ORDER OF THE COURT OF FIRST INSTANCE (First Chamber)
20 October 1994 *

In Case T-99/94,

Asociación Española de Empresas de la Carne (Asocarne), a Spanish trade association, based in Madrid, represented by Paloma Llaneza González, of the Madrid Bar, with an address for service in Luxembourg at the Chambers of Tom Loesch and Jean-Claude Wolter, 11 Rue Goethe,

applicant,

v

Council of the European Union, represented by Ramón Torrent, Director of its Legal Service, and Ignacio Díez Parra, also of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Bruno Eynard, Manager of the Legal Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

* Language of the case: Spanish.

APPLICATION for the annulment of Council Directive 93/118/EC of 22 December 1993 amending Directive 85/73/EEC on the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1993 L 340, p. 15),

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

composed of: J. L. Cruz Vilaça, President, H. Kirschner and A. Kalogeropoulos, Judges,

Registrar: H. Jung,

makes the following

Order

Facts and procedure

1 By application lodged at the Registry of the Court of First Instance on 10 March 1994, the Asociación Española de Empresas de la Carne (Asocarne) brought an action for the annulment of Council Directive 93/118/EC of 22 December

1993 amending Directive 85/73/EEC on the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1993 L 340, p. 15, hereinafter 'the directive at issue').

2 Council Directive 85/73/EEC of 29 January 1985 concerns the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1985 L 32, p. 14, hereinafter 'the 1985 Directive'). Its purpose was to harmonize the various fees collected on account of those inspections and controls. Differences in that sector were considered to be liable to affect the conditions of competition between lines of production which are for the most part covered by common organizations of the markets.

3 Article 1 of the 1985 Directive required Member States to ensure that, as from 1 January 1986, a fee was collected when animals of various species — including *inter alia* bovine animals, swine and goats — were slaughtered, in order to recoup the costs of the health inspections and controls provided for by Community law and, specifically, by Council Directive 64/433/EEC of 26 June 1964 on health problems affecting intra-Community trade in fresh meat (OJ, English Special Edition 1964, p. 185, hereinafter 'the 1964 Directive'), which governs the health inspections and controls applying to that trade, and by the 1985 Directive, which lays down detailed rules on the financing of those services.

4 On 15 June 1988, the Council adopted Decision 88/408/EEC on the levels of the fees to be charged for health inspections and controls of fresh meat pursuant to Directive 85/73/EEC (OJ 1988 L 194, p. 24, hereinafter 'the 1988 Decision'), basing it on Article 2 of that directive. The 1988 Decision was addressed to the Member States.

5 Article 1 of the directive at issue makes several amendments to the 1985 Directive. Article 1(3) amended Article 2 of the 1985 Directive through the addition of an annex to govern thereafter fees in respect of the types of meat covered by the 1964 Directive, Council Directive 71/118/EEC of 15 February 1971 on health problems affecting trade in fresh poultrymeat (OJ, English Special Edition 1971 (I), p. 106) and Council Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems upon importation of bovine animals and swine and fresh meat from third countries (OJ, English Special Edition 1972 (31 December), p. 7). The new Article 5 concerns the rate to be agreed for conversion into national currency of the amounts expressed in ECUs. Under Article 2 of the directive at issue, the 1988 Decision is repealed with effect from 1 January 1994.

6 Article 3 of the directive at issue requires Member States to bring into force the laws, regulations and administrative provisions necessary to comply with the directive not later than 31 December 1993 as regards the requirements in the Annex and in Article 5, and not later than 31 December 1994 as regards the other provisions.

It should be pointed out that, in principle, the fees are calculated on a flat-rate basis, but Member States may, if appropriate, adjust those rates.

7 By separate document, lodged at the Registry of the Court of First Instance on 20 May 1994, the Council raised a preliminary objection of inadmissibility under Article 114(1) of the Rules of Procedure. On 29 June 1994 Asocarne lodged its observations in response to that objection at the Registry of the Court of First Instance. The written procedure with respect to the objection of inadmissibility closed on 29 June 1994.

8 On 26 July 1994, the Commission lodged an application to intervene under Article 115 of the Rules of Procedure. On 16 August 1994, the Federació Catalana d'Industries de la Carn (Fecic) and the Asociación Profesional de Salas de Despiece y Empresas Carnicas (Aprosa-Anec) also lodged applications to intervene.

Law

9 Pursuant to Article 111 of the Rules of Procedure, where an action is manifestly inadmissible the Court of First Instance may, by reasoned order, give a decision on the action without taking further steps in the proceedings.

Admissibility

Arguments of the parties

10 In support of its objection of inadmissibility, the Council contends first that, according to the fourth paragraph of Article 173 of the EC Treaty, a directive cannot be the subject of an action for annulment brought by an individual, since that provision does not confer on natural or legal persons a right of action against measures of general application, such as directives. In the text of the fourth paragraph of Article 173 of the Treaty only decisions and regulations are mentioned.

11 Secondly, the Council contends that the contested measure cannot be regarded as a decision within the meaning of Article 173. Since the measure in question is of

general application, applies in a general and abstract manner to objectively determined situations and requires transposition into the domestic law of each Member State, its content matches its form, which is that of a directive.

12 The Council further maintains that, quite apart from the legal nature of the contested measure, the application would be admissible only if the measure were of individual concern to the applicant. In the Council's view, that is not the position. As the Court of Justice has consistently held, a trade association, the purpose of which is to protect the interests of its members, cannot be individually concerned (see the order of the Court of Justice in Case 117/86 *UFADE* v *Council and Commission* [1986] ECR 3255). Furthermore, the applicant is not adversely affected by the contested measure by reason of certain attributes which are peculiar to it or by reason of circumstances in which it is differentiated from all other persons. All the other traders in all the Member States who pursue the same activities as the members of the applicant association are affected in the same way.

13 Lastly, the Council considers that the measure is not of direct concern to the applicant. Since the addressees of the directive at issue are the Member States, the applicant possesses no such status. The Council stresses that the necessity for national implementing provisions derives directly from the content of the directive at issue and any rights or obligations for individuals will derive solely from those national measures.

14 The applicant claims, on the other hand, that the annex to the directive at issue is nothing other than a decision within the meaning of Article 173 of the Treaty. The content of the measure at issue is exactly the same as that of the 1988 Decision which it repeals and replaces. The control by the Court of First Instance of the legality of acts of the Council would be impaired if the Court were to be deprived

of the possibility of reviewing the legality of an act in the nature of a decision but in the form of a directive. Individuals who, while suffering the effects of such an act, would not be entitled to contest them by means of an action before the Court would thus be left defenceless.

15 The applicant further considers that the directive at issue affects it individually. In order to demonstrate that its status as an association is no obstacle in that respect, it relies on the judgment of the Court of Justice in Case C-313/90 (*CIRFS and Others* v *Commission* [1993] ECR I-1125). The applicant, which states that it had been involved in various steps taken with a view to defending the interests of undertakings in the Spanish meat sector, points out that it maintained contact with the Commission through the confederation of the associations in that sector in Europe; that it lodged a complaint with the Commission concerning the application made of the 1985 Directive; that, during the preparation of the directive at issue, it submitted written observations and was in close contact with the competent departments. The applicant claims that, even before the directive at issue is transposed into national law, it is possible to identify the persons affected and the extent of the economic damage which the application of the flat-rate payments will entail for them. To that end, the applicant has produced a detailed list of those of its member undertakings which had to pay a fee in accordance with the rules of the 1985 Directive. It claims that, merely by reading the directive at issue, it would be possible to quantify the damage which its members will inevitably suffer.

16 Lastly, the applicant claims that the judgment of the Court of Justice in Case C-309/89 (*Codorniu* v *Council* [1994] ECR I-1853) establishes that the normative character of a measure does not automatically preclude its being of individual concern to certain traders.

Findings of the Court

17 The fourth paragraph of Article 173 of the Treaty makes no provision — for the benefit of individuals — for a direct action before the Community judicature

against directives or against decisions adopted in the form of directives. The justification for that exclusion lies in the fact that, in the case of directives, the judicial protection of individuals is duly and sufficiently assured by the national courts, which review the transposition of directives into the domestic law of the various Member States.

18 Furthermore, even supposing that it were possible — contrary to the wording of the fourth paragraph of Article 173 of the Treaty — to treat directives as regulations in order to allow proceedings against a decision 'in the form of' a directive, the directive at issue neither constitutes a 'disguised' decision nor contains any specific provision which has the character of an individual decision. On the contrary, it is a normative measure of general application since it is directed in a general and abstract manner to all traders in the Member States who fulfil as from 1 January 1994 the conditions set out in the 1985 Directive and since, furthermore, its application within the Member States requires its transposition into each national legal system by means of national implementing measures. Contrary to the argument put forward by the applicant, the fact that the directive at issue replaced a decision does not in any way affect the general and abstract nature of its content and consequently cannot invalidate that analysis.

19 As a secondary point, it should be considered whether the directive was of individual concern to the applicant. In that regard, the applicant makes the point that it took part in the preparation of the 1985 Directive and lodged a complaint concerning its application. The Court of Justice has, admittedly, recognized, in its judgments in Joined Cases 67/85, 68/85 and 70/85 (*Van der Kooy and Others* v *Commission* [1988] ECR 219) and in Case C-313/90, cited above, that associations or bodies set up to promote collective interests may be individually concerned by decisions abolishing aid or refusing initiation of the procedure laid down in Article 93(2) of the EC Treaty. However, that case-law cannot be transposed to the present case, which concerns a directive, that is to say, a measure of general application.

Article 173 of the Treaty does not permit any individual who has taken part in the preparation of a legislative measure subsequently to institute proceedings against regulations or directives.

20 Nor is the directive of individual concern to the undertakings which are members of the applicant association. Unlike the regulation in question in Case C-309/89, cited above, the directive now under consideration has not affected specific rights of the applicant or its members.

21 On the contrary, the applicant and its members are — like all traders in the Community operating in the sector in question — subject to the national measures adopted for the purposes of transposing the directive. The concept of a closed class the members of which are identifiable is therefore of no relevance in the present case. It follows that the applicant is not individually concerned for the purposes of the fourth paragraph of Article 173 of the Treaty (see also the judgment of the Court of Justice in Case C-298/89 *Gibraltar* v *Council* [1993] ECR I-3605, paragraph 21, and the order of the Court of First Instance in Case T-463/93 *GUNA* v *Council* [1993] ECR II-1205, paragraph 17).

22 It follows that the application is manifestly inadmissible, without there being any need for the Court to consider whether or not the directive at issue is of direct concern to the applicant. In those circumstances, there is no need to give a decision on the applications to intervene in support of the applicant submitted by the Federació Catalana d'Industries de la Carn (Fecic) and the Asociación Profesional de Salas de Despiece y Empresas Carnicas (Aprosa-Anec) or on the application to intervene in support of the Council submitted by the Commission.

Costs

23 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, 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.

24 Under Article 87(6) of the Rules of Procedure of the Court of First Instance, where a case does not proceed to judgment, the costs shall be in the discretion of the Court of First Instance. The Court considers that, in view of the circumstances of the case, the parties who have made applications to intervene should bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby orders:

1. The application is dismissed as inadmissible.

2. There is no need to give a decision on the applications to intervene made by Federació Catalana d'Industries de la Carn (Fecic), the Asociación Profesional de Salas de Despiece y Empresas Cárnicas (Aprosa-Anec) and the Commission.

3. **The applicant shall bear its own costs, and the costs incurred by the Council.**

4. **The undertakings mentioned above and the Commission, which have applied for leave to intervene, shall bear their own costs.**

Luxembourg, 20 October 1994.

H. Jung — Registrar

J. L. Cruz Vilaça — President