JUDGMENT OF THE COURT
19 OCTOBER 1982 [1]

SA Roquette Frères
v Council of the European Communities

(Isoglucose — Production quotas)

Case 179/80

Application for a declaration of nullity — Application directed against a regulation which was confirmed by another regulation adopted during the proceedings — Dismissal as unfounded of the application submitted in the meantime and directed against the new regulation — Continuation of proceedings against the first regulation devoid of purpose — Decision on the point at issue unnecessary

(EEC Treaty, Art. 172)

In Case 179/80

SA ROQUETTE FRÈRES, whose registered office is situated in Lestrem (Pas-de-Calais), represented by its Deputy General Manager, Gérard Rousseaux, assisted by Marcel Veroone, of Messrs Veroone, Frevria, Letartre, Paillusseau, Hoste and Dutat, of the Lille Bar, with an address for service in Luxembourg at the Chambers of Mr Loesch, Advocate, 2 Rue Goethe,

applicant,

1 — Language of the Case: French.

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by Daniel Vignes, a director in its Legal Department, assisted by Arthur Brautigam, an administrator in that department, with an address for service in Luxembourg at the office of Douglas Fontein, Director of Legal Affairs at the European Investment Bank,

defendant,

and

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Peter Gilsdorf, assisted by Jacques Delmoly, a nember of its Legal Department, with an address for service in Luxembourg at the office of Mario Cervino, Legal Adviser to the Commission, Jean Monnet Building, Kirchberg,

intervener,

APPLICATION for a declaration that Council Regulation (EEC) No 1592/80 of 24 June 1980 on the application of the system of production quotas in the sugar and isoglucose sectors during the period 1 July 1980 to 30 June 1981 (Official Journal 1980, L 160, p. 12) is void in so far as it extends the validity of the system of production quotas for isoglucose established by Council Regulation (EEC) No 1111/77 of 17 May 1977 laying down common provisions for isoglucose (Official Journal 1977, L 134, p. 4), as subsequently amended,

THE COURT

composed of: J. Mertens de Wilmars, President, A. O'Keeffe, U. Everling and A. Chloros (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, G. Bosco, T. Koopmans and O. Due, Judges,

Advocate General: G. Reischl
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments put forward by the parties may be summarized as follows:

I — Facts and procedure

A — Background to the dispute

1. By a preliminary ruling of 25 October 1978 in Joined Cases 103 and 145/77, *Royal Scholten-Honig (Holdings) Ltd* v *Intervention Board for Agricultural Produce* and *Tunnel Refineries Ltd* v *Intervention Board for Agricultural Produce* [1978] ECR 2037, the Court of Justice held that Council Regulation No 1111/77 of 17 May 1977 laying down common provisions for isoglucose was invalid in so far as Articles 8 and 9 thereof imposed a production levy on isoglucose of five units of account per 100 kg of dry matter for the period corresponding to the sugar marketing year 1977/78. The Court found that the system established by the aforesaid articles offended against the general principle of equality (in those cases between sugar producers and isoglucose producers). However, it added that its judgment left the Council free to take any necessary measures compatible with Comunity law for ensuring the proper functioning of the market in sweeteners.

2. Following that judgment, on the basis of the proposal for a regulation by the Commission on which the Parliament had been consulted on 19 March 1979 but had not given its formal opinion, the Council adopted on 25 June 1979 Regulation (EEC) No 1293/79 (Official Journal 1979, L 162, p. 10, as rectified in Official Journal 1979, L 176, p. 37) amending Regulation No 1111/77. However, the preamble to Regulation No 1293/79 contains the reference "having regard to the fact that the European Parliament has been consulted". Pursuant to Article 5 thereof, the regulation entered into force on 1 July 1979.

3. Regulation No 1293/79 amended Regulation No 1111/77 in the light of the Court's judgment of 25 October 1978. Stating in its preamble that the most appropriate means for avoiding any inequality of treatment between sugar and isoglucose producers was to subject isoglucose production to rules analogous to those applying to sugar production until 30 June 1980, Regulation No 1293/79 introduced *inter alia,* as a transitional measure until that date, *a temporary system of production quotas for isoglucose* (see the sixth recital). The reasons for the adoption of detailed rules governing the allocation and determination of quotas are set out in the seventh recital. The eighth recital deals with the need to fix the specific amount of the production levy applicable to isoglucose production.

Those various considerations are embodied in the system laid down by Article 3 of Regulation No 1293/79, which provides for the insertion after Article 7 of Regulation No 1111/77 of the following title:

"TITLE II

Quota arrangements

Article 8

1. Article 9 shall apply for the period 1 July 1979 to 30 June 1980.

2. The arrangements applicable from 1 July 1980 shall be adopted by the Council before 1 January 1980 in accordance with the procedure laid down in Article 43 (2) of the Treaty.

Article 9

1. A basic quota shall be allotted to each isoglucose producing undertaking established in the Community, for the period referred to in Article 8 (1).

Without prejudice to implementation of paragraph (3), the basic quota of each such undertaking shall be equal to twice its production as determined, under this regulation, during the period 1 November 1978 to 30 April 1979.

2. To each undertaking having a basic quota, there shall also be allotted a maximum quota equal to its basic quota multiplied by a coefficient. This coefficient shall be that fixed by virtue of the second subparagraph of Article 25 (2) of Regulation (EEC) No 3330/74 for the period 1 July 1979 to 30 June 1980.

3. The basic quota referred to in paragraph (1) shall, if necessary, be corrected so that the maximum quota determined in accordance with paragraph (2):

Does not exceed 85 %

Is not less than 65 %

of the technical production capacity per annum of the undertaking in question.

4. The basic quotas established pursuant to paragraphs (1) and (3) are fixed for each undertaking as set out in Annex II.

5. Isoglucose producing undertakings which have not produced any during the reference period referred to in the second subparagraph of paragraph (1) and which can be shown to have resumed systematic production during the period referred to in Article 8 (1) shall be allotted a basic quota equal to the highest volume of their production attained during one of the following periods:

1 August 1976 to 31 July 1977,

1 July 1977 to 30 June 1978.

A maximum quota shall be allotted to such undertakings, determined in accordance with the provisions of paragraph (2).

6. A basic quota shall be allotted to undertakings starting systematic production of isoglucose during the period referred to in Article 8 (1) within the limits of a Community reserve quantity equal to 5% of the total of basic quotas established pursuant to paragraph (1).

7. The quantity of isoglucose produced during the period referred to in Article 8 (1) which:

Exceeds the maximum quota of the undertaking,

or

Was produced by an undertaking not having a basic quota

may not be disposed of on the Community's internal market and must

be exported in the natural state to third countries without the application of Article 4.

8. For the quantity of isoglucose production which exceeds the basic quota without exceeding the maximum quota Member States shall charge a production levy on the isoglucose producer concerned.

For the period referred to in Article 8 (1), the amount of the isoglucose production levy shall be equal to the share of the sugar production levy, as fixed for the 1979/80 sugar year by virtue of Article 28 of Regulation (EEC) No 3330/74, borne by the sugar manufacturers.

9. The Council, acting by a qualified majority on a proposal from the Commission, shall allocate the quotas referred to in paragraphs (5) and (6) and shall adopt any general rules necessary for the application of this article.

10. Detailed rules for the application of this article, which shall in particular provide for the levying of a charge on the quantity of isoglucose referred to in paragraph (7) which has not been exported in the natural state during the period referred to in Article 8 (1) and fix the amount of the production levy referred to in paragraph (8), shall be adopted in accordance with the procedure laid down in Article 12."

Article 4 of the regulation provides that Annex II set out below is to be added to Regulation (EEC) No 1111/77:

"ANNEX II

Undertaking	Address of registered office	Basic quotas in tonnes expressed as dry matter
Maizena GmbH	2000 Hamburg 1, Postfach 1000	28 000
Amylum SA	49, Rue de l'Intendant, 1020 Bruxelles	56 667
Roquette Frères SA	17, Boulevard Vauban, 59000 Lille	15 887
SPAD	15063 Cassano Spinola, Alessandria, Casella postale 1	5 863
Fabbriche Riunite Amido Glucosio Destrina, SpA	Piazza Erculea 9, Milano	10 706
Tunnel Refineries Ltd	Thames Bank House, Greenwich, London SE10 0PA	21 696"

4. By separate judgments delivered on 29 October 1980 in Case 138/79 *Roquette* v *Council* [1980] ECR 3333 and in Case 139/79 *Maizena* v *Council* [1980] ECR 3393, the Court declared Regulation No 1293/79 void for infringement of essential procedural requirements on the ground that it had been adopted without the European Parliament's being consulted, as required by Article 43 of the EEC Treaty. In its decision in the aforesaid cases, however, the Court dismissed all the substantive arguments directed against the system of production quotas established by the said regulation and, in particular, against the

fixing of basic quotas for the applicants in both cases.

5. By Regulation No 1592/80 of 24 June 1980 — adopted, that is to say, while Cases 138 and 139/79 were pending — the Council declared that the system of isoglucose production quotas established by Article 9 of Regulation No 1111/77 (as amended by Regulation No 1293/79) was to be applicable to the period between 1 July 1980 and 30 June 1981 and added that the basic quota of each isoglucose-producing enterprise for that period was to be that applied between 1 July 1979 and 30 June 1980 (Article 2).

B — Course of the procedure and related events

1. By application lodged at the Court Registry on 21 August 1980, Roquette Frères, a company incorporated under French law which manufactures *inter alia* isoglucose products at its factory in Lestrem (Pas-de-Calais), requested the Court to declare invalid the provision of Regulation No 1592/80 which extends the validity of the system of quotas established by Regulation No 1111/77, as amended, and by Annex II thereto, which sets out the applicant's production quota for the period between 1 July 1980 and 30 June 1981.

2. By a document headed: "Addendum to the application instituting the proceedings", lodged at the Court Registry on 8 November 1980, the applicant claims that the Council should be ordered to pay the costs.

3. By order of 17 December 1980, the Court allowed the Commission to intervene in support of the conclusion of the Council. However, for the reasons set out below, the Commission declined to submit any observations on the substance of the case.

4. Fearing, it would appear, that the production quotas for the 1980/81 marketing year would be declared void by the Court because they had been fixed by reference to Regulation No 1293/79 (see the first recital in the preamble to Regulation No 1592/80), which had been declared void by the aforesaid judgments of 29 October 1980, the Council adopted on *10 February 1981* the following two regulations:

(a) *Regulation (EEC) No 387/81* amending Regulation No 1111/77 laying down common provisions for isoglucose (Official Journal 1981, L 44, p. 1). Regulation No 387/81 reintroduces, by referring to the provisions of Regulation No 1111/77, *inter alia* the system of production quotas *with retroactive effect from 1 July 1979.* It should be noted that, on this occasion, the Council obtained the opinion of the European Parliament (given on 9 February 1981).

(b) *Regulation (EEC) No 388/81* amending Regulation No 1592/80 (Official Journal 1981, L 44, p. 4). Regulation No 388/81, according to the second recital in the preamble thereto, was adopted "in order to avoid any doubts as to the legality of ... Regulation (EEC) No 1592/80". With that end in view, Article 1 of Regulation No 388/81 actually provides that Article 2 of Regulation No 1592/80 is to refer to Article 9 of Regulation No 1111/77 as amended by Regulation No 387/81.

Regulation No 388/81, according to Article 2 thereof, *is to apply from 1 July 1980.* As in the previous case, the Parliament gave its prior opinion on 9 February 1981.

5. In its rejoinder, lodged at the Court Registry on 10 March 1981, the Council raised a fresh issue within the meaning of Article 42 (2) of the Rules of Procedure. It contended that as a result of the publication of Regulations Nos 387 and 388/81 in the Official Journal, it was *pointless* for the applicant to proceed with its application for a declaration of nullity.

6. By an additional statement lodged at the Court Registry on 13 April 1981, the applicant replied to the fresh issue raised by the Council in its rejoinder.

7. The written procedure came to an end without the Commission's having submitted, in its capacity as intervener, any written observations on the substance of the case. The Commission stated by letter of 16 March 1981 that it was wholly in agreement with the arguments adduced by the Council and reserved the right to submit observations solely at the hearing.

8. On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Conclusion of the parties

In its application instituting the proceedings, the *applicant* claims that the Court should:

Declare invalid in relation to the applicant the provision of Regulation No 1592/80 of 24 June 1980 which extends the validity of the system established by Regulation No 1111/77, as amended, and by Annex II thereto, and provides for the application from 1 July 1980 to 30 June 1981 of the isoglucose production quota fixed for the period between 1 July 1979 and 30 June 1980.

By a document headed: "Addendum to the application instituting the proceedings", lodged at the Court Registry on 7 November 1980, the applicant claims that the Council should be ordered to pay the costs.

In its defence, the *Council* contends that the Court should dismiss *as unfounded* the application for a declaration that Regulation No 1592/80 is void and that the applicant sould be ordered to pay the costs.

The Council considers that since the applicant's claim for costs, which is out of time, falls in particular within the scope of Article 173 of the EEC Treaty and of Article 42 of the Rules of Procedure it is inadmissible.

In its reply, the *applicant* does not put forward any formal conclusions but challenges the Council's objection regarding the admissibility of the applicant's claim for costs. Article 173 of the EEC Treaty prescribes a period of two months within which an application may be made for a declaration that an unlawful measure is void but does not apply to a claim for costs. Moreover, Article 42 of the Rules of Procedure concerns only the raising of a fresh issue and a claim for costs is not a fresh issue.

In its rejoinder, the *Council* contends that the Court should dismiss the

application for a declaration of nullity *as an abuse of process, without there being any need to examine the ground of complaint relied upon by the applicant.* That fresh issue is based on Article 42 (2) of the Rules of Procedure. In the alternative, the Council argues that the application should be dismissed as unfounded. In any event, the Council contends that the Court should order the applicant to pay the costs.

III — Submissions and arguments of the parties

In its application, the *applicant* claims that the Council again failed to await the European Parliament's opinion before adopting Regulation No 1592/80. In the preamble to that regulation, the Council refers to "the opinion of the European Parliament" and the text contains a reference to the following footnote: Official Jounral C 97 of 21 April 1980, p. 33. It is however apparent from that Official Journal that the reference is to the first part of a lengthy resolution adopted by the Parliament on 26 March 1980 embodying its opinion on:

"I — The communication from the Commission of the European Communities to the Council concerning changes in the common agricultural policy to help balance the markets and streamline expenditure

II — The proposals from the Commission of the European Communities to the Council on the fixing of prices of certain agricultural products and on certain related measures

on monetary compensatory amounts."

It can therefore be shown that the Parliament was not consulted on the text of Regulation No 1592/80 and that the reference concerning the Parliament's opinion, incorporated by the Council in the preamble to the regulation, reflects a desire to comply with an essential procedural requirement although it lacks any real content.

In those circumstances, the requirement laid down by Article 43 (2) of the EEC Treaty cannot be regarded as having been satisfied.

With regard to the substance, the applicant merely restates the arguments which it put forward in Case 138/79.

In its defence, the *Council* points out that the proposals designed to rationalize the common agricultural policy (Official Jounal C 60 of 10 March 1980) include under Point III the *"Proposal for a Council regulation on the common organization of the markets in sugar and isoglucose".*

That proposal was designed, in the first place, to replace the existing basic regulation on sugar, namely Regulation (EEC) No 3330/74, in view of the fact that the system of quotas provided for therein was to expire on 1 July 1980.

In its proposal, the Commission provided, in the case of sugar and isoglucose, for a system of quotas for a period of five years involving a number of important changes in the arrangements, including a reduction in sugar and isoglucose quotas. In other respects, the proposed system was more or less identical to that already applied in the sugar and isoglucose sector.

The European Parliament gave its opinion on that proposal, which was published in Official Journal C 97 of 21 April 1980 at p. 33. In that very detailed

opinion on the sugar policy to be pursued by the Community in the future, the Parliament expressed its disapproval of any reduction in the quotas (Point 49) and therefore requested the Commission to maintain the current regulations (Point 50); finally, it asked for the isoglucose arrangements to be brought into line with the sugar regulations (Point 53).

Thus the Parliament gave a very detailed opinion.

The Council maintains that if, by its submission that the regulation was tainted by a procedural defect the applicant meant that the text finally adopted bore no resemblance to the Commission's proposal, which would indicate that no genuine consultation had taken place, then that argument too is incorrect.

After consulting the European Parliament, the Council considered that it was unable to take an immediate decision regarding a reduction in quotas and preferred to extend the validity of the system in force (Regulation No 3330/74 for sugar and Regulation No 1111/77, as amended in 1979, for isoglucose) for a further marketing year, pending a decision on the system to be applied in future (see the third and fourth recitals in the preamble to Regulation No 1592/80).

It is clear therefore that the Parliament was consulted on the basis of a Commission proposal concerning the sugar and isoglucose sector, that the proposal which was applicable for five years provided for a reduction in quotas, that the Parliament expressed its disapproval of such a reduction and that not wishing to take an immediate decision to reduce quotas the Council preferred to extend the validity of the existing system for a further year, which it did by adopting a proposal amended by the Commission in accordance with Article 149 of the EEC Treaty. That proposal became Regulation No 1592/80.

Accordingly, the Council adopted a system which was similar to that desired by the Parliament and which had not undergone any substantive amendment in relation to the Parliament's opinion; however, it adopted it for a shorter period pending the adoption of a definitive position.

Therefore the submission that the regulation was vitiated by a a procedural defect should in any event be rejected.

The Council rejects all the substantive arguments for the same reasons as those which it gave in Case 138/79.

In its reply, the applicant raises *a fresh issue* based on a new factor, namely the judgments of the Court of 29 October 1980 declaring Regulation No 1293/70 void.

The application contends that Regulation No 1592/80, in so far as it merely extends the validity of Regulation No 1293/79, is void for the same reasons as the latter. Regulation No 1592/80 is inevitably, not to say automatically, unlawful in consequence of the Court's finding in its above-mentioned judgment that Regulation No 1293/79 was unlawful.

With regard to the *admissibility* of that submission, the applicant maintains that the conditions laid down by Article 42 (2) of the Rules of Procedure are fulfilled.

As regards the Parliament's opinion, the applicant emphasizes that the Parliament was never consulted on the proposal to extend the validity of the existing system. That is apparent from the texts published in the Official Journal of 21 April 1980

as well as from the Council's reply to the question put to it by the Court at the sitting in Case 138/79.

In conclusion, the applicant states that it no longer relies on *the substantive arguments* which it previously put forward, at least in so far as the Court has already rejected them in its judgments of 29 October 1980.

In its rejoinder, the *Council* argues that as a result of the publication of Regulations Nos 378 and 388/81, both of which were Commission proposals which the Council adopted *without amendment* after the Parliament had given its opinion on 9 February 1981, it is *pointless* for the applicant to proceed with its application for a declaration of nullity.

Moreover, the Council considers that there are may points of similarity between this case and Case 243/78 *Simmenthal* v *Commission* [1980] ECR 593 (see paragraph 9 of the decision), with the result that the prosecution by the applicant of its action may be regarded as *an abuse of process (idem,* paragraph 11 of the decision). The Court should therefore dismiss the application on that ground without even considering the applicant's complaints.

The fresh issue thus raised is based on Article 42 (2) of the Rules of Procedure. For the rest, the Council adduces further arguments in support of its contention that the application should be dismissed on procedural as well as substantive grounds.

In an additional statement, the *applicant* contends in particular that the actual situation obtaining in this case is quite different from that which arose in the *Simmenthal* case. At worst, the Court may decide that it is unnecessary to give a decision on the point at issue. Consequently, the applicant sees no reasons to withdraw its application. However, it leaves to the Court the question whether or not, in the circumstances, it is necessary to give a decision on the point at issue.

At all events, the applicant claims that the Council should be ordered to pay the costs.

IV — Oral procedure

Roquette Frères, represented by Mr Veroone, and the Council, represented by Mr Vignes, attended the sitting on 8 July 1981. The Advocate General delivered his opinion at the end of the sitting.

Decision

1 By application lodged at the Court Registry on 21 August 1980, Roquette Frères, a company incorporated under French law, instituted proceedings under the second paragraph of Article 173 of the EEC Treaty for a declaration that Council Regulation (EEC) No 1592/80 of 24 June 1980 on the application of the system of production quotas in the sugar and isoglucose sectors during the period 1 July 1980 to 30 June 1981 (Official Journal 1980, L 160, p. 12) was partially void. More precisely, the applicant

asked the Court to declare invalid Article 2 of the said regulation as well as Annex II thereto. Article 2 (1) extends the validity of the system of production quotas for isoglucose which was incorporated, for the period betwen 1 July 1979 and 30 June 1980, in Council Regulation (EEC) No 1111/77 of 17 May 1977 laying down common provisions for isoglucose (Official Journal 1977 L 134, p. 4) by Regulation (EEC) No 1293/79 of 25 June 1979 (Official Journal 1979, 162, p. 10, as rectified by a corrigendum in Official Journal 1979, L 176, p. 37). Under Article 2 (2), the basic quota for each isoglucose producing enterprise for the period from 1 July 1980 to 30 June 1981 was to be that applicable during the period from 1 July 1979 to 30 June 1980.

2 It should be noted that Council Regulation No 1592/80 was adopted while the proceedings were pending which led to the Court's declaration, in its judgments of 29 October 1980 in Case 138/79 *Roquette* v *Council* [1980] ECR 3333 and in Case 139/79 *Maizena* v *Council* [1980] ECR 3393, that Regulation No 1293/79 was void on the ground that it had been adopted without the European Parliament's being consulted, as required by Article 43 of the EEC Treaty. In its decision in the aforesaid cases, however, the Court rejected all the substantive arguments directed against the system of production quotas established for isoglucose by the said regulation and, in particular, against the fixing of basic quotas for the applicants in both cases.

3 In its application, the applicant contends that the Council adopted Regulation No 1592/80 without awaiting the Parliament's opinion. As regards the substance of the case, the applicant merely restates the arguments which it put forward in Case 138/79 and which were rejected by the Court in its aforementioned jugdment in that case. In its reply, it also contends that Regulation No 1592/80, in so far as it merely extends the validity of Regulation No 1293/79, is void for the same reasons as the latter. The unlawfulness of Regulation No 1592/80 is, it maintains, a necessary consequence of the Court's finding in its above-mentioned jugdment that Regulation No 1293/79 was unlawful. Finally, it states that it no longer relies on the substantive arguments which it put forward in its application.

4 It should be noted that on 10 February 1981, while this case was pending before the Court, the Council, after obtaining the Parliament's opinion on 4 February 1981, adopted the following two regulations:

(a) *Regulation (EEC) No 387/81* amending Regulation No 1111/77 laying down common provisions for isoglucose (Official Journal 1981, L 44, p. 1). Regulation No 387/81 reintroduces, by referring to the provisions of Regulation No 1111/77, *inter alia* the system of production quotas *with retroactive effect from 1 July 1979.*

(b) *Regulation (EEC) No 388/81* amending Regulation No 1592/80 (Official Journal 1981, L 44, p. 4). Regulation No 388/81, according to the second rectial in the preamble thereto, was adopted "in order to avoid any doubts as to the legality ... of Regulation (EEC) No 1592/80". With that end in view, Article 1 of Regulation No 388/81 provides that Article 2 of Regulation No 1592/80 is to refer to Article 9 of Regulation No 1111/77, as amended by Regulation No 387/81. Regulation No 388/81, according to Article 2 thereof, *is to apply from 1 July 1980.*

5 In its rejoinder, the Council raised a fresh issue, within the meaning of Article 42 of the Rules of Procedure, by contending that the action has become pointless as a result of the adoption of the two aforesaid regulations. The Council considers, moreover, that the applicant no longer has any interest in proceeding with its application and that to do so may be regarded as an abuse of process.

6 In an additional statement submitted in reply to the fresh issue raised by the Council, the applicant points out that it has no intention of withdrawing its application but leaves to the Court the question whether or not it is necessary to give a decision on the point at issue.

7 Whilst proceeding with its action in this case, the applicant instituted proceedings, by application lodged at the Court Registry on 7 May 1981, for a declaration that Council Regulations Nos 387 and 388/81 were void. By judgment of 30 September 1982, the Court dismissed that application as unfounded.

8 In the light of all the foregoing considerations, it must be stated that a declaration that Regulation No 1592/80 is void is no longer of any interest to the applicant in view of the fact that the provisions which it seeks to have declared void have, in the meantime, been confirmed by a regulation against

which an application for a declaration of nullity brought by the applicant was dismissed by the Court as unfounded in its aforementioned judgment.

9 Consequently, it is unnecessary for the Court to give a decision on the point at issue.

Costs

10 Under Article 69 (5) of the Rules of Procedure, where a case does not proceed to judgment, the costs shall be in the discretion of the Court.

11 If the applicant had withdrawn its application after it became aware of the amendment made to the contested regulation by the two regulations of 10 February 1981, there would have been grounds for finding that its withdrawal was justified by the attitude of the Council and for ordering the latter to pay the costs.

12 However, it is clear from the Court's judgment in Case 110/81 that the unlawfulness relied upon by the applicant in support of this application, even on the assumption that it has been demonstrated, was remedied by the adoption of Regulation No 388/81 and that thereafter the applicant no longer had any interest in the prosecution of the action.

13 In the light of all those considerations, it is equitable for the parties to bear their own costs.

On those grounds,

THE COURT

hereby:

1. **Declares that it is unnecessary for it to give a decision on the point at issue;**

2. Orders the parties to bear their own costs.

Mertens de Wilmars O'Keeffe Everling Chloros
Pescatore Mackenzie Stuart Bosco Koopmans Due

Delivered in open court in Luxembourg on 19 October 1982.

P. Heim
Registrar

J. Mertens de Wilmars
President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 8 JULY 1981 [1]

Mr President,
Members of the Court,

This case is not proceeding to judgment on the main issue and under Article 69 (5) of the Rules of Procedure the costs are in the discretion of the Court.

On consideration of the application at the final stage, there remains in fact only a single issue which is the claim that the regulation against which the application was made was adopted without the required consultation of the Parliament. I do not think that that claim is well founded because the Parliament did not express a view on this particular regulation but on the draft of a regulation which was to contain quota arrangements for five years. In my opinion if the Parliament approves more comprehensive fresh arrangements it thereby approves a continuation of the corresponding arrangements hitherto in force.

It is significant that the Parliament which intervened in the first case (Case 138/79 *Roquette Frères* v *Council of the European Communities,* judgment of 29 October 1980), has not intervened in this case. I believe too that the Parliament is of the opinion that in the present case its rights have not been infringed.

In my opinion therefore the application is certainly not well founded. I would nevertheless suggest that the Court should provide for the costs to be shared, that is to say, should order each party to bear its own costs.

1 — Translated from the German.