regulation, provided that those matters fall within the general scheme of the whole of which it forms part. If the contested measure clearly discloses the essential objective pursued by the institution, it would be going too far to insist upon a specific statement of reasons for each of the technical choices for which it provides.

5. As each of the common organizations of the market embodies features specific to it, a comparison of the technical rules and procedures adopted in order to regulate the various sectors of the market cannot constitute a valid basis for the purpose of proving the complaint of discrimination between dissimilar products, which are subject to different rules and which, moreover, in no way compete with each other.

6. A difference of treatment which is merely the consequence of a choice between two systems offered to traders under a common organization of the market and freely chosen by them according to their own requirements cannot constitute discrimination between producers or consumers.

In Joined Cases 292 and 293/81

REFERENCES to the Court under Article 177 of the EEC Treaty by the Tribunal Administratif [Administrative Court], Paris, for a preliminary ruling in the action pending before that court between

SOCIÉTÉ JEAN LION ET CIE, having its registered office in Paris (Case 292/81),

SOCIÉTÉ LOIRET & HAENTJENS SA,

SOCIÉTÉ JEAN LION ET CIE,

SOCIÉTÉ DEBMAN,

SOCIÉTÉ "ANCIENNE MAISON MARCEL BAUCHE" SA,

SOCIÉTÉ SCOA SA,

SOCIÉTÉ SUCRIMEX SA,

SOCIÉTÉ PHILIPP BROTHERS SA,

COMPAGNIE COMMERCIALE "SUCRES ET DENRÉES",

SOCIÉTÉ PIERRE PEETERS, SARL,

each having its registered office in Paris (Case 293/81)

v

FONDS D'INTERVENTION ET DE RÉGULARISATION DU MARCHÉ DU SUCRE (FIRS) [Sugar Market Intervention and Stabilization Fund], having its head office in Paris,

on the validity of Commission Regulation (EEC) No 3016/78 of 20 December 1978 laying down certain rules for applying conversion rates in the sugar and isoglucose sectors,

THE COURT (Second Chamber)

composed of: A. Chloros, President of Chamber, P. Pescatore and O. Due, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

Between 7 February and 13 June 1979 Jean Lion et Cie, and before 28 September 1979 Loiret & Heantjens SA, Jean Lion et Cie, Société Debman, "Ancienne Maison Marcel Bauche" SA, SCOA SA, Sucrimex SA, Philipp Brothers SA, Compagnie Commerciale "Sucres et Denrés" and Pierre Peeters, Sàrl, obtained from the competent national body, the Fonds d'Intervention et de Régularisation du Marché du Sucre (hereinafter referred to as "the Fund"), certificates for the exportation of sugar to non-member countries, which were valid for a period of five months from the end of the month of issue. They qualified for the advance fixing, pursuant to a tendering procedure, of export refunds for the advance fixing of monetary compensatory amounts, in accordance with the applicable Community rules.

Regulations concerning export refunds for sugar

Regulation No 3330/74 of the Council of 19 December 1974 on the common

organization of the market in sugar (Official Journal 1974, L 359, p. 1), like Regulation No 1009/67 of 18 December 1967 (Official Journal, English Special Edition 1967, p. 304) which it replaced, established a common system for trade with non-member countries, including measures intended to cover the difference between the prices applied outside and inside the Community, where world prices are lower than Community prices.

As regards exports of sugar outside the Community, the first subparagraph of Article 12 (1) of Regulation No 3330/74 provides that all exports are to be made conditional upon the submission of an export licence issued by Member States to any applicant, irrespective of the place of his establishment in the Community.

According to the fourth subparagraph of Article 12 (1) of the regulation the issue of a licence is conditional on the lodging of a deposit guaranteeing that the exportation will be effected during the period of validity of the licence and that the deposit is to be forfeited in full or in part if the transaction is not effected or is only partially effected within that period.

According to Article 19 (1) and (2) of the regulation, in the case of exports the difference between the quotations or prices on the world market and the prices in the Community may be covered by an export refund which is to be the same for the entire Community but may be varied according to destination.

The refund may be fixed in advance. In such cases, the advance-fixing is to be noted on the licence, which serves as a supporting document for the advance-fixing (second subparagraph of Article 12 (1)).

The general rules for the grant of export refunds on sugar were laid down by Regulation No 766/68 of the Council of 18 June 1968 (Official Journal, English Special Edition 1968 (I), p. 155).

According to Article 4 of that regulation, the refund may be fixed by means of an invitation to tender relating to the amount of the refund.

The invitations to tender are issued by the competent authorities of the Member States in accordance with an instrument binding in law in all Member States which lays down the terms of the invitation to tender. Those terms must guarantee equal access for all persons established within the Community.

The terms of the invitation to tender are to include a time-limit for the submission of tenders. Within three working days of the expiry of the prescribed period, the maximum amount of the refund for the tender in question is to be fixed on the basis of the tenders received. For the calculation of the maximum amount, account is taken of the supply situation and prices within the Community, prices and potential outlets on the world market and costs incurred in exporting sugar.

According to Article 9 of Regulation No 766/68, tenders submitted in response to an invitation are not to be considered unless a deposit is lodged, which is to be forfeited in whole or in part if tenderers have not fulfilled, or have only partially fulfilled, the obligations placed upon them.

Article 10 provides that the refund fixed by tender is to be valid for the same period as the export licence.

Regulation No 1408/71 of the Council of 25 May 1971 amending Regulation No 766/68 (Official Journal, English Special Edition 1966 to 1972, p. 54) replaced the text of Article 12 of Regulation No 766/68 by the following:

"If between:

The date on which the application for an export licence is lodged and a request for the advance fixing of the refund is made, or

The date on which the time-limit for the submission of the tenders expires, in the case of a refund fixed by tender,

And the date of exportation, there is an alteration in the prices for sugar or molasses fixed pursuant to Regulation No 1009/67/EEC, provision may be made for adjusting the amount of the refund."

Regulations concerning monetary compensatory amounts

Regulation No 974/71 of the Council of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (Official Journal, English Special Edition 1971 (I), p. 257), as amended by Regulation No 509/73 of the Council of 22 February 1973 (Official Journal 1973, L 50, p. 1), provides that if, for the purposes of commercial transactions, a Member State allows the exchange rate of its currency to fluctuate by a margin wider than that permitted by the international rules in force on 12 May 1971, the Member State whose currency increases in value beyond the permitted fluctuation margin is to charge on imports and grant on exports and the Member State whose currency decreases beyond the permitted fluctuation margins is to charge on exports and grant on imports compensatory amounts for certain agricultural products.

According to Article 2 of the regulation, the compensatory amounts for the products covered by intervention arrangements are to be equal to the amounts obtained by applying to the prices:

(a) in respect of those Member States the currencies of which are maintained among themselves within a spread at any given moment of 2.25 %, the percentage difference between:

The conversion rate used under the common agricultural policy, and

The conversion rates resulting from the central rate;

(b) in respect of Member States other than those referred to in (a), the average of the percentage differences between:

The relationship between the conversion rate used under the common agricultural policy for the currency of the Member State concerned and the official parity, or, where this parity is not observed, the central rate of each of the currencies of the Member States referred to in (a), and

The spot market rate for the currency of the Member State in question in relation to each of the

currencies of the Member States referred to in (a), as recorded over a period to be determined.

The system of compensatory amounts introduced by Regulation No 974/71 was subject to a degree of instability, in particular because the compensatory amounts were calculated on the basis of the difference between the representative rate of a currency and its actual rate and because, in the case of the Member States for whose currency no central rate was fixed, the acutal rate was that recorded regularly on the exchange market, whereas in the case of the other Member States the central rate was regarded as the actual rate. For that reason and in the light of the bases of calculation which took into account the movements of the floating currencies against the other currencies of the Community, the monetary compensatory amount did not always correspond to the monetary ratios used as a basis for commercial contracts, in particular in trade with non-member countries, so that certain difficulties were experienced by traders who, when concluding a contract, wished to know the economic circumstances in which the contract would be performed. Therefore, by Regulation No 243/78 of 1 February 1978 (Official Journal 1978, L 37, p. 5), the Commission introduced the advance fixing of monetary compensatory amounts.

Regulation No 243/78 provides, in particular in Articles 1 and 2, that in trade with non-member countries monetary compensatory amounts are to be fixed in advance, on application by the persons concerned, provided that the export refund is fixed in advance for the certificate in question, as is the case with regard to refunds fixed under a tendering procedure.

According to Article 6 (2) of the regulation, where the refund is fixed in advance under a tendering procedure the monetary compensatory amount applicable is to be that in force on the last day for the submission of tenders.

Article 7 (1) of Regulation No 243/78 provides for compulsory adjustment of the monetary compensatory amounts fixed in advance if, during the period of validity of the certificate, there comes into force a new representative rate which was decided upon before the application for advance-fixing was lodged.

Article 7 (2) provides for optional adjustment of the monetary compensatory amounts fixed in advance where, during the period of validity of the certificate, the refund is adjusted following a change in prices or when a new representative rate comes into force.

Regulations of a monetary character concerned with advance fixing and adjustments of export refunds and monetary compensatory amounts

Since a number of measures concerning agricultural policy provide that sums are to be expressed in units of account and are to be converted into the national currency of Member States by application of the rate of exchange corresponding to the official parity for those currencies, the Council, by means of Regulation No 653/68 of 30 May 1968 on conditions for alterations to the value of the unit of account used for the common agricultural policy (Official Journal, English Special Edition 1968 (I), p. 121), provided for automatic or optional changes to that value in order to avoid the possibility of problems deriving from the fixed nature of the unit of account.

The rules for the implementation of Regulation No 653/68 were laid down by Regulation No 1134/68 of the Council of 30 July 1968 (Official Journal, English Special Edition 1968 (II), p. 396).

According to Article 4 (1) of that regulation, in the case of an alteration of the relationship between the parity of the currency of a Member State and the value of the unit of account, the Member State concerned, using the new parity relationship, is to adjust the following amounts, given in units of account, if they appear in national currency in the documents or certificates issued in pursuance of the common agricultural policy or the special trade systems for goods processed from agricultural products:

(a) Amounts which have been fixed in advance for a transaction or part of a transaction still to be carried out after alteration of that parity relationship;

(b) Amounts appearing in agreements concluded between a private individual and an intervention agency for a transaction or part of a transaction still to be carried out after the alteration of the parity relationship.

However, any person who has obtained advance fixing of such amounts for a specific transaction may, by written application which must reach the competent authority within thirty days of the entry into force of the measures fixing the altered amounts, obtain cancellation of the advance fixing and of the relevant document or certificate.

By virtue of Article 4 (2) of Regulation No 1134/68, for transactions carried out pursuant to provisions on the common agricultural policy or special trade systems for goods processed from agricultural products, the sums owed to or by a Member State or a duly authorized body, expressed in national currency and representing amounts fixed in those provisions in units of account, are to be paid on the basis of the relationship between the unit of account and the national currency which obtained at the time when the transaction or part transaction was carried out.

According to Article 6 of Regulation No 1134/68, the time when a transaction is carried out is to be considered as being the date on which occurs the event, as defined by Community rules or, in the absence of and pending adoption of such rules, by the rules of the Member State concerned, in which the amount involved in the transaction becomes due and payable.

Article 4 (1) of Council Regulation No 878/77 of 26 April 1977 on the exchange rates to be applied in agriculture (Official Journal 1977, L 106, p. 27) extended the provisions of Regulation No 1134/68 in respect of alterations of the relationship between the parity of the currency of a Member State and the value of the unit of account to the case of alteration of the representative rate of a national currency.

By virtue of Article 4 (2) of Regulation No 878/77, cancellation of the advance fixing and of the certificate or document attesting thereto, provided for in Article 4 (1) of Regulation No 1134/68, becomes possible only if the application of

the new representative rates is disadvantageous to the party concerned. Before the date of application of the new rate it may be decided to offset that disadvantage by an appropriate measure, in which case advance fixing and the certificate or document attesting thereto may not be cancelled.

With more specific reference to monetary compensatory amounts, the detailed rules for compulsory adjustment thereof provided for in Article 7 (1) of Regulation No 243/78 were laid down by Commission Regulation No 651/78 of 31 March 1978 (Official Journal 1978, L 86, p. 41), which was repealed and replaced by Commission Regulation No 1516/78 of 30 June 1978 on adjustments to monetary compensatory amounts fixed in advance (Official Journal 1978, L 178, p. 63).

Regulation No 1516/78 linked the adjustments to be made to monetary compensatory amounts with the adjustment, if any, applicable to refunds fixed in advance to which the monetary compensatory amounts fixed in advance are related.

As regards the compulsory adjustments, Article 1 (1) of Regulation No 1516/78 provides that they are to be made on the basis of the representative rate applicable at the time of completion of the customs import or export formalities and fixed before submission of the application for advance fixing of the monetary compensatory amount.

By virtue of Article 2 (1) an optional adjustment is adopted for monetary compensatory amounts fixed in advance to the extent to which, following a change in the price level expressed in units of account, adjustments of refunds fixed in advance are applicable to products falling, *inter alia,* within the sugar sector.

By virtue of Article 3 of Regulation No 1516/78, any adjustment of that kind is to be made on the basis of the price and the representative rate valid at the time of completion of the customs formalities; the compulsory adjustment is to be altered when there is an optional adjustment.

Regulation No 243/78 was further amended, in particular as regards the adjustment of monetary compensatory amounts fixed in advance, by Commission Regulation No 1544/78 of 4 July 1978 (Official Journal 1978, L 182, p. 7). In particular, the first subparagraph of Article 6 (2) was supplemented by a provision under which, for the purpose of the adjustments referred to in Article 7, the application for advance fixing of the monetary compensatory amount is to be deemed to have been lodged on the last day for the submission of tenders.

Regulation No 878/77 was amended by Council Regulation No 976/78 of 12 May 1978 as regards the exchange rates to be applied in agriculture for various currencies and the effects of the fixing of new representative rates on existing rights and obligations (Official Journal 1978, L 125, p. 32).

In particular, that regulation lowered the representative rate for the French franc (the "green franc") by 3.60 % with effect from 1 July 1979.

Furthermore, since Articles 4 and 6 of Regulation No 1134/68 were designed to alter the parity of a currency and not to alter the representative rates and since therefore they were not wholly satisfactory in all cases, Regulation No 976/78, by supplementing Article 4 of Regulation No 878/77, provided for the possibility of the adoption, by means of a simplified procedure, of provisions derogating from the existing system.

Availing itself of the possibility created by Article 4 of Regulation No 878/77, as amended by Regulation No 976/78, the Commission, considering that it was appropriate, with a view to the sound management of the sugar market, to specify for each kind of transaction in that sector the method for fixing the conversion rate applicable, decided to make an exception to the rule laid down in Article 6 of Regulation No 1134/68. By means of the combined provisions of Article 1 and paragraph X (a) of the Annex to Regulation No 3016/78 of 20 December 1978 laying down certain rules for applying conversion rates in the sugar and isoglucose sectors (Official Journal 1978, L 359, p. 11), it decided that the rate of exchange to be applied to export refunds with advance fixing of monetary compensatory amounts was the representative rate applicable on the day referred to in Article 6 of Regulation No 243/78, as amended by Regulation No 1544/78, that is to say the last day for the submission of tenders.

The representative rate for the French franc, which had already been reduced by 3.60% with effect from 1 July 1979 by Regulation No 976/78, was the subject of further reductions, which also took effect as from 1 July 1979 and thus superseded the earlier reductions, namely 5.12% by Council Regulation No 643/79 of 29 March 1979 (Official Journal 1979, L 83, p. 1) and then 7% by Council Regulation No 1266/79 of 25 June 1979 (Official Journal 1979, L 161, p. 4). It was reduced on a further occasion by 1.046%, with effect from 1 October 1979, by Council Regulation No 2139/79 of 28 September 1979 (Official Journal 1979, L 246, p. 76).

By means of Council Regulation No 1288/79 of 25 June 1979 fixing the sugar prices for the 1979/80 sugar year (Official Journal 1979, L 162, p. 1), the intervention price for sugar was increased from 40.49 European currency units (ECU) for the 1978/79 year to 41.09 units per 100 kg.

Procedure

Because of the increase of the intervention price and the reductions in the representative rate for the French franc, Jean Lion et Cie, on the one hand, and Loiret and Haentjens and eight other companies dealing in sugar, on the other, applied to the Fund for an adjustment of the export refunds and, for Jean Lion et Cie, an adjustment of the compensatory amounts, for the sugar exports effected by Jean Lion et Cie after 1 July 1979 and by the other companies after 1 October 1979.

No action was taken in response to their applications and the companies thereupon brought actions before the Tribunal Administratif, Paris, for annulment of the Fund's implied decisions of rejection and for payment of the amounts which they considered to be due to them.

In its defence, the Fund relied essentially upon the obligation incumbent upon it to

apply Regulation No 3016/78 and the adjustment coefficients fixed by the Commission.

By judgment of 10 November 1981, on the action brought by Jean Lion et Cie, the Tribunal Administratif dismissed the claim concerning the effects of the alteration of the intervention price for sugar on the adjustment of refunds and held that the alteration of the representative rate for the French franc on 1 July 1979 had correctly influenced the adjustment of the monetary compensatory amounts. By a further judgment of the same date, the same court, having regard to the actions brought by the other companies, joined the nine cases so that they would be disposed of by a single judgment.

With regard to the consequences of the alterations to the representative rate for the French franc on the adjustment of export refunds, the Tribunal Administratif, Paris, decided, pursuant to Article 177 of the Treaty, to stay the proceedings until the Court of Justice had given a preliminary ruling on the following questions:

Is Regulation (EEC) No 3016/78 of 20 December 1978 valid with regard to the provisions contained in Article 190 of the Treaty of Rome?

Does it incorporate into the Community rules discriminatory measures such as to make them invalid?

Does it conflict with the provisions of Regulation (EEC) No 243/78 of 1 February 1978 providing for the advance fixing of monetary compensatory amounts, in relation to which it constitutes a measure of adaptation?

The two judgments of the Tribunal Administratif, Paris, of 10 November 1981 were received at the Court Registry on 16 November 1981 and registered under Nos 292/81 and 293/81.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted in each of the two cases on 19 January 1982 by the Commission of the European Communities, represented by its Legal Adviser, Jean-Claude Séché, and on 4 February 1982 by the plaintiffs in the main actions, represented by Lise Funck-Brentano, of the Paris Bar.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. However, it asked the plaintiff companies in the main actions and the Commission to answer a number of questions; that request was complied with within the prescribed time limits.

By order of 5 May 1982, the Court joined Cases 292/81 and 293/81 for the purposes of the procedure and judgment.

By a further order of the same date, the Court, pursuant to Article 95 (1) and (2) of its Rules of Procedure, referred Joined Cases 292/81 and 293/81 to the Second Chamber.

II — Written observations submitted to the Court

The *plaintiff companies in the main actions* consider that Regulation No 3016/78 is invalid by virtue of Articles 190 and 40 of the EEC Treaty and that certain of its provisions are incompatible with Regulation No 243/78.

Statement of reasons on which Regulation No 3016/78 is based

(a) Article 190 of the EEC Treaty prescribes a general obligation to state the reasons on which measures are based. The lack or inadequacy of such a statement of reasons constitutes an infringement of an essential procedural requirement and the measure vitiated thereby is rendered void.

(b) The statement of reasons of the contested regulation is more than succinct. It is confined to a single recital, worded as follows:

"... with a view to the sound management of the sugar and isoglucose markets it is appropriate to specify for each kind of transaction in these sectors, the method for fixing the conversion rate applicable; ... in certain cases it is appropriate to make derogations from the rule laid down in Article 6 of Regulation (EEC) No 1134/68."

Thus the Commission gives no explanation why in certain cases it is appropriate to make exceptions, what the circumstances of those exceptions are or why they are to be made in respect of the sugar sector (and the isoglucose sector).

(c) The references in the preamble to Regulation No 3016/78 are incomplete: paragraph X of the Annex mentions the day referred to in Article 6 of Regulation No 243/78, as amended by Regulation No 1544/78, but those two regulations are not mentioned in the references. That fact is incompatible with the decisions of the Court regarding the statements of reasons on which regulations are based.

(d) It is true that the Court has allowed succinct statements of reasons, in particular in the case of agricultural regulations fixing prices or concerning certain urgent measures. However, Regulation No 3016/78 is not an urgent measure or one of expediency — by the subterfuge of very specific provisions, it fundamentally changes the existing system of advance fixing, without mentioning that fact in the statement of the reasons on which it is based.

The discriminatory nature of Regulation No 3016/78

(a) Regulation No 3016/78 is discriminatory in two ways: because of the agricultural sector to which it refers and because it affects a specific category of traders. Since it applies only to the sugar sector, it is incompatible with Article 40 (3) of the EEC Treaty, according to which any common organization of agricultural markets is to exclude any discrimination between producers or consumers within the Community. Moreover, it provides for an unjustified difference of treatment as between, on the one hand, traders who have fixed the monetary compensatory amounts in advance and, on the other, those who have not availed themselves of that possibility.

(b) In other agricultural sectors, the exchange rate applicable in the event of an alteration of the representative rate is the rate ruling on the day on which the export customs formalities are completed, even if the monetary compensatory amounts were fixed in advance.

The measures specific to the sugar sector, listed in the Annex to Regulation No 3016/78, are intervention measures peculiar to certain clearly-identified transactions; they bear no relation to the problem of the representative rate applied to the refunds fixed in advance. The question of compensation for disadvantages deriving from an alteration of the representative rate is a general question which arises in all cases where the compensatory amounts are fixed in advance and not merely in the sugar sector (and in the isoglucose sector). On several occasions the Court has declared Community regulations to be invalid on the ground that they infringed the principle of non-discrimination, which is merely the specific expression of the general principle of equality, derived from the fundamental principles of Community law.

(c) Paradoxically, Regulation No 3016/78 creates a fundamental distinction, as regards the rate of exchange applicable to the transactions entered into, depending on whether or not they involve the advance fixing of monetary compensatory amounts. That attitude has no economically defensible basis.

Traders who availed themselves of the possibility offered by Regulation No 243/78 to safeguard their export transactions have been denied any adjustment of the amounts fixed in advance whereas traders who did not fix the monetary compensatory amounts in advance have had the benefit of an adjustment thereof and of the export refund. It is contrary to the principle of non-discrimination for traders who, anticipating speculative gains and accepting risks, have forgone the security offered by Regulation No 243/78, to be placed in a more favourable situation than those who have displayed all the usual and necessary diligence in order to avoid any risks arising from monetary developments beyond their control.

Incompatibility of Regulation No 3016/78 with Regulation No 243/78

(a) In the system of trade with non-member countries, refunds (or levies) and monetary compensatory amounts are firmly and inextricably linked.

In the absence of advance fixing of monetary compensatory amounts where the refund is fixed in advance, any change in the representative rate for a currency entails an adjustment of the monetary compensatory amounts and of the refunds fixed in advance, on the basis of the representative rate ruling at the time of the exportation. Where the refund and the compenstory amounts are both fixed in advance at a time when a new representative rate is already known and entered into force after the advance fixing, the monetary compensatory amounts should, pursuant to Article 7 (1) of Regulation No 243/78, undergo compulsory adjustment; accordingly, it follows that the refund must also be adjusted in order to ensure the general equilibrium of the system, as the Commission has, moreover, expressly laid down in Regulation No 1516/78.

The effect of paragraph X of the Annex to Regulation No 3016/78 is to make the date on which the exportation is

effected coincide with the date of the tender and thus to exclude any adjustment of the refund and of the monetary compensatory amounts on the basis of a representative rate coming into force after the advance fixing; it is incompatible with the provisions of Article 7 (1) of Regulation No 243/78, which provides for compulsory adjustment of the monetary compensatory amounts fixed in advance where an alteration to the representative rate is announced before the certificate takes effect.

Since the monetary compensatory amounts and the refund are linked within the general price system of the common agricultural policy, Regulation No 3016/78 is invalid in so far as its result is either to repeal Article 7 (1) of Regulation No 243/78, although no such repeal is mentioned in Regulation No 3016/78, or to dissociate compensatory amounts from refunds, with an adjustment being made in one case and not in the other.

(b) The system introduced by Regulation No 1134/68, supplemented by Regulation No 878/77 and not amended by Regulation No 243/78, is based on the notion that, since certain factors serving as a basis for contracts may undergo changes which traders have been unable to foresee, it is necessary to adapt them, by making adjustments to the monetary compensatory amounts and refunds fixed in advance, to the new economic situation created by the entry into force of the new representative rate or by an alteration of that rate, or indeed by both factors at once. In the event of an alteration of the representative rate for a currency, such measures enable a trader placed at a disadvantage by the application of the new rate either to have the benefit of an adjustment of the refund fixed in advance, in proportion to the alteration of the representative rate, or to cancel the advance fixing and the certificate or document attesting thereto, or to obtain, by taking appropriate action, compensation for the disadvantage suffered by him. In no case should a trader bear the burden of a disadvantage brought about by an alteration of the representative rate for a currency.

Regulation No 243/78 does not preclude application of the previous rules relating to refunds fixed in advance in circumstances where the monetary compensatory amount is also fixed in advance. That regulation was adopted in order to protect traders against risks deriving from the fluctuation of a currency on the exchange market, without any alteration of the representative rate for that currency being made. It runs counter to the effectiveness of the system of advance fixing, which should enable the trader to be certain, when concluding a contract, of the economic conditions under which it will be performed, to freeze the refund and the compensatory amounts fixed in advance, when an alteration of the representative rate causes one of the components of the contract, namely the purchase price of the product, to undergo an increase.

The Commission certainly intended Regulation No 3016/78 to extend to cases where an alteration of the representative rate involves no disadvantage for traders. In the sugar sector, every alteration of the representative rate affects the purchase price and involves

losses for exporters, as from the date on which the new representative rate enters into force, in the absence of any adjustment of the compensatory amounts fixed in advance.

Regulation No 3016/78 has no legal basis and infinges the principle of legal certainty in so far as it departs from the principle according to which traders should not have to bear the burden of a disadvantage resulting from an alteration of the representative rate for a currency.

(c) The Tribunal Administratif, Paris, did not see fit to refer to the Court for a preliminary ruling questions concerning the correct interpretation of Article 7 (1) of Regulation No 243/78. However, there is a lack of clarity in that regulation which it is necessary to remedy.

The compulsory adjustment of the compensatory amounts fixed in advance which was imposed upon the Commission by Article 7 (1) of Regulation No 243/78 was in this case certainly made at the time of the events of 1 July 1979, but the adjustment was made on a contestable basis.

Article 7 (1) of Regulation No 243/78 lays down two conditions for the adjustment of monetary compensatory amounts: a new representative rate must have been decided upon at the time of the advance fixing and the new rate must come into effect. On 1 July 1979, the new representative rate decided upon was that provided for by Regulations Nos 976/78 and 643/79, whereas the rate which took effect on that date is the one referred to in Regulation No 1266/79. The Commission adjusted the compensatory amounts fixed in advance by the application of a rate which did not correspond to the rate which came into effect on 1 July 1979.

In Regulation No 243/78, the Council made no provision for cases where the representative rate which came into effect differed from that initially decided upon; this lacuna in the text does not entitle the Commission to engage in arbitrary interpretation and application.

Seen in its legal and economic framework, Regulation No 243/78 can only be interpreted as meaning that where an alteration of the representative rate has been decided upon before an application for advance fixing of a monetary compensatory amount is lodged, the adjustments referred to in Article 7 (1) are to be made on the basis of the representative rate ruling when the customs formalities are completed.

Therefore there are grounds for contesting the validity of Regulation No 3016/78 which, without stating specific reasons, provides for adjustment of compensatory amounts fixed in advance on the basis of a rate which was decided upon but which never came into effect.

The *Commission,* for its part, takes the view that consideration of the questions referred to the Court discloses no factor of such a nature as to affect the validity of Regulation No 3016/78 as regards the provisions of paragraph X (a) of the Annex thereto.

The statement of reasons on which Regulation No 3016/78 is based

(a) It is immediately apparent from the decisions of the Court that the extent of the obligation to state the reasons on which a measure is based, embodied in

Article 190 of the EEC Treaty, depends on the nature of the measure in question and on the context in which it is adopted. The requirements of Article 190 are satisfied provided that the reasons stated explain the essential aspects of the rules adopted by the institutions; it is not possible to require the statement of reasons on which a regulation is based specifically to cover all the details, which are frequently numerous, which may be embodied in such a measure.

In the field of agriculture in particular, a statement of reasons, however laconic it may be, must be considered and assessed within the framework of the body of rules of which the measure in question forms an integral part.

(b) Regulation No 3016/78 was adopted by way of derogation from Regulation No 878/77, pursuant to Article 4 (3) of the latter; when Regulation No 976/78 inserted the latter provision in Regulation No 878/77, it stated the reasons at length in the penultimate recital in its preamble.

Since the essential considerations regarding the need to provide for the possibility of a derogation were set out in that way, the Commission was under no obligation to give further details, in the preamble to Regulation No 3016/78, of the measures adopted in the 19 cases provided for in the Annex thereto.

Non-discriminatory character of Regulation No 3016/78

(a) The choice of the operative event which determines, as appropriate, the time when the representative rate must be taken into consideration is made in accordance with objective criteria which vary according to each situation.

Where a trader has obtained advance fixing both of the refund and of the compensatory amount the situation in his case is different from two other situations which may be envisaged in the case of an alteration of the representative rate of a currency, namely the advance fixing of the refund only or the total absence of any advance fixing. The fact that Regulation No 3016/78 makes no provision, in the first of the cases mentioned above, for any adjustment may not be regarded as a breach of the principle of equality of treatment. Likewise, the fact that Article 7 (1) of Regulation No 243/78 imposes the requirement of an adjustment of the monetary compensatory amounts only in the case of double advance fixing reflects a concern to ensure fairness.

A trader who, like the plaintiffs in the main actions, has availed himself of the opportunity to project himself, by means of advance fixing, against unfavourable monetary developments is not entitled to plead, in order to justify an application for an adjustment, that the reduction of the representative rate has ultimately been disadvantageous to him. Advance fixing always involves a risk, which the trader is in no way obliged to take, but if the risk materializes he must bear the consequences.

(b) Unlike the other agricultural sectors, the sugar sector displays the special feature that it places financial responsibility on producers, which involves the determination of a series of amounts (production levies, down-payments for such levies, storage costs, quotas). All these factors must also be

known in the case of exportation: The Commission therefore had to use, in that sector, the powers conferred on it by the Council in order to specify precisely the operative event to be used for the fixing of the exchange rate.

In the case of the system provided for in paragraph X (a) of the Annex to Regulation No 3016/78, comparison with the system applicable to other agricultural products is possible only with respect to common organizations which, as far as export refunds are concerned, are, as in the case of sugar, based on a system of tenders. The only system characterized by this twofold condition is the system applicable in the cereals sector. In that sector, two different systems are applied at present, depending on the type of exportation involved. Most cereals exports are effected on the basis of refunds awarded by tender. To date, the Commission has not seen fit, in the case of cereals, to adopt any measure derogating from Regulation No 1134/68: The amounts fixed in advance in national currency are therefore, in the event of a change in the parity, adjusted when the exportation is actually carried out. The Commission is however preparing a draft regulation making provision, in the case of export refunds with advance fixing of monetary compensatory amounts in the cereals sector, for a system analogous to that provided for in paragraph X (a) of the Annex to Regulation No 3016/78.

The definition adopted in paragraph X (a) has now been adopted by Commission Regulation No 1003/81 of 10 April 1981 defining the operative event in the case of the sale of cereals and rice held in store by intervention agencies (Official Journal 1981, L 100, p. 11).

Compatibility of Regulation No 3016/78 with Regulation No 243/78

Regulation No 3016/78 was not adopted to implement Commission Regulation No 243/78 but to implement Council Regulation No 878/77; it was therefore adopted in conformity with the Council measure. By contrast, in the case of Regulations Nos 3016/78 and 243/78, both adopted by the Commission, neither takes precedence.

Moreover, from the substantive point of view, there is no discernible contradiction between the rules laid down by the Commission by means of those two regulations: Regulation No 3016/78 may indeed exclude the possibility of an adjustment but Regulation No 243/78 creates that possibility, on a compulsory basis, in one case only, which is certainly not comparable, or else on a merely optional basis.

III — Oral procedure

At the sitting on 8 July 1982 oral argument was presented and replies to questions put by the Court were given on behalf of the plaintiff companies in the main actions by Lise Funck-Bretano, of the Paris Bar, assisted by Alain Rozan, an expert and manager of Société pour l'Exportation des Sucres, Antwerp, and for the Commission, represented by its Legal Adviser, Jean-Claude Séché, assisted by Joachim Heine, expert and head of division in the Directorate for Agricultural Legislation of the Directorate General for Agriculture.

The Advocate General delivered his opinion at the sitting on 7 October 1982.

Decision

1 By two judgments of 10 November 1981 which were received at the Court on 16 November 1981, the Tribunal Administratif [Administrative Court], Paris, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the validity of Commission Regulation No 3016/78 of 20 December 1978 laying down certain rules for applying conversion rates in the sugar and isoglucose sectors (Official Journal 1978, L 359, p. 11) and more particularly of the provisions of paragraph X (a) of the Annex to that regulation.

2 It appears from the file on the case that Jean Lion et Cie, the plaintiff in the main action which is the subject of Case 292/81, exported sugar during the sugar marketing year 1979 to 1980 and for that purpose obtained, between 7 February and 13 June 1979, from the competent national body, the Fonds d'Intervention et de Régularisation du Marché du Sucre [Sugar Market Intervention and Stabilization Fund — hereinafter referred to as "the Fund"] export certificates for sugar intended for non-member countries, with advance fixing, by a tendering procedure, of export refunds and advance fixing of the monetary compensatory amounts. After the issue of those certificates, the Community lowered the representative rate for the French franc (the so-called "green rate") and increased the intervention price for sugar, both of which measures took effect on 1 April 1979 (Regulation No 1266/79 of 25 June 1979, Official Journal 1979, L 161, p. 4, and Regulation No 1288/79 of 25 June 1979, Official Journal 1979, L 162, p. 1).

3 The plaintiff Jean Lion et Cie, considering that by means of those unforeseeable measures the Community institutions had changed the financial conditions for exports covered by the certificates at issue, submitted an application to the Fund for supplementary refunds for the exports of sugar which it had effected, so as to take account of the devaluation of the "green franc" and of the increased intervention price. Since the Fund did not respond to that application, the plaintiff brought an action against that implied decision of rejection before the Tribunal Administratif. In its defence, the Fund stated that it had merely applied the existing Community rules and the plaintiff challenged the validity of those rules, in so far as they contained no provisions allowing refunds to be adjusted for the benefit of undertakings which had availed themselves of the opportunity to obtain advance fixing.

4 Loiret et Haentjens SA and eight other sugar-exporting companies, the plaintiffs in the main actions which are the subject of Case 293/81, obtained export certificates, with advance fixing of the refunds and of the monetary compensatory amounts, after the monetary developments involved in Case 292/81 but before 28 September 1979, the date of the adoption of Regulation No 2139/79 (Official Journal 1979, L 246, p. 76) further devaluing the "green franc" with effect from 1 October 1979. Having been unable to obtain supplementary refunds from the Fund in order to offset the effect of that alteration of the representative rate, they brought actions before the Tribunal Administratif analogous to the action in Case 292/81.

5 With a view to adjudicating upon all those actions, the Tribunal Administratif has submitted questions on the validity of Regulation No 3016/78, the effect of paragraph X (a) of the Annex thereto being, in the case of advance fixing of refunds with advance fixing of monetary compensatory amounts, to prescribe as the rate of exchange applicable to the conversion of the unit of account into national currency the rate ruling on the last day for the submission of tenders with a view to the award of refunds. Since the effect of that provision, as regards the holders of export certificates with advance fixing of refunds and of monetary compensatory amounts, is to render inoperative any alteration of the rate of exchange occurring subsequently, the Tribunal Administratif submitted the following three questions on the validity of that provision:

Is Regulation (EEC) No 3016/78 of 20 December 1978 valid with regard to the provisions contained in Article 190 of the Treaty of Rome?

Does it incorporate into the Community rules discriminatory measures such as to make them invalid?

Does it conflict with the provisions of Regulation (EEC) No 243/78 of 1 February 1978 providing for the advance fixing of monetary compensatory amounts, in relation to which it constitutes a measure of adaptation?

6 It is appropriate in the first place to examine the third question, which concerns the substantive validity of the provision in question, in so far as the answer to that question affects the answer to the first question, which concerns the statement of the reasons on which that provision is based.

The third question

7 The third question calls for a preliminary observation since, by contrast with the assumption which appears to be inherent in the wording of that question, there is no order of precedence as between Commission Regulation No 3016/78, the validity of which is contested, and Commission Regulation No 243/78 of 1 February 1978 providing for the advance fixing of monetary compensatory amounts (as amended by Commission Regulation No 1544/78 of 4 July 1978, Official Journal 1978, L 182, p. 7). Those two regulations, despite having separate legal bases — the former is derived simultaneously from Regulation No 3330/74 of the Council of 19 December 1974 on the common organization of the market in sugar (Official Journal 1974, L 359, p. 1) and from Council Regulation No 878/77 of 26 April 1977 on the exchange rates to be applied in agriculture, and the second is derived from Regulation No 974/71 of the Council of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (Official Journal, English Special Edition 1971 (I), p. 257), as subsequently amended — were both issued by the Commission and rank equally as regards implementation in relation to the Council regulations.

8 The object of the question submitted by the Tribunal Adminsitratif must therefore be understood as being to determine whether the validity of the contested provisions of Regulation No 3016/78 may be called in question by reason of the fact that, as alleged by the plaintiffs in the main actions, it gives rise to a lack of continuity or to a contradiction within the system for the determination of export refunds and monetary compensatory amounts.

9 It is not disputed that by adopting the contested provision contained in Regulation No 3016/78 the Commission acted within the limits of the powers conferred on it within the framework, on the one hand, of the common organization of the markets in the sector in question and, on the other, of the provisions of the regulations applicable in the case of an alteration of the value of the unit of account and in the case of an adjustment of the agricultural prices referred to in Regulation No 1134/68 of the Council of 30 July 1968 (Official Journal, English Special Edition 1968 (II), p. 396) as subsequently amended by Council Regulation No 878/77 of 26 April 1977 (Official Journal 1977, L 106, p. 27) and No 976/78 of 12 May 1978 (Official Journal 1978, L 125, p. 32), to which reference is made, directly or indirectly, in the preamble to the regulation in question.

10 The object of Regulation No 3016/78 is, according to the second recital in the preamble thereto, to determine, for the purpose of applying the conversion rates, the time when each transaction or part transaction giving rise to the payment or receipt of the various amounts provided for in the Community rules is carried out. The Annex enumerates 32 different amounts including, in paragraph X (a) "all import and export levies and export refunds provided for under Regulation (EEC) No 3330/74: (a) with advance fixing of monetary compensatory amounts". It is indicated with regard thereto that the conversion rate to be applied is the "representative rate applicable on the day referred to in Article 6 of Regulation (EEC) No 243/78, as amended by Regulation (EEC) No 1544/78". It follows from these references that the day in question is the last day of the period for the submission of tenders in the procedure for determining export refunds under a tendering procedure.

11 The choice of that day by the Commission is not open to dispute. That decision is wholly in conformity with the aim of the advance fixing procedure, in so far as the purpose of the contested provision is precisely to define the exporter's position at the time of tendering, so as to eliminate the element of uncertainty to which the exporter would be subject as a result of the application of the refund in force on the day of exportation. The Commission has rightly emphasized that since that position is determined in national currency the exporter is not thereby exposed to any exchange risk regarding the amount of the refund, which is adjusted upwards or downwards according to the circumstances on the basis of the monetary compensatory amount. It is to be noted that specifically by virtue of the reference contained in paragraph X (a) of the Annex to Regulation No 3016/78, there can be no discrepancy, in that regard, between that regulation and Regulation No 243/78, since the applicable monetary compensatory amount is, by virtue of Article 6 (2) of the latter regulation, also the amount in force on the last day of the period for the submission of tenders.

12 It must therefore be stated that in any case there is no conflict between the two regulations referred to in the third question submitted by the Tribunal Administratif.

13 However, the plaintiffs claim that the advance fixing of the refunds and compensatory amounts does not provide complete security for traders since

any transaction relating to the exportation of sugar involves a third factor, the price of the sugar and more specifically the purchase price, on the one hand, and the selling price to purchasers in non-member countries, on the other hand. The plaintiffs explain in that regard that the selling price is fixed by contract with the purchasers a considerable time in advance. As regards the purchase price, in accordance with the customs of the trade, it is subject to increases during the performance of the contracts, in the light of changes in the intervention price. They state that sugar dealers are bound by contractual provisions laid down within the framework of the Association des Organisations Professionnelles du Commerce de Sucre pour les Pays de la Communauté Européenne (ASSUC) [Association of Professional Organizations of the Sugar Trade for EEC Countries]. Pursuant to those provisions, the price under the contracts for purchase should be adjusted so as to reflect any change in the Community intervention price occurring before the delivery of the sugar, expressed in the currency of the contract and converted at the representative rate for that currency, on the understanding that the burden of any such change is to be borne by the purchaser. It is, according to the plaintiffs, a "binding custom" of the trade, which sugar dealers cannot avoid. Thus, any increase of the intervention price, whether direct or resulting from a change in the conversion rate for the unit of account, adversely affects the balance of the contracts covered by the export certificates.

14 These arguments put forward by the plaintiffs are based on a misunderstanding of the machinery of the Community regulations and, more particularly, of the intervention machinery. The object of the latter is to maintain market prices at the desired level by the imposition on the intervention agencies of the obligation to accept sugar subject to the differences in system, depending on whether it is classified as "A", "B" or "C" sugar, in regard to the intervention price, but not to give producers a guarantee that they will obtain that price in every one of their transactions, still less to force purchasers to amend their contracts in the event of a change in the intervention price or in the rate of exchange. Determination both of the selling price on export and of the purchase price for the sugar is a matter of free choice and therefore a risk to be borne by the undertakings concerned. The existence of such a risk or of obligations resulting from trade agreements cannot therefore justify any adjustment of the amounts fixed on the basis of Community regulations in the form, in particular, of export refunds. That argument, put forward by the plaintiffs in the main actions, must therefore be rejected.

15 It is clear from the foregoing that consideration of the third question submitted by the Tribunal Administratif has disclosed no factor of such a nature as to affect the validity of Regulation No 3016/78.

The first question

16 The first question submitted by the Tribunal Administratif seeks to determine whether Regulation No 3016/78 is valid, regard being had to the requirement imposed by Article 190 of the EEC Treaty that the reasons on which measures are based must be stated.

17 The plaintiffs in the main actions claim in that regard that the only statement of reasons in that regulation is that contained in the third recital in the preamble thereto in the form of a statement that "with a view to the sound management of the sugar and isoglucose markets it is appropriate to specify for each kind of transaction in these sectors the method for fixing the conversion rate applicable". It is claimed that that general statement gives no indication of the reasons which led the Commission to give preference in paragraph X (a) of the Annex, for the advance fixing of export refunds, to the last day of the period for the submission of tenders.

18 According to the case-law of the Court, the statement of reasons required by Article 190 of the Treaty must be appropriate to the nature of the measure in question. It must show clearly and unequivocally the reasoning of the Community authority which issued the contested measure so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its power of review. (See the most recent decision in this regard — judgment of 30 September 1982 in Case 114/81 *Tunnel Refineries Ltd* [1982] ECR 3189.)

19 It is moreover apparent from a consistent line of decisions (see in particular the judgment of 20 June 1973 in Case 80/72 *Koninklijke Lassiefabrieken* [1973] ECR 635) that the statement of reasons on which regulations are based is not required to specify the often very numerous and complex matters of fact or of law constituting the subject-mater of the regulations, provided that those matters fall within the general scheme of the whole of which they form part. That certainly applies in the case of the contested regulation, the annex to which determines the time to be used as a reference

for the application of the conversion rates with respect to the 32 different categories of economic or administrative transactions within the framework of the common organization of the market in sugar. If the contested measure clearly discloses the essential objective pursued by the institution, it would be going too far to insist upon a specific statement of reasons for each of the technical choices for which it provides. Moreover, it is clear from the foregoing that the Commission's choice, for the determination of export refunds, of the last day of the period for the submission of tenders is perfectly consistent with the scheme of the system as a whole.

20 It is apparent from the foregoing that the plaintiffs must have been in a position to realize the underlying reasons for the provisions which they allege to be unjustified and that they had the opportunity to decide, with full knowledge of the facts, upon how to defend their rights.

21 The validity of Regulation No 3016/78 cannot therefore be contested on the ground of infringement of the requirement imposed by Article 190 of the Treaty that the reasons upon which a measure is based must be stated.

The second question

22 The second question submitted by the Tribunal Administratif seeks to determine whether Regulation No 3016/78 is vitiated by discriminatory measures which render it invalid. It is apparent from the explanations given by the plaintiffs that the second question stems from a twofold objection raised before the Tribunal Administratif: on the one hand, the plaintiffs complain that the Commission has created special rules applicable to the sugar market without adopting parallel provisions for other market sectors; on the other hand, they claim that the Commission has made no provision for any adjustment of the refunds in favour of traders who opted for advance fixing, and therefore for certainty in their dealings, whilst for other traders the conversion rate which is valid on the day of the exportation is automatically applied.

23 Both those objections are based on the second paragraph of Article 40 (3) of the Treaty, by virtue of which common organizations of the markets must

"exclude any discrimination between producers or consumers within the Community".

24 It is appropriate to point out in that regard that, in the first place, the fact that Regulation No 3016/78 is specific to the sugar market and that apparently there are no similar provisions for other market sectors cannot be described as discrimination. It is sufficient to note that each of the common organizations of the market embodies features specific to it and the organization of the market in sugar is moreover characterized by the particularly complex nature of its provisions. As a result, a comparison of the technical rules and procedures adopted in order to regulate the various sectors of the market cannot constitute a valid basis for the purpose of proving the complaint of discrimination between dissimilar products, which are subject to different rules and which, moreover, in no way compete with each other.

25 As regards the difference between the treatment of traders who have availed themselves of advance fixing and the treatment of other traders, the complaint of discrimination is once again misconceived since the purpose of advance fixing is precisely to crystallize, at the request of traders, the amount of the refund and of the monetary compensatory amounts at a date prior to the day of the exportation. The resultant difference of treatment is merely the consequence of a choice between two systems offered to traders under the regulation and they may choose one or the other freely according to their own requirements.

26 It is apparent therefore that the complaint of discrimination raised by the plaintiffs is without foundation and that the validity of Regulation No 3016/78 cannot be called in question in that regard.

27 It follows from the foregoing that consideration of the questions submitted by the Tribunal Administratif has not disclosed any factors of such a nature as to affect the validity of the contested regulation.

Costs

28 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main actions are concerned, in the nature of a step in the actions pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber)

in answer to the questions referred to it by the Tribunal Administratif, Paris, by judgments of 10 November 1981, hereby rules:

Consideration of the questions submitted by the Tribunal Administratif, Paris, has not disclosed any factor of such a nature as to affect the validity of Commission Regulation No 3016/78 of 20 December 1978 laying down certain rules for applying conversion rates in the sugar and isoglucose sectors.

Chloros Pescatore Due

Delivered in open court in Luxembourg on 28 October 1982.

For the Registrar

H. A. Rühl
Principal Administrator

A. Chloros
President of the Second Chamber