JUDGMENT OF THE COURT (Fourth Chamber)
31 May 2001 *

In Case C-41/99 P,

Sadam Zuccherifici, divisione della SECI — Società Esercizi Commerciali Industriali SpA, established in Bologna (Italy),

Sadam Castiglionese SpA, established in Bologna,

Sadam Abruzzo SpA, established in Bologna,

Zuccherificio del Molise SpA, established in Termoli (Italy),

Società Fondiaria Industriale Romagnola SpA (SFIR), established in Cesena (Italy),

represented by V. Cerulli Irelli, G. Pittalis and G. Fanzini, avvocati, with an address for service in Luxembourg,

appellants,

* Language of the case: Italian.

APPEAL against the order of the Court of First Instance of the European Communities (Fourth Chamber, Extended Composition) of 8 December 1998 in Case T-39/98 *Sadam Zuccherifici and Others* v *Council* [1998] ECR II-4207, as amended by an order of 29 January 1999 (not published in the European Court Reports), seeking to have the first order set aside,

the other party to the proceedings being:

Council of the European Union, represented by J. Carbery and I. Díez Parra, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (Fourth Chamber),

composed of: A. La Pergola, President of the Chamber, D.A.O. Edward and C.W.A. Timmermans (Rapporteur), Judges,

Advocate General: C. Stix-Hackl,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 6 December 2000, at which Sadam Zuccherifici, divisione della SECI — Società Esercizi Commerciali Industriali SpA, Sadam Castiglionese SpA, Sadam Abruzzo SpA, Zuccherificio del Molise SpA and Società Fondiaria Industriale Romagnola SpA (SFIR) were represented by G. Fanzini, G.M. Roberti and A. Franchi, avvocati, and the Council by J. Carbery and F.P. Ruggeri Laderchi, acting as Agent

after hearing the Opinion of the Advocate General at the sitting on 8 February 2001,

gives the following

Judgment

1 By application lodged at the Registry of the Court on 12 February 1999, Sadam Zuccherifici, divisione della SECI — Società Esercizi Commerciali Industriali SpA, Sadam Castiglionese SpA, Sadam Abruzzo SpA, Zuccherificio del Molise SpA and Società Fondiaria Industriale Romagnola SpA (SFIR) brought an appeal under Article 49 of the EC Statute of the Court of Justice against an order of the Court of First Instance of 8 December 1998 in Case T-39/98 *Sadam Zuccherifici and Others* v *Council* [1998] ECR II-4207 (hereinafter 'the contested order'), as amended by an order of 29 January 1999 (not published in the European Court Reports), in which the Court of First Instance dismissed as inadmissible their action for annulment of Article 2 of Council Regulation (EC) No 2613/97 of 15 December 1997 authorising Portugal to grant aid to sugar beet producers and abolishing all State aid from the 2001/02 marketing year (OJ 1997 L 353, p. 3).

Legal and factual background to the dispute

2 Article 46 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 L 110, p. 1, hereinafter 'Regulation No 1785/81'), authorises the Italian Republic and the Kingdom of Spain, under the conditions therein laid down, to grant adjustment aid to producers of sugar and sugar beet. To that end, Article 46(2) of the regulation divides Italy into three separate regions, namely 'northern Italy', 'central Italy' and 'southern Italy'. The amount of aid authorised is progressively reduced over the years in accordance with the 'soft landing' principle, such aid being granted up to and including marketing year 1999/2000 in respect of northern and central Italy and up to and including marketing year 2000/01 in respect of southern Italy. The rate of reduction in the amount of aid authorised is very steep in the cases of northern and central Italy and less so in the case of southern Italy.

3 Regulation No 2613/97 contains two different types of provision. Article 1 of that regulation authorises the Portuguese Republic to grant adjustment aid to sugar beet producers located in its continental territory under certain conditions during the 1998/99 to 2000/01 marketing years. Article 2 of the regulation provides that the aid referred to in Article 1 and the aids referred to in Article 46 of Regulation No 1785/81 are to be abolished as from marketing year 2001/02.

4 The appellants, who are owners of sugar beet processing and beet sugar production establishments in southern Italy, considered that their interests had been harmed by Article 2 of Regulation No 2613/97, and brought an action for annulment thereof before the Court of First Instance. In support of that action,

they relied, first, on a failure to give reasons for Regulation No 2613/97 and, secondly, on an infringement of essential procedural requirements in that the Italian Republic was not consulted prior to the regulation being adopted. The then applicants furthermore considered it established that there had been a misuse of powers and an infringement of Article 39 of the EC Treaty (now Article 33 EC).

5 By separate document, the Council raised an objection of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance. The Council contended first of all that the contested act was a legislative act having general application which applied to objectively determined situations and entailed legal effects for categories of persons regarded generally and in the abstract and, secondly, that the applicants were not directly and individually concerned by the act; it requested the Court of First Instance to dismiss the action as manifestly inadmissible and to order the applicants to pay the costs.

6 The applicants lodged their observations on the objection of inadmissibility on 13 July 1998. Relying on the Opinion of Advocate General Van Gerven in Case C-213/91 *Abertal and Others* v *Commission* [1993] ECR I-3177, they submitted that Regulation No 2613/97 had legal effects that adversely affected them and that those effects resulted directly from the contested act itself, and were not the consequence of any subsequent decision taken by a Community institution or Member State. Accordingly, they requested the Court of First Instance to dismiss the objection raised by the Council and declare the action admissible.

The contested order

7 In the contested order, the Court of First Instance found for the Council. It dismissed the action before it as inadmissible and ordered the applicants jointly and severally to pay the costs of the proceedings.

8 The action was dismissed on two grounds.

9 First of all, the Court of First Instance found that Regulation No 2613/97 is a measure of general application, stating, *inter alia*, at paragraph 18 of the contested order, that '[Article 2 of the regulation] applies to an objectively determined situation and entails legal effects for categories of persons regarded generally and in the abstract, namely the Member States and sugar beet producers'.

10 Secondly, the Court of First Instance examined the question whether the applicants were concerned by Article 2 of Regulation No 2613/97 as a result of certain attributes peculiar to them or by reason of circumstances in which, for the purposes of that provision, they were differentiated from all other persons. In that regard, the Court of First Instance held, *inter alia*, at paragraph 21 of the contested order that 'even if the regulation is susceptible of affecting the applicants' situation, that circumstance is not sufficient to differentiate them from all other persons. The contested provision concerns them only by reason of their objective attribute as economic operators active in the sugar beet sector, in the same way as any economic operator engaged in the same business in the European Community.'

11 As to the applicants' argument that the effects of Article 2 of Regulation No 2613/97 were likely to be felt more severely in southern Italy than in northern or central Italy or in Spain, the Court of First Instance pointed out, at paragraph 22 of the contested order, that the fact that that provision might have different specific effects on the various persons to whom it applies 'is not inconsistent with its nature as a regulation.... Furthermore, in relation to the system of authorisation of aid established by Article 46(2) of Regulation No 1785/81 and

the system of prohibition established by Article 2 of Regulation No 2613/97, the applicants are in any event in the same situation as any other Italian sugar beet producer operating in southern Italy'.

The appeal

12 In support of their appeal asking that the contested order be set aside and consequently that their action challenging Article 2 of Regulation No 2613/97 be held admissible, the appellants rely on two grounds of appeal namely, first, disregard of the conditions governing the admissibility of an action for annulment brought by natural or legal persons and, secondly, the confusion by the Court of First Instance of their action with that brought on the same day and relating to the same subject-matter by the Associazione Nazionale Bieticoltori (ANB) and two independent producers from southern Italy, F. Coccia and V. Di Giovine, which was the basis for the order of 8 December 1998 in Case T-38/98 *ANB and Others* v *Council* [1998] ECR II-4191.

13 The appellants argue in particular that the rectificatory order of 29 January 1999, which was intended by the Court of First Instance to resolve that confusion, *inter alia*, by substituting the words 'les requérantes' for the words 'les requérants' in paragraphs 7, 9, 11, 14, 15 and 20 of the contested order, * and by removing any reference to F. Coccia and V. Di Giovine in paragraphs 21 and 22 thereof, did nothing to correct the 'defect of definition' allegedly vitiating it.

14 For its part the Council contends that the appeal is inadmissible on the ground that the appellants have merely reproduced word for word the pleas in law and arguments advanced before the Court of First Instance, contrary to the provisions of the EC Statute and the Rules of Procedure of the Court of Justice.

* Translator's note: 'les requérants' includes the applicants in Case T-38/98 whereas 'les requérantes' does not.

15 Furthermore, as regards the alleged 'confusion' by the Court of First Instance of the abovementioned cases *Sadam Zuccherifici and Others* v *Council* with *ANB and Others* v *Council*, the Council contends that in both cases the Court of First Instance employed the same traditional method of examining the admissibility of an action brought by natural or legal persons against Community regulations. Since the applicants relied on the same arguments in both cases, the Court of First Instance could not have done otherwise than hold, in the same terms, both actions to be inadmissible.

The admissibility of the appeal

16 It follows from Article 168a of the EC Treaty (now Article 225 EC), the first paragraph of Article 51 of the EC Statute of the Court of Justice and Article 112(1)(c) of the Rules of Procedure of the Court of Justice that an appeal must indicate precisely the contested elements of the judgment or order which it is requested to have set aside and also the legal arguments which specifically support that request (see, *inter alia*, the orders of 6 March 1997 in Case C-303/96 P *Bernardi* v *Parliament* [1997] ECR I-1239, paragraph 37, and C-317/97 P *Smanor and Others* v *Commission* [1998] ECR I-4269, paragraph 20).

17 That requirement is not satisfied by an appeal which, without even including an argument specifically identifying the error of law allegedly vitiating the contested order, confines itself to repeating or reproducing word for word the pleas in law and arguments previously submitted to the Court of First Instance, including those based on facts expressly rejected by that Court. Such an appeal amounts in reality to no more than a request for re-examination of the application submitted

to the Court of First Instance, which the Court of Justice does not have jurisdiction to undertake (Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraph 35).

18 However, in this case the appellants challenge the reasoning of the Court of First Instance quite specifically in accusing it of transposing to the case of *Sadam Zuccherifici and Others* v *Council*, which is the basis for this appeal, the grounds and reasoning applicable in the case of *ANB and Others* v *Council*, cited above, and failing to respond to any of the specific arguments raised by them to the effect that, as sugar beet processing and beet sugar production undertakings, they are directly and individually concerned by Article 2 of Regulation No 2613/97.

19 In those circumstances, the fact that the arguments and pleas in law relating to the conditions governing the admissibility of an action for annulment brought by legal or natural persons had already been raised in the same terms at first instance cannot constitute grounds for their inadmissibility in the appeal proceedings. It is clear that, at paragraphs 16, 18 and 22 of the contested order, the Court of First Instance confined itself to consideration of the position of sugar beet producers and did not rule on the specific position of sugar beet processing and beet sugar production undertakings.

20 The appeal must therefore be held admissible.

The substance of the appeal

21 As regards the substance of the appeal, the appellants essentially advance two grounds of appeal.

22 In their first ground of appeal, they claim that the Court of First Instance erred as to the nature of the contested act. Having regard to the legal effects of Article 2 of Regulation No 2613/97 for sugar producers in southern Italy, the measure contained in that provision, namely the abolition of aid as from the 2001/02 marketing year, though it appears to be of general application and thus to have the character of a regulation, is, rather, in the nature of a decision whose adverse effects are felt most keenly by industrial undertakings whose establishments are in southern Italy.

23 As their second ground of appeal, the appellants claim that the Court of First Instance was wrong to find that they were not individually concerned by Article 2 of Regulation No 2613/97.

24 As regards the appellants' first ground of appeal, it must be observed, as the Court of First Instance rightly pointed out at paragraph 17 of the contested order, that the admissibility of an action for annulment brought by a natural or legal person against a Community regulation is subject to the condition that the contested regulation is in reality a decision which concerns the applicant directly and individually. The Court of Justice has explained in this respect that the criterion for distinguishing between a regulation and a decision must be sought in the general application or otherwise of the measure in question and that an act has general application if it applies to objectively determined situations and entails legal effects for categories of persons regarded generally and in the abstract (see, *inter alia*, Case 307/81 *Alusuisse Italia* v *Council and Commission* [1982] ECR 3463, paragraphs 8 and 9, and the order in Case C-447/98 P *Molkerei Großbraunshain and Bene Nahrungsmittel* v *Commission* [2000] ECR I-9097, paragraph 67).

25 In this case, Article 2 of Regulation No 2613/97 is undeniably a measure of general application. In requiring the aid provided for by Article 1 of that

regulation and Article 46 of Regulation No 1785/81 to be abolished as from the 2001/02 marketing year, the Council adopted a measure which applies to an objectively determined situation and entails legal effects for categories of persons regarded generally and in the abstract. That measure concerns not just the Member States and sugar beet producers, but also, in relation to Spain and southern Italy, the undertakings producing beet sugar more particularly referred to in Article 46(2)(c), (3) and (6) of Regulation No 1785/81.

26 The Court of First Instance therefore properly held that the measure in question is a regulation.

27 In relation to the second ground of appeal raised by the appellants, it must be observed, as the Court of First Instance pointed out at paragraph 19 of the contested order, that in certain circumstances a provision in a measure of general scope may be of individual concern to certain of the economic operators concerned. That is so, in particular, where the provision in question affects specific natural or legal persons by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons (Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501, paragraph 13, and Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraphs 19 and 20).

28 In that regard, the appellants particularly criticise the Court of First Instance for having misinterpreted Article 173 of the EC Treaty (now, after amendment, Article 230 EC) in refusing to recognise that, in this case, they were individually concerned by Article 2 of Regulation No 2613/97. They claim that industrial undertakings are harmed more seriously than even beet producers by the abolition of aid laid down by that provision. First of all, because of the inter-dependence between the agricultural and industrial sectors, no sugar establish-

ment can survive without a local agricultural crop to supply the beet needed for production; secondly, they claim that the abolition of aid, with its direct effect of blocking the grant of aid, compromises, with regard to the appellants' sugar refineries alone, the implementation of industrial restructuring projects in southern Italy.

29 However, it must be observed that the fact that, when Regulation No 2613/97 entered into force, the appellants were its only actual addressees as far as producers of beet sugar in southern Italy are concerned is not in itself sufficient for them to be regarded as individually concerned by the regulation. It is settled case-law that the general applicability, and thus the legislative nature, of a measure are not called into question by the fact that it is possible to determine more or less exactly the number or even the identity of the persons to whom it applies at any given time, as long as it applies to them by virtue of an objective legal or factual situation defined by the measure in question in relation to its purpose (see Case C-298/89 *Gibraltar* v *Council* [1993] ECR I-3605, paragraph 17, and *Codorniu* v *Council*, cited above, paragraph 18).

30 It must be noted that the abolition of aid under Article 2 of Regulation No 2613/97 applies generally and for an indeterminate period to all the economic operators concerned, that is to say producers of sugar beet and producers of beet sugar in southern Italy and Spain.

31 The fact that, during the marketing years prior to 2001/02, the appellants received aid under Article 46(2) and (3) of Regulation No 1785/81 is no more relevant for the purposes of distinguishing them individually. First of all, any benefit from that aid was expressly limited to the marketing years 1995/96 to

2000/01 and therefore came to an end at the close of the latter marketing year. Secondly, the abolition of that aid applies without distinction to all current and future producers in southern Italy.

32 It follows from the foregoing that Regulation No 2613/97 cannot be considered to concern the appellants individually.

33 Accordingly, notwithstanding the fact, mentioned at paragraph 19 of this judgment, that in the contested order the Court of First Instance confined itself to closer examination of the position of sugar beet producers, the Court of First Instance was right to hold the action inadmissible.

34 The appeal must therefore be dismissed as unfounded.

Costs

35 Under Article 69(2) of the Rules of Procedure, which is applicable to the appeal procedure by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has applied for an order that the appellants pay the costs and the appellants have been unsuccessful, they must be ordered to pay the costs.

On those grounds,

THE COURT (Fourth Chamber),

hereby:

1. Dismisses the appeal.

2. Orders Sadam Zuccherifici, divisione della SECI — Società Esercizi Commerciali Industriali SpA, Sadam Castiglionese SpA, Sadam Abruzzo SpA, Zuccherificio del Molise SpA and Società Fondiaria Industriale Romagnola SpA (SFIR) to pay the costs.

La Pergola Edward Timmermans

Delivered in open court in Luxembourg on 31 May 2001.

R. Grass — Registrar

A. La Pergola — President of the Fourth Chamber