On those grounds,

THE COURT

in answer to the questions referred to it by the Pretura di Abbiategrasso by order of that court dated 30 January 1975,

hereby rules:

Article 6 of Regulation No 834/74/EEC of the Commission is invalid.

Lecourt Monaco Kutscher Donner Mertens de Wilmars

Pescatore Sørensen Mackenzie Stuart O'Keeffe

Delivered in open court in Luxembourg on 30 October 1975.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 1 OCTOBER 1975 [1]

Mr President,
Members of the Court,

Introduction

The present request for a preliminary ruling from the Pretura di Abbiategrasso has its origin in the combination of Community decisions relating to the sugar market in Italy and the measures taken by the Decree-law of the Italian Government for the purpose of giving effect to the provisions adopted by the Commission in Article 6 of Regulation No 834/74.

The objective of these provisions was to prevent disturbances on the market resulting, according to the Commission, from the increase on 1 July 1974, that is

1 — Translated from the French.

the beginning of the 1974/75 sugar year, in the price of sugar expressed in Italian lire.

This increase had two causes:

— first, the decision by which the previous March the Council had for the new marketing year increased by 7 % the intervention price of sugar in relation to the price applicable for the current marketing year;

— secondly and above all, the devaluation in the Italian currency the fluctuations of which had no longer been kept within the 'snake' since 15 February 1973 and the actual value of which had decreased by some 30 % in less than 18 months.

The prices of agricultural products governed by the common organizations of the market are expressed in units of account; they must be converted into the currency of each of the Member States on the basis of a conversion rate determined in accordance with the official parities laid down by the International Monetary Fund.

The extent of the devaluation of the lire required a conversion rate adapted to economic reality to be fixed for the agricultural sector.

This is what the Council did by successive stages from 1 November 1973. The value of the unit of account previously fixed at Lit. 625 was to reach Lit. 801 in July 1974.

In view of this the level of the agricultural prices in Italy had to be raised in the same proportion. But for reasons of policy on economic trends the Council considered that such an increase was not immediately acceptable for sugar.

The effect was postponed until 1 July 1974. Until then under the third paragraph of Article 4 (b) (1) of Regulation No 974/71 of the Council, as amended by Regulation No 3450/73 of 17 December 1973, the intervention prices for sugar and the minimum prices for sugar beet applicable in Italy were maintained at their level of 31 October 1973.

It was therefore not only foreseeable but certain that at the beginning of the new marketing year sugar produced from beet harvested in 1973 and sold after 1 July 1974 would be subject to a large increase in price. It was to be 37 %.

Traders could not disregard this prospect, any more than could the Community or national authorities.

It was easy to imagine the reactions which it could excite on the part of those concerned. The building op in those circumstances by holders of sugar of speculative stocks which would not be sold until after the increase took effect could legitimately be feared; while since beet is a product which cannot be stocked, growers had to make deliveries to the sugar manufacturers at the minimum price valid for the previous marketing year.

On the basis of Regulation No 2959/73 of the Council, providing for certain short-term economic measures for sugar in Italy, certain decisions were adopted for the purpose of reducing the compensatory amounts applicable to sugar imported from other Member States before 1 July 1974 but sold only after this date for consumption. Other provisions were made by the Commission on the basis of the same regulation to alter the amount expressed in lire, in particular, the levies for storage costs, subsidies for beet growers referred to in Article 34 of the basic regulation and the production levy. But the action, specifically intended to prevent excessive stocking in Italy was decided by the Commission on 5 April 1974 in Article 6 of Regulation No 834/74.

This provision reads as follows:

1. 'Italy shall take national measures to prevent disturbances on the market

resulting from the increase on 1 July 1974 in the price of sugar expressed in Italian lire. These provisions shall consist in particular of a payment to beet growers of the increased value of stocks.

2. The measures referred to in [this] Article which have been adopted or are to be adopted should be communicated in writing to the Commission before 5 June 1974.'

In fact the Italian authorities, paralysed by a governmental crisis, had not at this date made any provision for the purpose of giving effect to the Commission's instructions.

This is why the Commission, which had provided, if the need arose, for direct Community intervention, adopted Regulation No 1495/74 on 14 June, a provision supplementing Article 6 of Regulation No 834/74 providing for the declaration to the Italian authorities of stocks of white sugar, raw sugar or syrup of sugar in excess of 500 kg existing on 1 July 1974, whoever the holders were.

The period in which the declaration had to be made which was originally fixed for 10 July, had subsequently to be postponed to 30 August 1974 by an amending Regulation No 2106/74.

On its side, for the purpose of implementing the provisions of the Commission, on 8 July the Italian Government by Decree-law No 255 imposed on all holders of white or raw sugar or syrup of sugar in excess of 500 kg the obligation to pay at the latest on the following 30 September to the Cassa Conguaglio Zucchero a levy equal to the increased value resulting from the increase in the price of sugar. The amount of the levy was specified in a table annexed to the Decree-law. The product of the levy had to be distributed by the Cassa Conguaglio Zucchero to the beet growers.

It is on the application of this provision that Rey Soda, an industrial user of sugar in the manufacture of aerated beverages, was obliged to pay to the Cassa a sum of Lit. 366 910 in respect of the sugar stocks which it held.

It brought the matter before the Pretura di Abbiategrasso on an application for a protective sequestration of the assets of the Cassa. Its action was aimed in truth at contesting the legality of the imposition both from the point of view of national law and Community law.

After the Italian court had authorized the sequestration by the plaintiff the subsequent and adversory stage of the proceedings for confirmation offered the opportunity to three industrial associations to intervene in support of Rey Soda. They are Associazioni Industrie Produtti, Associazioni Industriali Produtti Alimentari, Associazioni Industriali Bevande Gassate.

The Pretura stayed the proceedings and submitted to you for a preliminary ruling a long series of questions which it appears to me unnecessary to set out, but which is reproduced in the report for the hearing.

Certain of these questions relate to the validity both of Article 6 of Regulation No 834/74 of the Commission and the supplementing Regulation No 1495/74. Others relate to the interpretation of the first regulation or raise the issue of the interpretation of certain provisions of the Treaty such as Articles 85 and 86 or even the general principles of Community law.

It has seemed to me logical to examine in the first place the questions of validity which moreover determine the answer to the other questions raised.

I — Validity of the provisions of Article 6 of Regulation No 834/74 with regard to the powers of the Commission

It is therefore with question No 2 that I shall begin since it deals with the very

principle of the powers of the Commission to impose on industrial users of sugar pecuniary charges for the benefit of beet growers.

First of all it is necessary to deal with the arguments maintained both by the plaintiff in the main action and the intervening associations that the recovery of the increased value on stocks is in the nature of a fiscal charge.

It is for the competent Italian judicial authority alone to define, on the basis of national law, the nature of the levies imposed by Decree-law No 255.

With regard to Community law the recovery of the increased value on stocks is an administrative instrument for regulating the sugar market, the legal basis of which is to be found in Article 37 (2) of the basic regulation.

But the measure in question seeks to impose pecuniary charges on traders subject to the payment of the increased value for the benefit of another class, beet growers.

This consideration is of crucial importance, as we shall see, when it is a question whether, in inviting and even obliging the Italian State to impose this payment, the Commission could restrict itself to laying down the principle without expressly determining either the basis of assessment to the levy on stocks or the persons who were subject to it, and therefore whether the Commission has made lawful use of the powers which were conferred on it.

To see what the powers of the Commission are the terms of Article 37 (2) of the basic regulation should be recalled:

'The requisite provisions to prevent the sugar market being disturbed as a result of an alteration in price levels at the change-over from one marketing year to the next may be adopted in accordance with the procedure laid down in Article 40.'

Various considerations lead me to think that this provision has conferred on the Commission a sufficiently wide delegation of power for it to decide on the recovery of the increased value.

The first consideration is based on the very general nature of the words 'requisite provisions to prevent the sugar market being disturbed'.

Although in principle the Commission obviously cannot arrogate to itself a power which the Council has not expressly delegated to it, it does not at all follow that only a power of implementation may be delegated to the Commission the exercise of which is strictly subjected to the basic rules laid down by the Council.

It is true that in the fourth paragraph of Article 155 of the Treaty provides that 'the Commission shall ... exercise the powers conferred on it by the Council for the *implementation* of the rules laid down by the latter'. But it appears from your case-law that this wording must not be interpreted literally and restrictively; on the contrary, you have accepted that the delegation of powers under Article 155 enables the transfer of a true power to draw up regulations (Judgment of 15 July 1970 in Case 41/69, *Chemiefarma* [1970] ECR). Further the practice started and followed for a long time by the Commission also allows it to be said that the powers conferred on the Commission on the basis of this provision are not confined to technical rules or procedure. The powers which are assigned to it frequently enable it to define the concepts which the Council has contented itself with mentioning without defining their content, to lay down criteria and even to impose obligations on traders.

This concept in the case-law on this wide exercise of the powers of the Com-

mission have found their justification in the sphere of the functioning of the common organizations of the agricultural markets, for reasons which are easily understandable since they are in the nature of things. Only the Commission is in a position to follow constantly and attentively the trends on these markets; it alone can act urgently in a crisis as is required; it alone, more often than not, can, albeit within the framework of the principles laid down by the Council, take measures of short-term economic policy.

It follows that the Council is of necessity led in this sphere to delegate to the Commission powers involving a certain margin of discretion, especially with regard to the choice of means to be used to deal with a particular situation.

The legality of the powers of the Commission must therefore be judged less in terms of strict conformity with the use, which it makes of them, by means of specific basic rules, than with regard to the essential general objectives of the organization of the market.

The first objective which in the present case had to guide the Commission in the exercise of the powers which Article 37 (2) of the basic regulation conferred on it was to prevent the Italian market being disturbed as a result of the substantial alteration in the prices of sugar, this market being particularly sensitive, for as you know, Italy is the area with the largest deficit in the common market and the danger of stocking-up and holding on to speculative stocks was far from being negligible having regard to the circumstances at the time.

The reversal of the tendency recorded on the world market where the price of sugar had literally 'rocketed' far above the Community price made imports from third countries practically impossible. It was moreover necessary to have recourse to measures aimed at heavily penalizing exports to these countries of sugar produced in the common market.

Finally it might legitimately be feared that the producers of Member States traditionally in surplus, France and Belgium, might be reluctant to deliver to Italy sufficient quantities to ensure a regular supply having regard to the position of the European market. Further you are not unaware that imports of Community sugar into Italy were locked in a rigid system of tenders awarded by the Cassa Conguaglio Zucchero and that in practice deliveries were largely made directly from the group of French and Belgian producers to the group of Italian producers constituted around the company Eridania. There was therefore reason to think that even if imports had been maintained at a level compatible with the needs of Italian consumers, the retention of excessive stocks in the hands of these producers, and indeed in those of traders or industrial users, in the anticipation of an increase in internal prices would not allow a normal and regular supply of the market to be ensured at the consumer stage.

The national court has queried the dangers which flowed from this set of circumstances.

Since it is a question of assessing after the event what would probably or possibly have happened in a complex economic situation which called for Community intervention under Article 37 (2) ot the basic regulation, it does not appear to me that the Court is in a position to substitute its discretion for that of the Commission. With regard to measures of short-term economic policy the Court exercises only a limited control; it is only in the case where Community intervention is vitiated by an obvious error or a misuse of powers that in the context of annulment proceedings you may censure the decisions taken. The same answer must apply in assessing validity on a question referred for a preliminary ruling.

However, I do not think that in the present case the Commission has made a

manifestly wrong analysis of the situation on the Italian market which is part of the common market. There is nothing to give cause to think that it has been guilty of a misuse of powers.

Given the task of adopting the 'requisite provisions' for the purpose of dealing with a disquieting short-term economic position the Commission was legally entitled, within the framework of the wide powers which it had, to put into operation the most effective means for achieving the objective pursued.

To ensure a normal supply of the Italian market it was necessary to dissuade businesses from building up speculative stocks before 1 July 1974. To deprive them of the benefit which they would have had, that is to say, to require the payment of the increased value realized by the increase in the price of sugar, was the best means to deal with the situation.

The plaintiff in the main action and the intervening associations rely on the violation of the principle of proportionality, but the effectiveness of the measures, the application of which they maintain would have enabled the risks of interruption in supply to be avoided, appears to me doubtful, to say the least.

According to them it would have sufficed to adopt provisions to prohibit or put difficulties in the way of exports from the Community.

It is a fact that such measures were actually introduced on a Community level. But they did not have the necessary effect of obliging Italian holders of sugar to put it on the market.

As for measures designed to check and advertize the prices of products for which there is great consumption I do not see what scope they could have had in the present case since the increase in the price of sugar was already decided as having to come into force on the first day of the new sugar year and was moreover inescapably linked with the devaluation in the 'green lira' as well as the increase in the intervention price.

A second consideration justifies the power delegated to the Commission. It relates to the fact that the powers conferred by Article 37 (2) of the basic regulation must be exercised in accordance with the procedure laid down in Article 40, that is to say, after the opinion of the Management Committee for sugar is obtained.

Such a procedure which you have recognized as conforming with the Treaty in the judgments of 17 December 1970, Cases 25/70, *Köster* and 30/70 *Scheer* [1970] ECR meets in particular the necessity in which the Community authorities find themselves more and more frequently of adopting provisions which by their nature are in principle within the jurisdiction of the Council, but the urgency of which does not allow the latter to adopt them in sufficient time.

It is thus to the Commission that it delegates a true power to take decisions whilst reserving the right to intervene if the opinion of the Management Committee should be unfavourable to the proposal of the Commission, which happens in fact only in exceptional cases.

A third consideration arises from the interpretation of Article 37 (2) of the basic regulation. This regulation envisages the case in which disturbances threaten the equilibrium of the market and in particular the certainty of supplies to consumers as a result of an alteration in prices at the change-over from one marketing year to the next.

To consider it restrictively, it might be thought that the Council intended to refer, at the time when the provision was adopted, only to alterations in Community intervention prices expressed in units of account which it was

called upon itself to fix before the beginning of each sugar year and not those which, since they affect internal prices expressed in national currency, are due to currency fluctuations independent of the will of the Council.

But the very logic of the common organizations of the market in agricultural products and thus in particular of sugar implies that alterations in prices expressed in national currency must likewise be taken into account in the application of Article 37 (2).

As a result of the operation of the representative conversion rates, the domestic prices derive directly from the Community prices. When, as happened in the present case, the currency of a Member State is appreciably devalued, the Council cannot escape the necessity of fixing a new conversion rate adapted to economic realities. It is thus led to confirm the consequences of the devaluation. The increase in domestic prices of agricultural products thus represents an 'alteration in prices' within the meaning of Article 37 (2). As has been seen, this alteration had, as regards the price of sugar in Italy, to take effect at the changeover from the 1973/74 marketing year to the next.

Had not the Council itself as from 1971 indicated by way of Regulation No 974 the scope of measures of short-term economic policy in the agricultural sector as a result of the widening of the fluctuation margins in the currencies of certain Member States?

The Commission did not fail to refer to this in Regulation No 834/74.

I am therefore justified in thinking that the Commission legally had the power to decide upon the principle of the recovery of the increased value on speculative stocks built up by holders of sugar to prevent the dangers of a breakdown in the supply to the market.

II — Validity of the provision in Regulation No 834/74 reserving the benefit of the levy for the increased value on stocks to beet growers.

A second question relating to the examination of the validity of Article 6 of Regulation No 834/74 concerns the provision by which the Commission designated beet growers as the recipients of the increased value in stocks.

I have some hesitation in going along with the Commission's representative in the argument which he developed in the oral proceeding in which he denied that this question had any relevance.

In his view since the validity of the taxation of stocks is admitted, the plaintiff in the main action has no interest in criticizing the ultimate application of the tax. Since the plaintiff is bound in any event to pay the amount in cannot concern the plaintiff whether the product benefits beet growers or is kept by the Italian State.

In the context of a direct application for annulment this argument would raise the question of whether the submission based on the illegality of the provision in question is inadmissible for want of any interest in bringing the proceedings. But we are here faced with a request for a preliminary ruling and the Court does not allow itself to enquire whether a question raised by the national court is relevant or not for the purpose of its decision in the main action. Since the validity of Article 6 of Regulation No 834/74 is questioned by the Pretura di Abbiategrasso on all counts you must give an answer to this point also.

Rey Soda maintains that by reserving the benefit of the product of the levy on stocks to beet growers the Commission has infringed Article 34 of Regulation No 1009/67 which, whilst authorizing Italy to grant in particular adaptation aids to its beet growers, limits the amount of these aids to a specific ceiling raised

several times. These are national aids within the meanings of Articles 92 to 94 of the Treaty. Article 6 of Regulation No 834/74 does not come within this sphere. It is a measure of equalization intended in some way to refund to beet growers the increased value, which holders of sugar stocks would have realized by selling, after 1 July 1974 at a price increased by 37 %, the product manufactured from beet bought the previous autumn at the minimum price applicable before 31 October 1973, the level of which had been frozen at the intervention price for sugar in force at the time.

The decision to give beet growers the benefit of the increased value was in accordance with the objective contained in Article 39 (b) of the Treaty; it was intended to ensure a fair standard of living for this class of the agricultural community.

But the validity of Article 6 of Regulation No 834/74 must be considered from yet another point of view.

III — Validity of Article 6 of Regulation No 834/74 with regard to the sub-delegation of power conferred on the Italian Government

It is fitting to examine it with regard, not to the beneficiaries of the levy on stocks, but to the businesses which are subjected to it.

In this respect a consideration of the precedents in relation to the taxation of sugar stocks supplies some interesting information.

In the first place Article 37 (1) of the basic regulation itself contains a provision which was intended to govern the position which would not fail to arise on the beginning of the first community sugar year, namely 1968/69, by reason of the difference between national sugar prices and the level of prices valid from 1 July 1968. By this provision the Council gave itself the power to adopt the measures necessary to offset the difference.

To this effect, it adopted on 18 June 1968 Regulation No 769/68 which, although it subjected industrial users of sugar purchased at a low national price before the increase on 1 July 1968 to the levy, it took account of the fact that the users, by reason of the nature and time-schedules of their operations, had to stock sugar even if this stocking-up, which was moreover normal, showed itself to be a good transaction from the financial point of view. Although admitting the risk of distorting competition, it excluded from the levy the quantities of sugar which these industries required for a normal four weeks working, regarded as the working stock of these industrial users.

A second example is supplied by the levy on stocks existing in France on 1 August 1970 of a compensatory tax 'to prevent disturbances in the market in sugar' as a result of the devaluation of the French franc. Regulation No 1507/70 of the Commission establishing this tax was based on Regulation No 1586/69 of the Council of 11 August 1969 relating to certain measures arising from the short-term economic policy to be taken in the agricultural sector as a result of the devaluation of the French franc.

This regulation did not expressly refer to stocks held by industrial users; but the French implementing decree of 30 July 1970, whilst subjecting those whose stocks exceeded 5 000 kg, expressly exempts working stock, that is to say the quantity held by a user required for a normal production of four weeks at the maximum.

A situation very similar to the case which concerns us occurred in 1971. Regulation No 1344/71 of the Commission provided

for the levying of a tax on stocks notified at 1 July 1971, again to avoid disturbances on the internal market of the Community.

Stocks held by users were subject to this tax but stocks regarded as working stock of users were exempted up to a maximum amount of 20 000 metric tons. To apportion this tonnage France had to take all the measures necessary to avoid difference in treatment of those concerned. This regulation of the Commission was based on the same Regulation No 1586/69 as well as on Regulation No 1432/70 of the Council relating to the adaptation of the intervention or purchase prices to be paid in France.

Having regard to the guidance which may be drawn from these precedents I am led to the following conclusions:

1. The Commission has limited itself to laying down — leaving the Italian Government to take the necessary measures — the principle of payment to beet growers of the increased value on stocks without determining which class of business: sugar producers, dealers or industrial users, would be subject to this tax on the increased value. The Commission's Agent confirmed in the oral proceedings that Article 6 of the Regulation nevertheless by implication covered all holders of stocks of sugar without exempting industrial users.

This interpretation, it is true, is in accordance with practical requirements. Why exempt these industrial users which, although they do not intervene in the sugar market as sellers of this product, are buyers of it and incorporate it in the goods which they produce? In a normal economic situation where there is price stability they have no incentive to stock up beyond the quantities which meet the needs of their normal production cycle; in other words, they limit themselves to maintaining their working stock at a level sufficient for four weeks' normal working.

But in the economic situation which characterized the Italian market in the spring of 1974 the prospect of having to pay for sugar at a price very much increased as from 1 July was alone such as to encourage these industries to build up stocks much larger than their immediate production needs required.

It is true that the quality of granulated sugar used by them cannot as a rule be put on the market for direct human consumption, although in a period in which, if there is not a shortage there is at least a shortage psychosis, it is not altogether inconceivable that certain quantities of granulated sugar end up for sale by retailers after the increase in price.

Even admitting that this hypothesis is very unlikely, the objective of the build-up by industrial users of excessive stocks could also be to enable the increased value obtained from 1 July 1974 to be reflected in the price of their products.

The argument put forward on behalf of Rey Soda and the intervening associations based on the fact that industrial users are bound by contracts of supply the execution of which stretches over several months and by reason of this they could not have benefitted from the increased value obtained on their sugar stocks did not appear to me fully convincing.

There is moreover something else which shows that the Commission intended in any event that these users should be subject to the payment of the levy on their excessive stocks. It arises from the wording of Regulation No 1495/74 which lays down that all holders in Italy on 1 July 1974 *on whatever basis* of quantities of white sugar, raw sugar or syrup of sugar in excess of 500 kg shall declare the same to the competent Italian authorities.

But the obligation imposed in such general terms on all holders of sugar to

declare it to the national administration does not imply that they were subject to a payment of the increased value. Having regard to the terms of Article 37 (2) of the basic regulation, I think that if the Commission had the power to require that the increased value on excessive stocks held *inter alia* by industrial users should be taxed, it ought to have made an express and unequivocal decision in this respect.

2. In the second place the scope of Article 6 of Regulation No 834/74 does not appear to me to be capable of being separated from the statement in the recitals which defines its objectives. According to the seventh recital it is concerned with 'the removal of any incentive to *excessive stocking* of sugar before 1 July 1974'.

Having thus defined the objective of the measures which the Italian authorities were required to take the Commission left to them the responsibility of determining in respect of each class of business and having regard to the size of the undertaking the threshold above which stocks held had to be regarded as excessive in relation to the requirements of their normal activity. In my opinion it would have been better advised to fix the objective criteria itself so as to confine the intervention of the Italian Government within a much more precisely defined context.

It is true that Regulation No 1495/74 in providing for a declaration of all stocks in excess of 500 kg by all holders on whatever basis met the need to carry out as complete and exact a return as possible of stocks held by producers, dealers and industrial users, but it does not define, any more than does the original regulation, what is to be understood by 'excessive stocking'.

Can one therefore accept that this regulation must be declared invalid because it omits to specify the contents of this concept?

I have been tempted to resolve the question by means of interpretation and to say, dealing with the case of industrial users, that stocks held by them in so far as they are limited to quantities required to ensure each undertaking a normal working period of four weeks at the maximum cannot be regarded as excessive.

On this basis it would have been for the Italian Government to exempt the working stock of these industries from the levy on the increased value, as did the French authorities in 1970.

But then the question, which in my opinion is crucial, arises whether, having regard to the general terms of the power given to the Italian Government, Article 6 of the regulation must not be declared invalid on the ground that neither the Treaty nor the basic regulation enables the Commission to delegate to a Member State the power of taking measures which it should have adopted itself within the framework of the common organization of the market in sugar.

It is a similar argument which the plaintiff in the main action, Otto Scheer, maintained in Case No 30/70, which was referred for a preliminary ruling, in order to contest the validity of Regulation No 87/62 adopted following the Management Committee procedure in which the Commission left to the Member States the responsibility of fixing the rules relating to the lodging of a deposit and its forfeiture on delivering import and export licences in respect of cereals.

Dismissing this argument the Court decided that the intervention of Member States was only the fulfilment of the general obligation contained in Article 5 of the Treaty under which they are bound to take all appropriate measures to ensure fulfilment of the obligations resulting from action taken by the institutions and in a general way to facilitate the achievement of the Community's task.

But it was because of the special circumstances in that case justifying the delegation of very wide powers by that regulation to the Member States that the Court opted for that solution. The Court stated that in view of the experimental nature of the first system of the organization of the market in cereals and of the shortness of the time which elapsed between the entry into force of the basic regulation and that of the implementing Regulation No 87/62, it was legitimate, in the interests of a rapid implementation of the organization of the market, to confer temporarily on the Member States functions which, at a more advanced stage of development, were taken over by the Community institutions.

These are therefore the grounds on which in those circumstances the Court recognized that the Commission was able to make the Member States responsible for taking decisions which in the normal framework of the functioning of the common organization of the market fell to the Commission.

However, such considerations cannot properly be relied upon in the present case.

We have here not a temporary, but a final and complete common organization, although the basic regulation contains certain transitional provisions applicable until the 1974/75 marketing year. Article 37 (2), which constitutes the legal basis in the present case of the powers conferred on the Commission, comes under Title IV which deals with general provisions. It is to the Commission and to it alone that the Council has delegated the exercise of these powers.

The urgency held in the *Scheer* case to justify intervention by the Member States cannot be relied upon in the present case. As far back as 1 November 1973 the Council had decided to postpone until 1 July of the following year the effect of the increase in prices of sugar in Italy due to the devaluation of the lira. The increase in Community intervention prices applicable for the 1974/75 marketing year was certainly not known until March but this is a subsidiary matter in the case. In any event, the Commission had already previously concerned itself since the beginning of 1974 with preventing excessive stocking of sugar in Italy since a first draft regulation had been prepared by its departments at that time.

In these circumstances could it, in short, transfer its responsibility to the Italian Government, as it purported to do, by limiting itself to empowering that government to take 'national measures to prevent disturbances on the market', and to indicating that 'these provisions shall consist in particular of a payment to beet growers of the increased value of stocks'?

In proceeding thus it had sub-delegated to a Member State a power to take decisions the exercise of which the Council had entrusted to it. No such sub-delegation is provided for in Article 37 (2) of the basic regulation. In my opinion it finds no legal basis in the Treaty, Article 5 of which, although requiring Member States to ensure fulfilment of the obligations resulting from action taken by the institutions, cannot be interpreted as authorizing, in the absence of exceptional circumstances, the community institutions to transfer their responsibilities to the States.

Finally, to accept the sub-delegation which the Commission engaged in would be contrary to your case-law, in which the principle may be found that, in the sphere covered by the common organizations of the market in agricultural products, the only powers which the Member States have retained are to fix certain detailed rules for implementing the Community regulations which they may neither add to nor subtract from and to assure the implementation of these regulations by

certain specific acts such as, for example, imposing, of levies, paying refunds, and receiving or paying compensatory amounts; they may likewise be enabled as a result of special powers granted by the Community authorities to take measures supplementing the regulations.

But the powers conferred on Italy by Regulation No 834/74 go far beyond this. They are in truth a 'carte blanche'.

I am thus led to think that although the Commission could enjoin the Italian authorities to ensure the *implementation* of the measures necessary to prevent disturbances on the market resulting from excessive stocking of sugar, it was itself required not only to define the general objective of these measures and to decide upon the principle of payment to beet growers of the increased value on stocks but also to determine precisely the essential basic rules, the implementation of which the Italian Government was required to ensure, that is: to list the classes of business affected; to define in respect of each of them the concept of stocks exceeding their normal requirements; finally to determine the basis of the levy and if not fix the rate at least clearly indicate on what basis the increased value should be calculated.

However, it is obvious that the Commission transferred this responsibility to the Italian authorities.

There are two possible alternatives:

Either, and this is what I think, the payment to beet growers of the increased value on stocks of sugar could not, within the framework of the common organization of the market, be made except as a result of a Community decision taken under the basic regulation in accordance with the provisions of Article 37 (2), which means that the Italian Government could be empowered only to ensure the implementation but not itself to decree the essential rules.

Or, Italy had retained, notwithstanding this common organization, independent powers enabling it to take on its own *national measures* of a legislative nature to prevent or punish the speculative stocking of sugar. But the Italian national market in this product is an integral part of the Community market and this would mean denying that the administration of this market falls in accordance with the division of powers prescribed by the basic regulation, within the respective jurisdictions of the Council and the Commission.

It is for these reasons that I propose that Article 6 of Regulation No 834/74 be declared invalid.

If you share this view you do not have to rule on the majority of the ancillary questions submitted by the national court. However, there is one which it appears to me necessary in any event to answer. It is the question how far the Decree-law No 255, adopted on the basis of an invalid Community provision, is, by this fact alone, itself unlawful.

Let me say first of all that the Decree-law in question was approved by the Parliament and Senate of the Italian Republic and thereupon made law in accordance with the ratification machinery provided for by the constitution.

Is is not therefore the illegality of Decree-law which is in question, but the unconstitutionality of the legislative provision adopted by the Parliament. It is therefore for the Italian constitutional court to decide the question, should it be referred to it by the national court.

Finally an answer must briefly be given to question 4 which contests the validity of Regulation No 1495/74, a provision, it is true, which supplements Regulation No 834/74, but which is, in my opinion, separable in that it requires only a declaration of stocks of sugar held by

anyone on 1 July 1974. As I have said, the obligation thus placed on holders of sugar does not involve, *de plano,* any subjection to the levy on the increased value, in respect of which it has been established that only the principle and the intended use have been decided by the Commission.

It is thus in fact a preparatory measure, technically indispensable to enable an accurate return of the quantities of sugar held by businesses at the beginning of the new marketing year and at the date when the price increase for this product came into force.

The Italian Government had, in my opinion, the power itself to order such a return.

But we are not unaware that, although the Commission resolved to anticipate it and intervene directly, this was because it feared that the Government, faced with a crisis, was not in a position to take this measure in time.

The Italian court questions the validity of this regulation on the ground of the absence or inadequacy of a statement of the reasons for it.

In the first place I do not see how the fact of having referred to Regulation No 834/74 affects the validity of the provision relating to the declaration of stocks which was a necessary preliminary to any levy on the increased value.

In the second place, mention of the necessity 'to allow Italy to take the implementing measures speedily' must be regarded as an ample reason, especially if it is borne in mind that the national authorities could of their own accord require holders of sugar to declare the state of their stocks.

This ground cannot invalidate the measure taken by the Commission itself.

Finally, it did not specify why the minimum quantity of sugar subject to the declaration was fixed at 500 kg.

This fact, too, appears to me not to affect the validity of the regulation. As I have already said, the obligation to declare on the one hand and subjection to the payment of the increased value on the other hand are two different concepts.

To fix the limit of the obligatory declaration at 500 kg does not in any way mean that the levy must be required on all stocks exceeding this limit. The basis of assessment to the levy on the increased value which the Commission had in my opinion the duty of determining in terms of the concept of excessive stocking, cannot be inferred solely from the requirement to declare existing stocks.

My opinion is that the Court should rule:

that the provisions of Article 6 of Regulation No 834/74 of the Commission are invalid in so far as they seek to confer on the Italian Republic the power delegated only to the Commission by Article 37 (2) of Regulation No 1009/67 of the Council to adopt the requisite provisions to prevent the sugar market being disturbed as a result of an alteration in price levels at the change-over from one marketing year to the next and in particular to determine the basis of a levy on the increased value on sugar stocks held within the territory of this Member State, to define the classes of businesses subject to payment of the said levy and to define the criteria so as to enable the amount to be fixed.