ORDER OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
25 June 1998 *

In Joined Cases T-14/97 and T-15/97,

Sofivo SAS, a company incorporated under French law, established at Condé-sur-Vire (France),

Sofivo Production SAS, a company incorporated under French law, established at Brécé (France),

Sovinor SAS, a company incorporated under French law, established at Condé-sur-Vire,

Denkavit France SARL, a company incorporated under French law, established at Montreuil-Bellay (France),

Sobeval Viande SA, a company incorporated under French law, established at Périgueux (France),

Serval SA, a company incorporated under French law, established at Sainte-Eanne (France),

* Language of the case: French.

Besnier Industrie SNC, a company incorporated under French law, established at Bourgbarre (France),

Sovida SA, a company incorporated under French law, established at Châteaubriand (France),

Ouest Élevage SICA, a company incorporated under French law, established at Ploudaniel (France),

Guinde SA, a company incorporated under French law, established at Montauban (France),

Tarbouriech SA, a company incorporated under French law, established at Villeneuve-sur-Lot (France),

Mamellor SARL, a company incorporated under French law, established at Charnay-lès-Mâcon (France),

Coopagri Bretagne, a company incorporated under French law, established at Landerneau (France),

Collet et Compagnie SA, a company incorporated under French law, established at Châteaubourg (France),

Kermené SA, a company incorporated under French law, established at Saint-Jacut-du-Mené (France), and

Vals SA, a company incorporated under French law, established at Champagne (France),

represented initially by Deborah Kryvian and subsequently by Philippe Denesle, of the Rouen Bar, with an address for service in Luxembourg at the Chambers of Marc Loesch, 11 Rue Goethe,

applicants,

v

Council of the European Union, represented by John Carbery, Legal Adviser, and Moyra Sims-Robertson, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Alessandro Morbilli, Manager of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer, Kirchberg,

defendant,

supported by

Commission of the European Communities, represented by Gérard Berscheid, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

intervener,

APPLICATION for annulment of Article 1(4) of Council Regulation (EC) No 2222/96 of 18 November 1996 amending Regulation (EEC) No 805/68 on the common organisation of the market in beef and veal (OJ 1996 L 296, p. 50),

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

composed of: J. Azizi, President, R. García-Valdecasas and M. Jaeger, Judges,

Registrar: H. Jung,

makes the following

Order

Legislative background

1 Consumer concern about bovine spongiform encephalopathy (BSE) led, from 1996 onwards, to a serious disruption of the market in beef and veal, which took the form of a steep drop in consumption, a fall in the prices paid to producers and public intervention buying.

2 As consumer demand was unlikely to recover quickly, the Council took the view that market balance should be restored by reducing production.

3 With that end in view Council Regulation (EC) No 2222/96 of 18 November 1996 amending Regulation (EEC) No 805/68 on the common organisation of the market in beef and veal (OJ 1996 L 296, p. 50), was adopted.

4 As the eighth recital in its preamble indicates, it aims to bring about a reduction in the number of finished animals offered on the market, with greater encouragement for withdrawal and/or marketing of young, light animals.

5 To that end, Article 1(4) of Regulation No 2222/96 replaces Article 4i of Regulation (EEC) No 805/68 of 27 June 1968 on the common organisation of the market in beef and veal (OJ, English Special Edition 1968 (I), p. 187), and authorises the granting of two types of premiums. The amended article provides, first, for a processing premium in respect of young male calves originating in the Community which are withdrawn from production, as a rule, before they are over 10 days old, and, under certain conditions, before they are 20 days old (Article 4i(1)), and, second, an early marketing premium for calves which is granted on the slaughter, in a Member State, of each calf 'of a weight of not more than the average slaughter weight of calves in the Member State concerned, less 15%' (Article 4i(2)).

6 During the period from 1 December 1996 to 30 November 1998, each Member State is to apply at least one of the two premiums (Article 4i(3) of Regulation No 805/68).

7 The average slaughter weight per Member State referred to in Article 4i(2) is to be that deriving from 'Eurostat statistics for 1995 or any other official published statistical information for that year accepted by the Commission' (Article 4i(2), first indent, of Regulation No 805/68).

8 On the basis of that information the Commission is to determine the maximum calf slaughter weights applicable in each Member State (Article 4i(5), second indent, of Regulation No 805/68).

Subject-matter of the dispute

9 The applicants are companies incorporated under French law involved in the production of veal for human consumption.

10 They seek the annulment of Regulation No 2222/96, or at least of Article 1(4) thereof, in so far as that provision requires the Member States to pay an early marketing premium for calves where their slaughter weight is not more than the average slaughter weight for calves as it appears in the statistics for 1995 in the Member State concerned, the weight of the animal being established by reference to the carcase specifications used to determine veal production in 1995, when, in the absence of a common definition of veal for human consumption or reliable uniform statistics at Community level, there are, in the applicants' submission, no objective data on the basis of which carcases from different Member States might be compared.

11 They complain that the application of that criterion entails discrimination against producers of veal operating in France in comparison with those operating in the Netherlands, who are their main competitors, since the reference weight fixed on that basis is, in the case of animals slaughtered in France, too low to allow normal marketing, with the result that receipt of the premium is incompatible with the normal marketing of the carcases, whereas the reference weight applicable to carcases of animals slaughtered in the Netherlands is sufficiently high for that country's producers to receive the premium whilst marketing their carcases normally, in particular, on the French market where they meet consumer requirements.

12 Accordingly, the applicants base their application for annulment on a breach of the principle of equal treatment and on discrimination between producers contrary to the second subparagraph of Article 40(3) of the EC Treaty.

Procedure and forms of order sought

13 On 21 January 1997, Sofivo SAS and 13 other companies incorporated under French law brought the action registered as Case T-14/97. On 24 January 1997, two companies incorporated under French law, Kermené SA and Vals SA, brought the action registered as Case T-15/97.

14 By order of the President of the Fifth Chamber of the Court of First Instance of 29 April 1997, Cases T-14/97 and T-15/97 were joined for the purposes of the written procedure, the oral procedure and judgment.

15 By order of the President of the Fifth Chamber of the Court of First Instance of 11 June 1997, the Commission was granted leave to intervene in support of the forms of order sought by the defendant.

16 In their applications the applicants claim that the Court of First Instance should:

— annul Regulation No 2222/96 or, at least, Article 1(4) thereof;

— order the Council to pay the costs.

17 By separate documents lodged at the Registry of the Court of First Instance on 24 March 1997, pursuant to Article 114(1) of the Rules of Procedure, the Council raised an objection of inadmissibility in both cases, contending that the Court of First Instance should:

— declare the applications manifestly inadmissible;

— order the applicants to pay the costs.

18 In their observations on the objection of inadmissibility lodged on 23 May 1997, the applicants contend that the Court of First Instance should dismiss the objection of inadmissibility raised by the Council.

19 The intervener supports the forms of order sought by the Council.

The admissibility of the applications

Arguments of the parties

20 The Council claims that the applications are inadmissible in that, first, the contested measure does not constitute a decision and, second and third, the applicants are neither individually nor directly concerned by the contested measure.

21 The Commission reiterates the arguments relied on by the Council and raises two further arguments alleging that the applicants have no interest in bringing proceedings and have given insufficient grounds for their applications, in that the subject-matter of the actions covers provisions other that Article 1(4) of Regulation No 2222/96.

22 The applicants submit that they are individually affected by Regulation No 2222/96. They base their argument, first, on the fact that the early marketing premium for veal was applied at very short notice, namely as from 1 December 1996, Regulation No 2222/96 having been published in the Official Journal on 21 November 1996. Veal production requires an industrial and marketing infrastructure which, the applicants submit, cannot be created within such a short period. It thus seems highly unlikely that the legislation can apply to new producers who only commenced business after the adoption of Regulation No 2222/96. Such does not, moreover, seem to have been the intention of the authors of that regulation since it is intended to limit production. The regulation, therefore, applies to persons whom it was perfectly possible to identify when it was enacted.

23 The applicants submit, second, that they are individually concerned by Regulation No 2222/96, inasmuch as the early marketing premium for which it provides substantially affects their position on the market *vis-à-vis* Dutch veal producers. They point to the fact that the maximum slaughter weight for calves eligible for the premium was established by Commission Regulation (EC) No 2311/96 of 2 December 1996 amending Regulation (EEC) No 3886/92 laying down detailed rules for the application of premium schemes in the beef and veal sector (OJ 1996 L 313, p. 9), *inter alia* by adding an Annex IV (Article 1(14)). That Annex IV established a maximum slaughter weight of 108 kg for animals slaughtered in France and 138 kg for animals slaughtered in the Netherlands. Given the pricing structure of carcases, the marketing of carcases weighing only 108 kg is only possible, in the applicants' submission, by allowing a discount, in contrast to carcases of 138 kg which are perfectly marketable, particularly on the French market where they meet consumer requirements. French producers, unlike Dutch producers, thus face a dilemma: they can either receive the premium or market their meat normally.

24 The applicants submit, further, that Regulation No 2222/96 concerns them directly. It does not allow Member States any discretion. The truth of this claim is evidenced in three ways. First, the Member States are obliged to apply at least one of the two premiums. Second, the choice between the two premiums is furthermore purely theoretical inasmuch as States not affected by embargo measures are forced to adopt the early marketing premium in preference to the market withdrawal premium. In practice only the United Kingdom and Ireland, which are affected by the embargo, and Portugal which does not produce veal, have opted for the second premium. Third, since Regulation No 2222/96 makes payment of the premium conditional upon a slaughter weight of not more than an average slaughter weight determined on the basis of statistics from 1995, that is to say from a year which has already passed, it removes any discretion from the Member States as they are not in a position to influence the rate of the premium.

Findings of the Court

25 Under Article 114 of the Rules of Procedure, the Court of First Instance is to give a decision on admissibility without considering the substance of the case, if a party makes an application to that effect. Under Article 114(3), unless the Court of First Instance otherwise decides, the remainder of the proceedings is to be oral. In this case, the Court considers that it has obtained sufficient information from examination of the documents on the court file to be able to give a decision without opening the oral procedure.

26 The fourth paragraph of Article 173 of the Treaty confers on individuals the right to challenge any decision which, although adopted in the form of a regulation, is of direct and individual concern to them. According to consistent case-law, 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 (Joined Cases 789/79 and 790/79 *Calpak and Società Emiliana Lavorazione Frutta* v *Commission* [1980] ECR 1949, paragraph 7; Case T-476/93 *FRSEA and FNSEA* v *Council* [1993] ECR II-1187, paragraph 19; and Case T-122/96 *Federolio* v *Commission* [1997] ECR II-1559, paragraph 50).

27 The test for distinguishing between a regulation and a decision, again according to settled case-law, is whether or not the measure in question has general application (Case 307/81 *Alusuisse Italia* v *Council and Commission* [1982] ECR 3463, paragraph 8).

28 In the present case it is therefore necessary to consider the nature of Regulation No 2222/96 and, in particular, its intended or actual legal effects.

29 The regulation is intended *inter alia* to allow Member States to grant an early marketing premium for veal. To that end, the provision which is more specifically contested provides that the premium is to be granted on the slaughter, in a Member State, of each calf of a weight of not more than the average slaughter weight of calves in the Member State concerned, less 15%.

30 In establishing one of the conditions governing the grant of the premium, the contested provision thus applies, as a part of the mechanism set up by the regulation, to objectively determined situations and has legal effects on categories of persons envisaged in general and abstract terms, in the present case, traders bringing calves to slaughter in Member States which opt for the application of that premium. It therefore displays the features of a measure of general application within the meaning of Article 189 of the Treaty.

31 The general application and hence the legislative nature of a measure are not called in question by the fact that it is possible to determine the number or even the identity of the persons to whom it applies at a given moment with a greater or lesser degree of precision as long as it is established that it is applied by virtue of an objective legal or factual situation defined by the measure in relation to its objective (see, for example, order of 18 December 1997 in Case C-409/96 P *Sveri-*

ges Betodlares Centralförening and Henrikson v *Commission* [1997] ECR I-7531, paragraph 37; orders of 29 June 1995 in Case T-183/94 *Cantina Cooperativa fra Produttori Vitivinicoli di Torre di Mosto and Others* v *Commission* [1995] ECR II-1941, paragraph 48, and *Federolio* v *Commission*, cited above, paragraph 55).

32 In the present case, notwithstanding the more or less limited number of traders eligible to receive the early marketing premium for veal when Regulation No 2222/96 was adopted, the Court cannot but find that the regulation provides for the premium to be granted on the basis of an objective situation, that is to say the bringing to slaughter of calves of a weight of not more than the average slaughter weight of calves in the Member State concerned, less 15%, a situation defined by reference to the objective of the regulation, that is to say, to restore balance to the market in beef and veal which has suffered serious disruption as a result of a drop in consumption. Moreover, the number of traders affected by the regulation at issue is always liable to change subsequently.

33 Accordingly, the contested provision of Regulation No 2222/96, is, by reason of its nature and its scope of application, of a legislative character, and does not constitute a decision within the meaning of Article 189 of the Treaty.

34 The case-law has made it clear, however, that, under certain circumstances, a provision of a legislative act applicable to the traders concerned in general, may be of individual concern to some of them (Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501, paragraph 13 and Case C-309/89 *Codorniu* v *Council* [1994] I-1853, paragraph 19). Where that situation obtains, a Community measure could then be of a legislative nature and, at the same time, *vis-à-vis* some of the traders concerned, in the nature of a decision (Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 50).

35 However, natural or legal persons cannot be individually concerned unless the provision in question affects them by reason of certain attributes which are peculiar to them or by reason of a factual situation which differentiates them from all other persons and which distinguishes them individually just as in the case of the person addressed (*Codorniu* v *Council*, cited above at paragraph 34, paragraph 20; Case T-12/93 *CCE de Vittel and Others* v *Commission* [1995] ECR II-1247, paragraph 36).

36 Accordingly, it must be ascertained whether, in the present case, the applicants are affected by the contested provision by reason of certain attributes which are peculiar to them or whether there is a factual situation which differentiates them from all other persons with respect to the provision in question.

37 In the present case, the Court of First Instance finds that, even if the contested provision of Regulation No 2222/96 were, as the applicants assert, such as to affect their situation by reason of its factual consequences on their position on the market, that circumstance would not suffice to differentiate them from all other persons, since they would be in the same situation as all other economic agents bringing calves to slaughter in France. The provision thus concerns them only by reason of their objective status of economic agents active in the sector contemplated by the regulation, in the same way as any other economic agent carrying on the same activity (Case 34/88 *Cevap and Others* v *Council* [1988] ECR 6265, paragraph 15, and Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 42).

38 It follows from the foregoing considerations that the contested provision of Regulation No 2222/96 cannot be held to be of individual concern to the applicants.

39 As that condition of admissibility is not fulfilled in the present case, the objection of inadmissibility raised by the Council must be upheld and the actions dismissed as inadmissible, without there being any need to rule on the pleas alleging that the

applicants were not directly concerned by Regulation No 2222/96, that they had no interest in bringing proceedings and that their applications did not state sufficient grounds under Article 19 of the EC Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance.

40 Finally, the Court of First Instance points out that it is clear from Article 1(9) of Regulation No 2311/96 that the application for the premium is to be made to the competent authority of the Member State concerned. It is therefore always possible that a trader may challenge the validity of the contested regulation in an action brought before the courts of that Member State against the decision of the competent State authority on his application for a premium. Such proceedings will be liable to give rise to a reference to the Court of Justice for a preliminary ruling on validity, pursuant to Article 177 of the Treaty.

41 The objection of inadmissibility raised by the Council must therefore be upheld and the present applications declared inadmissible.

Costs

42 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. As the applicants have been unsuccessful and the Council has applied for costs, the applicants should be ordered to bear their own costs and to pay those incurred by the Council. Under Article 87(4) of the Rules of Procedure, the institutions which intervened in the proceedings are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby orders:

1. **The applications are dismissed as inadmissible.**

2. **The applicants shall bear their own costs and shall be jointly and severally liable to pay the costs incurred by the Council. The Commission shall bear its own costs.**

Luxembourg, 25 June 1998.

H. Jung — Registrar

J. Azizi — President