ORDER OF THE COURT OF FIRST INSTANCE (First Chamber)
4 October 1996 *

In Case T-5/96,

Sveriges Betodlares Centralförening, an association established under Swedish law, having its registered office in Malmö (Sweden),

and

Sven Åke Henrikson, residing in Lund (Sweden),

represented by Otfried Lieberknecht and Wolfgang Kirchhoff, Rechtsanwälte, Düsseldorf, and Michael Schütte, Rechtsanwalt, Berlin, with an address for service in Luxembourg at the Chambers of Alex Bonn, 62 Avenue Guillaume,

applicants,

v

Commission of the European Communities, represented by Eugenio de March, Legal Adviser, and James Macdonald Flett, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission decision contained in the letter of 27 October 1995 (Reference D(95) VI/1242/95) refusing to fix for Sweden the specific agricultural conversion rate for minimum sugar beet prices for the period from 1 January 1995 to 30 June 1995,

* Language of the case: English.

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

composed of: A. Saggio, President, V. Tiili and R. M. Moura Ramos, Judges,

Registrar: H. Jung,

makes the following

Order

1 Under the second indent of Article 137(2) of the Act concerning the conditions of accession and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21, hereinafter 'the Act of Accession'), the common agricultural policy is applicable in full in the new Member States, namely the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, from 1 January 1995, the date of their accession, except where the Act of Accession provides otherwise. Article 149 of the Act of Accession provides that if transitional measures are necessary, in the sugar sector, to facilitate the transition from the existing regime in the new Member States to that resulting from application of the common organization of the markets, such measures are to be adopted in accordance with the procedure laid down in Article 41 of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector (OJ 1981 L 177, p. 4, hereinafter 'Regulation No 1785/81').

2 On 21 December 1994, the Commission adopted Regulation (EC) No 3300/94 laying down transitional measures in the sugar sector following the accession of Austria, Finland and Sweden (OJ 1994 L 341, p. 39, hereinafter 'Regulation No 3300/94'). The Commission noted, in the third recital in the preamble thereto, that, for the 1994/95 marketing year, the entire sugar output of Austria, Finland and Sweden had been produced under national arrangements and that a very large amount of that sugar had been disposed of prior to accession, and that retroactive action on sugar beet delivery contracts concluded in respect of that production

between producers and sugar manufacturers had for that reason to be ruled out. Under Article 1 of Regulation No 3300/94, the provisions on the self-financing of the sector set out in Articles 28 and 28a of Regulation No 1785/81 do not apply to the quantities of sugar produced in the new Member States prior to accession. Furthermore, under Article 5(1) of Regulation No 3300/94, a normal carry-over stock for sugar at 1 January 1995 was fixed for each of the new Member States. However, Regulation No 3300/94 does not contain any express rule concerning the application of minimum prices to sugar beet, such as those referred to in Article 5 of Regulation No 1785/81, for beet production in the new Member States prior to their accession.

3 Article 1(1) of Commission Regulation (EEC) No 1713/93 of 30 June 1993 establishing special detailed rules for applying the agricultural conversion rate in the sugar sector (OJ 1993 L 159, p. 94) provides that the minimum sugar beet prices referred to in Article 5 of Regulation No 1785/81 and the production and additional levies referred to in Articles 28 and 28a of that regulation respectively are to be converted into national currency using a specific agricultural conversion rate equal to the average, calculated *pro rata temporis*, of the agricultural conversion rates applicable during the marketing year in question. Article 1(3) provides that this specific agricultural conversion rate is to be fixed by the Commission during the month following the end of the marketing year in question.

4 With regard to the marketing year from 1 July 1994 to 30 June 1995, the Commission adopted Regulation (EC) No 1734/95 of 14 July 1995 fixing, for the 1994/95 marketing year, the specific agricultural conversion rate applicable to the minimum sugar beet prices and the production levy and additional levy in the sugar sector (OJ 1995 L 165, p. 12, hereinafter 'Regulation No 1734/95'). The specific agricultural conversion rate to be used to convert the minimum sugar beet prices referred to in Article 5 and the levies referred to in Articles 28 and 28a of Regulation No 1785/81 was determined for the currencies of the Member States other than the three new Member States, including Sweden. According to the third recital in the preamble to Regulation No 1734/95, the Commission took the view that it was not appropriate to lay down specific agricultural conversion rates for the three new

Member States on the ground that, for the marketing year in question, the entire sugar output of Austria, Finland and Sweden had been produced under national arrangements in force prior to accession and that it had been provided that Articles 28 and 28a were not to apply to the quantities of sugar produced in those countries during the 1994/95 marketing year.

5 By letter of 4 October 1995, the applicant association requested the Commission to 'correct this error' in Regulation No 1734/95 and to fix also for the Swedish currency a specific agricultural conversion rate for the 1994/95 marketing year.

6 The Director-General of the Directorate-General for Agriculture (DG VI) replied to this request by letter of 27 October 1995 (Reference D(95) VI/1242/95) addressed to the applicant association's legal representative (hereinafter 'the contested letter'). The Commission stated in that letter that it could not comply with the request. That letter refers to Regulation No 1734/95 and, in particular, to the reasons given in the third recital in its preamble. It explains that the Community legal arrangements can apply only to 'future operations', whereas the contracts between Swedish sugar beet growers and the industry were concluded and the sugar beet delivered before 1 January 1995.

7 The first applicant, Sveriges Betodlares Centralförening, is a Swedish association which claims to represent all sugar beet growers in negotiations with the only sugar manufacturer in Sweden. According to Article 4 of its Statutes, it consists of local associations of sugar beet growers. The second applicant, Mr Henrikson, is the President of the applicant association and is also a sugar beet grower.

Procedure and forms of order sought by the parties

8 The applicants seek the annulment of the Commission decision contained in the letter of 27 October 1995 (Reference D(95) VI/1242/95) in so far as it refuses to fix for Sweden, for the 1994/95 marketing year, a specific agricultural conversion rate

for the period from 1 January 1995 (the date of accession) to 30 June 1995. The application was lodged at the Registry of the Court of First Instance on 15 January 1996.

9 The applicants also lodged on the same day a separate document requesting that the case be joined to Case T-197/95 involving the same parties and, according to the applicants, concerning the same subject-matter and the same legal arguments. They explain that the application in the present case was filed as a procedural safeguard, necessary in case the fact that no specific agricultural conversion rate was fixed for Sweden in Regulation No 1734/95 should be regarded as a failure to act, within the meaning of Article 175 of the Treaty, and for that reason not amenable to annulment under Article 173 of the Treaty.

10 By document lodged at the Registry of the Court of First Instance on 23 February 1996, the Commission raised an objection of inadmissibility pursuant to Article 114(1) of the Rules of Procedure. The applicants' observations on the objection of inadmissibility were lodged at the Court Registry on 11 April 1996.

11 By order of the Court of 4 October 1996, the application in Case T-197/95 *Sveriges Betodlares Centralförening and Henrikson* v *Commission* [1996] ECR II-1283 was dismissed as inadmissible.

12 The applicants claim that the Court should:

— join the present case to Case T-197/95;

— annul the Commission decision contained in the letter dated 27 October 1995/VI/040143 (Reference D(95) VI/1242/95) in so far as it refuses to fix, for

the 1994/95 marketing year, the specific agricultural conversion rate also with regard to Sweden, for the period from 1 January 1995 (the date of accession) to 30 June 1995;

— order the Commission to pay the costs.

13 The Commission contends that the Court should:

— dismiss the application as inadmissible;

— order the applicants jointly and severally to pay the costs.

Law

Admissibility

Arguments of the parties

14 The Commission considers that the present application is inadmissible on the ground that the contested letter does not in any way alter the applicants' legal position. In this regard, it first refers to the judgment in Case T-83/92 *Zunis Holding and Others* v *Commission* [1993] ECR II-1169, paragraphs 30 and 31, in which it was held that only measures having binding legal effects of such a nature as to affect the interests of the applicant by having a significant effect on his legal position constitute acts or decisions against which proceedings for annulment may be

brought under Article 173 of the Treaty. It also follows from that judgment that the refusal to withdraw or amend an act may constitute an act whose legality may be reviewed under Article 173 of the Treaty only if the act which the Community institution refuses to withdraw or amend could itself have been contested under that provision. The Commission adds that, in the appeal brought against that judgment, the Court of Justice took the view that the Commission's reply was a decision which simply confirmed a previous decision and that such a decision was not an actionable measure (Case C-480/93 P *Zunis Holding and Others* v *Commission* [1996] ECR I-1, paragraphs 13 and 14).

15 The Commission further argues that, since the contested letter refuses to amend a regulation which is not an act against which the applicants have *locus standi* to bring an action, the present application is also inadmissible.

16 Finally, the Commission expresses the view that the contested letter is not of direct and individual concern to Mr Henrikson.

17 The applicants have contended that there were nine consecutive devaluations of the Swedish krona between 1 January 1995 and 30 June 1995, which affected the parity between the ecu and the Swedish currency. They point out that the intervention price for sugar is determined in ecus and that, when the intervention price remained unchanged, its counter-value in Swedish currency increased. The prices obtained by Swedish sugar manufacturers thus increased without that increase being shared by the sugar beet growers.

18 The applicants submit that neither Regulation No 3300/94 nor Regulation No 1734/95 excludes the fixing of a specific agricultural conversion rate for the three new Member States, including Sweden, in respect of minimum sugar beet prices. It is the contested letter alone which introduces such a transitional measure, without any legal basis. According to the applicants, the contested letter thus goes further than Regulation No 1734/95 by explicitly excluding the fixing of a specific

agricultural conversion rate applicable to minimum sugar beet prices in the three new Member States.

19 The applicants further submit that the confirmation in the contested letter that the Community legal arrangements apply only to 'future operations' in relation to the date of accession deteriorates their legal position since it follows that the applicants cannot benefit from the Community system applicable to the sugar sector and, in particular, from a specific agricultural conversion rate. In view of the fact that other sugar beet growers benefit from the retroactive fixing of a conversion rate, the contested letter, according to the applicants, is also discriminatory in its effect.

20 The applicants consider that, in those circumstances, the contested letter affects their interests by significantly altering their legal position. In particular, they argue that the position in this case is not similar to that in *Zunis Holding*, cited above, in so far as the contested letter is not merely a confirmation of a previous measure, but goes further and affects their interests more profoundly than does Regulation No 1734/95.

21 The applicants submit that they also have *locus standi* in this case. They claim that they are directly and individually concerned by Regulation No 1734/95 and thus also by the act confirming and, indeed, extending the effects of that regulation in their regard.

22 With more specific regard to Mr Henrikson, the applicants contend that his *locus standi* is established by the retroactive nature of Regulation No 1734/95 and of the contested letter. Mr Henrikson also forms part of the closed circle of persons to whom the contested letter applies, that is to say, sugar beet growers who sold and delivered beet during the 1994/95 marketing year. He is therefore, it is claimed, directly and individually concerned both by the contested letter and by Regulation No 1734/95.

23 The applicants further stress that the Commission, in the contested letter, took a position on their request for the fixing of a conversion rate for Sweden. For that reason, the applicants could no longer plead a failure on the part of the Commission to fix a conversion rate for Sweden in proceedings brought under Article 175 of the Treaty. Only an application for annulment under Article 173 would be possible. On the other hand, if the Court were to take the view that the present action is directed against a purely confirmatory decision and is for that reason inadmissible, the applicants would have no legal remedy to protect their legitimate interests. Since the Commission alone is competent to determine the conversion rate in question, Article 177 proceedings would also be unable to resolve this issue. The applicants take the view that at least one avenue of redress should be open to them in order to ensure minimum legal protection.

Findings of the Court

24 Under Article 114 of the Rules of Procedure, the Court may, where a party so requests, rule on the issue of inadmissibility without going to the substance of the case. In the present case, the Court finds that it has sufficient information from the documents on the file to enable it to rule on the request without opening the oral procedure and without considering the substance of the case.

25 The Court first notes that the contested measure is a letter indicating that the Commission cannot accede to the applicant association's request seeking, in substance, an amendment to Regulation No 1734/95, in which no conversion rate applicable in Sweden was fixed (see paragraph 6 above).

26 The fact that a letter is sent by a Community institution to its addressee in response to a request made by the latter is not enough for it to be treated as a decision within the meaning of Article 173 of the Treaty, thereby entitling its

recipient to bring an action for its annulment (judgment in Case T-277/94 *AITEC* v *Commission* [1996] ECR II-351, paragraph 50). According to settled case-law, acts or decisions against which an action for annulment may be brought under Article 173 of the Treaty are those which produce binding legal effects capable of affecting applicants' interests and bringing about a distinct change in their legal position (see, most recently, the order in Case T-134/95 *Dysan Magnetics and Review Magnetics* v *Commission* [1996] ECR II-181, paragraph 20).

27 The Court takes the view that the contested letter cannot affect the applicants' legal position. The fact that there is no conversion rate for Sweden results from an assessment made when Regulation No 1734/95 was being adopted. The contested letter is, in reality, no more than a letter merely providing information and confined to explaining briefly to the addressee why a previous legislative position, namely that in Regulation No 1734/95, was taken.

28 With regard to the assertion that the contested letter is a negative response to a request submitted by the applicant association seeking, in substance, to secure an amendment to Regulation No 1734/95, the Court reiterates that a negative reply must be appraised in the light of the nature of the request to which it constituted a reply (Joined Cases C-15/91 and C-108/91 *Buckl and Others* v *Commission* [1992] ECR I-6061, paragraph 22). An action for annulment brought by an individual against a negative decision is inadmissible in so far as it is directed against a refusal to adopt a regulation having general application. Similarly, a trader who cannot claim to be individually concerned by a regulation is not entitled, by way of an action for annulment, to contest the refusal to adopt it (see, in this connection, the judgment in *Buckl*, cited above, paragraphs 23 to 26). In other words, an action brought by a natural or legal person against a Commission refusal retroactively to rectify a measure will be inadmissible if the rectification requested would have had to be adopted in the form of a generally applicable regulation (Case C-87/89 *Sonito and Others* v *Commission* [1990] ECR I-1981, paragraphs 8 and 9).

29 The Court has already held in the previous case involving the same parties that, since Regulation No 1734/95 is legislative in character and general in its application, it is not of individual concern to either the applicant Mr Henrikson or to the applicant association (order in Case T-197/95 *Sveriges Betodlares Centralförening and Henrikson* v *Commission*, cited above). In those circumstances, the conclusion must be that, in so far as the contested letter constitutes a refusal to amend Regulation No 1734/95, the applicants' challenge mounted in this case against that refusal by way of an action for annulment is inadmissible.

30 Nor is it possible to accept the applicants' argument that the contested letter extended the absence of a conversion rate in Regulation No 1734/95 to the minimum sugar beet prices (see paragraph 18 above). In the first place, the Court finds that the contested letter was not capable of producing any binding legal effect. Second, it should be recalled that a consequence of the hierarchy of Community legal acts, as laid down in the Treaty and upheld in Community case-law, is that an act of general application cannot be implicitly altered by an individual decision (Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, paragraph 44, and Case T-2/93 *Air France* v *Commission* [1994] ECR II-323, paragraph 102).

31 Since the contested letter is not an act challengeable under Article 173 of the Treaty, it is unnecessary for the Court to rule on the question whether Mr Henrikson, who was not the addressee of the contested letter, has *locus standi* in this case.

32 Finally, the applicants' arguments concerning an alleged absence of legal redress cannot constitute a basis for the admissibility of the present action since the conditions laid down by the Treaty and by the case-law have not been satisfied.

33 It follows from all of the foregoing that the present action for annulment in respect of the contested letter is inadmissible in its entirety.

Costs

34 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have failed in their submissions, they must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby orders:

1. The application is dismissed as inadmissible.

2. The applicants shall bear their own costs and shall also bear, jointly and severally, those incurred by the Commission.

Luxembourg, 4 October 1996.

H. Jung — Registrar

A. Saggio — President