

1. Natural and legal persons other than Member States are not entitled to make an application for annulment of Regulations adopted by the Council or the Commission.
2. The term 'decision' used in Article 173 has the technical meaning employed in Article 189, which in particular makes a clear distinction between the concept of a 'decision' and that of a 'regulation'.
3. The criterion for the distinction between the terms 'decision' and 'regulation' should be sought in the general 'application' or otherwise of the measure in question.
A decision is of individual concern to specific individuals; its essential characteristics arise from the restriction of the class of persons to whom it is addressed.
A regulation, being essentially of a legislative nature, is not addressed to a restricted number of persons, defined or identifiable, but applies to objectively determined situations. It involves immediate legal consequences in all Member States for categories of persons viewed in a general and abstract manner.
4. The determination of the legal nature of a measure emanating from the Council or the Commission does not depend only on its official designation, but should first take into account its object and content.
5. When a measure, which as a whole constitutes a regulation, includes provisions which are capable of being of direct and individual concern to certain natural or legal persons, such provisions do not have the character of a regulation and may therefore be impugned by those concerned.
6. An association which represents a category of natural or legal persons is not concerned individually by a measure affecting the general interests of the persons in that category.

In Joined Cases 19 to 22/62

- 19/62 — **FÉDÉRATION NATIONALE DE LA BOUCHERIE EN GROS ET DU COMMERCE EN GROS DES VIANDES**, having its head office at 59 rue Saint-Lazare, Paris, represented by Jacques Lassier, advocate of the Paris Cour d'Appel,
- 20/62 — **STICHTING VOOR NEDERLANDSE ZELFSTANDIGE HANDELEN INDUSTRIE**, having its head office at 4 Wassenaarseweg, The Hague, represented by Jacques Lassier, advocate of the Paris Cour d'Appel, and by Harald Ditsch of Cologne,
- 21/62 — **SYNDICAT DE LA BOUCHERIE EN GROS DE PARIS**, having its head office at the La Villette slaughterhouses, 28 avenue Corentin-Cariou, Paris, represented by Jacques Lassier, advocate of the Paris Cour d'Appel,

all with an address for service in Luxembourg at the Chambers of E. Arendt, advocate of the Court of Luxembourg, 4 Boulevard Joseph-II,

22/62—ZENTRALVERBAND DES DEUTSCHEN GETREIDE-, FUTTER- UND DÜNGEMITTELHANDELS e. V., having its head office at '2-4 Olbergstrasse, Bonn, represented by its President, Rudolf Schwarze, assisted by Harald Ditzes of Cologne, with an address for service in Luxembourg at the Chambers of Mr Audry, Fédération des commerçants, 8 Avenue de l'Arsenal,

applicants,

v

COUNCIL OF THE EUROPEAN ECONOMIC COMMUNITY, provisionally established at Brussels, represented in Cases 19, 20 and 21/62 by its Legal Adviser, Jacques Mégret, acting as Agent, and in Case 22/62 by its Legal Adviser, Ernst Wohlfarth, acting as Agent, with an address for service in Luxembourg at the offices of the Secretariat General of the Councils of Ministers, 3-5 rue Auguste-Lumière,

defendant,

Application for annulment of the second sentence of Article 2 (1) of Regulation No 26 of the Council of the European Economic Community,

THE COURT

composed of: A. M. Donner, President, L. Delvaux and R. Rossi (Presidents of Chambers), O. Riese, Ch. L. Hammes, A. Trabucchi (Rapporteur) and R. Lecourt, Judges,

Advocate-General: M. Lagrange
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The facts may be summarized as follows: On 4 April 1962 the Council of the European Economic Community adopted Regulation No 26 'applying certain rules of competition to production

of and trade in agricultural products' (Official Journal of the Communities of 20 April 1962). Article 2 (1) of this Regulation provides that: 'Article 85 (1) of the Treaty shall not apply to such of the agreements, decisions and practices referred to in the

preceding Article as form an integral part of a national market organization or are necessary for attainment of the objectives set out in Article 39 of the Treaty. In particular, it shall not apply to agreements, decisions and practices of farmers, farmers' associations or associations of such associations belonging to a single Member State which concern the production or sale of agricultural products or the use of joint facilities for the storage, treatment or processing of agricultural products, and under which there is no obligation to charge identical prices, unless the Commission finds that competition is thereby excluded or that the objectives of Article 39 of the Treaty are jeopardized.'

According to the applicants, which are associations of French, Dutch and German traders dealing in agricultural products, the second part of this provision damages their interests because it establishes discrimination between producers of and traders in agricultural products, to the advantage of the former. The applicants see this discrimination in the fact that the disputed provision gives to farmers, to farmers' associations or to associations of such associations of a Member State, the right to make agreements relating to the sale of agricultural products or the use of joint facilities for the storage, treatment or processing of agricultural products, without its being necessary for such agreements to be capable of promoting the objectives of Article 39 of the EEC Treaty, whilst traders can make agreements only with the sole aim of realizing the objectives of that Article. This differentiation of treatment puts those in commerce at a disadvantage in competition with farmers and their associations.

The applicants have asked for the annulment of the second part of this provision on the basis of the second paragraph of Article 173, putting forward submissions of misuse of powers and of infringement of the Treaty.

The defendant has raised preliminary objections of inadmissibility in the four cases under Article 91 of the Rules of Procedure. In the summary of the submissions which follows, only the submissions and arguments relating to admissibility are dealt with.

II — Conclusions of the Parties

The *applicants* claim in their applications that the Court should:

'annul the second sentence of Article 2 (1) of Regulation No 26 of the Council of the European Economic Community'.

The *defendant* contends in its statement raising the preliminary objection of inadmissibility that the Court should:

'without considering the substance of the application in question, declare it to be inadmissible, with all the legal consequences arising therefrom in particular in respect of the payment of fees, expenses and any other costs'.

The *applicants* oppose these conclusions in their replies.

III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

1. *Preliminary objection of inadmissibility based on the nature and the application of the measure in dispute*

According to the *defendant*, the wording of the second paragraph of Article 173 allows private persons to institute proceedings against a regulation only in cases where such measure, because of its content, does not have general but only individual application. In this connexion the defendant points out that the condition that a regulation should be of individual concern to a private person if that person is to be entitled to contest it means that he must be affected not as a member of a category abstractly defined, but as a particular and specific individual. That means that the measure in question

must in reality constitute a decision and not a regulation.

Moreover a comparison between Article 173 of the EEC Treaty and Article 33 of the ECSC Treaty clearly shows the intention of the authors of the EEC Treaty to limit the possibility of instituting proceedings against measures of a general nature to the Member States, the Council and the Commission.

As to the distinction between a general and an individual measure, the defendant invokes the case law of the Court relating to the ECSC Treaty and states that on this point the Treaties of Rome have introduced no innovation. In the present case the provision in dispute being applicable to every legal person who at present or in the future fulfils the conditions which it has itself envisaged and defined in an abstract manner for its application clearly establishes a legislative principle. It cannot therefore usefully be replaced by a bundle of individual decisions which could not have any effect with regard to any persons concerned who might appear later.

The *applicants* in Cases 19, 20 and 21/62 reply that within the framework of the EEC Treaty the distinction between a decision and a regulation does not correspond exactly to the difference between an individual decision and a general decision within the meaning of the ECSC Treaty. In the absence of an expressed intention to the contrary by the authors of the EEC Treaty, the concept of a decision cannot be restricted only to measures directed to one or more individuals indicated by name. A decision could also be addressed to one or more categories of individuals, whilst a regulation is a measure which lays down a general rule applicable *in abstracto* to all individuals, present and future.

In the present action the applicants in the four cases maintain that the provision in dispute has the character of an individual decision, for the measure applies to a category of individuals who

are determined specifically, that is, farmers. In addition, as the applicant remarks in Case 22/62, it was made in relation to a well-defined particular matter and for well-defined cases, and directly affects both the legal and competitive position of the applicants.

The applicants in Cases 19, 20 and 21/62 furthermore criticize the construction placed by the defendant upon the expression 'of individual concern' and remark that such an interpretation would shift the meaning of this expression towards the concept of an addressee, contrary to the clear distinction made by the second paragraph of Article 173 in this respect. They claim that the inclusion of the words 'and individual' has no purpose other than to clarify the meaning of the words 'of direct ... concern'.

In support of their contentions the applicants point out that it would be contrary to the law of nations and to democratic principles to accept the restrictive construction of the Council, which would enable that institution, comprising members who are politically not responsible to the courts of Europe to frustrate unchecked the objectives of the Treaty and the rights of the citizens of Member States. In the present case the applicants would in practice have no chance of availing themselves of the objection of illegality (Article 184) against the disputed provision or of a reference for a preliminary ruling (Article 177), because the persons harmed by this provision do not appear among those to whom it is addressed. The restrictive argument of the Council would consequently lead to a real denial of justice.

The applicant in Case 22/62 asserts that should the Court consider the disputed provision to be a regulation, it would still have a right to institute proceedings against this provision, for the wording of the second paragraph of Article 173 of the EEC Treaty allows the inference that private individuals

have a right to institute proceedings against regulations which occasion damage to them 'in a special manner'. They furthermore refer to the principle of German constitutional law according to which private persons have always the option of attempting by means of legal proceedings to contest legislation detrimental to them. This option should be open particularly when the applicant relies, as here, not on a mere infringement of the Treaty, but on the infringement of the fundamental principle of non-discrimination.

2. *Preliminary objections of inadmissibility based on the ground that the disputed measure is not of direct concern to the applicants*

(a) The *defendant* maintains that Article 173 of the EEC Treaty, which requires that the act in question should be of *direct concern* to private persons, is more restrictive than Article 33 of the ECSC Treaty which provides, in a more general way, for the right of private persons to attack individual decisions '*concerning them*'. This condition imposed by Article 173 is fulfilled by 'the person for whose benefit, or against whose interests, the disputed measure creates, modifies or abolishes rights or obligations when, in a word, the effect of the measure on the person in question is direct and not mediate'; so that unlike the position within the framework of the ECSC Treaty, 'this condition is not fulfilled when that measure takes effect only after the intervention of a legal act of a third party taken on the basis of the measure in question'. In the present case, the applicants do not complain that they do not benefit from the disputed provision, but go no further than to maintain that their competitors are favoured by provisions the regularity of which is disputed by the applicants. This damage could occur only when their competitors have made use by agreements, decisions or practices of the

provision at issue.

The *applicants* in Cases 19, 20 and 21/62 reply that the arguments of the *defendant* appear to disregard the clear distinction which it is necessary to make between the person who is concerned by a measure and the person to whom it is addressed. They consider that the use of the phrase 'is of . . . concern to' made by the second paragraph of Article 173, which is much wider than, for example 'affects', implies that the Treaty 'allows the widest possible right of action to all parties interested'. The requirement of direct concern referred to in the second paragraph of Article 173 indicates that this provision allows 'an application for annulment only by persons who are immediately concerned, that is to say, without the intervention of persons who may also benefit or suffer from the measures'. The important position held by the applicant associations and their members in the agricultural sphere puts them directly in competition with farmers as regards the activities expressly mentioned in the disputed measure. Thus it is of direct concern to them.

The applicant in Case 22/62 asserts that in order that a person may be affected by a measure within the meaning of the second paragraph of Article 173, it is not necessary that such measure should alter his rights and duties, but it is sufficient that it damages him in respect of his economic interests. In order to decide whether the measure causes direct damage, whether within the legal sphere or within the sphere of a person's economic interests, the decisive element is the quantum of damage. In the context of admissibility, it must suffice that, 'according to the statement of the applicant, it is not out of the question that the disputed measure adversely affects his rights and interests'. The discrimination contained in the disputed decision, which involves a unilateral advantage for the applicant's competitors, has directly altered the

legal position and the competitive position to the disadvantage of the applicant in its capacity as general representative of the interests of its members. The applicants in the four cases state that they are attacking the discriminatory principle contained in the provision in question as such and not as discrimination consequent upon the making of agreements between producers.

The applicants in Cases 19, 20 and 21/62 point out that, in addition, the agreements, decisions or practices referred to in the disputed provision are not subject to any prior authorization, and that, in consequence, the Council is not able to prove that no agreement has been made.

(b) *As a subsidiary point*, the defendant, bearing in mind that the EEC Treaty, unlike the ECSC Treaty, contains no provision expressly granting a right of action to associations of undertakings, expresses doubts as to the possibility of the associations' being able to institute proceedings against a measure which — like the provision in the present case — is not of direct concern to them as associations but only by the intermediary of and through their members.

The applicants in Cases 19, 20 and 21/62 reply that, since the disputed provision establishes two distinct systems for two occupational categories, it is based on a criterion of differentiation of trades, and it is therefore for the trade organizations to act, since it is at their level that the discrimination appears. The commercial defence of the general interests of the

interests in the case of the applicants are accordingly affected as such, and the trades thus affected confers on them the capacity and interest to act.

According to the applicants, the interest of the Community in the good administration of justice and full supervision of the measures adopted by Community institutions requires that basic trade organizations, specialized in the defence of a well-defined trade, be acknowledged as having a right of action as wide as that in the ECSC Treaty (the words 'direct' and 'individual' in the second paragraph of Article 173 having the effect of excluding inter-trade organizations), interests in the case of the applicants are accordingly affected as such, and the for only these associations are in a position to defend sectional interests and to put them to the Court in their proper perspective. The applicant in Case 22/62 emphasizes in this respect that individual undertakings are rarely in a position to keep themselves informed of the measures adopted by Community institutions or to contest them in appropriate cases.

IV — Procedure

The procedure followed the normal course.

In view of the fact that the present cases are similar in their subject matter, the Court by an Order dated 7 November 1962 joined the four cases for purposes of the oral procedure and the judgment.

Grounds of judgment

I — As to admissibility

1. Under the terms of the second paragraph of Article 173 of the EEC Treaty, any natural or legal person may institute proceedings against an act of the Commission or the Council only if that act constitutes either a decision addressed to that person or a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and

individual concern to the former. It follows that such a person is not entitled to make an application for annulment of regulations adopted by the Council or the Commission.

The Court admits that the system thus established by the Treaties of Rome lays down more restrictive conditions than does the ECSC Treaty for the admissibility of applications for annulment by private individuals. However, it would not be appropriate for the Court to pronounce on the merits of this system which appears clearly from the text under examination.

The Court is unable in particular to adopt the interpretation suggested by one of the applicants during the oral procedure, according to which the term 'decision', as used in the second paragraph of Article 173, could also cover regulations. Such a wide interpretation conflicts with the fact that Article 189 makes a clear distinction between the concept of a 'decision' and that of a 'regulation'. It is inconceivable that the term 'decision' would be used in Article 173 in a different sense from the technical sense as defined in Article 189. It follows from the foregoing considerations that the present applications should be dismissed as inadmissible if the measure in dispute constitutes a regulation.

In examining this question, the Court cannot restrict itself to considering the official title of the measure, but must first take into account its object and content.

2. Under the terms of Article 189 of the EEC Treaty, a regulation shall have general application and shall be directly applicable in all Member States, whereas a decision shall be binding only upon those to whom it is addressed. The criterion for the distinction must be sought in the general 'application' or otherwise of the measure in question.

The essential characteristics of a decision arise from the limitation of the persons to whom it is addressed, whereas a regulation, being essentially of a legislative nature, is applicable not to a limited number of persons, defined or identifiable, but to categories of persons viewed abstractly and in their entirety. Consequently, in order to determine in doubtful cases whether one is concerned with a decision or a regulation, it is necessary to ascertain whether the measure in question is of individual concern to specific individuals.

In these circumstances, if a measure entitled by its author a regulation contains provisions which are capable of being not only of direct but also of individual concern to certain natural or legal persons, it must be admitted, without prejudice to the question whether that measure considered in its

entirety can be correctly called a regulation, that in any case those provisions do not have the character of a regulation and may therefore be impugned by those persons under the terms of the second paragraph of Article 173.

3. In this case the measure in dispute was entitled by its author a 'regulation'. However, the applicants maintain that the disputed provision is in fact 'a decision in the form of a regulation'. It is possible without doubt for a decision also to have a very wide field of application. However, a measure which is applicable to objectively determined situations and which involves immediate legal consequences in all Member States for categories of persons viewed in a general and abstract manner cannot be considered as constituting a decision, unless it can be proved that it is of individual concern to certain persons within the meaning of the second paragraph of Article 173.

In fact this provision gives to the categories of persons it affects, namely agricultural producers and their associations, operating in each Member State, the ability to conclude agreements and to adopt decisions and practices under less restrictive conditions than would be obtained from a pure and simple application of Article 85 of the EEC Treaty.

It remains to be considered whether the disputed provision is of individual concern to the applicants.

Although this provision affects the interests of traders in agricultural products, and consequently the members of the applicant associations, by placing them in a less favourable position than that of their direct competitors, the agricultural producers, it must be stated nevertheless that the traders who are members of the applicant associations are concerned by the said provision in the same way as all other traders in agricultural products in the Community.

Moreover, one cannot accept the principle that an association, in its capacity as the representative of a category of businessmen, could be individually concerned by a measure affecting the general interests of that category. Such a principle would result in the grouping, under the heading of a single legal person, of the interests properly attributed to the members of a category, who have been affected as individuals by genuine regulations, and would derogate from the system of the Treaty which allows applications for annulment by private individuals only of decisions which have been addressed to them, or of acts which affect them in a similar manner.

In these circumstances, it cannot be admitted that the provision in dispute is of individual concern to the applicants. It follows that the defendant was correct in designating the provision in question as a regulation.

The preliminary objection of inadmissibility is therefore well founded and the applications must be declared inadmissible, without its being necessary to examine the question whether associations are entitled to act each time their members are enabled to do so.

II — Costs

Under the terms of Article 69 (2) of the Rules of Procedure of the Court, the unsuccessful party shall be ordered to pay the costs. In the present case the applicants, having failed in their action, must bear the costs of the proceedings.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 173 and 189 of the Treaty establishing the European Economic Community;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 69 (2) and 91 (4);

THE COURT

hereby

1. Dismisses the applications as being inadmissible;

2. Orders the applicants to pay the costs of the proceedings.

	Donner	Delvaux	Rossi	
Riese	Hammes	Trabucchi		Lecourt

Delivered in open court in Luxembourg on 14 December 1962.

A. Van Houtte
Registrar

For the President
L. Delvaux
President of Chamber

OPINION OF MR ADVOCATE-GENERAL LAGRANGE
DELIVERED ON 20 NOVEMBER 1962

(see Joined Cases 16 and 17/62, page 481)