OPINION OF ADVOCATE GENERAL KOKOTT

delivered on 26 October 2006 [1]

I — Introduction

1. The focus of this reference for a preliminary ruling once again concerns the legal protection available to individuals vis-à-vis Community regulations.

2. Whereas the Court most recently, in particular in *Unión de Pequeños Agricultores* v *Council* [2] and *Commission* v *Jégo-Quéré*, [3] clarified the conditions under which individuals in accordance with Article 230(4) EC may challenge a Community regulation directly, by means of an action for annulment before the Community Courts, [4] in the present case the issue of legal protection arises from a different perspective. What are the circumstances in which an individual *before a national court* may rely upon the unlawfulness of a Community regulation which he did not previously challenge directly before the Community Courts?

3. The background to these proceedings is to be found in the quota system for the production of isoglucose in force in the Community since the end of the 1970s. In the main proceedings before the French courts, the French undertaking Roquette Frères [5] has challenged its isoglucose production quota allocated by the national authorities. In support of its claim, Roquette Frères argues that at a Community level the

1 — Original language: German.

2 — Case C-50/00 P [2002] ECR I-6677 with an Opinion delivered by Advocate General Jacobs.

3 — Case C-263/02 P [2004] ECR I-3425.

4 — See also in this connection the broadening of an individual's right to bring proceedings provided for in Article III-365(4) of the Treaty establishing a Constitution for Europe signed in Rome on 29 October 2004 (OJ 2004 C 310, p. 1). According to that provision, natural and legal persons are to be entitled also with regard to such regulatory acts as concern them directly and do not entail implementing measures to pursue an action for annulment.

5 — The name Roquette Frères is not unknown to the Court's case-law: see, for example, Case 138/79 *Roquette Frères* v *Council* [1980] ECR 3333, on the European Parliament's right to be consulted; Case 145/79 *Roquette Frères* v *French State Customs Administration* [1980] ECR 2917, on the temporal validity of judgments; and Case C-94/00 *Roquette Frères* [2002] ECR I-9011, in which the Court clarified the legal position regarding Commission investigations in competition cases.

isoglucose basic quantities available for metropolitan France [6] have been incorrectly calculated, because no account has been taken of the isoglucose produced in that territory as an intermediate product in the manufacture of other products intended for sale.

II — Legal framework

A — *Background*

4. Isoglucose is a liquid sweetener which is generally obtained from starch which has been modified into glucose; the starch is obtained from cereals, usually maize. [7] Isoglucose is considered to be a direct substitute for liquid sugar obtained from sugar beet or sugar cane with which it is in direct competition. [8]

5. At the end of the 1970s, as had also already been done in respect of sugar production, [9] a quota system was introduced into the Community as regards isoglucose production. [10] That system must be viewed in connection with certain disposal guarantees for sugar granted within the framework of the common agricultural policy. Since isoglucose production contributed to an increase in Community sugar surpluses, it was intended to limit such production through the use of quotas in order, thus, to counteract any negative effects on the Community sugar policy. [11]

6. Initially, individual undertakings were allocated their production quotas directly by means of Community regulations. Thus,

6 — For the French overseas *départements* separate isoglucose basic quantities apply. These are not at issue in the present proceedings.

7 — On this point, see Case C-210/90 *Roquette Frères* [1992] ECR I-731, paragraph 3.
In the first recital in the preamble to Council Regulation (EEC) No 1111/77 of 17 May 1977 laying down common provisions for isoglucose (OJ 1977 L 134, p. 4), isoglucose is described as a glucose syrup with a high fructose content. The common organisation of the markets in the sugar sector defines isoglucose as the product obtained from glucose or its polymers with a content by weight in the dry state of at least 10% fructose, as already provided for in Article 1(2)(c) of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector (OJ 1981 L 177, p. 4) and, most recently, in point 3 of Article 2 of Council 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).

8 — See the second and seventh recitals to Regulation No 1111/77 and the second recital to Regulation No 1785/81.

9 — The objective of affording analogous treatment to sugar and isoglucose is a central theme running through the preamble to Council Regulation (EEC) No 1293/79 of 25 June 1979 amending Regulation (EEC) No 1111/77 laying down common provisions for isoglucose (OJ 1979 L 162, p. 10, as corrected by OJ 1979 L 176, p. 37), by which a quota system for isoglucose was first introduced; to the same effect, see the second recital to Regulation No 1785/81.

10 — That quota system is based on the allocation of basic quotas (also known as A quotas) and additional quotas (also known as B quotas). Sugar and isoglucose production in excess of those quotas (also known as 'C sugar' and 'C isoglucose' or 'surplus sugar' and 'surplus isoglucose'), was, as a matter of principle, destined for export to third countries and, as a rule, it could not be marketed within the Community.

11 — See, to that effect, Case 138/79 *Roquette Frères* v *Council* (cited in footnote 5), paragraphs 26 and 27.

in accordance with Article 9(1) to (3) of Regulation No 1111/77, as inserted by Regulation No 1293/79, [12] each producer of isoglucose within the Community was allocated a basic quota for the period 1 July 1979 to 30 June 1980, which was to correspond, in principle, to twice its production in the period 1 November 1978 to 30 April 1979, but which could be corrected if necessary, such that its maximum quota neither exceeded 85% nor fell below 65% of its technical production capacity per annum. [13]

7. According to that version of Article 9(4) of Regulation No 1111/77 read together with Annex II thereto, the basic quota for Roquette Frères amounted to 15 887 tonnes. [14] Furthermore, pursuant to Article 9(3) of the same provision Roquette Frères was entitled to a maximum quota, which according to the undertaking's own figures totalled 20 022 tonnes, which corresponds to an amount of 4 135 tonnes in addition to the basic quota.

8. On an application by Roquette Frères, the Court declared Regulation No 1293/79 to be invalid as a result of a procedural failure in the consultation of the European Parliament. [15] Thereupon the Council adopted new measures — identical in terms of content — amending Regulation No 1111/77, initially for the period 1 July 1979 to 30 June 1980 by means of Regulation No 387/81 [16] and then by means of Regulation No 388/81 [17] for the period 1 July 1980 to 30 June 1981. [18] In those regulations, Roquette Frères was on each occasion once again allocated the basic quota already mentioned of 15 887 tonnes and, in addition, according to those provisions the undertaking was again entitled to an additional quota of 4 135 tonnes.

9. For the period from 1 July 1981 onwards, the provisions on sugar and isoglucose production were unified in a new common organisation of the markets, in which the production quotas also for isoglucose were no longer granted directly to individual undertakings, rather — as was already the

12 — See, in particular, Article 3 of Regulation No 1293/79.

13 — That rule was retained also for the period 1 July 1980 to 30 June 1981; see Article 2 of 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 (OJ 1980 L 160, p. 12).

14 — These and the following references expressed in tonnes relate to dry matter (dry material).

15 — Case 138/79 *Roquette Frères* v *Council* (cited in footnote 5); see, in particular, paragraph 37. See, in addition, Case 139/79 *Maizena* v *Council* [1980] ECR 3393 — judgment delivered on the same day — in particular paragraph 38.

16 — Council Regulation (EEC) No 387/81 of 10 February 1981 amending Regulation (EEC) No 1111/77 laying down common provisions for isoglucose (OJ 1981 L 44, p. 1).

17 — Council Regulation (EEC) No 388/81 of 10 February 1981 amending Regulation (EEC) No 1592/80 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 (OJ 1981 L 44, p. 4).

18 — An action for annulment brought by Roquette Frères in respect of both of those regulations amending Regulation No 1111/77 was rejected as unfounded by the Court in Case 110/81 *Roquette Frères* v *Council* [1982] ECR 3159, paragraph 1 of the operative part. See also judgments delivered on the same day in Case 108/81 *Amylum* v *Council* [1982] ECR 3107 and in Case 114/81 *Tunnel Refineries* v *Council* [1982] ECR 3189 in annulment proceedings concerning Regulation No 387/81.

case for sugar quotas — an overall allocation was simply made to the Member States in the form of basic quantities. [19] Since that date, it has been incumbent on the authorities of the Member States specifically to allocate the quotas to the respective undertakings.

10. From 1 July 1981 until 30 June 2006, that common organisation of the markets in the sugar sector resulted initially from Regulation No 1785/81, then from Regulation No 2038/1999 [20] and finally from Regulation No 1260/2001. [21] Since 1 July 2006, Regulation No 318/2006 — not relevant for the present proceedings, however — has been in force. [22]

B — *The provisions contested in the present case*

11. Pursuant to Article 24(1) of Regulation No 1785/81, Member States were required to allocate an A quota and a B quota to each undertaking established in their national territory producing sugar or isoglucose which during the period from 1 July 1980 to 30 June 1981 had received a basic quota as defined by Regulation No 1111/77. [23]

12. In so doing, the A quota of an isoglucose-producing undertaking had to equal the basic quota which had been allocated to that undertaking for the period 1 July 1980 to 30 June 1981, and the B quota had to amount to 23.55% of that A quota (Article 24(3) and (5) of Regulation No 1785/81). The basic quantities which each Member State was thus permitted in total to distribute as A and B quotas was determined in a table in Article 24(2) of Regulation No 1785/81, which as regards the isoglucose sector for 'France (metropolitan)' resulted in a basic quantity A of 15 887.0 tonnes and a basic quantity B of 4 135.0 tonnes. That quota provision applied from 1 July 1981 and was prolonged on several occasions. [24]

13. In Regulation No 2038/1999, the Council initially also retained those basic quan-

19 — An exception to this rule can be found in certain provisions to be seen respectively in the context of the accession of new Member States, in which the Community legislature continued directly to set the isoglucose quotas of individual undertakings: thus as regards Greece, the second subparagraph of Article 24(3) of Regulation No 1785/81 and as regards Finland, the fourth subparagraph of Article 27(4) of Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector (OJ 1999 L 252, p. 1).

20 — Regulation No 2038/1999 repealed Regulation No 1785/81.

21 — 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). That regulation repealed Regulation No 2038/1999.

22 — Regulation No 318/2006 repealed Regulation No 1260/2001.

23 — Corresponding provisions may be found also in the later regulations on the common organisation of the markets in the sugar sector: see Article 27(1) of Regulation No 2038/1999 and Article 11(1) of Regulation No 1260/2001.

24 — See Council Regulations (EEC) No 934/86 of 24 March 1986 (OJ 1986 L 87, p. 1), (EEC) No 305/91 of 4 February 1991 (OJ 1991 L 37, p. 1), (EEC) No 1548/93 of 14 June 1993 (OJ 1993 L 154, p. 10), (EC) No 133/94 of 24 January 1994 (OJ 1994 L 22, p. 7) and (EC) No 1101/95 of 24 April 1995 (OJ 1995 L 110, p. 1), adopted on each occasion to amend Regulation (EEC) No 1785/81 on the common organisation of the markets in the sugar sector.

tities for the marketing years 1995/96 to 2000/01. Thus, from the table in Article 27(3) of that regulation as regards the isoglucose sector for 'France (metropolitan)' a basic quantity A of 15 887.0 tonnes and a basic quantity B of 4 135.0 tonnes once again resulted.

14. At the same time, in order to comply with international commitments entered into by the Community, [25] Article 26(5) of Regulation No 2038/1999 opened up the possibility, however, of reducing henceforth the aforementioned basic quantities. The Commission took advantage of that possibility for the marketing year 2000/01 and as regards the isoglucose sector for 'France (metropolitan)' reduced the basic quantity A by 606.6 tonnes to 15 280.4 tonnes and the basic quantity B by 157.9 tonnes to 3 977.1 tonnes (Article 1(2) of Regulation No 2073/2000 [26] in conjunction with Annexes I and II thereto).

15. Finally, for the marketing years 2001/02 to 2005/06, the Council in Article 11(2) of Regulation No 1260/2001 determined as regards the isoglucose sector for 'France (metropolitan)' a new basic quantity A of 15 747.1 tonnes and a new basic quantity B of 4 098.6 tonnes. In order to comply with the Community's international commitments, Article 10(3) and (4) of that regulation, however, once again opened up the possibility of reducing those quantities.

16. Thereupon, for the marketing year 2002/03, the Commission as regards the isoglucose sector for 'France (metropolitan)' reduced the basic quantity A by 1 048.9 tonnes to 14 698.2 tonnes and the basic quantity B by 273.0 tonnes to 3 825.6 tonnes (Article 1(2) of Regulation No 1745/2002 [27] in conjunction with Annexes I and II thereto). For the marketing year 2003/04, the Commission undertook a subsequent reduction, cutting as regards the isoglucose sector for 'France (metropolitan)' the basic quantity A by 262.1 tonnes to 15 485.0 tonnes and the basic quantity B by 68.2 tonnes to 4 030.4 tonnes (Article 1(2) of Regulation No 1739/2003 [28] in conjunction with Annexes I and II thereto).

25 — This refers to the agreement on agriculture (OJ 1994 L 336, p. 22) concluded within the framework of the 'Uruguay Round' of multilateral trade negotiations (1986-94) which led to the establishment of the World Trade Organisation.

26 — Commission Regulation (EC) No 2073/2000 of 29 September 2000 reducing, for the 2000/01 marketing year, the guaranteed quantity under the production quotas scheme for the sugar sector and the presumed maximum supply needs of sugar refineries under the preferential import arrangements (OJ 2000 L 246, p. 38).

27 — Commission Regulation (EC) No 1745/2002 of 30 September 2002 reducing, for the 2002/03 marketing year, the guaranteed quantity under the production quotas scheme for the sugar sector and the presumed maximum supply needs of sugar refineries under the preferential import arrangements (OJ 2002 L 263, p. 31).

28 — Commission Regulation (EC) No 1739/2003 of 30 September 2003 reducing, for the 2003/04 marketing year, the guaranteed quantity under the production quotas for the sugar sector and the presumed maximum supply needs of sugar refineries under preferential imports (OJ 2003 L 249, p. 38).

17. In the common organisation of the markets in force at the relevant times, the possibility was always open to Member States to transfer A and B quotas from one undertaking to other undertakings whether the undertaking thereby benefiting already had a quota entitlement or not; for those purposes, it was permitted to reduce the existing quotas of each isoglucose producer by a maximum of 10% (see Article 25 of Regulation No 1785/81, Article 30 of Regulation No 2038/1999 and Article 12 of Regulation No 1260/2001).

III — Facts and main proceedings

18. Before the French administrative courts a dispute between Roquette Frères and the French agriculture minister [29] is pending, whose subject-matter concerns the calculation of production quotas for isoglucose allocated to that undertaking.

19. Specifically, Roquette Frères contests, first, a decision of 28 June 2000, in which the head of the Economic and International Policy Department of the Ministry of Agriculture confirmed to that undertaking its isoglucose production quota amounts for the marketing years 1981/82 onwards and, second, the four Ministry of Agriculture orders issued on 26 October 2000, 13 July 2001, 23 October 2002 and 17 October 2003, in which that undertaking's annual isoglucose production quota amounts were adjusted respectively in line with Community law requirements. [30]

20. Before the French administrative courts, Roquette Frères contests the validity of those legal acts issued by the French Ministry of Agriculture and seeks their revocation, arguing that they are based on provisions of certain Community regulations which are invalid. In detail, Roquette Frères contends that at a Community level the basic quantities of isoglucose for metropolitan France have been incorrectly calculated, because those calculations have failed to include the isoglucose which was produced in that Member State during the period 1 November 1978 and 30 April 1979 as an intermediate product used in the manufacture of other products intended for sale.

21. Roquette Frères was unsuccessful at first instance in its claim before the Tribunal

29 — Ministre de l'Agriculture, de l'Alimentation, de la Pêche et de la Ruralité.

30 — See points 13 and 16 of this Opinion.

administratif de Lille, [31] which by judgment of 11 March 2004 dismissed the action. By application of 28 May 2004, the undertaking lodged its appeal against that judgment with the Cour administrative d'appel de Douai. [32]

IV — Reference for a preliminary ruling and procedure before the Court

22. By judgment of 1 December 2005, the Cour administrative d'appel de Douai suspended the proceedings and referred to the Court for a preliminary ruling the following two questions:

'(1) Did Roquette Frères undoubtedly have the right to challenge directly before the Court the validity of Article 24(2) of Regulation No 1785/81, Article 27(3) of Regulation No 2038/1999, Article 1 of Regulation No 2073/2000, Article 11(2) of Regulation No 1260/2001, Article 1 of Regulation No 1745/2002 and Article 1 of Regulation No 1739/2003?

(2) If Roquette Frères was entitled to challenge the lawfulness of those regulations, are Article 24(2) of Regulation No 1785/81, Article 27(3) of Regulation No 2038/1999, Article 1 of Regulation No 2073/2000, Article 11(2) of Regulation No 1260/2001, Article 1 of Regulation No 1745/2002 and Article 1 of Regulation No 1739/2003 valid inasmuch as they set the maximum basic quantities of isoglucose production for metropolitan France without taking into account the isoglucose produced in that Member State between 1 November 1978 and 30 April 1979 as an intermediate product used in the manufacture of other products intended for sale?'

23. Roquette Frères, the French Government, the Commission of the European Communities and the Council of the European Union entered written and oral submissions before the Court.

V — Appraisal

24. The reference for a preliminary ruling seeks initially to determine whether at the present time Roquette Frères is at all still entitled before national courts to contest the lawfulness of certain provisions in Community regulations concerning isoglucose pro-

31 — Administrative Court, Lille.

32 — Administrative Court of Appeal, Douai; hereinafter also 'the referring court'.

duction quotas which that undertaking did not previously challenge directly before the Community Courts. Should that question be answered in the affirmative, the referring court requests the Court to determine the validity of those very provisions. In detail, the following six provisions are at issue (hereinafter also 'the contested provisions'):

— Article 24(2) of Regulation No 1785/81,

— Article 27(3) of Regulation No 2038/1999,

— Article 1 of Regulation No 2073/2000,

— Article 11(2) of Regulation No 1260/2001,

— Article 1 of Regulation No 1739/2003.

Since, as regards the questions referred, all of the provisions mentioned do not significantly differ, in the following appraisal I will consider them together.

A — *The first question: Roquette Frères' right to challenge the contested provisions directly*

25. The first question seeks to establish whether Roquette Frères currently still has the right before national courts to contest the validity of the contested provisions. For these purposes, the referring court wishes to know whether that undertaking would undoubtedly have had the right by means of an action for annulment to challenge the contested provisions directly before the Court.

26. This first part of the reference for a preliminary ruling concerns in essence, therefore, the delineation of the boundary

between both conceivable routes by which an individual may subject the acts of Community institutions to judicial review on validity. The Court has already been confronted with this problem in a variety of cases. [33]

1. Delineating the boundary between direct actions and indirect challenges

27. The judicial protection system provided for by the EC Treaty offers individuals in principle two routes by which they may obtain judicial review on the validity of Community legal acts.

28. The action for annulment permits individuals in accordance with the conditions set out in Article 230(4) EC to challenge *directly* before the Community Courts a Community legal act and to have its validity reviewed. [34]

29. In an action before a national court, individuals may by means of an indirect challenge contest the lawfulness of a Community legal act, whereupon that court may by means of a reference for a preliminary ruling in accordance with Article 234(1)(b) EC request the Court of Justice to review the validity of that Community legal act. [35] In such a case, the Court's involvement with the review on validity of the Community legal act arises *indirectly*, as it were, as also occurred in relation to the main proceedings.

30. Where no other possibility exists for an applicant to obtain a review of the lawfulness of a Community legal act concerning him, the fundamental right to effective judicial protection [36] requires the *indirect* route — outlined immediately above — not to be barred to him and his indirect challenge to be admissible in an action before national courts.

33 — See, in particular, Case 216/82 *Universität Hamburg* [1983] ECR 2771, paragraph 5 et seq.; Case C-188/92 *TWD* [1994] ECR I-833, paragraph 10 et seq.; Case C-241/95 *Accrington Beef* [1996] ECR I-6699, paragraph 14 et seq.; Case C-178/95 *Wiljo* [1997] ECR I-585, paragraph 15 et seq.; Case C-408/95 *Eurotunnel and Others* [1997] ECR I-6315, paragraph 26 et seq.; Case C-239/99 *Nachi Europe* [2001] ECR I-1197, paragraph 28 et seq.; Case C-390/98 *Banks* [2001] ECR I-6117, paragraph 109 et seq.; and Joined Cases C-346/03 and C-529/03 *Atzeni and Others* [2006] ECR I-1875, paragraph 30 et seq.; and, in addition, *Unión de Pequeños Agricultores* v *Council* (cited in footnote 2), paragraph 40, and *Commission* v *Jégo-Quéré* (cited in footnote 3), paragraph 30.

34 — The particular variant of the action provided for by Article 241 EC is not of relevance in the present case and therefore will not be discussed further below (on Article 241 EC, see, for example, *Nachi Europe*, cited in footnote 33, paragraphs 33 and 34).

35 — *Universität Hamburg* (cited in footnote 33), paragraphs 10 and 12; *Nachi Europe* (cited in footnote 33), paragraph 35; *Unión de Pequeños Agricultores* v *Council* (cited in footnote 2), paragraph 40; and *Commission* v *Jégo-Quéré* (cited in footnote 3), paragraph 30.

36 — On that fundamental right, see Case 222/84 *Johnston* [1986] ECR 1651, paragraph 18; *Unión de Pequeños Agricultores* v *Council* (cited in footnote 2), paragraph 39; and *Commission* v *Jégo-Quéré* (cited in footnote 3), paragraph 29; and, in addition, Article 47 of the Charter of Fundamental Rights of the European Union (OJ 2000 C 364, p. 1).

31. Where, on the contrary, the applicant concerned can already obtain legal protection by means of an action for annulment in accordance with Article 230 EC, he must pursue that *direct* route if he wishes to obtain a judicial examination of the legal act in question. [37] Otherwise, there is a risk that the time-limit set out in Article 230(5) EC and the definitive nature of the legal act concerned arising on the expiry thereof might be circumvented. [38]

32. The period in which an application is to be lodged and the associated effect concerning the definitive nature of legal acts function to safeguard legal certainty. It is intended to prevent legal effects arising from conduct by Community organs from being 'called into question indefinitely'. [39] A party entitled in accordance with Article 230 EC to bring an action seeking the annulment of a Community legal act which permits the time-limit for bringing that action to elapse must accept, thus, the definitive nature of that legal act and may not subsequently challenge its lawfulness — even indirectly — before national courts; [40] the definitive nature of the Community legal act binds the national court. [41]

33. Exclusion of the indirect challenge in an action before national courts can only be justified, however, where *undoubtedly* it would have been open to the individual to bring annulment proceedings before the Community Courts. [42] The fundamental right to effective judicial protection requires above all that objective uncertainties concerning the entitlement of natural and legal persons to bring an action in accordance with Article 230(4) EC do not operate generally to the detriment of those concerned. Otherwise, in order to avoid jeopardising their possibility even to obtain a judicial review of the relevant Community legal act they would be under considerable pressure — even where admissibility is doubtful — always to pursue an action for annulment as a purely precautionary measure. From the point of view of procedural economy, this would be hardly desirable.

37 — See, to that effect, *TWD*, in particular paragraph 17, and *Nachi Europe*, paragraphs 37 to 39 (cited respectively in footnote 33).

38 — *TWD*, paragraphs 17 and 18; *Nachi Europe*, paragraphs 29 and 30; *Banks*, paragraph 111; and *Atzeni and Others*, paragraph 31 (cited respectively in footnote 33).

39 — *TWD*, paragraph 16; *Wiljo*, paragraph 19; and *Nachi Europe*, paragraph 29 (cited respectively in footnote 33).

40 — *TWD* (cited in footnote 33), paragraphs 13 and 17; *Nachi Europe* (cited in footnote 33), paragraphs 30 and 37; and Case C-11/00 *Commission* v *ECB* [2003] ECR I-7147, paragraph 75. That case-law concerns only such cases, however, in which the subject-matter of legal proceedings before national courts and a possible reference for a preliminary ruling is at all suitable to call into question the validity of a Community legal act; see *Banks*, paragraph 112, and *Wiljo*, paragraphs 27 and 29 (cited respectively in footnote 33).

41 — *TWD*, paragraph 25; *Wiljo*, paragraph 24; and *Nachi Europe*, paragraph 40 (cited respectively in footnote 33). According to *Atzeni and Others* (cited in footnote 33), paragraphs 30 and 34, a reference for a preliminary ruling concerning the validity of the Community legal act at issue would be *inadmissible*.

42 — The requirement that an individual's entitlement to pursue an action in accordance with Article 230(4) EC must 'without any doubt' or 'undoubtedly' exist follows from the Court's consistent case-law in *TWD*, paragraph 24; *Wiljo*, paragraphs 21 and 23; *Nachi Europe*, paragraphs 37 and 38; and *Banks*, paragraph 111 (cited respectively in footnote 33); see also *Commission* v *ECB* (cited in footnote 40), paragraph 75. Similarly, according to *Accrington Beef*, paragraphs 15 and 16, *Eurotunnel and Others*, paragraphs 28 and 29, and *Atzeni and Others*, paragraph 34 (cited respectively in footnote 33), the decisive factor was whether it was 'obvious', 'self-evident' or 'unquestionabl[e]' that an individual's action for annulment would have been admissible.

34. As a result, the indirect challenge raised by Roquette Frères before the French administrative courts may be excluded, only where *undoubtedly* it would have been open to the undertaking to seek annulment of the contested provisions in accordance with Article 230 EC.

2. The entitlement of Roquette Frères to challenge the contested provisions

35. Since the contested provisions are contained within regulations, they have general application and are directly applicable in all Member States (Article 249(2) EC). As a matter of principle, such provisions may be challenged by means of an action for annulment only by Community organs, the European Central Bank and Member States (Article 230(2) and (3) EC). [43] In contrast, a legal person such as Roquette Frères is entitled to bring an action only in so far as it is *directly and individually concerned* by the contested provisions (Article 230(4) EC).

36. The parties before the Court disagree as to whether Roquette Frères could have met those requirements. Whilst the undertaking itself and also the Council dispute the entitlement to bring proceedings because in their view there was an absence of both direct and individual concern, the Commission and the French Government take the diametrically opposed position.

(a) Direct concern

37. A person is *directly concerned* whenever the legal act in question directly affects that individual's legal situation because either it requires no (national or Community) implementing measure [44] or its implementation results automatically such that the body entrusted with its application is denied any discretion. [45]

38. Unlike the situation provided for by the previous provisions, [46] in the contested provisions isoglucose production quotas were no longer allocated by means of

43 — *Unión de Pequeños Agricultores* v *Council* (cited in footnote 2), paragraph 35.

44 — On that point see, for example, *Commission* v *Jégo-Quéré* (cited in footnote 3), paragraph 35, and Case T-177/01 *Jégo-Quéré* v *Commission* [2002] ECR II-2365, paragraph 26, final sentence.

45 — See, to that effect, Case C-386/96 P *Dreyfus* v *Commission* [1998] ECR I-2309, paragraph 43; Case C-486/01 P *Front national* v *Parliament* [2004] ECR I-6289, paragraph 34; and Case C-417/04 P *Regione Siciliana* v *Commission* [2006] ECR I-3881, paragraph 28.

46 — See Regulation No 1111/77, to which I referred in points 6 to 8 of this Opinion, in particular Article 9 and Annex II thereto in the respective versions provided for by Regulations No 1293/79, No 387/81 and No 388/81.

regulation directly to the undertakings concerned but were attributed only in the form of overall basic quantities to the Member States whose duty it then was to make specific allocation to the individual undertakings. As a result, both the allocation of quotas on the basis of Regulations No 1785/81 and No 2038/1999 and also its subsequent adjustment in accordance with Regulations No 2073/2000, No 1260/2001, No 1745/2002 and No 1793/2003 respectively required national implementing measures.

39. Moreover, as Roquette Frères and the Council correctly observe, in the common organisation of the markets in force at the relevant times the Member States were granted in addition the possibility to reallocate quota — subject to a maximum limit of 10% of the quota allocated per individual isoglucose producer — to other undertakings. [47] During the whole of the period at issue in this case, the quota system introduced by the Community thus permitted national authorities a not inconsiderable discretion in the allocation of isoglucose quotas to producers established in their respective national territory. [48]

40. Admittedly, as for the remainder, the activities of the national authorities were in substantive terms largely predetermined. Member States were not permitted, therefore, to exceed the total isoglucose basic quantities attributed to them and moreover, as regards each isoglucose producer which previously in a specific period had already received isoglucose quota they were required to allocate once again a detailed quantity of A quota and B quota. [49] In addition, any adjustments to their basic quantities resulting from Regulations No 2073/2000, No 1260/2001, No 1745/2002 and No 1793/2003 they had to pass on to their respective isoglucose producers.

41. Contrary to the view taken by the Commission, such mere limits on the discretion of national authorities are insufficient to justify the conclusion, however, that the individual isoglucose producers are already directly concerned. What is decisive in this matter is not whether the bodies charged with the implementation of the contested provisions are granted a particularly wide discretion by Community law; they are bound by Community law and in particular by Community fundamental rights and thus they can in any event never enjoy unlimited discretion. Rather, an individual fails already to be directly concerned if national bodies retain any discretion —

47 — Article 25 of Regulation No 1785/81, Article 30 of Regulation No 2038/1999 and Article 12 of Regulation No 1260/2001.

48 — Advocate General Reischl took the same view in his Opinion in Case 242/81 *Roquette Frères* v *Council* [1982] ECR 3213, 3232.

49 — That quantity resulted — depending on the period in question — from Article 24 of Regulation No 1785/81 (reference period: 1 July 1980 to 30 June 1981), from Article 27 of Regulation No 2038/1999 (reference period: 1 July 1994 to 30 June 1995) and from Article 11 of Regulation No 1260/2001 (reference period: 1 July 2000 to 30 June 2001).

limited in substantive terms as the case may be — in the implementation of a Community legal act and from an individual's perspective, therefore, the specific content of the implementing measure is not fixed in advance.

42. That is the situation in the present case: an undertaking such as Roquette Frères could not predict in advance the specific amount of isoglucose quota which the national authorities would allocate to it, because — at least in theory — the possibility of additional isoglucose producers entering the market always existed. The fact that in practice no such market entry occurred and that the basic quantities intended for metropolitan France were always allocated in their entirety to Roquette Frères as the only isoglucose producer in the territory does not affect that conclusion. At the very least, the common organisation of the markets for sugar as such did not result in fact in any automatic mechanism for national authorities' implementation of the Community quota system.

43. Since the contested provisions required national implementation measures and Member States thereby retained a discretion, Roquette Frères was, therefore, not even directly concerned by such provisions.

(b) Individual concern

44. Natural or legal persons cannot be *individually concerned* by a legal act unless they are affected by it by reason of certain attributes peculiar to them or by reason of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as an addressee. [50]

45. In the measures based on Regulation No 1293/79 which preceded the contested provisions, [51] the Community legislature continued to undertake itself the allocation of the specific isoglucose quotas to the individual isoglucose producers. Accordingly, Roquette Frères was named in those measures. Against such a background, when that undertaking sought the annulment of

50 — The Court's consistent case-law; see only Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, 107; *Unión de Pequeños Agricultores* v *Council* (cited in footnote 2), paragraph 36; and *Commission* v *Jégo-Quéré* (cited in footnote 3), paragraph 45.

51 — See Article 9 together with Annex II to Regulation No 1111/77 in the version as provided by Regulation No 1293/79.

Regulation No 1293/79, [52] the Court expressly held Roquette Frères to be individually concerned within the meaning of Article 173(2) EEC (now Article 230(4) EC).

46. By contrast, as already mentioned, in all of the common organisations of the markets in the sugar sector in force since 1 July 1981 within the framework of which all of the contested provisions were adopted, only overall basic quantities per Member State were determined, and it was the duty of the respective national authorities to distribute those basic quantities as quota to the isoglucose producers operating in their national territory. [53]

47. In the contested provisions, Roquette Frères was, therefore, no longer mentioned by name as a recipient of specific isoglucose quotas, [54] but was a member of the group — simply referred to in general terms — of isoglucose producers in the Community. Thus, the undertaking fell within the scope of the contested provisions in its capacity as an operator in the isoglucose market as a result simply of objective criteria formulated in general and abstract terms. In accordance with consistent case-law, such circumstances are insufficient to justify a conclusion that the person is individually concerned within the meaning of Article 230(4) EC. [55]

48. Nor can it be argued in support of the entitlement to bring proceedings by an undertaking such as Roquette Frères that such undertaking is one of few isoglucose producers in the Community, even the only one in metropolitan France, and that, therefore, in practice the entirety of the isoglucose quotas assigned to that territory will be allocated to it. Even if the number and identity of the undertakings addressed by a regulation at a particular time can be determined with a sufficient degree of accuracy, such circumstances do not entitle those undertakings to bring proceedings, provided that their identification in their capacity as economic operators occurs sim-

52 — Case 138/79 *Roquette Frères* v *Council* (cited in footnote 5), paragraphs 15 and 16; to the same extent, *Maizena* v *Council* (cited in footnote 15), paragraphs 15 and 16. The action brought by Roquette Frères challenging Regulations No 387/81 and No 388/81 — which to the extent relevant here corresponded in terms of content to Regulation No 1293/79 — was held similarly to be admissible; on that point, see the case-law cited in footnote 18 and point 8 of this Opinion.
For further cases in which Community regulations mentioned undertakings by name and they were considered to be entitled to bring proceedings, see, for example, Joined Cases 239/82 and 275/82 *Allied Corporation and Others* v *Commission* [1984] ECR 1005, paragraphs 12 and 14; Case 264/82 *Timex* v *Council and Commission* [1985] ECR 849, paragraph 15; and *Nachi Europe* (cited in footnote 33), paragraph 39 together with paragraph 3, taken respectively from the field of commercial policy protective measures.

53 — For detail on that matter, see points 9 to 17 of this Opinion.

54 — That point distinguishes the present case from, for example, *Nachi Europe* (cited in footnote 33), in particular paragraphs 3 and 39, in which the contested regulation mentioned by name the undertaking concerned or an undertaking closely associated with it.

55 — Case 26/86 *Deutz und Geldermann* v *Council* [1987] ECR 941, paragraph 12; Case C-213/91 *Abertal* v *Commission* [1993] ECR I-3177, paragraphs 19 and 20; Case C-451/98 *Antillean Rice Mills* v *Council* [2001] ECR I-8949, paragraph 51; and *Commission* v *Jégo-Quéré* (cited in footnote 3), paragraphs 43 and 46; already to the same effect *Plaumann* v *Commission* (cited in footnote 50), 238.

ply, as is the case here, on the basis of objective criteria formulated in general and abstract terms and that other economic operators which at the time of the regulation's adoption are unaffected may in the future as a result of taking up a particular activity become affected by the measure in question. [56]

49. From the rules on the transfer of quotas applicable since the entry into force of Regulation No 1785/81, [57] it may be observed that on adopting the contested provisions the Community legislature expressly considered it possible that potential new operators might enter the market. According to those rules, it is, as previously mentioned, within the discretion of national authorities to transfer the quotas of existing isoglucose producers — subject to a maximum limit of 10% — to other undertakings, including such undertakings as previously did not hold quotas.

50. The question of Roquette Frères' entitlement to bring proceedings would have to be answered differently if on each occasion when the contested regulations were adopted it were the case that such undertaking was affected as a member of a closed group differentiated from other potential applicants, for example by virtue of certain applications made, conclusion of certain contracts or as holder of guaranteed legal positions. [58] In the present case, however, such circumstances did not exist.

51. In particular, the mere fact that originally, that is to say before adoption of the contested provisions, the undertaking by virtue of a regulation was holder of isoglucose quotas did not result in Roquette Frères enjoying a guaranteed legal position. [59] The quotas held by Roquette Frères at that time were from the outset allocated only for specific limited periods, from 1 July 1979 to 30 June 1980 and from 1 July 1980 to 30 June 1981. That allocation did not permit any conclusions to be drawn as to how in later periods quotas would be calculated and distributed and in what amount Roquette Frères would participate therein.

52. Admittedly, it is the case that the isoglucose basic quantities per Member State for the period beginning on 1 July 1981 did still correspond purely in number terms with

56 — See, to that effect, Case 123/77 *UNICME* v *Council* [1978] ECR 845, paragraph 16; Case 147/83 *Binderer* v *Commission* [1985] ECR 257, paragraph 13; *Deutz und Geldermann* (cited in footnote 55), paragraph 8; *Abertal* v *Commission* (cited in footnote 55), paragraphs 17, 19 and 20; and *Commission* v *Jégo-Quéré* (cited in footnote 3), paragraph 46. See also the Opinion of Advocate General Reischl in Case 242/81 *Roquette Frères* v *Council* (cited in footnote 48), at 3233.

57 — Article 25 of Regulation No 1785/81, Article 30 of Regulation No 2038/1999 and Article 12 of Regulation No 1260/2001.

58 — See, for example, Joined Cases 106/63 and 107/63 *Töpfer* v *Commission* [1965] ECR 405, 411; Joined Cases 41/70 to 44/70 *International Fruit Company and Others* v *Commission* [1971] ECR 411, paragraphs 16 to 22; Case 11/82 *Piraiki-Patraiki* v *Commission* [1985] ECR 207, paragraph 19; and Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraphs 21 and 22.

59 — See Regulation No 1111/77 mentioned in points 6 to 8 of this Opinion, in particular Article 9 and Annex II thereto in the versions provided for by Regulations No 1293/79, No 387/81 and No 388/81.

the isoglucose quotas which had previously been allocated directly to individual undertakings; thus the basic quantities for metropolitan France prescribed by Regulation No 1785/81 corresponded to the quotas which Roquette Frères itself had received for the previous two 12-month periods respectively. Unlike in the period prior to 1 July 1981, [60] in the contested provisions the previous isoglucose production of specific undertakings was, however, no longer expressly used as the basis for calculating the isoglucose basic quantities [61] which the national authorities had henceforth to distribute within their respective national territory. Those basic quantities merely constituted overall maximum limits which affected both active isoglucose producers already within the market and potential new entrants, and thus all producers were equally affected thereby.

53. As a result, from 1 July 1981 onwards Roquette Frères was no longer distinguished in the same manner as an addressee and as regards the contested provisions was no longer differentiated from other potential applicants. As for actions for annulment concerning the contested provisions, in the light of Roquette Frères' failure to be individually concerned, it would have not been entitled, therefore, to bring proceedings within the meaning of Article 230(4) EC. [62]

(c) At the very least, good reason to doubt the entitlement of Roquette Frères to bring proceedings

54. On the basis of my previous observations, Roquette Frères was not entitled to challenge the contested provisions by means of an action for annulment in accordance with Article 230(4) EC. Even if one comes to the conclusion, however, that actions for annulment brought by Roquette Frères would have been admissible, it remains to be examined whether the undertaking was *undoubtedly* entitled to bring proceedings. [63]

55. In that regard, doubt experienced merely subjectively by the applicant certainly cannot be decisive. Otherwise, delineation of the boundary between the action for annulment before the Community Courts and the

60 — The starting point for the calculation of quotas allocated to undertakings for the period *prior to 1 July 1981* (from 1 July 1979 to 30 June 1980 and from 1 July 1980 to 30 June 1981) had been the production of the respective undertakings for the period 1 November 1978 to 30 April 1979.

61 — In that respect, the present case can be distinguished, for example, from *Nachi Europe* (cited in footnote 33), in particular paragraphs 3 and 39, where the calculations made in the contested regulation were expressly based on business data of the undertaking concerned or of a closely associated undertaking; see on this point the 6th and 17th recitals to Council Regulation (EEC) No 2849/92 of 28 September 1992 modifying the definitive anti-dumping duty on imports of ball bearings with a greatest external diameter exceeding 30 mm originating in Japan imposed by Regulation (EEC) No 1739/85 (OJ 1992 L 286, p. 2).

62 — See, to the same effect, the Opinion of Advocate General Reischl in Case 242/81 *Roquette Frères* v *Council* (cited in footnote 48), at 3232.

63 — On this issue, see point 33 of this Opinion and the case-law cited in footnote 42.

indirect challenge before national courts would depend upon assertions made by an individual which only with difficulty are capable of objective review. An individual could thus practically without limitation subsequently contest the validity of Community legal acts and circumvent thereby their definitive nature.

56. Rather, taking into account all the circumstances of the individual case, on an *objective examination* of the matter it must be determined whether there was good reason for an individual to doubt the admissibility of any action for annulment he could bring. In this regard, objectively existing uncertainties regarding the entitlement of natural and legal persons to bring proceedings in accordance with Article 230(4) EC are, therefore, decisive.

57. On this issue, the opinions of the parties before the Court are also divided: whilst Roquette Frères and the Council take the view that it was justified to doubt the undertaking's entitlement to bring proceedings, the Commission and the French Government take the opposite point of view.

58. Of particular importance in the present case is the fact that the Court already rejected once as inadmissible an action brought by Roquette Frères challenging the first of the regulations contested in this present case, Regulation No 1785/81. [64] Admittedly, the reasoning of that judgment was expressly limited to an examination of the admissibility of an action brought by an individual challenging the *production levy* on isoglucose provided for by Regulation No 1785/81. [65] In his Opinion in that case, Advocate General Reischl had undertaken, however, a comprehensive examination of the admissibility of the action brought by Roquette Frères and had also rejected it inasmuch as it touched upon the *quota system* for isoglucose production, of relevance here. [66]

59. Given such circumstances Roquette Frères could assume that it was not entitled to bring proceedings in respect of the contested provisions. [67] Such an assessment must be seen in any event as plausible, since it coincided with the legal view taken by an Advocate General of the Court on a question on which the Court at that time did not itself expressly take a contrary view.

64 — Case 242/81 *Roquette Frères* v *Council* [1982] ECR 3213, paragraphs 9 and 10.

65 — Case 242/81 *Roquette Frères* v *Council* (cited in footnote 64), paragraph 8. Details of that levy were set by Article 28 of Regulation No 1785/81.

66 — Opinion in Case 242/81 *Roquette Frères* v *Council* (cited in footnote 48), at 3233 to 3237.

67 — That conclusion applies not only in respect of the contested provisions of Regulation No 1785/81, but also in respect of any actions challenging comparable legal acts adopted at a later stage, that is to say in the present case Regulations No 2038/1999, No 2073/2000, No 1260/2001, No 1745/2002 and No 1739/2003, to which the observations of Advocate General Reischl in his Opinion in Case 242/81 *Roquette Frères* v *Council* (cited in footnote 48), at 3233 to 3237, can be applied.

60. This conclusion is all the more valid since at the time the contested provisions were adopted no opposing case-law of the Court was available, on the basis of which the undertaking could have concluded with certainty that its action challenging the contested provisions would be admissible. [68] On the contrary, the undertaking could assume in line with consistent case-law that the contested provisions formed part of regulations whose provisions were simply addressed in general terms to categories of persons defined in the abstract and to situations determined objectively and that an action for annulment before the Community Courts was, therefore, *not* available to it. [69]

61. Roquette Frères could justifiably entertain doubts, therefore, as to its entitlement to bring proceedings concerning the contested provisions.

3. Interim conclusion

62. On the basis of the foregoing observations, I propose that the first question be answered as follows:

Roquette Frères did not undoubtedly have the right to bring proceedings in accordance with Article 230(4) EC before the Community Courts seeking annulment of Article 24(2) of Regulation No 1785/81, Article 27 (3) of Regulation No 2038/1999, Article 1 of Regulation No 2073/2000, Article 11(2) of Regulation No 1260/2001, Article 1 of Regulation No 1745/2002 and Article 1 of Regulation No 1739/2003.

B — *The second question: validity of various provisions contained in Community regulations on the basic quantities for isoglucose production*

63. By its second question, the referring court seeks the Court's determination of the validity of the contested provisions in so far as they respectively prescribe isoglucose basic quantities for metropolitan France.

64. The referring court's doubts as to the validity of the contested provisions rest on the hypothesis that at a Community level the basic quantities for isoglucose for metropolitan France were incorrectly calculated because those calculations failed to take into

68 — The position of Roquette Frères is, in particular, not comparable to that of an exporter challenging a regulation introducing an anti-dumping duty, such that *Nachi Europe* (cited in footnote 33), paragraphs 38 and 39, for example, cannot be applied to the present case (see also on this point, footnotes 54 and 61 above).

69 — *Accrington Beef* (cited in footnote 33), paragraph 15; see also my observations in points 37 to 53 of this Opinion and the case-law cited in footnote 55.

account the isoglucose produced in that Member State between 1 November 1978 and 30 April 1979 as an intermediate product for use in the manufacture of the other products destined for sale.

65. The alleged error relates to the calculations which were made on the initial introduction of the isoglucose quota system, thus affecting the regime [70] prior to the contested provisions. Allegedly, that error has subsequently perpetuated itself, however, and hereafter also concerns each of the provisions contested in this case, because ultimately the original determinations of quota have been retained at a later stage in the form of basic quantities for the individual Member States.

66. Whilst Roquette Frères is convinced as to the existence of such an error and assumes the contested provisions, therefore, to be invalid, all the other parties before the Court consider the contested provisions to be valid.

70 — See Regulation No 1111/77, to which I referred in points 6 to 8 of this Opinion, in particular Article 9 and Annex II thereto in the respective versions provided for by Regulations No 1293/79, No 387/81 and No 388/81.

1. Background: the distinction between standard isoglucose and isoglucose as an intermediate product in the manufacture of enriched isoglucose

67. From a technical point of view, isoglucose is obtained through the isomerisation of glucose syrup. Depending on their sweetness and their chemical composition, in simplified terms, two isoglucose end-products may be distinguished which Advocate General Tesauro succinctly paraphrased as 'standard isoglucose' and 'enriched isoglucose'. [71] In the manufacturing of the latter product, isoglucose also arises as an intermediate product.

68. After the single isomerisation of glucose syrup, *standard isoglucose* thus is formed, a solution consisting of glucose and fructose molecules in almost equal proportions and which in terms of its chemical composition and its sweetness comes close to liquid sugar. [72] It is marketed as a direct substitute for liquid sugar. According to information supplied by Roquette Frères, it distributes such a product under the commercial designation of 'méliose'.

71 — Opinion of Advocate General Tesauro in Case C-210/90 *Roquette Frères* (cited in footnote 7), points 2 and 3.

72 — Case C-210/90 *Roquette Frères* (cited in footnote 7), paragraph 3, and the Opinion of Advocate General Tesauro in that case, point 2.

69. In contrast to standard isoglucose, *enriched isoglucose* has a much higher fructose content [73] and thereby a much greater sweetness. According to information supplied by Roquette Frères, it previously manufactured such a product and distributed it under the commercial designation of 'lévulose'. To produce enriched isoglucose, following an initial isomerisation the fructose molecules are in several successive cycles separated on each occasion from the glucose molecules and subsequently the glucose molecules are subjected to re-isomerisation. [74] Following each such operation, isoglucose — as an intermediate product — correspondingly arises afresh, which is, however, not placed as such on the market because it is consumed in further processing to make enriched isoglucose.

70. The *quota system* for isoglucose production applies not only to the isoglucose which is actually placed on the market but also to that which is used as an intermediate product in the manufacture of another product intended for sale and which at the end of the production process no longer exists. That principle was established by the Court in another case concerning Roquette Frères. [75] It held, moreover, that 'at each successive isomerisation of glucose syrup with a content by weight in the dry state of at least 10% fructose after the first isomerisation there is a production of isoglucose subject to the quota system laid down by [Regulation No 1785/81], if the effect of the successive isomerisations is to increase the fructose content of the final product'. [76]

71. This inclusion of the isoglucose arising merely as an intermediate product within the respective producer's quota contributes towards the effective prevention of surpluses on the sugar market. It is intended, moreover, through the use of such a strategy to avoid distortions of competition, not only between isoglucose and sugar but also amongst isoglucose producers; the aim is to maintain the 'balance' which the Community legislature wished to create amongst the various producers of sweeteners. [77] According to the common organisation of the markets, sugar quotas apply without differentiating between intermediate products and end-products; likewise, in the name of equal treatment the isoglucose quotas must, therefore, also apply without differentiation. [78]

73 — According to information supplied by Roquette Frères, its composition may even be pure, crystallised fructose.

74 — Case C-210/90 *Roquette Frères* (cited in footnote 7), paragraph 4, and the Opinion of Advocate General Tesauro in that case, point 2. In place of pure glucose, to some extent, a mixture of glucose and fructose was also used as the basis for further isomerisation operations; see paragraph 5 of the judgment cited.

75 — Case C-210/90 *Roquette Frères* (cited in footnote 7), paragraph 38 and paragraph 3 of the operative part.

76 — Ibid., paragraph 34 and paragraph 2 of the operative part.

77 — Ibid., paragraph 33 taken together with paragraph 25.

78 — Ibid., paragraph 33 taken together with paragraph 36.

2. No manifest error in determining the isoglucose basic quantities in the contested provisions

72. In reviewing the validity of the contested provisions, the Court must confine itself to examining whether the Community legislature committed a manifest error or misused its powers or has clearly exceeded the bounds of its discretion. [79] In implementing the common agricultural policy, inter alia in the sugar sector, the legislature is required to evaluate complex economic situations and to take decisions of an economic, political and social nature. [80] The discretion which it enjoys in carrying out those tasks does not apply exclusively to the nature and scope of the measures to be taken but also to some extent to the finding of the basic facts. [81]

73. The calculation error alleged to have been made by the Council is said to have originated in the regime prior to the contested provisions and subsequently to have affected also the contested provisions. It appears advisable, therefore, to examine initially whether the previous provision was vitiated by a manifest error and whether any such error also had a decisive effect on the adoption of the provisions contested in this case. Should this be so, those provisions must be declared invalid.

(a) No manifest error on the adoption of the previous regime

74. In the provisions based on Regulation No 1293/79 which constitute the regime prior [82] to the contested provisions the basic criterion for the quantitative determination of isoglucose quotas was the individual production of each producer for the reference period 1 November 1978 to 30 April 1979; moreover, account was to be taken of the technical production capacity per annum of the individual undertakings. [83]

75. Subsequently it became apparent that the data available to the Council for calculation purposes at that time contained only

79 — Case 138/79 (cited in footnote 5, paragraph 25) and Case C-289/97 *Eridania* [2000] ECR I-5409, paragraph 49.

80 — See, to that extent, Case 138/79 *Roquette Frères* v *Council* (cited in footnote 5), paragraph 25, and *Eridania* (cited in footnote 79), paragraph 48; in addition, Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04 *ABNA and Others* [2005] ECR I-10423, paragraph 69, and Case C-310/04 *Spain* v *Council* [2006] ECR I-7285, paragraph 96.

81 — Case 138/79 *Roquette Frères* v *Council* (cited in footnote 5), paragraph 25, and *Eridania* (cited in footnote 79), paragraph 48; see also Case C-285/94 *Italy* v *Commission* [1997] ECR I-3519, paragraph 23, and *Spain* v *Council* (cited in footnote 80), paragraph 121.

82 — Article 9 of Regulation No 1111/77 taken together with Annex II thereto, in the version provided for by Regulation No 1293/79 and, later, Regulations No 387/81 and No 388/81.

83 — Seventh recital to Regulation No 1293/79 and Article 9(1) to (3) of Regulation No 1111/77 in the version as amended by Regulation No 1293/79.

reference period figures which failed to include the isoglucose arising merely as an intermediate product in Roquette Frères' manufacturing process. In order to record fully the production and capacities of the respective producer and to satisfy the spirit and meaning of the quota system, in line with the judgment in Case C-210/90 *Roquette Frères*, [84] such an intermediate product should, however, in quantitative terms have also been taken into account. With hindsight, the Council to that extent committed an error in its determination of the isoglucose quotas applicable to Roquette Frères in Regulation No 1293/79.

76. Whether such conduct constituted a *manifest* error must be determined, however, by having regard to all the circumstances of the individual case. In reaching that determination, it must be examined whether even at the time when the Council took its decision a reasonable observer could and should without difficulty have concluded that the calculation of the production quantities was flawed.

77. The fact that the relevant information on Roquette Frères' capacities and production in the reference period was taken from the undertaking itself is of significance in the present case. First, use was made of the information concerning production capacity supplied by Roquette Frères itself. Second, reference was had to France's monthly communications concerning isoglucose production on its national territory, [85] which in turn were based on information supplied by the undertaking Roquette Frères.

78. In determining the basic facts relating to the planned quota system [86] it was legitimate for the Council, within the scope of its available discretion, to rely on information obtained from the undertakings concerned themselves.

79. When examined objectively, at the time Regulation No 1293/79 was adopted the Council had no reason to doubt the correctness of that information, particularly since as regards the allocation of quotas it was in the own interests of the undertakings concerned not to state production quantities and capacities below those values which actually prevailed.

84 — Cited in footnote 7, paragraph 38 and paragraph 3 of the operative part; on that issue; see also point 70 of this Opinion.
In this connection, reference must also be had to consistent case-law, according to which, the interpretation which the Court in the exercise of the jurisdiction conferred on it by Article 234 EC gives to a rule of Community law, clarifies and defines, where necessary, the meaning and scope of that rule as it must be, or ought to have been, understood and applied *from the time of its coming into force* (see, in particular, Case 61/79 *Denkavit italiana* [1980] ECR 1205, paragraph 16; Case C-453/00 *Kühne & Heitz* [2004] ECR I-837, paragraph 21; Case C-402/03 *Skov and Bilka* [2006] ECR I-199, paragraph 50; and Joined Cases C-290/05 and C-333/05 *Nádasdi and Others* [2006] ECR I-10115, paragraph 62).

85 — In accordance with Article 1 of Commission Regulation (EEC) No 1471/77 of 30 June 1977 on information from the Member States concerning isoglucose (OJ 1977 L 162, p. 13), the Member States were required to make such communications.

86 — On that issue, see point 72 of this Opinion and the case-law cited in footnote 81.

80. Contrary to what Roquette Frères claims, even at that time the undertakings concerned could and should have known that not only the isoglucose placed on the market but also the isoglucose arising as an intermediate product was to be included in the information they supplied. This follows from the fact that at no point did the relevant Community provisions differentiate between isoglucose marketed as an end-product and isoglucose merely arising as an intermediate product such as to have justified, from a manufacturers' point of view, the provision of quantitative information only as regards end-products actually marketed and not as regards intermediate products.

81. Then as now, the essential reference point for Community provisions limiting the quantities of isoglucose on the common market was not how much isoglucose was sold on the common market but how much was produced there. Thus, even before the introduction of the isoglucose *quota system*, the *levy system*, for example, contained in Article 9 of Regulation No 1111/77 [87] was based on the production and not the marketing of isoglucose. In addition, the communications which Member States were required to make to the Commission within the framework of Article 1 of Regulation No 1471/77 related always to the quantities produced within a particular month.

87 — Regulation No 1111/77 in its original version.

82. For the reasons stated, I conclude that on adopting the regime prior to the contested provisions the Council did not commit a *manifest* error in basing its quota calculations on information relating to Roquette Frères' capacities and production quantities in the isoglucose sector which originated from that undertaking itself.

(b) No decisive influence on the contested provisions

83. Even if one assumes, however, that the previous regime was vitiated by a manifest error, it remains to be examined whether such an error has had a decisive effect on the contested provisions subsequently adopted. In that connection, the following matters must be considered:

84. It is the case, admittedly, that for many years following 1 July 1981 the isoglucose basic quantities for metropolitan France corresponded to those quotas which for the two previous 12-month periods had been allocated directly to the undertaking Roquette Frères. Unlike in the period prior to 1 July 1981, in Regulation No 1785/81 and

in all the other contested provisions, however, the isoglucose production of specific undertakings no longer expressly constituted the basis for calculation of the isoglucose basic quantities allocated to Member States. [88]

85. Moreover, as stated in the preamble to Regulation No 1785/81, in introducing the new common organisation of the markets in the sugar sector in force from 1 July 1981, the Community legislature acted, once more, under the impression that structural surpluses could be observed in the Community sweeteners sector. [89] It was expressly intended to make changes to the production quota system for sugar and isoglucose which, inter alia, took recent developments in production into account. [90]

86. These considerations suggest that on determining the isoglucose basic quantities in force from 1 July 1981 a range of factors were at issue and formed the basis for the Council's evaluation. No sufficient indications exist, on the contrary, that on adopting Regulation No 1785/81 the Council had been exclusively — or at least materially — influenced by the specific isoglucose production of individual undertakings in previous periods.

87. Even as regards the first contested provision, Article 24(2) of Regulation No 1785/81, any evaluation error by the Council on adopting the previous regime cannot with certainty be said, therefore, to have decisively influenced its determination of the isoglucose basic quantities.

88. The same applies a fortiori as regards the contested provisions in later regulations. First, on their adoption the previous regime was even more distant, in fact by more than 20 years. [91] Second, the Community meanwhile had entered into international obligations [92] which even on determining the isoglucose basic quantities in Regulation No 2038/1999 may have had an influence [93] and undoubtedly did so in subsequent periods.

88 — On the contrary, this was still the case with the previous rule; see, to that extent, Article 9(1) to (3) of Regulation No 1111/77 as provided for by Regulation No 1293/79 and the seventh recital to Regulation No 1293/79.

89 — Second recital to Regulation No 1785/81.

90 — Eleventh recital to Regulation No 1785/81.

91 — Regulation No 1293/79 was adopted on 25 June 1979, Regulation No 2038/1999 on 13 September 1999.

92 — This refers to the agreement on agriculture (cited in footnote 25).

93 — See the 13th and 16th recitals to Regulation No 2038/1999.

89. Against that background, I can find no sufficient indications to support the view that any earlier evaluation error by the Council has decisively influenced the contested provisions. As a result, no reason exists to declare those provisions invalid.

3. Interim conclusion

90. The second question should be answered, therefore, as follows:

As regards the determination of basic quantities of isoglucose production for metropolitan France, examination of the second question has failed to reveal anything which could impair the validity of Article 24(2) of Regulation No 1785/81, Article 27 (3) of Regulation No 2038/1999, Article 1 of Regulation No 2073/2000, Article 11(2) of Regulation No 1260/2001, Article 1 of Regulation No 1745/2002 and Article 1 of Regulation No 1739/2003.

VI — Conclusion

91. On the basis of the foregoing observations, I propose that the Court should reply to the Cour administrative d'appel de Douai as follows:

(1) Roquette Frères did not undoubtedly have the right to bring proceedings in accordance with Article 230(4) EC before the Community Courts seeking annulment of Article 24(2) of Regulation No 1785/81, Article 27(3) of Regulation No 2038/1999, Article 1 of Regulation No 2073/2000, Article

11(2) of Regulation No 1260/2001, Article 1 of Regulation No 1745/2002 and Article 1 of Regulation No 1739/2003.

(2) As regards the determination of basic quantities of isoglucose production for metropolitan France, examination of the second question has failed to reveal anything which could impair the validity of Article 24(2) of Regulation No 1785/81, Article 27(3) of Regulation No 2038/1999, Article 1 of Regulation No 2073/2000, Article 11(2) of Regulation No 1260/2001, Article 1 of Regulation No 1745/2002 and Article 1 of Regulation No 1739/2003.