JUDGMENT OF THE COURT (Fourth Chamber)
12 November 1998 *

In Case C-269/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunal Administratif, Paris (France), for a preliminary ruling in the proceedings pending before that court between

Sucreries et Raffineries d'Erstein SA

and

Fonds d'Intervention et de Régularisation du Marché du Sucre (FIRS)

on 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), and Council Regulation (EEC) No 2225/86 of 15 July 1986 laying down measures for the marketing of sugar produced in the French overseas departments and for the equalisation of the price conditions with preferential raw sugar (OJ 1986 L 194, p. 7),

THE COURT (Fourth Chamber),

composed of: P. J. G. Kapteyn, President of the Chamber, H. Ragnemalm and K. M. Ioannou (Rapporteur), Judges,

* Language of the case: French.

Advocate General: N. Fennelly,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Sucreries et Raffineries d'Erstein SA, by Catherine Buchser-Martin, of the Strasbourg Bar,

— the French Government, by Catherine de Salins, Deputy Head of Directorate in the Legal Directorate, Ministry of Foreign Affairs, and Frédéric Pascal, Administrative Attaché in the same directorate, acting as Agents,

— the German Government, by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and Bernd Kloke, Oberregierungsrat in the same Ministry, acting as Agents,

— the Portuguese Government, by Luís Fernandes, Director of the Legal Service of the Directorate-General for the European Communities, and Alexandra Caldeira, Legal Assessor in the Office for Agricultural Planning and Food Policy, acting as Agents,

— the Commission of the European Communities, by Xavier Lewis, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Sucreries et Raffineries d'Erstein SA, represented by Alexandre Carnelutti, of the Paris Bar, of the French Government,

represented by Frédéric Pascal, of the United Kingdom Government, represented by John E. Collins, Assistant Treasury Solicitor, and Sarah Moore, Barrister, and of the Commission, represented by Xavier Lewis, at the hearing on 15 January 1998,

after hearing the Opinion of the Advocate General at the sitting on 19 February 1998,

gives the following

Judgment

1 By judgment of 12 June 1996, received at the Court on 8 August 1996, the Tribunal Administratif (Administrative Court), Paris, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a number of questions on 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), and Council Regulation (EEC) No 2225/86 of 15 July 1986 laying down measures for the marketing of sugar produced in the French overseas departments and for the equalisation of the price conditions with preferential raw sugar (OJ 1986 L 194, p. 7).

2 Those questions were raised in proceedings between Sucreries et Raffineries d'Erstein SA (hereinafter 'Erstein') and the Fonds d'Intervention et de Régularisation du Marché du Sucre (Sugar Market Intervention and Stabilisation Fund, hereinafter 'the FIRS'), the public body responsible in France for the management of the markets in the sugar sector, concerning the payment of aid, provided for by Community legislation, for the refining of cane sugar produced in the French overseas departments.

The facts of the case

3 It is clear from the case-file that Erstein is a sugar manufacturer established in the French department of the Bas-Rhin. Its industrial site includes a plant which processes sugar beet into syrups or raw sugar, a refining plant which processes syrups and raw sugar into white sugar, as well as centres for the preparation and production of liquid sugar. The syrups and raw sugar, which constitute the raw material of the refining plant, are derived from both beet and sugar cane and are mixed in order to obtain an end-product of consistent quality.

4 During 1993 Erstein purchased from an undertaking in Guadeloupe raw cane sugar which it proceeded to refine in its refining plant. In 1993 and 1994 it applied to the FIRS for the grant of aid for refining cane sugar produced in the French overseas departments, to which it believed it was entitled under Regulations Nos 1785/81 and 2225/86.

5 By decisions of 28 March, 16 June and 14 December 1994 and of 13 January, 6 February and 7 February 1995, the FIRS rejected Erstein's applications on the ground that the latter had not shown that it had processed raw cane sugar from the French overseas departments and beet syrups separately and at different periods, with the result that it did not constitute a 'refinery' for the purposes of the relevant Community legislation.

The Community legislation

6 The 17th recital in the preamble to Regulation No 1785/81 states that the preferential system for imports into the Community of cane sugar produced in the ACP

countries and the Republic of India, established by agreements between the Community and those countries, was extended to imports of cane sugar originating in the overseas countries and territories by Council Decision 80/1186/EEC of 16 December 1980 on the association of the overseas countries and territories with the European Economic Community (OJ 1980 L 361, p. 1).

7 The 20th recital in the preamble to that regulation then refers to the need 'to create the means for ensuring that raw cane sugar imported under the said preferential systems can be refined under the most equitable conditions of competition'.

8 Consequently, Article 9(4) of Regulation No 1785/81 provides:

'Appropriate measures shall be taken in order to permit the sugars produced in the French overseas departments to be marketed in the European regions of the Community.'

9 That provision was clarified by Council Regulation (EEC) No 1482/85 of 23 May 1985 amending Regulation No 1785/81 (OJ 1985 L 151, p. 1). The second recital in the preamble to that regulation states as follows:

'Whereas enlargement of the Community necessitates the adoption of intervention measures to ensure the regular supply of all Community refineries processing raw sugar into white sugar; whereas, in addition to preferential sugar, these refineries require supplies of raw cane sugar produced in the French overseas departments and of raw beet sugar harvested in the Community; whereas the said intervention measures should ensure that the price conditions applying to these last-mentioned sugars are similar to those applying to preferential sugar'.

10 Article 9(4) of Regulation No 1785/81, as amended by Regulation No 1482/85, provides:

'Appropriate measures shall be taken on the subject of the transport and storage costs of sugars produced in the French overseas departments, in order to permit these sugars to be marketed in the European regions of the Community.

To the extent necessary for the supply of refineries, provision may be made that raw sugar manufactured from beet harvested in the Community shall qualify for the same measures as those referred to in the first subparagraph.

For the purposes of this article, "refinery" shall mean a production unit whose sole activity consists in refining either raw sugar or syrups produced prior to the crystallising stage.'

11 That provision was implemented by Regulation No 2225/86 which, in the second recital in its preamble, states as follows:

'Whereas, by a Joint Declaration, annexed to the Act of Accession of Spain and Portugal, on supplies to the sugar refining industry in Portugal, it was agreed to take appropriate measures with a view to equalising the prices of Community raw sugar; [whereas, however, in the present situation no raw beet sugar is available]; whereas, therefore, equalising should apply to raw cane sugar originating in the French overseas departments with a view to enabling, in particular, Portuguese refineries to be supplied with this sugar under price conditions similar to those obtaining for preferential sugars'.

12 Article 1 of that regulation provides:

'Flat-rate Community aids for the marketing, in the European regions of the Community, of sugars produced in the French overseas departments shall be granted as an intervention measure under the conditions laid down in Articles 2, 3 and 4.'

13 Article 3 of the regulation further provides:

'1. Without prejudice to paragraph 2, for the sugars referred to in Article 1 which have been refined in a refinery in the European regions of the Community, an aid shall be granted to the undertakings concerned, consisting of:

...

2. Paragraph 1 shall apply within the limits of the quantities to be determined according to the regions of the Community in which the refining is likely to take place and separately according to the originating French overseas department or departments in question.

The quantities referred to in the first subparagraph shall be determined ... on the basis of a Community supply balance sheet for raw sugar and for their refining in the European regions of the Community concerned.

3. The total amount of the aid referred to in paragraph 1 shall be granted following an application by the undertakings which refined the sugar ...'.

14 Furthermore, with effect from the 1987/1988 marketing year, additional aid for the refining of raw cane sugar from the French overseas departments was introduced by Council Regulation (EEC) No 2250/88 of 19 July 1988 amending Regulation No 1785/81 (OJ 1988 L 198, p. 28). A paragraph 4b was thus inserted in Article 9 of Regulation No 1785/81, which provides, in its third subparagraph, that 'additional aid ... shall be granted for the refining, in the refineries referred to in the third subparagraph of paragraph 4, of raw cane sugar produced in the French overseas departments'.

The questions referred for a preliminary ruling

15 Taking the view that the FIRS' interpretation of the relevant Community provisions was incorrect, Erstein sought the annulment of the FIRS' decisions refusing the aid in proceedings instituted before the Tribunal Administratif, Paris.

16 The national court thereupon decided to stay proceedings and seek a preliminary ruling from the Court on the following questions:

'In an industrial site which processes sugar beet into white sugar, in which the first-stage installations take delivery of the sugar beet, process it and extract the sugar-bearing liquids and the second-stage installations convert into white sugar the liquids and syrups in question, which can be enriched by the addition of raw cane sugar from the French overseas departments, can the said second-stage installations, for the purposes of the grant of refining aids for the refining of that sugar from the overseas departments, be regarded at all times as a "production unit" and as a

"refinery" within the meaning of Regulations (EEC) Nos 1785/81, Article 9, and 2225/86, mentioned above?

If the answer is no, can such a complex of installations, intermittently and for non-continuous periods, be regarded as a "production unit" and as a "refinery" within the meaning of those regulations?

And finally, if the answer to the preceding question is yes, must those periods be limited to those in which the processing of raw cane sugar into white sugar is carried out at a different time from the processing of syrups extracted from sugar beet in the first-stage installations on the same industrial site?'

The Court's answer

17 In its questions, the national court is asking, in substance, whether, in an industrial complex that includes

— installations which first process sugar beet and extract the sugar-bearing liquids, and

— installations which then convert into white sugar the liquids and syrups in question, which are enriched by the addition of raw cane sugar from the French overseas departments,

the latter installations can be regarded, for the processing of raw cane sugar from the French overseas departments, either permanently or intermittently, as a 'production unit' or as a 'refinery' within the meaning of the third subparagraph of Article 9(4) of Regulation No 1785/81, as amended by Regulation No 1482/85.

18 Erstein submits that the definition of the term refinery in the third subparagraph of Article 9(4) covers any installation or production unit which possesses the equipment required for refining, that is to say for converting into white sugar, raw sugar or syrups produced prior to the crystallising stage.

19 In that respect, Erstein argues that the rules in question show no trace of any intention on the part of the Community legislature to confine the benefit of the aid under consideration only to installations which refine exclusively raw cane sugar. The third subparagraph of Article 9(4) of Regulation No 1785/81 accordingly uses the expressions 'raw sugar' and 'syrups produced prior to the crystallising stage' without drawing any distinction between cane sugar and beet sugar. Furthermore, the second subparagraph of that article makes express reference to raw sugar manufactured from beet. Finally, that interpretation is consistent with the objective of the rules under consideration, which is to facilitate the marketing in the Community of raw cane sugar from the French overseas departments.

20 For the purpose of interpreting the provision under consideration, it should be noted, first of all, that Article 9(7) of Council Regulation (EEC) No 3330/74 of 19 December 1974 on the common organisation of the market in sugar (OJ 1974 L 359, p. 1), which preceded Regulation No 1785/81, as supplemented by Council Regulation (EEC) No 2623/75 of 13 October 1975 (OJ 1975 L 268, p. 1), contained the same definition of refinery as that which now appears in the third subparagraph of Article 9(4) of Regulation No 1785/81, as amended by Regulation No 1482/85. The third subparagraph of Article 9(3) of Regulation No 3330/74, as supplemented by Regulation No 2623/75, provided for the grant of aid for raw sugar produced in the French overseas departments and 'refined either in a refinery or in some other production unit situated in the Community'.

21 Furthermore, it is clear from the wording of the third subparagraph of Article 9(4) of Regulation No 1785/81, as amended by Regulation No 1482/85, that the definition of refinery which appears in that provision does not tally with its usual meaning, according to which a refinery is a production unit whose activity consists in converting raw sugar or syrups into white sugar in general. Otherwise, it would not have been necessary to include, preceded by the expression 'for the purposes of this article', a definition corresponding to the usual and obvious meaning of the term in question.

22 In addition, Article 36(3) of Regulation No 1785/81, since replaced by Article 1(12) of Council Regulation (EC) No 1101/95 of 24 April 1995 (OJ 1995 L 110, p. 1), defined refinery in the same terms as the third subparagraph of Article 9(4), for the purposes of derogating from the application of a differential charge on raw preferential sugar 'intended for refining in a refinery' when it is put into free circulation in the Community. Article 36(2)(b) authorised the non-application of that charge to any raw preferential sugar imported into certain regions of the Community and 'refined in a production unit other than a refinery'.

23 Finally, List XIV (Agriculture)(c)(2) in Annex I to the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (OJ 1985 L 302, p. 23) supplemented Article 9(4) of Regulation No 1785/81 by adding the following subparagraph:

'However, with regard to the sugar-producing undertaking, situated in the Autonomous Region of the Azores, this undertaking shall be considered to be a refinery within the meaning of this paragraph for refining unrefined beet sugar up to a quantity limit ...'.

24 The wording of the third subparagraph of Article 9(4) of Regulation No 1785/81 is thus not entirely unambiguous. In order to assess its scope and ascertain whether

the term 'refinery' within the meaning of the provision in question applies to an industrial site, such as that of Erstein, which converts raw sugar and syrup produced both from beet previously processed on site and from sugar cane, it is therefore necessary to take account of the objective of the rules under consideration.

25 In that respect, it must be emphasised that the purpose of the rules in question is to facilitate the marketing in the European regions of the Community of raw cane sugar produced in the French overseas departments and, in parallel and at the same time, to ensure regular supplies to the Community refineries. The aid in question is thus paid both for the production of raw cane sugar in the French overseas departments and for refining it in the Community industries. It is with the aim of ensuring regular supplies of raw cane sugar to the refineries that the second subparagraph of Article 9(4) of Regulation No 1785/81, as amended by Regulation No 1482/85, provides for the possibility of granting aid for sugar produced from beet, to the extent necessary for the supply of the refineries, namely when it cannot be ensured by the production of raw cane sugar.

26 It follows in particular from the second recital in the preamble to, and Article 3(2) of, Regulation No 2225/86, cited above, that those two objectives must not be separated but must be considered together. The European regions referred to in the last provision cited can only be those in which the refineries specialising in the processing of raw cane sugar are established.

27 Reference must also be made to the eleventh recital in the preamble to Regulation No 1101/95, which states that 'the port-related refining industry is accordingly, for the Community, a valuable complement to the beet processing industry, in particular in Finland, mainland Portugal, the United Kingdom and southern and western France', and to Article 37 of Regulation No 1785/81, inserted by Regulation No 1101/95.

28 In the light of those findings, a refinery, for the purposes of the application of the rules in question, is a production unit which refines exclusively raw cane sugar, subject to the exceptions which those rules provide for.

29 That interpretation is supported by the fact that Article 37 of Regulation No 1785/81, as amended by Regulation No 1101/95, cited above, provides for the levying of a reduced rate of duty on imports of raw cane sugar, other than preferential sugar, originating in the ACP countries and the Republic of India, in order to ensure '... adequate supplies to the Community refineries referred to in Article 9(4) ...', and sets the presumed maximum supply needs per marketing year of the refining industries in metropolitan France, Finland, continental Portugal and the United Kingdom. However, the refining activity of the industries established in the last three countries is almost exclusively given over to the processing of sugar cane and, in metropolitan France, two port-related sites refine sugar cane exclusively.

30 It should be noted that the production of cane sugar in the Community is minute by comparison with the production of sugar from beet, that the cost structure of those two types of production is markedly different, that the processing of cane for the purpose of extracting raw sugars and syrups is undertaken in the French overseas departments and, finally, that the Community has some traditional refineries specialising exclusively in the production of sugar from cane, the supply needs of which, as is clear from Article 37 of Regulation No 1785/81, as amended by Regulation No 1101/95, serve to calculate the volume and distribution of Community aid. Thus the aid system in question must be deemed to be based on the interdependence and balance between the production of raw cane sugar in the French overseas departments and the refining of such sugar in the European regions of the Community, in that outlets for raw cane sugar can be ensured in the long term to the extent that supplies to specialised refineries can also be guaranteed.

31 In the light of those considerations, it must be concluded that a production unit, that is to say an industrial plant which functions independently and without any link with any other unit, whose sole activity consists in refining raw sugar and syrups extracted from cane, constitutes a refinery within the meaning of the third subparagraph of Article 9(4) of Regulation No 1785/81, as amended by Regulation No 1482/85. That definition does not therefore cover a refining unit forming part of an industrial complex which also includes a first-stage unit for the extraction of sugar-bearing liquids.

32 Furthermore, for the unit in question to be described as a refinery within the meaning of the aforesaid provision, its activity must at all times be given over to the refining of raw sugar and cane syrups and may not also involve, intermittently, the refining of sugar-bearing liquids obtained from beet, even separately, if it is not to upset the balance and interdependence, which the Community rules seek to achieve, between the production of and outlets for raw cane sugar from the French overseas departments and regular supplies to specialised refineries.

33 The answer to the national court's questions must therefore be that, in an industrial complex that includes

— installations which first process sugar beet and extract the sugar-bearing liquids, and

— installations which then convert into white sugar the liquids and syrups in question, which are enriched by the addition of raw cane sugar from the French overseas departments,

the latter installations cannot be regarded, for the processing of raw cane sugar from the French overseas departments, either permanently or intermittently, as a 'production unit' or as a 'refinery' within the meaning of the third subparagraph of Article 9(4) of Regulation No 1785/81, as amended by Regulation No 1482/85.

Costs

34 The costs incurred by the French, German, Portuguese and United Kingdom Governments and by the Commission, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Fourth Chamber),

in answer to the questions referred to it by the Tribunal Administratif, Paris, by judgment of 12 June 1996, hereby rules:

In an industrial complex that includes

— installations which first process sugar beet and extract the sugar-bearing liquids, and

— installations which then convert into white sugar the liquids and syrups in question, which are enriched by the addition of raw cane sugar from the French overseas departments,

the latter installations cannot be regarded, for the processing of raw cane sugar from the French overseas departments, either permanently or intermittently, as a 'production unit' or as a 'refinery' within the meaning of the third subparagraph of Article 9(4) of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector, as amended by Council Regulation (EEC) No 1482/85 of 23 May 1985.

Kapteyn Ragnemalm Ioannou

Delivered in open court in Luxembourg on 12 November 1998.

R. Grass

Registrar

P. J. G. Kapteyn

President of the Fourth Chamber