JUDGMENT OF THE COURT (Second Chamber)
12 October 2004 *

In Case C-87/00,

REFERENCE for a preliminary ruling under Article 234 EC

from the Giudice di pace di Genova (Italy), made by decision of 28 February 2000, received at the Court on 7 March 2000, in the proceedings

Roberto Nicoli

v

Eridania SpA,

* Language of the case: Italian.

THE COURT (Second Chamber),

composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann, R. Schintgen, F. Macken and N. Colneric (Rapporteur), Judges,

Advocate General: M. Poiares Maduro,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 25 March 2004,

after considering the observations submitted on behalf of:

— Mr Nicoli, by G. Conte and B. Della Barile, avvocati,

— Eridania SpA, by I. Vigliotti and C. Cacciapuoti, avvocati,

— the Italian Government, by I.M. Braguglia, acting as Agent, and G. De Bellis and A. Cingolo, avvocati dello Stato,

— the Council of the European Union, by F.P. Ruggeri Laderchi, acting as Agent,

— the Commission of the European Communities, by C. Cattabriga and L. Visaggio, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 18 May 2004,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the interpretation of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector (OJ 1981 L 177, p. 4), as amended by Council Regulation (EC) No 1101/95 of 24 April 1995 (OJ 1995 L 110, p. 1, 'Regulation No 1785/81'), and on the validity of Council Regulation (EC) No 1361/98 of 26 June 1998 fixing, for the 1998/99 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 (OJ 1998 L 185, p. 3).

2 The reference was made in proceedings between Mr Nicoli, a producer of sugar beet in Italy, and the company Eridania SpA ('Eridania'), a sugar manufacturer to which Mr Nicoli supplied sugar beet, apropos of whether there was justification for classifying Italy as a non-deficit area for the marketing year 1998/99 and, in

consequence, the lack of an intervention price for white sugar for that Member State's areas and the increased minimum prices to be paid to producers of sugar beet.

The relevant provisions of law

Common organisation of the markets in the sugar sector

3 In the context of the common organisation of the markets in the sugar sector ('the COM in sugar'), Title I of Regulation No 1785/81 established a price regime and Title III a quota regime.

4 So far as the quota regime is concerned, each Member State is allocated, in particular, a basic quantity for its national production. That is divided, within each of the Member States, in step with the criteria laid down by Regulation No 1785/81, between the producing undertakings in the form of A and B production quotas. Those two quotas are guaranteed an outlet by means of intervention prices for white sugar, both on the Community market and in non-member countries, and adequate remuneration, which is unequal, given that the B quota is subject to higher dues. When surplus sugar, called 'C sugar', is not carried forward by the producing undertakings within the bounds of fixed quantities to the following marketing year, it must be exported to non-member countries without intervention by the Community.

5 The prices regime provides for prices to be fixed every year for the marketing year which starts on the following 1 July. Article 3(4) and (5) provide:

'4. The intervention price for white sugar shall be fixed before 1 August for the marketing year beginning on 1 July of the following year, in accordance with the procedure laid down in Article 43(2) of the Treaty.

In accordance with the same procedure the Council shall specify the standard quality for which this price is valid.

5. The Council, acting by a qualified majority on a proposal from the Commission, shall fix the intervention price for raw sugar and the derived intervention prices each year at the same time as it fixes the intervention price for white sugar.

In accordance with the same procedure the Council shall specify the standard quality for which the intervention price for raw sugar is valid.'

6 There are two categories of intervention prices for white sugar: the intervention price proper applies to sugar produced in non-deficit areas and the derived intervention price to sugar produced in deficit areas. The priced fixed for deficit areas is greater than that for non-deficit areas. That differentiation in price is known as 'regionalisation'.

7 In parallel with the price of sugar, a minimum price at which sugar factories must buy beet from producers is fixed every year in accordance with Article 5(1) of Regulation No 1785/81, at the same time as the intervention price of white sugar. As in the case of sugar, there are two categories, A and B, of beet, corresponding to the A sugar and B sugar of which they form the raw material.

8 In order to maintain the parallel with the sugar regime, Article 5(3) of Regulation No 1785/81 provides that '[f]or areas for which a derived intervention price for white sugar is fixed, the minimum prices for A beet and B beet shall be increased by an amount equal to the difference between the derived intervention price for the area in question and the intervention price, such amount being adjusted by the coefficient 1.30'.

9 As a result, the system established by Regulation No 1785/81 provides, for deficit areas and within the restrictions of the quota allocated, a higher price for the purchase of the raw material required for the manufacture of sugar and, simultaneously, a guaranteed higher price for sugar produced in those areas.

10 Regulation No 1785/81 has been replaced by Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector (OJ 1999 L 252, p. 1) which has, in its turn, been repealed by Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178, p. 1).

11 Article 14(1) of Commission Regulation (EC) No 779/96 of 29 April 1996 laying down detailed rules for the application of Council Regulation (EEC)

No 1785/81 as regards communications in the sugar sector (OJ 1996 L 106, p. 9) provides:

'Each Member State shall notify to the Commission:

1. before 1 September of each year in respect of the previous marketing year and before 1 January of each year in respect of the previous production year, using the model form shown in Annex II, the data relating to the supply balance for sugar, isoglucose and inulin syrup for the period in question.'

12 Annex II to Regulation No 779/96 contains a table to be used as a model for the communications referred to in Article 14(1) of that regulation. The left-hand column of that table is worded as follows:

1. OPENING STOCKS at: 1 ..... Total ... 2. PRODUCTION ... 3. IMPORTS FROM THIRD COUNTRIES (a) unprocessed ... (b) processed products 4. IMPORTS FROM OTHER MEMBER STATES (a) unprocessed (b) processed products
5. TOTAL SUGAR AVAILABLE
6. EXPORTS TO OTHER MEMBER STATES (a) unprocessed (b) processed products 7. EXPORTS TO THIRD COUNTRIES (a) unprocessed (b) processed products ... 8. TOTAL CONSUMPTION [5 – (6 + 7 + 9)] 9. CLOSING STOCKS at: 30 ..... Total ...

Regulations (EC) Nos 1360/98 and 1361/98

13 Council Regulation (EC) No 1360/98 of 26 June 1998 fixing, for the 1998/99 marketing year, certain sugar prices and the standard quality of beet (OJ 1998 L 185, p. 1) has fixed, inter alia, the intervention price for white sugar for the marketing year concerned in the main proceedings.

14 The second and third recitals in the preamble to Regulation No 1361/98, adopted on the basis of Regulation No 1785/81, state, with regard to the fixing of derived intervention prices:

'Whereas Article 3(1) of Regulation (EEC) No 1785/81 provides that derived intervention prices for white sugar are to be fixed for each of the deficit areas; whereas, 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 in the price of sugar under natural conditions of price formation on the market;

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

15 No derived intervention price having been fixed for white sugar in Italy by Regulation No 1361/98, the intervention price for white sugar determined in Article 1(2) of Regulation No 1360/98 was applied to Italy too for the marketing year 1998/99. By the same token, Italy was treated as an area of surplus production.

The dispute in the main proceedings and the questions referred for a preliminary ruling

16 By a contract concluded on 2 December 1997, Roberto Nicoli, a producer of sugar beet, sold to Eridania his beet production for the marketing year 1998/99, a total weight of 53.23 tonnes. Eridania paid the sum of ITL 6 651 350 (EUR 3 435.14), which did not include the amount corresponding to 'regionalisation' of the price, that is to say, ITL 421 263.88 (EUR 217.56).

17 Considering himself to be owed that latter sum, Mr Nicoli brought proceedings against Eridania before the Giudice di pace di Genova (Magistrate of Genoa), with a view to obtaining payment of the balance of the price he regarded as due to him.

18 The national court observes in particular that the conditions for identifying non-deficit and deficit areas are the prevalence either of production over consumption (area of surplus production) or of consumption over production (deficit area).

19 So far as consumption is concerned, the national court dwells more particularly on the question whether, for the purposes of determining that a given area is a deficit area, there are good and logical grounds for treating as being consumed in Italy sugar incorporated there into food which is subsequently eaten in other Member States, or whether that sugar must not rather be acknowledged to be consumed in the country in which that food is eaten.

20 Those are the conditions in which the Giudice di pace di Genova decided to stay proceedings and to refer three questions to the Court for a preliminary ruling.

21 By decision of the President of the Court of 13 April 2000, the Court stayed proceedings until such time as the matter giving rise to the judgment in Case C-340/98 *Italy* v *Council* [2002] ECR I-2663 should have been decided. The subject-matter of that case was precisely the validity of Regulations Nos 1360/98 and 1361/98. That judgment has been communicated to the Giudice di pace di Genova, who has taken the view, in an order of 30 July 2002 registered at the Court Registry on 19 August 2002, that the Court had replied to only the first of the three questions he had raised in his decision making the reference.

22 According to the Giudice di pace di Genova, the second question, which asks, first, what interpretation it is necessary to give to the concept of 'consumption in a particular area' and, second, whether or not that concept includes sugar incorporated into a processed product subsequently consumed in another country, remains unanswered. According to the national court, no answer has been given to the third question it referred either, which is linked to the second, in that it follows from the second not only on account of lack of reasoning in Regulation No 1361/98 but also because that act does not fix a derived intervention price for all areas of Italy.

23 Those were the circumstances in which the Giudice di pace di Genova, pursuing the two latter questions set out in his order for reference of 28 February 2000, referred the following questions to the Court for a preliminary ruling:

'(1) Must Regulation No 1785/81 be interpreted as meaning that the classification of an area as a deficit area is to be based on a calculation method which treats as being consumed in that area sugar which is incorporated there into a processed product even if the latter is eaten in another country, or is the classification of an area as a deficit area to be based on a calculation method which does not treat as being consumed in that area sugar which is incorporated there into a processed product even if the latter is eaten in another country?

(2) Is Regulation ... No 1361/98 ... valid, in view of the fact that it fails to fix a derived intervention price for all areas of Italy in accordance with Article 3(1), Article 5(3), and Article 6(2) of Regulation ... No 1785/81 and contains no statement of reasons for that omission?'

24 By decision of the President of the Court of 3 September 2002, the proceedings were resumed.

On the questions referred

25 The two questions pursued by the Giudice di pace di Genova before the Court, which it is appropriate to examine together, amount in essence to asking whether Regulation No 1361/98 is not invalid in so far as, by reason of an incorrect method of computing the estimated consumption of sugar, Italy does not appear for the marketing year 1998/99 among the deficit areas of the Community which are listed in Article 1 of that regulation. The national court also seeks to ascertain whether that regulation is invalid because it contains no statement of reasons justifying the omission to fix a derived intervention price for all the areas of Italy.

On the implications of the judgment in Italy *v* Council

26 It has to be stated that, contrary to the Council and Commission's submissions, the judgment in *Italy* v *Council* supplied no answer to the question of Regulation No 1361/98's validity from the point of view of the method of computing the estimated consumption of sugar used by the Community legislature.

27 As regards the issue of interpreting the notion of consumption, it is clear from paragraphs 71 to 78 of the judgment in *Italy* v *Council* that the Court examined only a supposed alteration in the method used by the Commission and Council to evaluate the future situation in Italy.

28 In particular, in paragraph 73 of that judgment the Court found that the method used consisted of comparing available production, made up of the foreseeable quantities of A and B sugar, plus any C sugar carried forward, with foreseeable consumption.

29 Nevertheless, the judgment in *Italy* v *Council* examined neither the method used to compute estimated consumption nor, therefore, the question of the validity of Regulation No 1361/98 inasmuch as it did not show Italy as a deficit area for the marketing year 1998/99, on account of the use of a method of computing that consumption held to be inaccurate.

30 On the other hand, it is apparent from paragraphs 56 to 63 of the judgment in *Italy* v *Council*, in which the Court examined the plea alleging lack or inadequacy of a statement of the reasons on which Regulation No 1361/98 was based in the light of Article 190 of the EC Treaty (now Article 253 EC), that that reasoning was held to be in keeping with the requirements of that provision. Indeed, in paragraph 63 of that judgment, the Court found that, in the context of the set of rules in issue and the way in which the market concerned had developed, the statement of reasons given in Regulation No 1361/98 for the classification of Italy as a non-deficit area for the marketing year 1998/99, whilst very succinct, sufficiently fulfilled the requirements laid down in the Court's case-law regarding the statement of reasons.

31 The validity of Regulation No 1361/98 cannot therefore be challenged by reason of alleged infringement of the requirements to give reasons for the decision not to fix a derived intervention price for all areas of Italy.

On the method of computing estimated consumption

32 As a preliminary point, it ought to be noted that estimated consumption for the coming year is one of two elements which the institutions must take into account in determining whether a situation of deficit or of surplus is to be foreseen for a particular area. As a matter of fact, there is a deficit for the purposes of Regulation No 1785/81 when total available production falls short of consumption (see Case C-289/97 *Eridania* [2000] ECR I-5409, paragraph 46, and *Italy* v *Council*, paragraph 76).

33 The concept of 'consumption' has not been defined by the legislation governing the system of the COM in sugar. Even though paragraph 8 of Annex II to Regulation No 779/96, applicable at the date of the facts in the main proceedings, provides for a method of computing total consumption, that annex is not intended to establish a definition of the concept of consumption that could appropriately be used in determining whether an area had a deficit or a surplus. Its purpose is rather to establish a common model for the communication of the data which are to be used for several mechanisms of that COM.

34 Now, it is established that the Council and the Commission rely on the definition of 'total consumption' given in paragraph 8 of that annex in order to determine whether an area is in deficit or surplus. They thus appraise total consumption by deducting from the total quantities available the sum of the quantities corresponding to exports to other Member States, exports to non-member countries and closing stocks. It follows that sugar imported from non-member countries or from other Member States and incorporated into processed products is taken into account, but that sugar incorporated into processed products and exported to other States is not regarded as being consumed in the Member State in question.

35 In Mr Nicoli's view, that computation of consumption is seriously flawed because it does not take those last-mentioned quantities into consideration.

36 With regard to the ambit of the Court's judicial review of the method adopted by the institutions in order to determine estimated consumption of sugar for the marketing year in question, it ought to be borne in mind that the Council and the Commission must extrapolate, on the basis of information notified by the Member States which relates both to the current year, as far as the pattern of consumption is concerned, and to the prospects for the forthcoming year, as regards the pattern of available production (*Eridania*, paragraph 47).

37 Where the need to evaluate a complex economic situation is involved, the Community institutions enjoy a wide measure of discretion. In reviewing the legality of the exercise of such discretion, the Court cannot substitute its own assessment of the matter for that of the competent authority but must confine itself to examining whether that assessment is vitiated by a manifest error or misuse of power or whether the institution in question has not manifestly exceeded the limits of its discretion (see Case C-369/95 *Somalfruit and Camar* [1997] ECR I-6619, paragraph 50, and Case C-99/99 *Italy* v *Commission* [2000] ECR I-11535, paragraph 26).

38 With regard to Regulation No 1361/98, it is, therefore, necessary to consider in the light of that case-law whether, in taking into account in its evaluating of estimated consumption of sugar for the marketing year 1998/99 only those quantities consumed in a given area, to the exclusion of sugar incorporated into processed products in the area concerned which are subsequently exported, the Commission has committed a manifest error of assessment.

39 As the Commission has noted in its written observations, the purpose of fixing a higher derived intervention price for deficit areas is, first, to enable those areas to obtain supplies of sugar from non-deficit areas, taking into account to a certain extent transport costs, in particular, and, second, to avoid such a reduction in the production of sugar beet as would lead to an even greater deficit in succeeding marketing years.

40 Even if the method of computing consumption advocated by Mr Nicoli were better suited to the purpose of attaining the objectives mentioned in the previous paragraph, the Commission did not make a manifest error of assessment when it adopted a method of computing estimated consumption of sugar that did not regard as consumed in the Member State concerned sugar incorporated into processed products and exported to other States. According to the method adopted, sugar contained in processed products which was imported from other States is as a matter of fact taken into account in the computation of that consumption.

On the validity of Regulation No 1361/98

41 It follows from all the foregoing that consideration of the questions raised has disclosed nothing to affect the validity of Regulation No 1361/98.

Costs

42 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) rules as follows:

Consideration of the questions raised has disclosed nothing to affect the validity of Council Regulation (EC) No 1361/98 of 26 June 1998 fixing, for the 1998/99 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.

Signatures.