JUDGMENT OF THE COURT (Second Chamber)

11 June 2009 *

In Case C-33/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Verwaltungsgerichtshof (Austria), made by decision of 19 November 2007, received at the Court on 28 January 2008, in the proceedings

Agrana Zucker GmbH

v

Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, K. Schiemann, P. Kūris (Rapporteur), L. Bay Larsen and C. Toader, Judges,

* Language of the case: German.

Advocate General: V. Trstenjak,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Lithuanian Government, by D. Kriaučiūnas, acting as Agent,

— the Council of the European Union, by M. Moore and Z. Kupčová, acting as Agents,

— the Commission of the European Communities, by F. Erlbacher and B. Doherty, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 18 February 2009,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation and the validity of Article 11 of Council Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy (OJ 2006 L 58, p. 42).

2 The reference was made in the course of proceedings brought by Agrana Zucker GmbH ('Agrana Zucker') against a decision of the Bundesminister für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft (Federal Minister for Agriculture, Forestry, the Environment and Water Management) of 16 April 2007 relating to the temporary restructuring amount ('the temporary amount') for the financial year 2006/07.

Legal context

3 Within the framework of the reform of the common organisation of the markets in the sugar sector which took place during 2006, the Council of the European Union adopted Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector (OJ 2006 L 58, p. 1) and Regulation No 320/2006 of the same date establishing a temporary scheme for the restructuring of the sugar industry. In accordance with Article 44 of Regulation No 318/2006, the Commission of the European Communities adopted Regulation No 493/2006 of 27 March 2006 laying down transitional measures within the framework of the reform of the common organisation of the markets in the sugar sector, and amending Regulations (EC) No 1265/2001 and (EC) No 314/2002 (OJ 2006 L 89, p. 11).

Regulation No 318/2006

4 Recital 22 in the preamble to Regulation No 318/2006 states as follows:

'New market tools to be managed by the Commission should be introduced. Firstly, if market prices fall below the reference price for white sugar, it should be possible for operators, under conditions to be determined by the Commission, to benefit from a private storage scheme. Secondly, to maintain the structural balance of the markets in sugar at a price level close to the reference price, it should be possible for the Commission to decide to withdraw sugar from the market for as long as it takes for the market to rebalance.'

5 Article 19 of Regulation No 318/2006 provides:

'1. In order to preserve the structural balance of the market at a price level which is close to the reference price, taking into account the commitments of the Community resulting from agreements concluded in accordance with Article 300 of the Treaty, a percentage, common to all Member States, of quota sugar … may be withdrawn from the market until the beginning of the following marketing year.

…

2. The withdrawal percentage referred to in paragraph 1 shall be determined by 31 October of the marketing year concerned at the latest on the basis of expected market trends during that marketing year.

3. Each undertaking provided with a quota shall store at its own expense during the period of withdrawal the quantities of sugar corresponding to the application of the percentage referred to in paragraph 1 to its production under quota for the marketing year concerned.

The sugar quantities withdrawn during a marketing year shall be treated as the first quantities produced under quota for the following marketing year. However, taking into account the expected sugar market trends, it may be decided, in accordance with the procedure referred to in Article 39(2), to consider, for the current and/or the following marketing year, all or part of the withdrawn sugar … as:

— surplus sugar … available to become industrial sugar,

or

— temporary quota production of which a part may be reserved for export respecting commitments of the Community resulting from agreements concluded under Article 300 of the Treaty.

…'

Regulation No 320/2006

6 Recitals 1, 2, 4 and 5 in the preamble to Regulation No 320/2006 state, inter alia, as follows:

'(1) … To bring the Community system of sugar production and trading in line with international requirements and ensure its competitiveness in the future it is necessary to launch a profound restructuring process leading to a significant reduction of unprofitable production capacity in the Community. To this end, as a precondition for the implementation of a functioning new common market organisation for sugar a separate and autonomous temporary scheme for the restructuring of the sugar industry in the Community should be established …

(2) A temporary restructuring fund should be set up in order to finance the restructuring measures for the Community sugar industry …

…

(4) The restructuring measures provided for by this Regulation should be financed by raising temporary amounts from those sugar, isoglucose and inulin syrup producers which will eventually benefit from the restructuring process. As this amount falls outside the scope of the charges traditionally known in the framework of the common market organisation for sugar, the proceeds resulting from its collection should be considered as "assigned revenue" as provided for by Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities …

(5) An important economic incentive for sugar undertakings with the lowest productivity to give up their quota production in the form of an adequate restructuring aid should be introduced. To this effect, a restructuring aid should be set up that creates an incentive to abandon sugar quota production and renounce the quotas concerned … The aid should be available during four marketing years with the aim to reduce production to the extent necessary to reach a balanced market situation in the Community.'

7 Under Article 3 of Regulation No 320/2006, as amended by Council Regulation (EC) No 2011/2006 of 19 December 2006 (OJ 2006 L 384, p. 1):

'1. Any undertaking producing sugar … to which a quota has been allocated by 1 July 2006, or by 31 January 2007 in the case of Bulgaria and Romania, shall be entitled to a restructuring aid per tonne of quota renounced, provided that during one of the marketing years 2006/07, 2007/08, 2008/09 and 2009/10 it:

(a) renounces the quota assigned by it to one or more of its factories and fully dismantles the production facilities of the factories concerned;

or

(b) renounces the quota assigned by it to one or more of its factories, partially dismantles the production facilities of the factories concerned and does not use the remaining production facilities of the factories concerned for the production of products covered by the common market organisation for sugar;

or

(c) renounces a part of the quota assigned by it to one or more of its factories and does not use the production facilities of the factories concerned for refining raw sugar.

…'

8 Article 11 of Regulation No 320/2006 provides:

'1. A temporary … amount shall be paid per marketing year per tonne of quota by those undertakings to which a quota has been allocated...

Quotas that have been renounced by an undertaking as from a given marketing year in accordance with Article 3(1) shall not be subject to the payment of the temporary … amount for this marketing year and subsequent marketing years.

2. The temporary … amount for sugar … shall be set at:

— EUR 126.40 per tonne of quota for the marketing year 2006/07,

— EUR 173.8 per tonne of quota for the marketing year 2007/08,

— EUR 113.3 per tonne of quota for the marketing year 2008/09.

…

3. Member States shall be liable to the Community for the temporary … amount to be collected on their territory.

…

5. The totality of the temporary … amounts to be paid in accordance with paragraph 3 shall be allocated by the Member State among the undertakings on its territory according to the allocated quota during the marketing year concerned.

…'

Regulation No 493/2006

9 The transitional measures provided for in Regulation No 493/2006, as amended by Commission Regulation (EC) No 1542/2006 of 13 October 2006 (OJ 2006 L 283, p. 24), ('Regulation No 493/2006') include 'preventive withdrawal'.

10 In that regard, recital 6 in the preamble to Regulation No 493/2006 states:

'In order to improve the market balance in the Community without creating new stocks of sugar in the 2006/07 marketing year, provision should be made for a transitional measure to reduce eligible production under quota in respect of that marketing year. A threshold should be fixed above which the production under quota of each undertaking is considered withdrawn within the meaning of Article 19 of Regulation … No 318/2006 or, at the request of the undertaking, as production in excess of the quota within the meaning of Article 12 of that Regulation. In view of the transition between the two regimes, this threshold should be obtained by a combination, in equal parts, of the method laid down in Article 10 of Regulation (EC) No 1260/2001 and that laid down in Article 19 of Regulation … No 318/2006 and take into account the special efforts made by some Member States within the framework of the restructuring fund set up by … Regulation … No 320/2006...'

11 Article 3 of Regulation No 493/2006 sets out the transitional provisions concerning preventive withdrawal as follows:

'1. For each undertaking, the share of the production of sugar … in the 2006/07 marketing year which is produced under the quota allocated in accordance with the quotas laid down in Annex IV and which exceeds the threshold established in accordance with paragraph 2 of this Article shall be considered withdrawn within the meaning of Article 19 of Regulation … No 318/2006 or, at the request of the

undertaking concerned submitted before 31 January 2007, shall be considered fully or partially to be produced in excess of the quota within the meaning of Article 12 of that Regulation.

2. For each undertaking, the threshold mentioned in paragraph 1 shall be calculated by multiplying its quota mentioned in paragraph 1 by the sum of the following coefficients:

(a) the coefficient laid down for the Member State in Annex I;

(b) the coefficient obtained by dividing the sum of the quotas renounced in the 2006/07 marketing year in the Member State concerned under Article 3 of Regulation … No 320/2006 by the quota fixed for that Member State in Annex IV to this Regulation. The Commission shall fix this coefficient not later than 15 October 2006.

However, where the sum of the coefficients exceeds 1.0000, the threshold shall be equal to the quota referred to in paragraph 1.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

12 In 2006, the competent administrative authority allocated to Agrana Zucker a quota of 405 812.4 tonnes for sugar production for the marketing years 2006/07 to 2014/15. That administrative authority set, pursuant to Article 3 of Regulation No 493/2006, a production threshold of 348 565.56 tonnes for the marketing year 2006/07, thereby imposing a preventive withdrawal of 57 246.84 tonnes on that undertaking.

13 By decision of the Agrarmarkt Austria (supervisory body) of 16 January 2007, Agrana Zucker was requested to pay the first instalment of the temporary amount for the marketing year 2006/07 totalling EUR 30 776 812.42.

14 Since it objected that the temporary amount was calculated on the basis of the quota which had been allocated to it, and therefore included, in that basis, the 57 246.84 tonnes of withheld sugar which it could not sell as an amount of sugar produced under quota, Agrana Zucker appealed against that decision of the Agrarmarkt Austria to the Bundesminister für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft. The latter dismissed the appeal by decision of 16 April 2007. That decision is the subject-matter of the proceedings before the referring court.

15 It is apparent from the order for reference that Agrana Zucker is claiming in the main proceedings that the taking into account, in the calculation of the temporary amount, of the quantity of sugar which was subject to withdrawal from the market infringes the principles of proportionality and of non-discrimination as enshrined in Article 34(2) EC.

16 It is in those circumstances that the Verwaltungsgerichtshof (Administrative Court) decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 11 of … Regulation … No 320/2006 … be interpreted as meaning that even a sugar quota which cannot be fully utilised as a consequence of a preventive withdrawal in accordance with Article 3 of … Regulation … No 493/2006 … must be included in the calculation of the temporary … amount?

(2) In the event that the first question is answered in the affirmative:

Is Article 11 of Regulation No 320/2006 compatible with primary law, in particular with the principle of non-discrimination derived from Article 34 EC and the principle of the protection of legitimate expectations?'

The questions referred for a preliminary ruling

The first question

17 By its first question, the referring court asks, in essence, whether Article 11 of Regulation No 320/2006 must be interpreted as meaning that the part of the sugar quota allocated to an undertaking, which has been subject to a preventive withdrawal pursuant to Article 3 of Regulation No 493/2006, is to be included in the basis for the calculation of the temporary amount.

18 It should be recalled that the first subparagraph of Article 11(1) of Regulation No 320/2006 provides that a temporary amount is to be paid per marketing year per tonne of quota by those undertakings to which a quota has been allocated.

19 It follows from that provision that the basis for the calculation of the temporary amount owed by an undertaking consists of the total number of tonnes of sugar quota allocated to that undertaking for the marketing year in question.

20 The only exemption from the requirement to pay the temporary amount laid down in Regulation No 320/2006 is — as provided in the second subparagraph of Article 11(1) of the regulation — for quotas renounced by the undertaking in accordance with Article 3(1) of that regulation. These are quotas which — during the marketing years referred to in that provision — are renounced by an undertaking which totally or partially dismantles its production facilities or does not use them and which may, on that basis, benefit from restructuring aid per tonne of quota renounced.

21 In that regard, it should be observed, in the first place, that the renunciation of a quota in terms of Article 3(1) of Regulation No 320/2006 is, within the framework of the reform of the common organisation of the market in sugar, an instrument which is quite distinct from withdrawal from the market within the meaning of Article 19 of Regulation No 318/2006, and from preventive withdrawal within the meaning of Article 3 of Regulation No 493/2006, the nature and purpose of which are different.

22 As the Advocate General pointed out in points 40 to 43 of her Opinion, an undertaking's renunciation of a quota together with the dismantling or non-use of its production facilities is definitive. As is apparent from, inter alia, recitals 1 and 5 in the preamble to Regulation No 320/2006, the renunciation mechanism is one of the means of restructuring the sugar sector with a view to reducing unprofitable production capacity in the Community and is the subject of an economic incentive in the form of restructuring aid intended for those undertakings with the lowest productivity, so that they give up their quota production.

23 By contrast, a market withdrawal decided on by the Commission is temporary. The quantities of sugar involved are, according to Article 19(1) of Regulation No 318/2006, to be withdrawn from the market until the beginning of the following marketing year and can be stored or disposed of out of quota. As is apparent from that provision, and recital 22 in the preamble to that regulation, that instrument seeks to maintain the structural balance of the market at a price level close to the reference price, taking into account the international obligations of the Community.

24 The same is true for preventive withdrawal under Article 3 of Regulation No 493/2006 which, according to recital 6 in the preamble to that regulation, constitutes a transitional measure seeking to improve the market balance in the Community without creating new stocks of sugar in the marketing year 2006/07.

25 In the second place, as the renouncing of a quota, withdrawal from the market and preventive withdrawal all form part of the same set of measures seeking to reform the common organisation of the markets in the sugar sector, it follows that it was by design that the Community legislature did not lay down, in Article 11 of Regulation No 320/2006, an exemption from the temporary amount for quantities of sugar withdrawn from the market such as that provided for in that article in respect of quotas which have been renounced.

26 In the light of those considerations, the answer to the first question is that Article 11 of Regulation No 320/2006 must be interpreted as meaning that the part of the sugar quota allocated to an undertaking, which has been subject to a preventive withdrawal pursuant to Article 3 of Regulation No 493/2006, is to be included in the basis for the calculation of the temporary amount.

The second question

27 The second question concerns the validity of Article 11 of Regulation No 320/2006. Although the question refers to the principle of the protection of legitimate expectations, it appears that the considerations set out in the order for reference concern only the principles of proportionality and non-discrimination. It is therefore necessary to assess the validity of Article 11 with regard to those two principles.

The validity of Article 11 of Regulation No 320/2006 with regard to the principle of proportionality

28 It is apparent from the order for reference that the applicant in the main proceedings claims, in essence, that fixing the temporary amount owed by an undertaking on the basis of the quota which has been allocated to it, including the part of the quota which was subject to a withdrawal from the market, has the effect of imposing disproportionate burdens on that undertaking, since the net price of the sugar produced under quota is, as a result, much lower than the reference price. Furthermore, as the part of the quota withdrawn from the market during the marketing year 2006/07 is transferred to the following marketing year, it will again be included in the calculation of the temporary amount undertaken for the following year.

29 The method for fixing the temporary amount is thus contrary to the purpose of the reform of the sugar market, namely the consolidation of those businesses capable of facing competition effectively. It is, moreover, contrary to the principle of proportionality and to recital 4 in the preamble to Regulation No 320/2006, according to which the restructuring measures are to be financed by raising temporary amounts from those sugar producers which will eventually benefit from the restructuring process.

30 The Lithuanian Government is also of the opinion that the inclusion — in the basis for the calculation of the temporary amount — of that part of the quota which is subject to a withdrawal from the market has the effect of causing the undertakings in question to bear an unjustified and disproportionate financial burden and, therefore, an unjustifiable burden of charges which prevents them from benefiting from the restructuring process. It considers that the reasoning followed in Joined Cases C-5/06 and C-23/06 to C-36/06 *Zuckerfabrik Jülich and Others* [2008] ECR I-3231 may also be adopted in the present case.

31 In that regard, it should be recalled that the principle of proportionality, which is one of the general principles of Community law, requires that acts adopted by Community institutions do not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by the legislation in question; where there is a choice between several appropriate measures, recourse must be had to the least

onerous, and the disadvantages caused must not be disproportionate to the aims pursued (Case C-310/04 *Spain* v *Council* [2006] ECR I-7285, paragraph 97 and the case-law cited).

32 As regards judicial review of the implementation of that principle, bearing in mind the wide discretion enjoyed by the Community legislature where the common agricultural policy is concerned, the lawfulness of a measure adopted in that sphere can be affected only if the measure is manifestly inappropriate in terms of the objective which the competent institution is seeking to pursue (*Spain* v *Council*, paragraph 98 and the case-law cited).

33 What must be ascertained is therefore not whether the measure adopted by the legislature was the only measure possible or the best measure possible but whether it was manifestly inappropriate (*Spain* v *Council*, paragraph 99 and the case-law cited).

34 In the present case, it is apparent from recital 1 in the preamble to Regulation No 320/2006 that the Council considered it necessary, in order to bring the Community system of sugar production and trading into line with international requirements and ensure its competitiveness in the future, to launch a profound restructuring process leading to a significant reduction of unprofitable production capacity in the Community. To that end, it established, in that regulation, a separate and autonomous temporary scheme for the restructuring of the sugar industry in the Community.

35 Within the framework of that temporary scheme, Regulation No 320/2006 established, as set out in recital 5 in the preamble to that regulation, an economic incentive, in the form of restructuring aid, intended for undertakings with the lowest productivity, to give up their quota production. To that effect, that regulation provides, in Article 3, for a restructuring aid available for four marketing years, namely 2006/07 to 2009/10, with the aim of reducing production to the extent necessary to reach a balanced market situation in the Community.

36 In order to finance the restructuring measures laid down in Regulation No 320/2006, the Council set up a temporary restructuring fund and, in particular, decided that, as is stated in recital 4 in the preamble to that regulation, the financing for those measures would be ensured by raising temporary amounts from those sugar, isoglucose and inulin syrup producers which will eventually benefit from the restructuring process. The proceeds resulting from its collection are considered to be 'assigned revenue' within the meaning of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).

37 Thus, the temporary amount provided for in Article 11 of Regulation No 320/2006 has as its aim the self-financing, by producers, of the temporary restructuring scheme for the sugar industry in the Community, which implies a budgetary balance between the expenses incurred and the revenue raised during the four marketing years in question.

38 In reply to a written question from the Court, the Commission produced a table of predicted expenses and revenues for the temporary restructuring fund for the period running from 2007 to 2013, and the balance sheet for the marketing year 2006/07. These show, first, that the predicted revenues and expenses are to be balanced over a period of three years, with the excess revenue received in the year 2006/07 having to finance the predicted expenses for the following years and, second, that the expenses recorded at the end of the first year slightly exceeded the predicted expenses.

39 That information confirms that fixing the temporary amount owed by a sugar producer on the basis of the quota which has been attributed to it, and not on the basis of the quota which it could actually have marketed following the withdrawal of a part of that quota from the market is not manifestly inappropriate to attain the objective of Regulation No 320/2006, as described in paragraph 34 of this judgment.

40 In that regard, the measure in question can be distinguished from that at issue in *Zuckerfabrik Jülich and Others*, in which the Court held that the method of calculating contributions evaluated in paragraphs 57 to 60 of that judgment went beyond what was necessary to attain the objective of Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178, p. 1), which sought to make producers meet in full, in a fair yet efficient way, the cost of disposing of surpluses of Community production in accordance with the principle of self-financing.

41 Conversely, to subtract that part of the quota which was subject to a withdrawal from the market from the basis for calculating the temporary amount for a given marketing year would disrupt the planned budgetary balance, while damaging the stability and predictability of revenue. Therefore, such a rule would compromise the self-financing of the restructuring measures intended by the Community legislature, and, consequently, the functioning and aim of the temporary restructuring scheme for the sugar industry established by Regulation No 320/2006.

42 Furthermore, as regards the burdens which the system imposes on the undertakings which are subject to it, it must be emphasised that the scheme is temporary, that arrangements for preventive withdrawal are unique in their application, and that those undertakings can expect to benefit, first, from the renouncing of quotas which the Community legislature sought to encourage and, second, from the support for the price of quota sugar permitted by a withdrawal from the market, in particular, by preventive withdrawal. That benefit is capable of offsetting the disadvantages which that scheme gives rise to, including the fact that the quantity of sugar withdrawn from the market in the course of a marketing year is still subject to the temporary amount applicable to a quota allocated for the following marketing year if that quantity is carried forward and not sold as industrial sugar or out of quota on the world market.

43 It follows from all of the foregoing that the fixing of the temporary amount on the basis of the quota allocated, including, where necessary, the part of the quota which was subject to a withdrawal from the market, is not manifestly inappropriate to attain the objective pursued and, therefore, cannot be held to be contrary to the principle of proportionality.

The validity of Article 11 of Regulation No 320/2006 with regard to the principle of non-discrimination

44 It is apparent from the order for reference that the applicant in the main proceedings claims that the inclusion, in the basis for the calculation of the temporary amount, of the quantity of sugar which was subject to preventive withdrawal infringes the principle of non-discrimination as enshrined in Article 34(2) EC. The applicant argues, in essence, that taking the amount of sugar thus withdrawn into account affects, in a discriminatory way — on account of the method for calculating the production threshold laid down in Article 3 of Regulation No 493/2006 — the undertakings in Member States in which a small number of quotas have been renounced for the marketing year 2006/07 compared with those undertakings in Member States which have, on the contrary, definitively abandoned a large number of quotas for that year. The first group of undertakings are disadvantaged compared with the second because the former will obtain — for the quantity of quota sugar which they still have after the preventive withdrawal — a much lower net price than that obtained by the latter.

45 The Lithuanian Government notes also that such a method for fixing the temporary amount is capable of creating an unjustified difference in treatment between the undertakings which did not withdraw from the market, since the burden of the temporary amount is divided differently between sugar producers which are in a similar position, but established in different Member States, on the basis of factors which do not depend on them.

46 In that regard, it should be noted that the Court has consistently held that the second subparagraph of Article 34(2) EC, which prohibits all discrimination in the context of the common agricultural policy, is merely a specific expression of the general principle of equal treatment, which requires that comparable situations not be treated differently and different situations not be treated alike unless such treatment is objectively justified (Case C-313/04 *Franz Egenberger* [2006] ECR I-6331, paragraph 33 and the case-law cited).

47 In the present circumstances, as is apparent from recital 6 in the preamble to Regulation No 493/2006, preventive withdrawal constitutes — in the context of transitional measures established by that regulation to ensure the transition in the sugar sector from the old regime under Regulation No 318/2006 to the regime established by Regulation No 493/2006 — a transitional measure intended to reduce eligible production under quota for the marketing year 2006/07, in order to improve the market balance in the Community without creating new sugar stocks during that year. In order to give effect to that transition, Article 3 of that regulation sets a threshold beyond which the production under quota of each undertaking is to be considered to be withdrawn for the purposes of Article 19 of Regulation No 318/2006.

48 That threshold is, according to Article 3(2) of Regulation No 493/2006, to be calculated by multiplying the quota allocated to the undertaking by the sum of two coefficients, the second of which depends on the total quotas which have been renounced for the marketing year 2006/07 in the Member State concerned under Article 3 of Regulation No 320/2006.

49 It follows that the size of the preventive withdrawal imposed on undertakings for that marketing year will vary, inter alia, depending on the Member State in which they are established. Therefore, the part of the temporary amount which they are to pay, which corresponds to the part of their quota which was subject to such a preventive withdrawal, will also be larger or smaller depending on the Member State in which they are established.

50 To that extent, the fixing of the temporary amount provided for in Article 11 of Regulation No 320/2006 will result in different treatment for undertakings which may be in a similar situation but are established in different Member States.

51 Nevertheless, such treatment of undertakings appears to be objectively justified. As the division of the quotas between undertakings and the management of those quotas are ensured by the Member States, the renouncing of quotas is also organised by each Member State and will vary from one Member State to another. In that context, as is

apparent from recital 6 in the preamble to Regulation No 493/2006, the object of applying a coefficient which varies depending on the Member State concerned, as provided for in Article 3(2) of that regulation, is to take into account the special efforts which Member States have made to renounce quotas definitively and, in so doing, to contribute to reducing production at an equal rate in all the Member States in order to achieve balanced production throughout the Community.

52 It follows that the inclusion, in the basis for calculating the temporary amount, of the quantity of sugar which was subject to a preventive withdrawal cannot be considered to be contrary to the principle of non-discrimination.

53 In the light of all of the foregoing, the reply to the second question is that an examination of that question has not revealed anything which might affect the validity of Article 11 of Regulation No 320/2006.

Costs

54 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Article 11 of Council Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending Regulation (EC) No 1290/2005 on the**

financing of the common agricultural policy must be interpreted as meaning that the part of the sugar quota allocated to an undertaking, which has been subject to a preventive withdrawal pursuant to Article 3 of Commission Regulation (EC) No 493/2006 of 27 March 2006 laying down transitional measures within the framework of the reform of the common organisation of the markets in the sugar sector, and amending Regulations (EC) No 1265/2001 and (EC) No 314/2002, as amended by Commission Regulation (EC) No 1542/2006 of 13 October 2006, is to be included in the basis for the calculation of the temporary amount.

2. Examination of the second question has not revealed anything which might affect the validity of Article 11 of Regulation No 320/2006.

[Signatures]