JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)

8 July 1999 *

In Case T-158/95,

Eridania Zuccherifici Nazionali SpA, a company incorporated under Italian law, established in Genoa, Italy,

ISI — Industria Saccarifera Italiana Agroindustriale SpA, a company incorporated under Italian law, established in Padua, Italy,

Sadam Zuccherifici, a division of SECI — Società Esercizi Commerciali Industriali SpA, a company incorporated under Italian law, established in Bologna, Italy,

Sadam Castiglionese SpA, a company incorporated under Italian law, established in Bologna,

Sadam Abruzzo SpA, a company incorporated under Italian law, established in Bologna,

Zuccherificio del Molise SpA, a company incorporated under Italian law, established in Termoli, Italy,

SFIR — Società Fondiaria Industriale Romagnola SpA, a company incorporated under Italian law, established in Cesena, Italy,

Ponteco Zuccheri SpA, a company incorporated under Italian law, established in Pontelagoscuro, Italy,

represented by Bernard O'Connor, Solicitor, and Ivano Vigliotti and Paolo Crocetta, of the Genoa Bar, with an address for service in Luxembourg at the Chambers of Arsène Kronshagen, 12 Boulevard de la Foire,

applicants,

* Language of the case: Italian.

V

Council of the European Union, represented by Jan-Peter Hix and Ignacio Díez Parra, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Alessandro Morbilli, General Counsel of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendants,

supported by

Commission of the European Communities, represented by Eugenio de March, Legal Adviser, and Francesco Paolo Ruggeri Laderchi, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

intervener,

APPLICATION for, in substance, the annulment, first, of Council Regulation (EC) No 1101/95 of 24 April 1995 amending Regulation (EEC) No 1785/81 on the common organisation of the markets in the sugar sector and Regulation (EEC) No 1010/86 laying down general rules for the production refund on certain sugar products used in the chemical industry (OJ 1995 L 110, p. 1) and, second, of Council Regulation (EC) No 1534/95 of 29 June 1995 fixing, for the 1995/96 marketing year, the derived intervention prices for white sugar, the intervention price for raw sugar, the minimum prices for A and B beet, and the amount of compensation for storage costs (OJ 1995 L 148, p. 11),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (First Chamber),

composed of: B. Vesterdorf, President, J. Pirrung and M. Vilaras, Judges,
Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 26 January 1999,

gives the following

Judgment

Legal framework

1 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, hereinafter the 'basic regulation'), as amended on a number of occasions, has as one of its objectives to ensure that the necessary guarantees in respect of employment and standards of living are maintained for Community growers of sugar beet and sugar cane (third recital in the preamble), and to that end establishes a price system, a quota system and a compensation system for storage costs.

2 The quota system entails the fixing, for each production region in the Community, of the quantities of sugar to be produced, which the Member States are to share among the various sugar-producing undertakings in their territory in

the form of production quotas. These quotas relate to a specific marketing year, which begins on 1 July of one year and expires on 30 June of the following year.

3 The price system includes a system of intervention designed to guarantee the prices and sales of the products; the prices applied by the intervention agencies are fixed each year by the Council.

4 Since sugar manufacturing is an activity which is subject to seasonal fluctuations, with the consequence that the quantities produced during one year cannot normally all be sold during that year, Article 8 of the basic regulation also established a 'compensation system for storage costs, comprising flat-rate reimbursement to be financed by means of a levy' (paragraph 1). The third subparagraph of Article 8(2) provides that '[t]he amount of the reimbursement shall be the same for the whole Community. This rule shall also apply [in respect of the levy imposed by the Member States on each sugar manufacturer]'.

5 For the 1995/96 marketing year the amount of the flat-rate reimbursement was fixed at 'ECU 0.45 per month per 100 kilograms of white sugar' by Article 4 of Regulation (EC) No 1534/95 of 29 June 1995 fixing, for the 1995/96 marketing year, the derived intervention prices for white sugar, the intervention price for raw sugar, the minimum prices for A and B beet, and the amount of compensation for storage costs (OJ 1995 L 148, p. 11). In fixing this amount the Council, as is apparent from the sixth recital in the preamble to that regulation, took into account financing costs, insurance costs and specific storage costs, while account was taken of a '6.75% interest rate' for financing costs.

6 Article 46(4) of the basic regulation additionally authorised the Italian Republic 'during the 1981/82 to 1985/86 marketing year,... when the interest rate granted in Italy to the most solvent applicant is higher, by 3% or more, than the interest rate used to calculate the reimbursement referred to in Article 8, to cover the

effect of this difference on the storage costs by a national aid'. That authorisation was renewed, first by Article 1(10) of Council Regulation (EEC) No 934/86 of 24 March 1986 amending Regulation (EEC) No 1785/81 (OJ 1986 L 87, p. 1) for the 1986/87 and 1987/88 marketing years, when the relevant provision became Article 46(5) of the basic regulation, then for all the subsequent marketing years, and finally by Article 1(26) of Council Regulation (EC) No 133/94 of 24 January 1994 amending Regulation (EEC) No 1785/81 (OJ 1994 L 22, p. 7) for the 1994/95 marketing year.

7 Article 46 of the basic regulation, as amended by Article 1(13) of Council Regulation (EC) No 1101/95 of 24 April 1995 amending Regulation (EEC) No 1785/81 and Regulation (EEC) No 1010/86 laying down general rules for the production refund on certain sugar products used in the chemical industry (OJ 1995 L 110, p. 1), no longer authorises the Italian Republic to grant that national aid.

Procedure

8 It was in those circumstances that, by an application lodged at the Court Registry on 11 August 1995, the applicants, companies established in Italy and together holding 92% of the sugar production quotas allocated to that Member State, brought the present action pursuant to the fourth paragraph of Article 173 of the EC Treaty (now, after amendment, the fourth paragraph of Article 230 EC).

9 By a separate document lodged at the Court Registry on 25 October 1995 the Council raised an objection of inadmissibility pursuant to Article 114(1) of the Rules of Procedure. The applicants lodged their observations on that objection on 11 December 1995.

10 By order of 19 March 1996 the President of the Second Chamber of the Court of First Instance granted the application by the Commission, lodged at the Court Registry on 31 January 1996, for leave to intervene in support of the form of order sought by the Council. On 3 May 1996 the Commission lodged a statement in intervention. By documents lodged at the Registry on 14 and 18 June 1996 respectively the Council and the applicants submitted their observations on that statement in intervention.

11 By order of 25 June 1997 the Court of First Instance (Second Chamber) reserved a decision on that objection for the final judgment.

12 By decision of the Court of First Instance of 21 September 1998 the Judge-Rapporteur was posted to the First Chamber, to which the case was therefore assigned.

13 On hearing the report of the Judge-Rapporteur, the Court of First Instance (First Chamber) decided to open the oral procedure without any preparatory inquiry. The parties presented oral argument and replied to the questions put by the Court at the hearing on 26 January 1999.

Forms of order sought by the parties

14 The applicants claim that the Court should:

— declare the action admissible;

— annul Regulation No 1101/95, at the very least in so far as, in amending the basic regulation, it makes no provision for differentiation of the amount of compensation for storage costs according to the financial charges borne by the sugar manufacturers of each country;

— annul Article 4 of Regulation No 1534/95 in so far as it fixes, for the 1995/96 marketing year, the amount of the compensation referred to in Article 8 of the basic regulation at a standard rate, irrespective of the interest rates actually in force in each country of the Community;

— annul, in so far as necessary, all measures adopted prior to or subsequent to Regulations No 1101/95 and No 1534/95 which are connected to them, including the basic regulation and the successive amendments thereof or, at the very least, Articles 3, 5, 6 and 8 thereof and all implementing measures;

— order the Commission to bear the costs resulting from the lodging of its statement in intervention;

— order the Council to pay the costs of the case.

15 The Council contends that the Court should:

— dismiss the application as inadmissible and, in the alternative, as unfounded;

— order the applicants to pay the costs.

16 In its statement in intervention, the Commission claims that the Court should grant the form of order sought by the Council and dismiss the action as inadmissible.

Admissibility of the action

17 In support of its objection of inadmissibility, the Council submits four pleas in law. The first alleges a breach of the first paragraph of Article 19 of the EC Statute of the Court of Justice and of Article 44(1) of the Rules of Procedure of the Court of First Instance, in that the application lacks the precision demanded by those provisions. The second plea is that the application seeks only the partial annulment of measures adopted by the Council. The third plea alleges that the time-limit for bringing an action laid down in the fifth paragraph of Article 173 of the EC Treaty had expired as regards certain parts of the application. The Council's fourth plea is that the applicants are not directly and individually concerned by the contested measures and therefore lack standing to bring proceedings under the fourth paragraph of Article 173 of the EC Treaty.

Pleas in law and arguments of the parties

First plea: the application lacks sufficient precision

18 The Council submits that the application does not meet the requirements of precision laid down in the first paragraph of Article 19 of the Statute of the Court of Justice and Article 44(1) of the Rules of Procedure of the Court of First

Instance. It is admissible only in so far as it seeks the annulment of Article 4 of Regulation No 1534/95 and Article 8 of the basic regulation. The claim that the Court should, generally, annul the basic regulation and Regulations No 1101/95 and No 1534/95 does not make it possible to determine the subject-matter of the application, since the applicants fail to specify which provisions of those regulations adversely affect them.

19 Similarly, the claims for the annulment of Regulation No 1101/95, in so far as 'it makes no provision for differentiation of the amount of compensation for storage costs according to the financial charges borne by the sugar manufacturers of each country', are inadmissible in the absence of further particulars, since that regulation contains no provision relating to compensation for storage costs.

20 The applicants consider that the subject-matter of their application is sufficiently precise. In their observations on the objection of inadmissibility they further stated that they sought:

— the annulment of Regulation No 1101/95 in so far as, by Article 1(13) replacing the wording of Article 46 of the basic regulation, it abolishes the possibility for the Italian State to grant Italian sugar manufacturers aid to offset the storage costs resulting from the high interest rates in Italy;

— the annulment of Article 4 of Regulation No 1534/95, which, for the 1995/96 marketing year, fixes the amount of the reimbursement provided for in Article 8 of the basic regulation at a flat rate for the whole Community; and

— a declaration under Article 184 of the EC Treaty (now Article 241 EC) that Article 8 of the basic regulation is unlawful in that it establishes flat-rate

reimbursement for the whole Community and fails to take account of the particular circumstances which influence storage costs in each Member State.

Second plea: there is no measure capable of being contested

21 The Council maintains that the application is inadmissible in that it seeks the annulment of Regulation No 1101/95 in so far as it does not provide for differentiation of the amount of compensation for storage costs. That regulation does not amend Article 8 of the basic regulation, which establishes the compensation system for storage costs, and contains no provision relating to that system, and the application cannot therefore be regarded as being directed at an 'act adopted' by the Council for the purposes of Article 173 of the Treaty.

22 The Council considers that the applicants are in reality criticising it for having failed to add to Article 8 of the basic regulation a provision establishing such a differentiation and that, accordingly, they should not have brought an action for annulment but an action for failure to act. In any event, the conditions of admissibility of an action for failure to act are not met in the present case.

23 The Commission argues that the claims relating to the annulment of Regulation No 1101/95, in so far as it allegedly abolishes the possibility of granting aid to Italian producers, are misdirected. The possibility of granting aid to Italian producers was limited to the 1994/95 marketing year by Article 1(26) of Regulation No 133/94. It was pursuant to that provision, and not to any repealing effect which Regulation No 1101/95 may have had, that the possibility of granting additional national aid ceased to apply with effect from 1 July 1995.

24 The applicants reply that they did not actually claim that Regulation No 1101/95 had amended Article 8 of the basic regulation. They sought the annulment of Regulation No 1101/95 in so far as it abolished the provision in Article 46 of the basic regulation which authorised Italy to grant aid. Their action was therefore designed to eliminate any discrimination caused by the compensation for storage costs.

25 They further claim that the possibility of granting additional national aid was not abolished by Regulation No 133/94, since that regulation merely extended for the 1994/95 marketing year the provisions of the basic regulation, including those in Article 46. On the contrary, Regulation No 1101/95 extended the applicability of the basic regulation for the 1995/96 to 2000/01 marketing years, but did not extend the applicability of the provision of Article 46 referred to above. Thus Regulation No 1101/95 abolished that provision with effect from the 1995/96 marketing year, which altered their legal situation.

Third plea: expiry of the time-limit for bringing proceedings

26 The Council maintains that in so far as the action seeks the annulment of Article 8 of the basic regulation it was introduced after the expiry of the two-month period provided for in the fifth paragraph of Article 173 of the Treaty, and is thus inadmissible. The basic regulation was adopted on 30 June 1981 and in its present form the third subparagraph of Article 8(2) of that regulation, on the amount of the reimbursement, was introduced in 1985.

27 The applicants claim that they plead the illegality of Article 8 of the basic regulation on the basis of Article 184 of the EC Treaty and that their claims in that regard are therefore admissible.

28 The Commission argues that the objection of illegality raised by the applicants is out of time and inconsistent with the content of their application, in which they formally sought only the annulment of Article 8 of the basic regulation. The attempt which the applicants make in their observations on the objection of inadmissibility to reclassify that application for annulment as an objection of illegality should be declared inadmissible pursuant to Article 48(2) of the Rules of Procedure, which provides that no new pleas in law are to be introduced in the course of proceedings.

29 The applicants reply that they complained of the illegality of all the acts and indicated the regulations which they challenged, including the basic regulation and, in particular, Article 8 thereof. The acts which they challenge in their action are Regulations No 1101/95 and No 1534/95. By contrast, they did not seek the annulment of the basic regulation. The purpose of their third plea was to raise the issue of the possible illegality of the abovementioned regulations. Accordingly, they did not introduce a new plea within the meaning of Article 48(2) of the Rules of Procedure but merely provided better particulars of an earlier plea.

Fourth plea: the applicants lack standing to bring proceedings

30 The Council maintains that the applicants are neither directly nor individually concerned by the contested measures. In particular, the Council disputes the applicants' argument that they belong to a limited class of individually distinguished and identifiable economic operators, namely Italian sugar manufacturers holding production quotas, since that class is not limited.

31 The Council points out that the system of production quotas in the sugar sector provides for the allocation of quotas to 'newcomers'. Under Article 25 of the basic regulation, Member States are free to transfer quotas between undertakings without limits on the basis of restructuring plans. Consequently, the potential class of Italian sugar manufacturers holding production quotas cannot be

determined in advance. Furthermore, the provisions establishing the compensation system for storage costs concern not only Italian sugar manufacturers but also all other sugar manufacturers in the Community. The class of persons concerned by the contested measures is therefore not closed and could be extended in the future. Consequently, the conditions of admissibility established by the Court of Justice in Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477 and Case C-354/87 *Weddel* v *Commission* [1990] ECR I-3847 are not met in the present case.

32 The Council also refers to the case-law under which the general applicability, and thus the legislative nature, of a measure is not called in question by the fact that it is possible to determine the number or even the identity of the persons to whom it applies at any given time, as long as it applies to them by virtue of an objective legal or factual situation defined by the measure in question in relation to its purpose (Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 18, and order of the Court of First Instance in Case T-183/94 *Cantina Cooperativa fra Produttori Vitivinicoli di Torre di Mosto and Others* v *Commission* [1995] ECR II-1941, paragraph 48). The contested measures apply by virtue of such an objective legal and factual situation.

33 In that regard, the Council points out that the compensation system for storage costs introduced in Article 8 of the basic regulation applies throughout the Community and that the reimbursement of the storage costs provided for in Article 8(1) is made at a flat rate. Consequently, Article 8 does not specifically refer to the reimbursement of the costs actually borne by Italian sugar manufacturers.

34 Furthermore, Regulation No 1101/95 amending the basic regulation extends the self-financing system of the sector and the quota system for six marketing years and takes account of the Community's international commitments and the economic situation in the sugar sector in the Community.

35 The Council further points out that Regulation No 1534/95 forms part of the 'price package' which it adopts each year for the following marketing year in the various agricultural sectors. It follows from the preamble to that regulation that in determining the amount of the refund the Council relied on objective criteria and — in accordance with the criteria set out in Article 5 of Council Regulation (EEC) No 1358/77 of 20 June 1977 laying down general rules for offsetting storage costs for sugar and repealing Regulation (EEC) No 750/68 (OJ 1977 L 156, p. 4) — took account of financing costs (in respect of which it also took account of a 6.75% interest rate), insurance costs and specific storage costs.

36 The Council infers that the provisions at issue provide no support for the conclusion that the compensation system for storage costs, and in particular the fixing of the amount of the reimbursement, was aimed specifically at the applicants' situation. They were therefore concerned only in their objective capacity as sugar manufacturers.

37 In any event, the mere fact that the applicants hold production quotas is not sufficient to establish, as case-law requires, that their legal position is affected (*Codorniu*, paragraph 20). Unlike the regulation at issue in *Codorniu*, the fixing of the amount of the reimbursement does not adversely affect the applicants' 'legal position', nor does it affect their 'specific rights' (order in Case T-99/94 *Asociación Española de la Carne (Asocarne)* v *Council* [1994] ECR II-871, paragraph 20).

38 In its statement in intervention the Commission supports the Council's arguments. It points out that the contested provisions establish the amount of the flat-rate reimbursement for storage costs on the basis of an assessment of the market situation as a whole and concern not only Italian sugar manufacturers but all Community manufacturers and affords no special protection to any of them.

39 The applicants consider, first, that they are directly affected by the contested regulations in their capacity as holders of production quotas, in that the reimbursement of storage costs is directly linked to possession of those quotas. Because the contested measures do not take account of the higher storage costs borne by Italian producers they discriminate against the applicants. The contested measures therefore have a direct impact on the applicants' financial situation, since they are obliged to operate in adverse market conditions and bear higher costs than those borne by foreign operators.

40 That observation is not called in question by the fact that the Italian authorities had a discretion in granting the national aid. The applicants refer to Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207 and point out that the aid was always granted in practice, so that Regulation No 1101/95, in so far as it abolishes the possibility of granting such aid, produces direct effects for them.

41 Next, the applicants claim that they are individually concerned by the contested provisions, in so far as they belong to a limited class of economic operators capable of being individually identified, namely Italian sugar manufacturers holding production quotas. Being in possession of a quota is the condition which allows a sugar manufacturer actually to define himself as such for the purposes of the Community rules. Only sugar manufacturers holding quotas are entitled to reimbursement of storage costs. It is common ground that the applicants held production quotas for the 1995/96 marketing year.

42 In that context, the applicants point out that the institutions were aware of their identity and refer to the fact that the Member States are required to inform the Community authorities of the way in which quotas are shared between sugar-producing undertakings, pursuant to Articles 25(2) and 39 of the basic regulation and to Commission Regulation (EEC) No 787/83 of 29 March 1983 on communications in the sugar sector (OJ 1983 L 88, p. 6). When the Council adopted Regulations No 1101/95 and No 1534/95 it was aware of the identity of

the Italian sugar-producing undertakings which held quotas for the 1995/96 marketing year. It was common ground that the applicants were among those producers and that the possibility that additional quota holders might be added was precluded.

43 In so far as the Council refers to Article 25 of the basic regulation in support of its contention that the number of sugar manufacturers is not fixed, but open to 'newcomers', the applicants point out that the possibility for Member States to transfer quotas for the 1995/96 marketing year could only be used before 1 March 1995. Council Regulation (EEC) No 193/82 of 26 January 1982 laying down general rules for transfers of quotas in the sugar sector (OJ 1982 L 21, p. 3) provides in Article 7 that where a Member State applies Article 25(2) of the basic regulation it is to allocate the adjusted quotas before 1 March with a view to applying them in the following marketing year. They conclude that on the dates on which Regulations No 1101/95 and No 1534/95 were adopted — 24 April and 29 June 1995 — Article 1(f) of Regulation No 1534/95 could only concern the limited class of Italian sugar producers defined on 1 March 1995.

44 The applicants also refer to Special Report No 4/91 of the Court of Auditors on the operation of the common organisation of the market in the sugar and isoglucose sector, in which it is observed that long-term application of the quota system created production rights for holders of quotas, since those production quotas had resulted in genuine individual rights. As the Commission did not object to that point in its official reply to those findings, it accepted by implication that the production quotas have become genuine individual rights and that, accordingly, any measure adopted by the Community authorities in relation to those rights produces direct and individual effects *vis-à-vis* the holders of those rights.

45 The applicants refer, in particular, to the *Sofrimport*, *Piraiki-Patraiki* and *Weddel* judgments, and to Joined Cases 106/63 and 107/63 *Töpfer and Others* v *Commission* [1965] ECR 405 and Joined Cases 41/70, 42/70, 43/70 and 44/70 *International Fruit Company and Others* v *Commission* [1971] ECR 411, and claim that they constitute a group which is sufficiently distinguished from

producers in other areas of the Community. They are victims of discrimination caused by the particular impact of financial costs in the Italian market, an impact of which the contested measures failed to take account even though the Community institutions were aware of the problem.

46 Thus, according to the applicants, the Council adopted the contested measures in reaction to the quantity of sugar which the applicants were authorised to produce under the quotas allocated to Italy. It acted on the basis of that information and decided that the figure for production coincided with the figure for consumption and that no additional aid was therefore necessary, so that there is a clear correlation between the applicants' situation and the measures adopted by the Council.

Findings of the Court

The subject-matter of the action, the lack of sufficient precision in the application and the failure to observe the time-limit for bringing proceedings (first and third pleas)

47 The applicants stated in their observations on the objection of inadmissibility that they sought the annulment of Regulation No 1101/95, in so far as Article 1(13), by replacing the wording of Article 46 of the basic regulation, abolished the possibility for the Italian State to grant Italian sugar manufacturers aid relating to storage costs, and of Regulation No 1534/95 in so far as Article 4 fixes the reimbursement to compensate for storage costs at a flat rate for the whole Community.

48 It is true that the applicants stated, in the same context, that they also sought 'a declaration, under, *inter alia*, Article 184 of the Treaty, that Article 8 of Regulation No 1785/81 [was] invalid and illegal', which amounts to raising an

objection of illegality in support of the form of order sought in the application. On this last point, however, they stated in their observations on the Commission's statement in intervention that the acts which they challenged in their application were Regulations No 1101/95 and No 1534/95 and that, in any event, they did not seek the annulment of the basic regulation.

49 The Court concludes that the applicants seek only the annulment of Article 1(13) of Regulation No 1101/95 and Article 4 of Regulation No 1534/95, so that there is no longer any need to consider the admissibility of the action in so far as the other elements are concerned.

50 It follows that the first and third pleas of inadmissibility, alleging that the application lacks precision and that the time-limit for bringing proceedings had expired, are devoid of purpose.

Second plea, alleging that there is no measure capable of being contested

51 It is settled case-law that only measures the legal effects of which are binding on, and capable of affecting the interests of, the applicants by bringing about a distinct change in their legal position are acts which may be the subject of an action for annulment under Article 173 of the Treaty (order in Case T-596/97 *Dalmine* v *Commission* [1998] ECR II-2383, paragraph 29).

52 As the Commission and the Council correctly observed, Article 1(13) of Regulation No 1101/95 contains no provision relating to the compensation system for storage costs, in general, or the possibility for the Italian State to grant aid to Italian producers in relation to those costs, in particular. The possibility of granting such aid was last provided for in Regulation No 133/94, Article 1(26) of which extended the corresponding provision in Article 46(5) of the basic

regulation but limited that possibility of aid to the 1994/95 marketing year. It follows that, as regards the marketing year in issue, namely 1995/96, the applicants' legal situation was not distinctly changed by Regulation No 1101/95.

53 It follows that, in so far as it seeks the annulment of Article 1(13) of Regulation No 1101/95, the application must be declared inadmissible.

The applicant's standing to bring proceedings (fourth plea)

54 Under the fourth paragraph of Article 173 of the Treaty, the admissibility of an application for the annulment of a regulation introduced by a natural or legal person is subject to the condition that the contested regulation is in reality a decision which concerns that person directly and individually. The criterion for distinguishing between a regulation and a decision must be sought in the general application or otherwise of the measure in question. An act has general application if it applies to objectively determined situations and entails legal effects for categories of persons regarded generally and in the abstract (order in Case C-87/95 P *Cassa Nazionale di Previdenza ed Assistenza a favore degli Avvocati e Procuratori (CNPAAP)* v *Council* [1996] ECR I-2003, paragraph 33; judgment in Case T-482/93 *Weber* v *Commission* [1996] ECR II-609, paragraph 55; and order in Case T-39/98 *Sadam Zuccherifici and Others* v *Council* [1998] ECR II-4207, paragraph 17).

55 In the present case Article 4 of Regulation No 1534/95 fixes at 'ECU 0.45 per month per 100 kilograms of white sugar' the 'amount of the reimbursement referred to in Article 8' of the basic regulation; Article 8 of the basic regulation provides for a 'flat-rate reimbursement', the amount of which 'shall be the same for the whole Community'. It follows from the preamble to Regulation No 1534/95 that for the purpose of determining the amount of the reimbursement the Council took account of financing costs (in relation to which it also took account of a general 6.75% interest rate), insurance costs and specific storage costs. The provision in question thus introduces a flat-rate reimbursement and

applies to an indefinite number of storage operations in the Community carried out by all Community sugar manufacturers. It follows that when Article 4 of Regulation No 1534/95 is placed in the context of the basic regulation it applies to objectively determined situations and is addressed in general terms to categories of persons regarded in the abstract. Consequently, that provision may be seen to be a measure of general application.

56 However, it cannot be excluded that a provision which by its nature and application is general in character may individually concern natural or legal persons where it adversely affects them by reason of certain attributes which are peculiar to them or by reason of circumstances which differentiate them from all other persons and thereby distinguish them individually in the same way as the person to whom a measure is addressed (Case C-209/94 P *Buralux and Others* v *Council* [1996] ECR I-615, paragraph 25).

57 The applicants' argument that they are differentiated because, as holders of sugar production quotas, they form part of a 'limited class' cannot be upheld. First, even supposing that the Council had actually been aware of the applicants' identity when it adopted the regulation at issue, it is settled law that the general application of a measure is not called in question by the fact that it is possible to define more or less precisely the number or even the identity of the persons to whom it applies at any given time, as long as it is established that such application takes effect by virtue of an objective situation of fact or of law defined by the measure in question (order in Case C-409/96 P *Sveriges Betodlares Centralförening and Henrikson* v *Commission* [1997] ECR I-7531, paragraph 37). The applicants have completely failed to adduce any factors of such a kind as to show that Italian sugar manufacturers were in a specific situation such that the fixing by the Council of the derived intervention price for white sugar for Italy did not have general application but was aimed at them individually.

58 Second, and in any event, as the Council observed at the hearing without being contradicted by the applicants, while it is the case that before the various prices for sugar are fixed for each marketing year the Member States communicate to the Commission information on developments in sugar production and con-

sumption in their territory and on the sugar production quotas already allocated (see paragraph 44 above), when the Council adopted the contested regulation it nevertheless did not have any particular information on each of the Italian undertakings holding sugar production quotas for the 1995/96 marketing year.

59 Nor is the case-law on which the applicants rely in support of the admissibility of their action relevant in the present case. That case-law refers to certain specific situations concerning individual applications for import licences which were submitted during a short period and related to specific quantities (see *Töpfer, International Fruit Company* and *Weddel*) or involving the obligation imposed on the Community institutions to take account of the consequences which the measure they propose to adopt will have on the situation of certain individuals (see *Sofrimport* and *Piraiki-Patraiki*). There are no such circumstances in the present case. In particular, the applicants have neither alleged nor, *a fortiori*, established that the Council is under an obligation to afford the Italian producers, in the context of the compensation system for storage costs, special protection over and above that afforded to other Community producers who have also placed their products in storage (see also *Buralux*, paragraphs 32 to 34).

60 In so far as the applicants criticise the Council for having fixed the amount of the reimbursement at a standard rate in the contested provision and for having thus discriminated against Italian sugar producers, whose storage costs are particularly high, it is sufficient to point out that, according to a consistent line of decisions, the fact that a measure may have different specific effects on the various persons to whom it applies is not inconsistent with its nature as a regulation when that situation is objectively defined (order in Case T-197/95 *Sveriges Betodlares Centralförening and Henrikson* v *Commission* [1996] ECR II-1283, paragraph 29). It follows from the foregoing that the contested provision has general application.

61 The applicants also claim that the contested provision adversely affects the individual production rights which they enjoy as holders of production quotas allocated pursuant to the basic regulation. The Court must therefore consider whether they may none the less be regarded as being individually distinguished within the meaning of the *Codorniu* v *Council* judgment, in which it was held that a provision of general application may, in certain circumstances, be of individual concern to an economic operator in so far as it adversely affects that operator's specific rights (see *Weber* v *Commission*, paragraph 67, and the case-law cited there).

62 In that regard, it is sufficient to observe that the allocation of production quotas to the applicants was not, prior to the adoption of the contested regulation, accompanied by an established right that reimbursement would be fixed at an amount which took account of the storage costs which in practice only the Italian sugar producers were required to bear. The applicants' legal situation was therefore no different from that of other holders of production quotas, all of whom had to adjust to the amount of the uniform flat-rate reimbursement fixed by the Council for each marketing year (Case 72/79 *Commission* v *Italy* [1980] ECR 1411, paragraph 16).

63 It follows that the applicants are not individually concerned by Article 4 of Regulation No 1534/95 and that the application, in so far as it seeks the annulment of that provision, is not admissible.

64 It follows from all the foregoing that the application must be dismissed as inadmissible in its entirety.

Costs

65 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if these have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful and the Council asked for costs, the applicants must be ordered jointly and severally to pay their own costs and also those incurred by the Council. In accordance with Article 87(4) of the Rules of Procedure, the Commission must bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1. **Dismisses the application as inadmissible;**

2. **Orders the applicants jointly and severally to pay their own costs and also those incurred by the Council;**

3. Orders the Commission to bear its own costs.

Vesterdorf Pirrung Vilaras

Delivered in open court in Luxembourg on 8 July 1999.

H. Jung B. Vesterdorf

Registrar President