OPINION OF ADVOCATE GENERAL MISCHO

delivered on 22 April 1999 *

1. The questions submitted to the Court by the Giudice di Pace di Genova (Magistrate's Court, Genoa) (Italy) for a preliminary ruling concerning one of the mechanisms, namely the regionalisation of the intervention prices, of the common organisation of the markets in the sugar sector, stem from a dispute between an Italian sugar producer, Eridania SpA ('Eridania'), and one of its beet suppliers, Azienda Agricola San Luca di Rumagnoli Viannj ('Agricola'), which arose in connection with the purchase price for beet for the 1996/97 marketing year.

2. Eridania paid its supplier, as it was required to do, a price corresponding to the minimum price for beet, calculated on the basis of Article 5(3) of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector [1] (the 'basic regulation'), as amended by Council Regulation (EC) No 1101/95 of 24 April 1995. [2] Since Council Regulation (EC) No 1580/96 of 30 July 1996 fixing, for the 1996/97 marketing year, the derived intervention prices for white sugar, the intervention price for raw sugar, the minimum prices for A and B beet, and the amount of compensation for storage costs, [3] included Italy among the deficit areas of the Community, this price was increased in relation to that payable to beet suppliers in the non-deficit areas. Eridania is seeking to obtain a refund of that part of the price paid by way of the increase.

3. It claims that there was no justification for the Council to impose upon Italian sugar producers, by classifying Italy as a deficit area, the obligation to pay a higher price to their beet suppliers and therefore brought proceedings against Agricola before the Guidice di Pace, in which Agricola was ordered to reimburse to it the sum of ITL 2 710 672, paid by way of the increase which, it argued, had been unlawfully imposed by Regulation No 1580/96.

4. At this point of the account of the dispute, before even coming to the questions submitted to the Court by the Guidice di Pace for a preliminary ruling, I consider that a brief outline should be given of the

* Original language: French.

1 — OJ 1981 L 177, p. 4.

2 — OJ 1995 L 110, p. 1.

3 — OJ 1996 L 206, p. 9.

common organisation of the markets in the sugar sector, so as to enable the provisions which Eridania is challenging to be placed in their context.

5. The common organisation of the markets in the sugar sector, as laid down in the basic regulation, combines a system of quotas and a system of guaranteed prices.

6. Under Community rules every Member State is allocated for each marketing year, which runs from 1 July of one year to 30 June of the following year (Article 2(1) of the basic regulation), an A sugar quota, linked to the absorption capacity of the Community market, and a B sugar quota. It is for the Member State to distribute these quotas, in accordance with the rules, among the various producers, each of them obtaining an A quota and a B quota.

7. Sugar produced in excess of these quotas (referred to as 'C sugar') may not be disposed of on the Community market but may, under certain conditions and within certain limits, be carried forward to the A quota of subsequent marketing years.

8. This limitation of the marketable quantities of sugar is offset by the guarantee mechanism established under the common organisation of the markets: every year, before 1 August, the Council must fix, for the marketing year commencing the following year, in addition to a target price for sugar, an intervention price for sugar, which the intervention agencies are required to pay for the sugar delivered to them by producers (Article 3 of the basic regulation).

9. In view of the charges which the producers have to bear in order to finance the common organisation, the sugar produced under quota A receives a guarantee equal to 98% of the intervention price, while the B sugar only receives a lower guarantee, which corresponds to 68% of the intervention price but may, in certain cases, fall to 60.5% of that price.

10. Every year, at the same time as it fixes this intervention price for sugar, the Council also fixes a basic price for beet, which is linked to it (Article 4 of the basic regulation). This price differs according to whether the beet is processed into A or B sugar.

11. A minimum price to be paid by sugar producers to their beet suppliers (Article 5(1) of the basic regulation) is fixed with reference to this basic price. However, the intervention price for sugar and the minimum price for beet are not identical throughout the Community.

12. A distinction is made between areas where production covers or exceeds consumption and the deficit areas. For the latter, the prices are increased in order to improve supplies (Article 3(1) and Article 5(3) of the basic regulation).

13. Within the framework thus laid down in the basic regulation, the Council adopted, in two regulations of 30 July 1996 (Regulation (EC) No 1579/96 fixing, for the 1996/97 marketing year, certain sugar prices and the standard quality of beet, [4] and Regulation No 1580/96, referred to above), various provisions applicable to the 1996/97 marketing year.

14. However, since the marketing year in question was due to commence on 1 July, the Commission had adopted, in order to avoid any discontinuity in the operation of the common organisation, Regulation (EC) No 1252/96 of 28 June 1996 on precautionary measures in the sugar sector. [5]

15. Those measures included fixing the intervention price for white sugar at ECU 63.19 per 100 kg, fixing the derived intervention price for white sugar for all areas of Italy classified as deficit areas at ECU 65.53 per 100 kg and fixing the minimum price for A and B beet at ECU 46.72 and ECU 32.42 per tonne respectively.

16. These provisions were not called into question in the Council Regulations of 30 July 1996. Thus the second recital in the preamble to Regulation No 1580/96 states that Article 3(1) of the basic regulation provides that derived intervention prices for white sugar are to be fixed for each of the deficit areas and that, for such fixing, it is appropriate that account be taken of the regional variations in the price of sugar, which, given a normal harvest and free movement of sugar, might be expected to occur under natural conditions of price formation on the market. The third recital in the preamble to Regulation No 1580/96 notes that a deficit supply situation is to be foreseen in the areas of production of Italy, Ireland, the United Kingdom, Spain, Portugal and Finland. Consequently, Article 1 is worded as follows:

'For the deficit areas of the Community, the derived intervention price for white sugar shall be fixed, per 100 kilograms, at:

...

4 — OJ 1996 L 206, p. 7.
5 — OJ 1996 L 161, p. 142.

(f) ECU 65.53 for all the areas in Italy.'

And Article 3 states that:

'1. The minimum price for A beet applicable in the Community shall be ECU 46.72 per tonne.

2. Subject to Article 28(5) of Regulation (EEC) No 1785/81, the minimum price for B beet applicable in the Community shall be ECU 32.42 per tonne.'

17. Having outlined the regulatory context of the action brought by Eridania before the national court, I now turn to the questions submitted for a preliminary ruling to which the Court is requested to give a reply.

18. The first relates to the validity of Regulation No 1580/96. The national court's doubts on this matter concern the date — a year later than that provided for in the basic regulation — on which it was adopted, the reasons stated therein for classifying Italy as a deficit area and the relevance of that classification.

19. The second, which arises only if the Court of Justice considers that these doubts are unfounded, concerns the actual principle of differentiation between the deficit and non-deficit areas, commonly referred to by the term 'regionalisation' used in the basic regulation, and hence the validity of the basic regulation in so far as it enshrines that concept.

20. The logic of the manner in which these two questions are linked seems to me somewhat paradoxical since the national court is asking the Court of Justice, first of all, whether the implementation for the 1996/97 marketing year of regionalisation complied with the basic regulation and, then, if the Court answers this question affirmatively, it asks whether the basic regulation itself is valid, whereas it is obvious that, if the regionalisation mechanism were itself to be considered unlawful, Regulation No 1580/96, which implements it for a given marketing year, would also be unlawful, irrespective of whether or not it had been adopted in compliance with the basic regulation.

21. I nevertheless intend to examine the two questions in the order in which they have been put to the Court, in particular because the oral procedure has only served to confirm the impression gained from reading the documents submitted during the written procedure, namely that Eridania is clearly taking issue more with the

application of regionalisation to Italy for the 1996/97 marketing year than with the fact that regionalisation is one of the mechanisms for managing the sugar market in the Community.

22. Thus, as regards the first question, I shall examine in turn, as the Court of Justice has been asked to do by the national court, the legality of Regulation No 1580/96 in the light of its date of enactment, the grounds on which it was based, and its substance, in so far as it classifies all areas of Italy as deficit areas.

The belated nature of the price-fixing

23. Does the fact that Regulation No 1580/96 was adopted by the Council on 30 July 1996 and published in the Official Journal on 16 August 1996, whereas, according to Article 3(4) and Article 3(5) of the basic regulation, this should have been done before 1 August 1995, affect its validity?

24. According to Eridania, that question should be answered affirmatively.

25. It argues that compliance with the date laid down by the basic regulation is not at the discretion of the Council. The basic regulation provided for the adoption of the derived intervention prices before 1 August of the year preceding that during which the marketing year in question commences so as to enable sugar producers to take their decisions in good time, that is to say before beet-sowing operations are commenced. The Council is therefore, it contends, guilty of a manifest abuse — which must be penalised in terms of the validity of the adopted measure — where it acts a year after the deadline imposed on it in the basic regulation.

26. The period allowed the Council for fixing the derived intervention prices is, Eridania maintains, just as absolute as that allowed to Member States for making quota transfers between sugar producers, which the Court recognised as such in its judgment in *Cavarzere Produzioni Industriali and Others*. [6]

27. The Council and the Commission, however, consider that the date of 1 August of the year preceding that during which the marketing year opens features in the basic regulation only for purposes of guidance. It is therefore completely erroneous, they contend, to construe that date as an absolute deadline.

28. They also point out that, by deferring its decision, the Council puts itself in a position to be able to manage the sugar

6 — Case C-1/94 *Cavarzere Produzioni Industriali and Others* [1995] ECR I-2363.

market in a much more subtle, and hence more effective, manner, since it will be able to take account of the latest economic data.

29. The Council takes the view that the intervention price is fixed in good time if it is fixed prior to the start of the marketing year, that is to say before 1 July, which was the case for the 1995/96 marketing year, since, the Council being unable to adopt the 'price package' before 1 July, the Commission had adopted the essential precautionary measures.

30. The Commission also contends that, in the common organisation of markets in the sugar sector, prices are fixed annually so that, if Regulation No 1580/96 were held to be invalid, this would result not in a situation where a previous price would continue to apply because it had not been validly altered but in a situation where, in the absence of any price, the operation of the organisation would be brought to a complete standstill.

31. What are we to make of these arguments?

32. I will preface my remarks by saying that it is, it seems to me, wrong that the basic regulation — which is couched in mandatory terms, since it stipulates that '[t]he intervention price for white sugar shall be fixed before 1 August' — includes a deadline which, it transpires, is never observed, as is confirmed by the information communicated to the Court at its request during the oral procedure.

33. While it would, as the Council and the Commission affirm, be unrealistic, and even contrary to the sound management of the market, to fix the prices 11 months prior to the opening of the marketing year, this does not explain why advantage has never been taken of the many amendments to the successive basic regulations to amend that deadline.

34. Such a discrepancy between law and practice blandly acquiesced in by the Community legislature should not, in my view, be shown the slightest indulgence.

35. An attempt has, admittedly, been made to persuade the Court that the maintenance of the 1 August date acts as a powerful incentive for the Community legislature which is on 2 August already aware that its impending decision cannot be long deferred.

36. However, apart from the scepticism which may be engendered by such a way of encouraging progress in the delicate discussions to which the annual fixing of agricultural prices generally gives rise, I have to say that the effectiveness of the

method remains to be demonstrated, given that the fixing has never, at any event since 1991, taken place before 13 June and that, in 1996, because the 1996/97 marketing year was about to start without the prices having been fixed, the Commission had to adopt precautionary measures.

37. None the less, I have to admit that I have difficulty in considering, as Eridania does, that we are dealing with an absolute deadline.

38. The case-law indeed clearly suggests that, where a common agricultural policy management measure takes place after the date provided for in the rules governing the common organisation of the markets in question, it is not to be inferred therefrom that the measure in question is *ipso facto* illegal.

39. This certainly does not mean that lateness must always be of no consequence in terms of legality, as it cannot be ruled out that cases may occur where a measure is adopted so belatedly as to conflict with the principle of legal certainty, with all the consequences entailed by such an infringement. In its recent judgment in *Pontillo*[7] the Court confirmed this approach, which involves not drawing conclusions concerning the legality of the lateness itself when the question arises of the validity of a regulation that has been adopted belatedly but rather examining with the utmost care whether, because of the lateness, certain principles protecting individuals have been contravened and, accordingly, the rights of traders have been adversely affected.

40. That could be the case if an important management measure concerning a particular marketing year were adopted, even though the marketing year was already substantially under way — a situation which the Commission specifically sought to avoid in 1996, when by way of precaution it adopted interim measures at the end of June, that is to say just before the start of the new marketing year.

41. However, leaving aside such hypothetical situations, where there is an overriding need to penalise lateness from the point of view of legality I believe that it must in fact be accepted, as the Council and the Commission maintain, that the large margin of discretion conferred on the Community legislature by the case-law in agricultural matters enables it not to observe a deadline such as that at issue in the present case.

42. In the light of these various factors, in particular the fact that the Commission had adopted interim measures by way of precaution, I do not consider that Regulation No 1580/96 can be regarded as invalid because it was adopted on 30 July 1996.

7 — Case C-372/96 *Pontillo* [1998] ECR I-5091.

43. This finding cannot, however, be interpreted as an endorsement of all the arguments put forward by the Council and the Commission. Thus, while I agree that the Council does not forfeit the power to adopt the prices for a particular marketing year if it has failed to use that power by 1 August of the year preceding the start of that marketing year, I do not concur with the Commission's argument that a declaration of invalidity on grounds of lateness should in any event be ruled out in view of the consequences which might ensue therefrom.

44. In my opinion this argument, which I consider to be very close to the *fait accompli* doctrine, is, as such, indefensible.

45. There are cases where illegality must be recognised and penalised, however painful the consequences may be.

Statement of the reasons on which Regulation No 1580/96 is based

46. Does Regulation No 1580/96 satisfy, in so far as the fixing of a derived intervention price for Italy is concerned, the requirement that the reasons on which it is based be stated, as laid down in Article 190 of the Treaty?

47. It should be borne in mind that the third recital of the Regulation is worded as follows:

'Whereas a deficit supply situation is to be foreseen in the areas of production in Italy, Ireland, the United Kingdom, Spain, Portugal and Finland'.

48. According to Eridania, the Council certainly cannot justify the fixing of a derived intervention price for a particular area simply by referring to a foreseeable deficit situation in that area.

49. It puts forward two arguments in support of that view.

50. First, it maintains that the fixing of a derived intervention price must be viewed as the introduction of an exception to the normal arrangements, namely the uniform application throughout the Community of a single intervention price and, as such, must be justified by specifically stating the reasons on which it is based.

51. Secondly, it claims that, since the concept of a deficit situation is not elucidated in the basic regulation and is there-

fore open to different interpretations, an assertion of a deficit must be backed up by the presentation of quantitative data.

52. The Council and the Commission, on the other hand, argue that the fixing of a derived intervention price cannot be regarded as the introduction of an exception. On the contrary, it is mandatory if it is established that a deficit situation is foreseeable, and the obligation to state the reasons on which a measure such as the one in question is based cannot extend so far as to require the Council to specify all the factors which led it to believe that the measure was necessary. Simply referring to the existence of a foreseeable deficit situation in Italy is certainly unlikely, as is shown by Eridania's action, to deprive the firms in question — which, owing to their participation in various technical committees, are all perfectly aware of the data taken into consideration by the Council — of the right to challenge the adopted measure before a judicial authority.

53. It seems to me that, on this point as well, it is the Council and the Commission which are right. Indeed, I believe that the fixing of a derived intervention price cannot be regarded as an exception giving rise to specific obligations as regards the statement of the reasons on which it is based. The basic regulation cannot be construed as considering the deficit situation that may be experienced by certain areas to be exceptional.

54. It quite simply notes that certain areas of the Community may, at times, have a sugar production deficit, while others do not, either because their production and consumption are in balance or because they have a production surplus, in which case the intervention price will not be the same in both situations.

55. In view of the fact that the common organisation of the markets cannot be intended to bring about a partitioning of markets and that prices in the deficit and non-deficit areas cannot be fixed totally independently, provision is made for the intervention price for the deficit areas to be fixed in light of the price laid down for the other areas, but there is nothing to suggest that one of those prices is the rule and the other the exception. These are simply different prices, corresponding to different situations. Moreover, I take the view that, under the terms of the basic regulation, the fixing of a derived intervention price is not in any way an optional matter for the Council. If an area is in deficit, provision must be made for a derived intervention price for that area.

56. Furthermore, and above all, the Court's settled case-law shows that, with regard to the extent of the obligation to state the reasons on which management measures in the common agricultural policy field are based, in the case of a regulation, that is to say a measure intended to have general application, 'the preamble ... may be confined to indicating the general situation which led to its adoption, on the one hand, and the general objectives which it is

intended to achieve on the other. Consequently it is not possible to require that it should set out the various facts, which are often very numerous and complex, on the basis of which the regulation was adopted, or *a fortiori* that it should provide a more or less complete evaluation of those facts'. [8]

57. In the present case it was not necessary for the Council to explain what had led it to believe that a deficit was foreseeable in each of the six areas for which a derived intervention price was fixed. Here it was, as we shall see later, the result of an evaluation encompassing a whole series of highly technical factors and data (of which, incidentally, those working in the sector were well aware) not needing to be explained in the recitals of a regulation unless — and this was not the case in 1996 — the factors involved were completely new and thus required clarification.

58. I therefore conclude that the statement concerning a foreseeable deficit contained in the recitals in the preamble to Regulation No 1580/96 constitutes an adequate statement of reasons for fixing a derived intervention price for Italy for the 1996/97 marketing year.

8 — Case 87/78 *Welding* [1978] ECR 2457, at paragraph 11; see also Case 230/78 *Eridania and Società italiana per l'industria degli zuccheri* [1979] ECR 2749 and Case 250/84 *Eridania and Others* [1986] ECR 117, paragraphs 35 to 40.

59. However — and this is the subject of the third criticism levelled by Eridania at Regulation No 1580/96 — was the Council in fact entitled to take the view, when the Regulation was adopted, that the 1996/97 marketing year was going to result in a deficit situation in Italy?

Was the Council entitled to forecast a deficit?

60. According to the basic regulation there is a deficit if total available production is lower than consumption. Eridania, on the one hand, and the Council and the Commission, on the other, agree that available production is a legal concept which refers not to physical production but to total production of A sugar and B sugar, plus the amount of C sugar carried forward in accordance with the Community rules.

61. Nor, moreover, does Eridania dispute the fact that, when evaluating the relationship between production and consumption for the coming marketing year, the institutions have no alternative but to make projections on the basis of the data communicated to them by the Member States concerning both the current marketing year and the prospects for the coming marketing

year. That is where the dispute over the figures starts.

The production forecast

62. Eridania considers that the Commission and the Council should have decided, for the 1996/97 marketing year, upon a production forecast of 1 568 000 tonnes.[9] This figure is to be found in a document drawn up by the Commission on 17 July 1996, on the basis of a communication from the Italian Government.

63. According to Eridania, such a figure was consistent with production of 1 568 250 tonnes during the 1993/94 marketing year and 1 558 687 tonnes during the 1994/95 marketing year. This trend, it claims, proves that the figure of 1 461 670 tonnes for the 1995/96 marketing year, which was affected by particularly unfavourable weather conditions in northern Italy, is not relevant.

64. The Council and the Commission, however, explained that, when they took their decision, they had reliable data indicating that production was likely to be 1 465 000 tonnes. On the basis of the information provided by the Italian Government, the following forecast had been adopted at the 'Sugar' Management Committee meeting held on 13 March 1996:

— area sown with beet: 248 000 hectares;

— estimated white sugar yield: 5.6 tonnes per hectare;

— production: approximately 1 390 000 tonnes.

To this figure should be added 75 000 tonnes carried over from the previous marketing year.

65. In order to try to settle this debate concerning the production which could reasonably be forecast on the threshold of the 1996/97 marketing year, I believe that it is necessary to bear in mind the circumstances in which Regulation No 1580/96 was adopted. The Commission has explained to us that it is around December or January preceding the opening of the new marketing year — that is, as will be noted in passing, several months after the

9 — The A and B quotas allocated to Italy total 1 568 250 tonnes.

1 August cut-off date — that it draws up price proposals on the basis of the available data.

66. Subsequently, as it receives updated data on production and consumption for the current year, it refines its forecasts, and the various parties involved in the sugar sector are informed on a very regular basis, via the various committees and groups on which they are represented, of the trends observed and taken into account.

67. Discussion then takes place within the Council, followed by the Council decision. We have been told that, for the 1996/97 marketing year, the decision was taken within the framework of the annual discussions on all agricultural prices, on 23 and 24 June 1996. Admittedly, this decision was not immediately embodied in a regulation, as the fixing of agricultural prices is traditionally done as part of an 'annual package' and, in 1996, it turned out that the agreement on sugar did not coincide with that on the prices of products covered by the common organisation of other markets, which did not take place until July.

68. This explains why the two Regulations Nos 1579/96 and 1580/96 were not formally adopted, together with many others, until 30 July and not finally published until 16 August.

69. However, the prices were adopted *de facto* on 23 and 24 June, which, incidentally, enabled the Commission to make them official in the form of precautionary measures in its Regulation No 1252/96 of 28 June. This explains why the 1 568 000 tonne production forecast contained in the abovementioned Commission document of 17 July 1997 relied upon by Eridania was not taken into account. It should be noted in passing that Eridania does not appear to see any contradiction in the fact that, before referring to this July 1996 figure, it argued that Regulation No 1580/96 was illegal in any case because it was adopted after 1 August 1995.

70. It is my view, however, that once it had reached agreement on 23 and 24 June, the Council was not obliged, even if its decision had not yet been made official, to reopen the discussion to take account of the 17 July 1996 production forecast, which had not been notified in good time.

71. If it is thus agreed that only the figures available during May and, at the latest, the beginning of June can be taken into account, I think that the Council cannot be accused of drawing up arbitrary production forecasts, as there was nothing abnormal about the forecast supplied to it by the

Commission on the basis of sown areas and estimated beet yield in terms of sugar.

The consumption forecast

72. Eridania criticises the method used by the Commission for estimating consumption, which uses the consumption figures for the last 12 months for which such figures exist, and proposes using another, which consists of extrapolating on the basis of the figures for the last six months used for drawing up statistics; with this method it could be said that consumption hardly changes from one six-month period to another.

73. Yet the data from the Italian Ministry of Agriculture, which were available as from 21 January 1996 and covered a six-month period (from 1 July 1995 to 31 December 1995), showed consumption of 723 174 tonnes, down by 5% from the corresponding period of the 1994/95 marketing year. In order to estimate consumption for the whole of the 1995/96 marketing year this figure should, according to Eridania, have been multiplied by two. This would therefore have resulted in a consumption figure of 1 446 000 tonnes, which should have been used in connection with the forecast for the 1996/97 marketing year.

74. Eridania acknowledges, however, that the data for the preceding three marketing years show that consumption for the first half of a marketing year can vary between 50, 49 or 48% of overall consumption for the year.

75. On the supposition that a method based on extrapolation could have been used, the low figure of 48% might equally well have been taken into account. This, however, would have resulted in an estimated consumption for the 1995/96 marketing year of 1 506 612 tonnes. The margin of uncertainty inherent in this method was therefore quite considerable.

76. Eridania also proposes other possible methods for calculating consumption. The first consists of taking as a starting point the figure for the 1994/95 marketing year (1 544 011 tonnes) and reducing it by 5%. This would have resulted in a consumption forecast of 1 467 000 tonnes. The second consists of taking the average of the above-mentioned two figures of 1 446 000 tonnes and 1 467 000 tonnes (= 1 457 000 tonnes). In both these cases it would also have been concluded, on the basis of the production forecast advocated by Eridania, that production would have been in surplus.

77. I admit that I do not possess any forecasting expertise that would enable me to decide which method is the most

reliable. But it seems to me that the method adopted by the Commission, with the endorsement of the Council, appears not to be implausible and must therefore be accepted in light of the case-law, which traditionally acknowledges that the Community legislature has a certain amount of discretion when assessing the data on which it bases its decisions. [10]

78. Yet the Council and the Commission adopted, for the following marketing year too, the provisional figure of 1 532 000 tonnes available to them on 18 June 1996 concerning the 1995/96 marketing year, which was about to come to an end. The Council explained that this figure had been obtained after the last figures notified to the Commission by the Italian Government at the meeting of the Sugar Management Committee held on 20 May 1996. In the absence of conflicting information, the Commission was entitled to use this figure for the forecast for the 1996/97 marketing year. Contrary to Eridania's claim, consumption during the relevant period did not reveal a downward trend. Indeed, compared with the 1993/94 marketing year, sugar consumption in Italy had increased considerably during the 1994/95 marketing year and had fallen only slightly during the 1995/96 marketing year compared with the 1994/95 marketing year. There was therefore no reason to forecast that sugar consumption during the 1996/97 marketing year would turn out to be lower than for the 1995/96 marketing year (paragraph 49 of the Council's observations).

79. Furthermore, the Commission explained that a number of events, such as the increase in the storage levies from ECU 2.5 to ECU 3.5 per 100 kilograms which took place on 1 July 1993 and the abolition of frontier controls, were to lead to rejection of the idea that the large fall in consumption during the 1993/94 marketing year reflected a clear and sustainable trend towards lower consumption in Italy.

80. These explanations show that the Council and the Commission endeavoured to base their forecasts on data that were as objective as possible and that their forecast consumption of 1 532 000 tonnes for the 1996/97 marketing year was not arbitrary. Compared with the figure of 1 465 000 tonnes adopted for available production for the same marketing year, it revealed a deficit situation which justified the introduction of a derived intervention price. I therefore conclude that, on this point too, Eridania's criticisms questioning the validity of Regulation No 1580/96 are unfounded.

81. Indeed, this validity cannot be called in question in light of the actual results of the marketing year concerned, since the validity of a measure is assessed at the time of its enactment.

10 — Case 138/79 *Roquette Frères* v *Council* [1980] ECR 3333, paragraph 25.

82. The final results for the 1996/97 marketing year admittedly show that in actual fact there was not a production deficit for that year but a surplus of 33 525 tonnes. The Council and the Commission were mistaken about consumption, which amounted to 1 467 675 and not 1 532 500 tonnes, as they had forecast. It should, however, be pointed out that the 1 568 000 tonne production forecast which Eridania criticises the Council for not using also turned out to be erroneous, because it overestimated production by 67 000 tonnes (the actual figure was only 1 501 000 tonnes).

83. This shows — and it is the only respect in which these figures are of interest with regard to the question before the Court — that in this area it is very difficult to make an accurate forecast. Provided that the competent institution has applied a coherent method, it cannot be accused of having exceeded the bounds of its discretion.

84. However, I consider it necessary to append to this conclusion a remark concerning an assertion by the Council and the Commission which, in my view, is highly questionable. These two institutions in fact gave to understand that, because the Italian Republic traditionally had a deficit, it would not have been reasonable, even if the statistical data available in June 1996 had not pointed to a deficit, to cancel the derived intervention price, since to do so would have disrupted the sugar sector in Italy.

85. I cannot subscribe to an interpretation of the basic regulation according to which a foreseeable deficit for a particular marketing year is not an essential factor in extending the application in a Member State of derived intervention prices, which was justified in the preceding year. Rightly or wrongly, the basic regulation stipulated that regionalisation should be applied on a year-by-year basis and in no case uses the concept of areas with a structural deficit, in which no significance is attached to the disappearance of the deficit in a given marketing year. If the Council is today of the opinion that annual management, with the variables which this may entail, ought to give way to multiannual management, it is for it to amend the basic regulation but under no circumstances is it open to it to interpret it in such a way as to negate the principles on which it is based.

86. Having come to the conclusion that Regulation No 1580/96 is not in itself invalid for one of the reasons put forward by Eridania, I must examine, as the national court has asked the Court of Justice to do, whether the basic regulation itself is not invalid in so far as it provides for regionalisation, which would as a consequence invalidate Regulation No 1580/96, which applies it to the Italian Republic for the 1996/97 marketing year.

Validity of the basic regulation

87. Eridania criticises the basic regulation in three respects:

— first, that regulation, it claims, runs counter to the prohibition of discrimination between producers or consumers within a common organisation of markets, as laid down in the second subparagraph of Article 40(3) of the EC Treaty;

— secondly, it introduces restrictions on the free movement of sugar within the Community, in contravention of Articles 30 and 34 of the EC Treaty;

— thirdly, it introduces unjustified assistance for beet producers in deficit areas.

88. On the first point, Eridania contends that sugar producers in the regions where a derived intervention price is applied are subject to discrimination, since they have to pay a higher price than other producers for the raw material, namely beet, without being able to obtain higher prices on the market, exposed as they are to competition from producers in the surplus areas.

89. Similarly, there is no point in their taking part in the invitations to tender for exports because the fact that the refund is calculated on the basis of the intervention price for surplus areas means that they cannot compete with producers from those areas.

90. The Council and the Commission deny the existence of discrimination prohibited by the aforementioned Treaty provision. With regard to the principles involved, they argue first of all that the application of derived intervention prices in cases where certain production areas are subject to deficits while others experience surpluses has been recognised as lawful from the point of view of the Treaty rules in various judgments, in particular that of 11 July 1974. [11]

91. They go on to point out that the derived intervention price is necessary as a means of attracting to the deficit areas the surpluses from other areas, notwithstanding the cost of transportation, and that the derived intervention price is always fixed in such a way that the surpluses directed towards the deficit areas genuinely serve to supply the market and are not presented for intervention in order to benefit from the

11 — Case 11/74 *Union des minotiers de la Champagne* [1974] ECR 877.

derived intervention price, which is by definition higher than in the surplus areas.

92. The Council and the Commission admit that their objective should be to achieve a single price but consider that the specific characteristics of the sugar market — which, moreover, justify the maintenance of the quota system [12] — are such that this objective is still beyond their reach.

93. They also claim that it is not true — or in any event it has not been proved, since on the part of sugar producers there is a great lack of transparency in this matter — that Italian producers cannot conduct their operations as profitably as their competitors in the surplus areas.

94. With regard, finally, to the disadvantages allegedly affecting producers in deficit areas when it comes to exporting, either to other Member States or to non-member countries, the Council and the Commission argue that there is nothing unusual about such producers being encouraged to supply their own markets rather than to export and exacerbate the deficit in view of the demand on their natural markets, and that the less attractive nature of the amount of the refund is offset for them by the production levy.

95. These different arguments put forward by the institutions — which relate to the principle, settled in the case-law of the Court, that different treatment cannot be regarded as discriminatory if it applies to different situations, provided that the principle of proportionality is observed — are, it seems to me, wholly convincing.

96. The same goes for the arguments invoked by them to refute any contravention of Articles 30 and 34 of the Treaty. It is clear, as they admit, that regionalisation is not without its effects upon the movement of sugar within the Community, but it is equally clear that, where these effects are the result not of national but of Community measures, they must be accepted in order to attain an objective assigned by Article 39 of the Treaty to the common agricultural policy, namely guaranteeing the availability of supplies.

97. Sugar producers in deficit areas are not prevented from exporting to other Member States; they are quite simply not encouraged to do so, given that their task, precisely because of the supply shortfall on their domestic market, is above all to supply that market, on which the intervention price has been fixed in the light of that objective.

98. With regard to Eridania's complaint concerning the introduction of aid for beet-

12 — See, in particular, the *Eridania* case, cited above.

growers in deficit areas, solely at the expense of sugar producers in those same areas, I find it difficult to see, in view of the rather succinct explanations devoted to this matter by Eridania in its written observations, how it could refute the Council's argument that the increase in the minimum purchase price for beet is merely the transposition, to another stage in the sugar production chain, of the higher intervention price for sugar which, as I already conceded earlier, cannot be considered unlawful in view of the objectives of the common agricultural policy.

Conclusion

99. Having thus considered the various arguments put forward by Eridania against the validity of Regulation No 1580/96 and of the basic regulation which, according to the national court, were worthy of examination by the Court, I conclude that it is appropriate to propose that the Court's reply to the questions submitted for a preliminary ruling by the Giudice di Pace di Genova should be that:

Examination of the questions submitted has not revealed any factor which might affect the validity of Council Regulation (EC) No 1580/96 of 30 July 1996 fixing, for the 1996/97 marketing year, the derived intervention prices for white sugar, the intervention price for raw sugar, the minimum prices for A and B beet, and the amount of compensation for storage costs or of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector.