JUDGMENT OF THE COURT
28 April 1988 *

In Joined Cases 31 and 35/86

Levantina Agrícola Industrial SA (Laisa), a company incorporated under Spanish law, having its registered office in Barcelona, Kingdom of Spain, represented by Marcel Veroone, of the Lille Bar, with an address for service in Luxembourg at the Chambers of Louis Schiltz, 83 boulevard Grande-Duchesse-Charlotte, and

CPC España SA, a company incorporated under Spanish law, having its registered office in Barcelona, Kingdom of Spain, represented by Barbara Rapp-Jung, Rechtsanwältin, Frankfurt, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 4 avenue Marie-Thérése,

applicants,

supported by

Campo Ebro Industrial SA, a company incorporated under Spanish law, having its registered office in Zaragossa, Kingdom of Spain, represented by Michel Waelbroeck, of the Brussels Bar, and Antonio Plasencia, of the Barcelona Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 4 avenue Marie-Thérése,

intervener,

v

Council of the European Communities, represented by Arthur Brautigam, Principal Administrator at the Legal Department of the Council of the European Communities, acting as Agent, with an address for service in Luxembourg at the office of Jörg Käser, Manager of the Legal Directorate of the European Investment Bank, 100 boulevard Konrad-Adenauer, Kirchberg,

defendant,

* Languages of the Case: French and English.

supported by

Commission of the European Communities, represented

in Case 31/86 by Jean-Claude Séché, Legal Adviser,

in Case 35/86 by D. Grant Lawrence, a member of its Legal Department,

both acting as Agents, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

and

Asociación General de Fabricantes de Azúcar de España (AGFA), having its registered office in Madrid, Kingdom of Spain, represented by Agusti Bou Maqueda of the Barcelona Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue,

interveners,

APPLICATION for a declaration that certain provisions of Annex I to the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (Official Journal L 302 of 15 November 1985, p. 232), amending Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector (Official Journal 1981, L 177, p. 4), are void or alternatively for a declaration that the European Economic Community, represented by the Council, is liable for the damage suffered by the applicants as a result of the adoption of the abovementioned provisions,

THE COURT

composed of: G. Bosco, President of Chamber, acting as President, O. Due and J. C. Moitinho de Almeida (Presidents of Chambers), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. Kakouris, R. Joliet, T. F. O'Higgins and F. Schockweiler, Judges,

Advocate General: C. O. Lenz
Registrar: B. Pastor, Administrator

having regard to the Report for the Hearing and further to the hearing on 20 October 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 1 December 1987,

gives the following

Judgment

1 By applications lodged at the Court Registry on 6 and 10 February 1986 respectively, Levantina Agrícola Industrial SA ('Laisa') and CPC España SA, whose registered offices are in Barcelona, brought actions under the second paragraph of Article 173 of the EEC Treaty for the annulment of certain provisions of Annex I to the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (Official Journal 1985, L 302, p. 232), amending Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector (Official Journal 1981, L 177, p. 4). Alternatively, the applicants seek a declaration that the European Economic Community, represented by the Council, is liable for the damage suffered by them as a result of the adoption of the abovementioned provisions.

2 The applicants and Campo Ebro Industrial SA (hereinafter referred to as 'Campo Ebro'), which has intervened in support of their case, are the only three Spanish producers of isoglucose. They contest the validity of Article 24 (3) (a) and (5) (a) of Regulation No 1785/81, read in conjunction with paragraph (2) of the same article relating to the allocation of isoglucose production quotas to the undertakings established in Spain, claiming that the principles of equal treatment and of proportionality have been infringed and, as an alternative ground for annulment, that the allocation of quotas between the three Spanish producers of isoglucose is inappropriate.

3 The alternative claim for damages is based on Article 215 of the Treaty, the conditions of which the applicants consider fulfilled in this case.

4 The Council, supported by the Commission and the Asociación General de Fabricantes de Azucar de España, has raised an objection of inadmissibility against the main and alternative claims. In accordance with Article 91 (3) of the Rules of Procedure, the Court decided to open the oral procedure on the objection of inadmissibility.

5 Reference is made to the Report for the Hearing for a fuller account of the facts of the case and the arguments of the parties which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The admissibility of the actions for annulment

6 The Council argues that the contested provisions form an integral part of a treaty which has the same value in law as the original Treaties and that consequently they are not part of an act of the Council open to the review of legality provided for in Article 173 of the EEC Treaty. In its view, Article 8 of the Act of Accession relates only to the possibility for the institutions to repeal or amend the provisions of that Act which have repealed or amended, otherwise than as a transitional measure, the acts adopted by them without using the procedure for revising the Treaties provided for in Article 6 of the Act of Acession for the suspension, amendment or repeal of the provisions of that Act.

7 The applicants and Campo Ebro contend that the contested provisions are secondary legislation, as is expressly indicated in Article 8 of the Act of Accession. In their view, an act may not be secondary legislation as regards some of its provisions and primary law as regards others. Furthermore, the Council's argument would lead to a distinction being drawn between, on the one hand, the regime applicable to the adaptations to secondary legislation set out in Annex I and, on the other hand, that applicable to the adaptations made by the institutions in accordance with the guidelines set out in Annex II to the same Act, which would be arbitrary since the choice of the procedure to be followed for such adaptations was made merely on grounds of convenience and expediency. They also submit that, if the contested provisions fell outside the ambit of review by the Court, the effectiveness of the system of judicial protection, the fundamental legal principles of the Community and the uniformity of Community law would be placed in jeopardy.

8 In Campo Ebro's view, the fact that the non-transitional adaptations to the acts adopted by the institutions may be repealed or amended after accession indicates that such adaptations cannot constitute conditions of admission within the meaning of Article 237. Furthermore, the position adopted by the Council would mean that Article 24 of Regulation No 1785/81 would, paradoxically, have been subjected to three different legal regimes in turn: possibility of instituting proceedings until 31 December 1985; no such possibility from 1 January 1986 to 30 June 1986; renewed possibility of instituting proceedings since 1 July 1986, the date of the entry into force of Regulation No 934/86 which extended the application of the provisions of Regulation No 1785/81 until the end of the 1990/91 marketing year.

9 It should be observed first of all that, in accordance with Article 1 (2) of the Treaty concerning the accession of the Kingdom of Spain and the Portuguese Republic, the conditions of admission and the adjustments to the Treaties establishing the European Economic Community and the European Atomic Energy Community necessitated by admission are set out in the Act annexed to the Treaty.

10 The conditions of admission concern the application to the new Member States of the entire body of Community law in force at the time of accession and form the essential subject-matter of the Act concerning the accession of the two aforementioned States.

11 According to Articles 26 and 27 of the Act of Accession, the non-transitional adaptations are set out in the Act itself, in Annex I, or are established by the Council or by the Commission, in accordance with the guidelines set out in Annex II and in accordance with the procedure and under the conditions laid down in Article 396.

12 The adaptations set out in Annex I to the Act of Accession are thus the subject of an agreement between the Member States and the applicant State as provided for in Article 237 of the EEC Treaty. They do not constitute an act of the Council but provisions of primary law which, according to Article 6 of that Act and unless otherwise provided therein, may not be suspended, amended or repealed otherwise than by means of the procedure laid down for the revision of the original Treaties.

13 Contrary to what is maintained by the applicants and the intervener Campo Ebro, the possibility that the legality of such provisions may be reviewed cannot be inferred from Article 8 of the Act of Accession, which provides:

'Provisions of this Act the purpose or effect of which is to repeal or amend acts adopted by the institutions of the Communities, otherwise than as a transitional measure, shall have the same status in law as the provisions which they repeal or amend and shall be subject to the same rules as those provisions.'

14 That provision must be read in conjunction with Article 6, cited above. Article 8, as well as Article 7, relating to transitional provisions, specify the exceptions indicated in Article 6 as regards the procedure for amending and repealing provisions of the Act of Accession. Article 8 does not therefore have the effect of subjecting to a review of legality the provisions to which it refers.

15 That interpretation is rendered all the more compelling by the fact that the provisions of the Act of Accession affirm the results of the accession negotiations which constitute a totality intended to resolve difficulties which accession entails either for the Community or for the applicant State.

16 The argument based on the change of nature of Articles 24 to 32 of Regulation No 1785/81, which, according to Article 23 thereof, were applicable only with regard to the marketing years 1981/82 to 1985/86 but whose application was extended by the Council until the end of the 1990/91 marketing year, must be rejected. Although the provisions in question, in so far as they concern the marketing years subsequent to those envisaged by the Act of Accession, are subject to the judicial review provided for in Article 173 of the Treaty, that situation, contrary to what Campo Ebro claims, is not paradoxical. It arises from the fact that, in accordance with Article 23 mentioned above, the agreement of the contracting parties is limited to the period of application of such provisions.

17 As regards the alleged arbitrary difference of regime between the adaptations to the acts of the institutions ensuing from the Act of Accession itself and the adaptations to acts adopted by the institutions in accordance with Article 27 of the Act of Accession, it must be pointed out that that difference is merely the consequence

of the different procedures chosen. Whereas the adaptations provided for in Article 27 of the Act are adopted pursuant to acts of the institutions, which are subject as such to the general rules on the review of legality provided for in the Treaty, the adaptations resulting directly from the Act of Accession do not constitute acts of the institutions and are not therefore open to a review of legality.

18 It follows from the foregoing that the contested provisions, which form an integral part of the Act of Accession of the Kingdom of Spain and the Portuguese Republic, do not constitute an act of the Council within the meaning of Article 173 of the EEC Treaty and that consequently the Court has no jurisdiction to consider the legality of such provisions. Consequently, the actions for annulment are inadmissible

The actions for damages

19 In the Council's view, the alleged damage is not the result of an act which it has adopted as a Community institution but of provisions of the Act of Accession. The Council further considers that, since no conduct is imputable to it as regards the determination of the contested rules, Article 215 of the EEC Treaty is not applicable in this case.

20 The applicants argue that the adaptations to secondary legislation are imputable to the Council by virtue of the pre-eminent role which it plays in the accession procedure and that, as a result, that institution is liable for the damage ensuing from them.

21 It must be pointed out that, according to Article 237 of the EEC Treaty, the conditions of admission and the adjustments to the Treaty are to be the subject of an agreement between the Member States and the applicant State and that the only role which the Council plays is to decide on the application for accession.

22 Consequently, although the actions for damages are directed in form against the Council, they in fact seek compensation for damage which may have been caused by an agreement concluded between the Member States, the Kingdom of Spain and the Portuguese Republic. Since the Court has no jurisdiction to hear and determine such actions, it follows that the actions for damages are inadmissible.

Costs

23 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the applicants have failed in their submissions, they must be ordered to bear the costs jointly and severally. The intervener Campo Ebro shall bear its own costs.

On those grounds,

THE COURT

hereby

(1) Dismisses the applications as inadmissible;

(2) Orders the applicants to bear the costs jointly and severally;

(3) Orders the intervener Campo Ebro to bear its own costs.

Bosco Due Moitinho de Almeida Koopmans Everling

Bahlmann Galmot Kakouris Joliet O'Higgins Schockweiler

Delivered in open court in Luxembourg on 28 April 1988.

J.-G. Giraud
Registrar

A. J. Mackenzie Stuart
President