JUDGMENT OF THE COURT
2 JULY 1964[1]

Glucoseries Réunies
v Commission of the European Economic Community[2]

Case 1/64

Summary

Measures adopted by a Community institution — Proceedings by individuals against a decision addressed to another person — Decision of individual concern to them — Concept
(EEC Treaty, second paragraph of Article 173)
Cf. Para. 4 of summary in Case 25/62.

Persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually just as in the case of the person addressed.
A decision of general economic scope and effect within the Common Market cannot be of individual concern to an undertaking, even if the latter occupies, a special position as regards the relevant product in the market of one of the Member States.

In Case 1/64

SOCIÉTÉ ANONYME BELGE 'GLUCOSERIES RÉUNIES' (formerly the firms Blieck Bros. and Callebaut Bros.) having its registered office at Molenbeek-Saint-Jean (Belgium, 49 rue de l'Intendant, represented by Jacques de Grave, Advocate at the Cour d'Appel, Brussels, 56 avenue Franklin Roosevelt, Brussels, with an address for service at the Chambers of E. Arendt, avocat-avoué, 6 rue Willy-Goergen,

applicant,

v

COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY, 23 avenue de la Joyeuse-Entrée in Brussels, represented by its Legal Adviser, Marc Sohier,

1—Language of the Case: French.
2—CMLR.

acting as Agent, with an address for service in Luxembourg at the offices of Henri Manzanarès, Secretary of the Legal Department of the European Executives, 2 place de Metz,

defendant,

Application for the annulment of the Decision of the Commission of 28 November 1963 authorizing the levying of countervailing charges on the importation into the French Republic of glucose (dextrose) originating from certain Member States (Official Journal, 13 December 1963),

THE COURT

composed of: A. M. Donner, President, Ch. L. Hammes and A. Trabucchi (Rapporteur), Presidents of Chambers, L. Delvaux, R. Rossi, R. Lecourt and W. Strauß, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

JUDGMENT

Issues of fact and of law

I — Facts

At the request of the Government of the French Republic, the Commission of the European Economic Community authorized that Member State, by a Decision of 28 November 1963 (Official Journal, 13 December 1963, pp. 2914 to 2917/63), to levy countervailing charges on the importation of glucose (dextrose) originating in other Member States, where those States did not themselves impose such charges on export.

This Decision of the Commission, which has been contested by the applicant in an application lodged on 13 January 1964, was taken on the basis of a Decision made by the Council of 4 April 1962 under Article 235 of the Treaty stating that the Commission may authorize Member States, in certain circumstances, to impose a countervailing charge on the importation of goods processed from agricultural products.

In his originating application the applicant, which claims to be among the leading European manufacturers of glucose, maintains that this Decision is illegal because the conditions for the applicability of the Council's Decision of 4 April 1962 do not exist so far as Belgian industry is concerned.

The applicant also claims, alternatively, that the contested Decision introduces discrimination by excluding the Italian Republic from the scheme established by it.

Lastly, the applicant reserves the right to specify at a later stage in the proceedings the facts on which it bases a submission of misuse of powers, which it also intends to put forward.

II — Conclusions of the parties

In its originating application, the *appli-*

cant claims that the Court should:

'annul the defendant's Decision of 28 November 1963 (63/664 EEC), published in the Official Journal of the European Communities of 13 December 1963 (p. 2914/63), at least in so far as it authorizes the imposition of a countervailing charge of 7.15 FF per 100 kg on the importation of glucose (dextrose) originating in the Kingdom of Belgium;

place on record that the applicant reserves its position as regards compensation for any damage it may be caused by the contested Decision;

order the defendant to bear the costs;

accept French as the language of the case;

order the appearance of the French Republic.'

The *Commission* contends in its statement of defence of 21 February 1964 that the Court should:

'Give a preliminary ruling as to the admissibility of the application in accordance with Article 91 of the Rules of Procedure;

dismiss the application as inadmissible;

dismiss the request that the French Republic be ordered to appear;

order the applicant to bear the costs.'

The *applicant* company claims in its observations in reply to this request that the Court should:

'Place on record that the applicant repeats its application for annulment.'

III — Submissions as to admissibility

The submissions and arguments presented by the parties on this point may be summarized as follows:

In the statement of defence delivered on 21 February 1964, the defendant requested the Court to give a preliminary ruling on admissibility without going into the substance of the case. The defendant claims that this request is justified because the action is so obviously inadmissible in the light of the judgment of 15 July 1963 in Case 25/62 (*Plaumann* v *EEC Commission*). The circumstances in which this action was brought are, it claims, identical in every way to those which gave rise to that judgment, the contested Decision being neither of direct nor of individual concern to the applicant, irrespective of whether it can be considered as having been made 'in the form of' a decision addressed to another person.

Endorsing the opinion expressed by Advocate-General Roemer in Case 25/62, the defendant states that a decision which grants an authorization to, or imposes an obligation on, a Member State cannot be of direct interest to individuals because in such a case only some subsequent measure which may be taken by the Member State concerned would be capable of giving rise to direct consequences affecting individuals. In this instance, the French Republic, as well as the exporting Member States, were free to avail themselves of the authorization granted by this Decision. Even where a decision is one taken by the Community executive and refusing to grant an authorization for which a Member State has applied, no direct interest is involved, since there again individuals can only be directly concerned by the national legislative provisions the amendment of which the decision has prevented.

Nor does the applicant have an individual interest, as may be seen from the Plaumann judgment. The fact that the applicant is one of the leading European producers of glucose (dextrose) is not sufficient to escape the consequences of this judgment of the Court because the applicant is affected by the Decision solely by reason of the fact that it is one of a group, defined in the abstract, comprising all those who wish to produce or export glucose to France.

In its reply of 8 April 1964, the applicant claims that all the conditions as to admissibility set out in the last sentence

of the second paragraph of Article 173 of the Treaty are met in this instance. The applicant does not agree with the argument expounded by the Advocate-General in Case 25/62 as regards 'direct concern', claiming that this is a concept which should be considered in relation to reality, not theory, the reason being that this is the only approach compatible with the principle maintained by the Court in the Plaumann judgment that provisions of the Treaty relating to individuals' rights of action should not be given a narrow interpretation.

Since, were it not for the disputed Decision, the French Republic could never have introduced, as it has done, a countervailing charge on imports of glucose (dextrose) from Belgium, there is a casual relationship between the contested Decision and its harmful consequences for the applicant which is both inevitable and direct. It is in any case hard to imagine that an authorization to impose a countervailing charge on imports should be sought but not used, particularly in view of the fact that the purpose of the decision is to authorize, as here, a countervailing charge intended to compensate for certain imbalances created by price differences in basic agricultural raw materials. According to the applicant the line of reasoning adopted by Advocate-General Roemer is only applicable where the Commission grants to a Member State an authorization for which the latter has not applied.

As for the requirement that the decision be of individual concern, the applicant remarks that, unlike the applicant in Case 25/62, its position as far as the effects of the contested Decision are concerned is sufficiently special to distinguish it individually from all other persons. It states that in fact it is the only Belgian undertaking with an economic interest in the matter and both willing and able to export glucose from Belgium to France in significant quantities during the period of validity (a year) of the contested Decision. The applicant draws attention to the fact that a comparison between the quantity of Belgian dextrose imported into France in 1962 and orders from France given to and executed by it during that year reveals that the quantities concerned are identical. Consequently the applicant, being the only Belgian producer with dextrose available in sufficient quantity for export, is in a position fundamentally different from that of the Plaumann firm, which was merely one of thirty-five German importers of clementines, and is concerned actually and individually by any decision authorizing the imposition of a countervailing charge on dextrose imports from Belgium.

IV — Procedure

The arguments of the parties on the objection of inadmissibility raised by the defendant were heard by the Court on 28 May 1964.

The Advocate-General presented his opinion at the hearing on 16 June 1964.

Grounds of judgment

Admissibility

The contested Decision is addressed to Member States. The second paragraph of Article 173 provides that any natural or legal person may contest a decision which is not addressed to him on condition that it is of direct and individual concern to him.

The defendant maintains that the contested Decision is of neither direct nor individual concern to the applicant within the meaning of this provision.

Consequently, the Court must first decide whether this second condition of admissibility is fulfilled, since it would be superfluous to determine whether the Decision is of direct concern to the applicant if it is not of individual concern to him.

Persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually just as in the case of the person addressed.

The applicant maintains that it is in a special position as regards the effects of the contested Decision, because it is the only Belgian undertaking with an economic interest in the matter and both willing and able to export glucose from Belgium to France in significant quantities during the period of validity of the contested Decision.

However, it should be noted that the effects of the Decision are not limited to exports from Belgium to France. Consideration of the Decision cannot therefore be restricted to its effect on one exporter in one of the Member States whose exports to France are concerned, without artificially isolating the market of this State from the rest of the Common Market, which is equally affected by the Decision in question.

Bearing in mind the aim of the Decision, which is to protect a sector of the French economy against competition from imports originating in other Member States, and the machinery set up to this end, the contested Decision is intended to affect imports of glucose into France from the whole Community with the exception of Italy because that country does not export any glucose to France.

In view of the general economic scope of the contested Decision, it is not of individual concern to the applicant even if the latter does occupy the position which it claims on the Belgian market in respect of glucose exports to France.

For these reasons, this application for annulment is inadmissible and there is no need to consider whether the contested Decision, seeing that it presupposes for its implementation some subsequent act by a Member State, can be of concern to the applicant.

Costs

Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

The applicant having failed in its action must be ordered to bear the costs.

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the second paragraph of Article 173 of the Treaty establishing the European Economic Community;
Having regard to the Protocol on the Statute of the Court of Justice annexed to the Treaty establishing the European Economic Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Article 69 (2);

THE COURT

hereby:

1. **Dismisses application for annulment No 1/64 as inadmissible;**

2. **Orders the applicant to bear the costs.**

Donner Hammes Trabucchi
Delvaux Rossi Lecourt Strauß

Delivered in open court in Luxembourg on 2 July 1964.

A. Van Houtte
Registrar

A. M. Donner
President