OPINION OF ADVOCATE GENERAL STIX-HACKL

delivered on 8 February 2001 [1]

I — Introduction

1. In the present case, the appellants (Sadam Zuccherificio Divisione della SECI SpA, Sadam Castiglionese SpA, Sadam Abruzzo SpA, Zuccherificio del Molise SpA and Società Fondiaria Industriale Romagnola SpA) are contesting the order made on 8 December 1998 [2] by the Court of First Instance in Case T-39/98, in which their application was dismissed as inadmissible.

II — Facts, legal framework and procedure before the Court of First Instance

2. By application lodged at the Court of First Instance, the applicants brought an action for the annulment of Article 2 of Council Regulation (EC) No 2613/97 [3] of 15 December 1997. That provision, *inter alia*, abolishes the State aid authorised by Article 46 of Council Regulation (EEC) No 1785/81 [4] with effect from the 2001/02 marketing year.

3. Article 46 of Regulation No 1785/81 authorised the Italian Republic and the Kingdom of Spain to grant adjustment aid in particular to producers of sugar beet, under the conditions which it defines.

Regulation No 1785/81 has been amended several times. In Regulation (EC) No 1101/95, [5] aid for the regions of northern and central Italy is extended to the end of the 2000 marketing year and, for the region of southern Italy, to the end of the 2001 marketing year. The aid system for southern Italy also differs from the systems in place for other regions in Italy in that it is less digressive in nature. Article 2 of Regulation No 2613/97 thus provides, in relation to southern Italy, for something which already followed from the stipulated time-limit for aid in Regulation No 1101/95.

1 — Original language: German.

2 — [1998] ECR II-4207.

3 — OJ 1997 L 353. p. 3.

4 — 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).

5 — Council Regulation (EC) No 1101/95 of 24 April 1995 amending Regulation (EEC) No 1785/81 on the common organisation of the market in the sugar sector and Regulation (EEC) No 1010/86 laying down general rules for the production refund on certain sugar products used in the chemical industry (OJ 1995 L 110, p. 1).

4. The appellants are owners of beet sugar processing and production establishments in southern Italy as defined in the fourth paragraph of Article 46 of Regulation No 1785/81.

In the order against which the present appeal has been brought, the Court of First Instance held the application brought before it to be inadmissible on the ground that the applicants lacked standing to bring an action for annulment. The Court viewed Regulation No 2613/97 as a measure of general application and concluded that none of the applicant companies are individually concerned by this regulation. The application was dismissed as inadmissible since, in the opinion of the Court of First Instance, the applicants did not meet the conditions governing the admissibility of an action for annulment laid down in the fourth paragraph of Article 173 of the EC Treaty (now the fourth paragraph of Article 230 EC).

admissibility of an action for annulment brought by natural or legal persons.

With regard to the conditions of admissibility, the appellants are of the view that they satisfy the three criteria laid down by Advocate General Van Gerven in Case C-213/91 *Abertal and Others* v *Commission*.[7] First, the regulation has legal effects equivalent to those of a decision, in that it completely abolishes the adjustment aid for sugar beet producers and for sugar companies as of the marketing year 2001. Secondly, the regulation adversely affects the appellants because it is of direct 'concern' to the sugar companies in southern Italy. Thirdly, these legal effects follow from the regulation itself and are not the consequence of any act of a Community institution or Member State. The appellants therefore conclude that the appeal is admissible and ask the Court of Justice to give a ruling on the merits of the case.

III — Grounds of appeal

5. In support of their appeal, the appellants rely on two grounds: the confusion by the Court of First Instance of their action with that of the Associazione Nazionale Bieticoltori (ANB), an Italian association of producers of sugar beet, and two Italian sugar beet producers in Case T-38/98,[6] and disregard of the conditions governing the

The appellants found their allegation that the Court of First Instance confused their case with that of another, first, on the fact that the names of the applicants in the other case appeared in the order made in their case. That caused the Court of First Instance to make a rectificatory order on

6 — This case was terminated by the order of the Court of First Instance of 8 December 1998 [1998] ECR II-4191.

7 — [1993] ECR I-3177.

29 January 1999. Secondly, the Court of First Instance refers to the situation of sugar beet producers several times in its order and thus misunderstands their economic activity. According to the appellants, these references prove a misunderstanding of their proper identity because they are not producers of sugar beet but companies that process sugar beet and produce sugar. The Court of First Instance consequently transposed the reasoning it had applied in Case T-38/98 to their case, Case T-39/98, without giving any reason as to why Article 2 of Regulation No 2613/97 is not of direct and individual concern to them as companies that process sugar beet and produce sugar.

6. The Council counters by pointing out that the appeal adopts word for word the pleas in law advanced before the Court of First Instance in the hope that the Court of Justice will re-examine the case. That is contrary to Article 51 of the EC Statute of the Court of Justice and to Article 112 of the Rules of Procedure of the Court of Justice. The Court of Justice should therefore dismiss the appeal as clearly inadmissible in accordance with Article 119 of its Rules of Procedure.

7. The appellants submit that the Court of First Instance confined itself to an examination of admissibility. As the Court of First Instance did not rule on the substance of the case, they submit that there is no question of re-examination. Furthermore, it would be difficult for the appellants to rely on other arguments when the Court of First Instance considered the application inadmissible.

8. As far as the alleged confusion of the two cases by the Court of First Instance is concerned, the Council draws attention to the fact that in these cases, the Court of First Instance employed the same, traditional methods of examining the admissibility of an action for annulment brought by natural or legal persons. Since the applicants in both cases used the same arguments, the Court of First Instance could not have done otherwise than conclude, in the same terms, that the application was inadmissible.

9. The Council stresses, finally, that an order regarding inadmissibility is a final act that can be challenged before the Court of Justice. Therefore, it is not appropriate to distinguish between judgments and orders, as is being done by the appellants. The same conditions of appeal apply in both cases. An appeal that is confined to reproducing the pleas in law and arguments raised before the Court of First Instance should consequently be dismissed as inadmissible.

IV — Assessment

A — *Admissibility*

10. Under the first paragraph of Article 51 of the EC Statute of the Court of Justice, an appeal is to be limited to points of law and lies on the grounds of lack of competence of the Court of First Instance, a breach of procedure before it which adversely affects the interests of the appellant as well as the infringement of Community law by the Court of First Instance. According to Article 112(1)(c) of the Rules of Procedure of the Court of Justice, the appeal must contain the pleas in law and legal arguments relied on. [8]

It follows from these two provisions that the appeal must indicate precisely the contested elements of the order and also the legal arguments which support the request to have it set aside. [9]

11. It has consistently been held that an appeal which simply repeats or reproduces verbatim the pleas in law and arguments already submitted to the Court of First Instance does not meet that requirement; such an appeal merely seeks, in reality, reconsideration of the application submitted before the Court of First Instance, which, under Article 49 of the EC Statute of the Court of Justice, falls outside the jurisdiction of the Court of Justice. [10]

12. That the appeal merely repeats the pleas in law already submitted is true to the extent that it reproduces verbatim the pleas contained in the application.

The fact that the appellants in the present case are challenging an order and not a judgment of the Court of First Instance is irrelevant.

However, in so far as the appellants claim that the Court of First Instance confused their case with Case T-38/98, both in name and in the type of economic activity carried on by them, that certainly cannot — understandably — amount to mere repetition and a request for reconsideration.

13. The appellants are contesting the order by challenging its legal basis. The appellants base their appeal namely on arguments that relate to the contents of the order and indirectly also to the previous proceedings before the Court of First Instance.

8 — See Case C-303/96 P *Bernardi* v *Parliament* [1997] ECR I-1239, paragraph 36.

9 — See Case C-403/95 P *Obst* v *Commission* [1998] ECR I-27, paragraph 17.

10 — Case C-317/97 P *Smanor and Others* v *Commission* [1998] ECR I-4269 paragraph 21.

B — *Substance*

14. It must therefore be examined whether the Court of First Instance acted unlawfully by denying the applicants the right to challenge Regulation No 2613/97.

15. First of all, I would like to record the fact that I too share the opinion that access to Community jurisprudence, in particular by means of actions for annulment, should, in principle, be dealt with in a generous way. [11]

The order of the Court of First Instance is, of course, in line with the settled case-law on the interpretation of the fourth paragraph of Article 173 of the Treaty which lays down strict conditions for the admissibility of an action for annulment brought by natural or legal persons.

16. Under the fourth paragraph of Article 173 of the Treaty, the admissibility of an action for annulment brought by a natural or legal person against a regulation depends on whether the contested regulation is, in terms of its legal effects, a decision of direct and individual concern to the applicant. It has consistently been held 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. [12] A measure has general application if it applies to an objectively determined situation and entails legal effects for categories of persons regarded generally and in the abstract. [13]

17. Article 2 of Regulation No 2613/97 provides that the aid referred to in Article 1 of that regulation and the aids referred to in Article 46 of Regulation No 1785/81 are to be abolished with effect from the 2001/02 marketing year. Such a measure applies therefore to an objectively determined situation, that is to say, to all cases that satisfy the conditions for the application of those two aid systems.

18. Article 2 of Regulation No 2613/97 entails legal effects for categories of persons defined generally and in the abstract, that is to say, for Member States and those natural and legal persons active in a particular economic sector. The latter also includes owners of undertakings that process sugar

11 — See the article quoted by Advocate General Ruiz-Jarabo Colomer in his Opinion in Case C-142/95 P *Associazione agricoltori della provincia di Rovigo and Others* v *Commission* [1996] ECR I-6669, I-6679.

12 — Case C-168/93 *Gibraltar and Gibraltar Development* v *Council* [1993] ECR I-4009, paragraph 11.

13 — Case 307/81 *Alusuisse Italia* v *Council and Commission* [1982] ECR 3463, paragraph 9, and Case C-321/95 P *Greenpeace Council and Others* v *Commission* [1998] ECR I-1651 paragraph 27 et seq.

beet and produce beet sugar, with whom these proceedings are concerned. That does not, however, alter the general application of the provision in any way.

19. The Court of Justice has held that in certain circumstances a legislative provision that applies to all economic operators concerned may be of individual concern to some of them. [14] In such a case, a Community act may, at the same time, constitute both a general legislative provision and, *vis-à-vis* some of the economic operators concerned, a decision. That is so where the provision in question affects natural or legal persons by reason of certain attributes which are peculiar to them or by reason of certain circumstances in which they are differentiated from all other persons.

20. In the light of the case-law, it must therefore be examined whether Article 2 of Regulation No 2613/97 is of concern to the appellants by reason of certain attributes which are peculiar to them or by reason of particular circumstances in which, with regard to that provision, they are differentiated from all other persons.

In the present case, the criterion of material concern must be considered. However, it is not clear from the submissions of the appellants whether and to what extent Article 2 of Regulation No 2613/97 would affect their legal position in a particular way or whether it would affect it exclusively.

21. The regulation does affect the appellants, but that circumstance is not sufficient to differentiate them from all other persons to whom the regulation applies. The contested provision concerns them namely only by reason of their objective attribute as economic operators engaged in the processing of sugar beet, in fundamentally the same way as any other economic operator carrying out the same activity in one of the geographical zones affected by the regulation. [15]

If the legal situation under Regulation No 1101/95 is compared with the rules in force in other parts of Italy, it is apparent that the effects of Article 2 of Regulation No 2613/97 might be felt more severely in southern Italy, and thus by the appellants, since the gradual reduction of authorised aid provided for in Regulation No 1101/95 is less pronounced than in other regions. The fact, however, that the contested measure may have different specific effects for the various individuals to whom it applies does not call into question its legislative nature. [16]

14 — Case C-309/89 *Cordorniu* v *Council* [1994] ECR I-1853, paragraph 20.

15 — Case C-209/94 P *Buralux and Others* v *Council* [1996] ECR I-615 paragraph 24; Advocate General Ruiz-Colomer in his Opinion in Case C-142/95 P (cited in footnote 11 I-6669, I-6681).

16 — Case C-409/96 P *Sveriges Betodlares and Henrikson* v *Commission* [1997] ECR I-7531, paragraph 37.

22. Nor does the fact that the appellants are owners of undertakings that process sugar beet and produce beet sugar, and not producers of sugar beet, with the resultant particularities of their economic activity, mean that they are individually concerned.

In relation to the system of authorised aid within the meaning of Article 46(2) of Regulation No 1785/81 and the prohibition of aid laid down in Article 2 of Regulation No 2613/97, the appellants are in any event in a situation comparable to that of all other sugar beet processors and producers of beet sugar. [17]

23. The fact that the appellants are, according to their own submissions, the only owners of undertakings processing sugar beet and producing beet sugar in southern Italy that are affected does not mean that they are individually affected. It has been consistently held that the fact that the legal act concerns a closed and limited class of addressees does not satisfy the conditions governing an action for annulment. [18]

24. Furthermore, the appellants' argument that there would be no effective legal remedy available to them if they were denied the right to contest Regulation No 2613/97 is incorrect. In the case of legal proceedings before a national court regarding the application of the regulation 'there is nothing to prevent [them] from questioning the validity of the Community regulation'. [19]

25. Accordingly, the Court of First Instance interpreted the fourth paragraph of Article 173 of the Treaty correctly when it decided that Regulation No 2613/97 is not of individual concern to the applicants and that they therefore do not satisfy the conditions governing the admissibility of an action for annulment.

26. Since the condition of individual concern is not satisfied, no examination of the condition of direct concern is required.

In view of the foregoing considerations it may be concluded that the alleged confusion on the part of the Court of First Instance does not affect the validity of the order.

17 — See Case 34/88 *Cevap and Others* v *Council* [1988] ECR 6265, paragraph 15, and Case C-10/95 P *Asocarne* v *Council* [1995] I-4149, paragraph 42.

18 — Case C-73/97 P *France* v *Comafrica and Others* [1999] ECR I-185 paragraph 37 et seq.

19 — *France* v *Comafrica and Others* (cited in footnote 18, paragraph 40).

V — Costs

27. Under Article 69(2) read in conjunction with Article 118 of the Rules of Procedure of the Court of Justice, the appellants should be ordered to pay the costs if the Court dismisses the appeal.

VI — Conclusion

28. In the light of the foregoing, I propose that the Court:

(1) dismiss the appeal;

(2) order the appellants to pay the costs.