JUDGMENT OF THE COURT (Sixth Chamber)
14 March 2002 *

In Case C-340/98,

Italian Republic, represented by U. Leanza, acting as Agent, assisted by I.M. Braguglia, Avvocato dello Stato, with an address for service in Luxembourg,

applicant,

v

Council of the European Union, represented by J. Carbery, I. Díez Parra and A. Tanca, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: Italian.

supported by

Commission of the European Communities, represented by F.P. Ruggeri Laderchi, acting as Agent, with an address for service in Luxembourg,

intervener,

APPLICATION for annulment of Article 1 of Council Regulation (EC) No 1361/98 of 26 June 1998 fixing, for the 1998/99 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 1998 L 185, p. 3), in so far as it omits to fix the derived intervention price for white sugar for all areas of Italy and thus renders applicable in Italy the intervention price for white sugar fixed by Article 1(2) of Council Regulation (EC) No 1360/98 of 26 June 1998 fixing, for the 1998/99 marketing year, certain sugar prices and the standard quality of beet (OJ 1998 L 185, p. 1), and, if necessary, annulment of Article 1(2) of Regulation No 1360/98, in so far as it also fixes the intervention price for white sugar for Italy,

THE COURT (Sixth Chamber),

composed of: F. Macken, President of the Chamber, N. Colneric (Rapporteur), C. Gulmann, J.-P. Puissochet and J.N. Cunha Rodrigues, Judges,

Advocate General: J. Mischo,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 15 February 2001, at which the Italian Republic was represented by I.M. Braguglia, the Council by F.P. Ruggeri Laderchi, acting as Agent, and the Commission by L. Visaggio, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 15 March 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 17 September 1998, the Italian Republic brought an action under the first paragraph of Article 173 of the EC Treaty (now, after amendment, the first paragraph of Article 230 EC) for annulment of Article 1 of Council Regulation (EC) No 1361/98 of 26 June 1998 fixing, for the 1998/99 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 1998 L 185, p. 3), in so far as it omits to fix the derived intervention price for white sugar for all areas of Italy and thus renders applicable in Italy the intervention price for white sugar fixed by Article 1(2) of Council Regulation (EC) No 1360/98 of 26 June 1998 fixing, for the 1998/99 marketing year, certain sugar prices and the standard quality of beet (OJ 1998 L 185, p. 1), and, if necessary, annulment of Article 1(2) of Regulation No 1360/98, in so far as it also fixes the intervention price for white sugar for Italy.

2 By order of the President of the Court of 10 March 1999, the Commission of the European Communities was granted leave to intervene in support of the form of order sought by the Council of the European Union.

Legal background

Regulation (EEC) No 1785/81

3 In the context of the common organisation of the market in sugar (hereinafter 'the sugar COM'), Title I 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), as applicable in the version thereof resulting from Council Regulation (EC) No 1101/95 of 24 April 1995 (OJ 1995 L 110, p. 1, hereinafter 'Regulation No 1785/81'), established a price regime and Title III thereof a quota regime.

4 As regards the quota regime, a basic national production quantity is allocated to each Member State and spread between the national producers in the form of A and B production quotas. Those two quotas benefit from a marketing guarantee — in the form of an intervention price for white sugar — both on the Community market and in third countries.

5 As regards the price regime, Article 3(1), (4) and (5) of Regulation No 1785/81 provides:

'1. For white sugar there shall be fixed each year:

(a) an intervention price for the non-deficit area;

(b) a derived intervention price for each of the deficit areas.

...

4. The intervention price for white sugar shall be fixed before 1 August for the marketing year beginning on 1 July of the following year, in accordance with the procedure laid down in Article 43(2) of the Treaty.

...

5. The Council, acting by a qualified majority on a proposal from the Commission, shall fix... the derived intervention prices each year at the same time as it fixes the intervention price for white sugar.

...'

6 In order to provide beet producers with fair guarantees, a minimum price for sugarbeet is fixed each year, at the same time as the price for sugar, by reference to a basic price established in accordance with Article 4 of Regulation No 1785/81. With regard to the minimum prices for sugarbeet, Article 5 of that regulation provides:

'1. There shall be fixed each year at the same time as the intervention price for white sugar a minimum price for A beet and a minimum price for B beet.

...

3. For areas for which a derived intervention price for white sugar is fixed, the minimum prices for A beet and B beet shall be increased by an amount equal to the difference between the derived intervention price for the area in question and the intervention price, such amount being adjusted by the coefficient 1.30.

4. For the purposes of this Regulation, A beet and B beet shall mean all beet processed into A sugar and B sugar, respectively...'

7 Pursuant to Article 6 of Regulation No 1785/81:

'1. ... sugar manufacturers buying beet:

...

shall be required to pay at least a minimum price...

2. The minimum price referred to in paragraph 1 shall correspond:

(a) in the non-deficit areas to:

— the minimum price for A beet, in the case of beet to be processed into A sugar,

— the minimum price for B beet, in the case of beet to be processed into B sugar;

(b) in the deficit areas to:

— the minimum price for A beet adjusted in accordance with Article 5(3), in the case of beet to be processed into A sugar,

— the minimum price for B beet adjusted in accordance with Article 5(3), in the case of beet to be processed into B sugar.'

8 Consequently, areas regarded as deficit areas within the meaning of the sugar COM have applied to them derived intervention prices under Article 3(1)(b) and (5) of Regulation No 1785/81 and the minimum prices for sugarbeet increased in accordance with Article 5(3) of the same regulation.

9 That system, which is commonly known as 'regionalisation', enables higher prices to be fixed for deficit areas than the corresponding prices for non-deficit areas.

The basic regulations prior to Regulation No 1785/81

10 Regulation No 1009/67/EEC of the Council of 18 December 1967 on the common organisation of the market in sugar (OJ, English Special Edition 1967, p. 304) already provided for the fixing of derived intervention prices for white sugar.

11 Regulation (EEC) No 3330/74 of the Council of 19 December 1974 on the common organisation of the market in sugar (OJ 1974 L 359, p. 1), which replaced the first regulation, retained the essence of the rules laid down by Regulation No 1009/67. With regard to the fixing of derived intervention prices, Article 3(1) and (2) thereof provided:

'1. An intervention price for white sugar shall be fixed each year for the Community area having the largest surplus.

2. Derived intervention prices shall be fixed for other areas, taking account of the regional variations which, given a normal harvest and free movement of sugar, might be expected to occur in the price of sugar under natural conditions of price formation.'

12 The latter regulation was in turn replaced by Regulation No 1785/81.

The regulations relating to the 1998/99 marketing year

13 Regulation No 1361/98, which was adopted on the basis of Regulation No 1785/81, states as follows in the second and third recitals in the preamble thereto with regard to the fixing of derived intervention prices:

'... Article 3(1) of Regulation (EEC) No 1785/81 provides that derived intervention prices for white sugar are to be fixed for each of the deficit areas;... for such fixing, it is appropriate that account be taken of the regional variations in

the price of sugar, which, given a normal harvest and free movement of sugar, might be expected to occur in the price of sugar under natural conditions of price formation on the market;

... a deficit supply situation is to be foreseen in the areas of production in Ireland, the United Kingdom, Spain, Portugal and Finland'.

14 In accordance with the third recital in the preamble thereto, Article 1 of Regulation No 1361/98 fixed a derived intervention price for white sugar for all the areas of production in the United Kingdom, Ireland, Portugal, Finland and Spain.

15 Since Regulation No 1361/98 did not fix a derived intervention price for Italy, the intervention price for white sugar fixed by Article 1(2) of Regulation No 1360/98 also applied in Italy for the 1998/99 marketing year. Accordingly, Italy was treated as a Member State with excess production.

The action

16 In those circumstances, the Italian Republic brought the present action for annulment of Article 1 of Regulation No 1361/98, in so far as it omits to fix the derived intervention price for white sugar for all areas of Italy for the 1998/99 marketing year and, if necessary, annulment of Article 1(2) of Regulation No 1360/98, in so far as it also fixes the intervention price for white sugar for Italy.

17 In support of its action, the Italian Government puts forward three pleas in law.

18 First, it complains of infringement of Article 3(4) and (5) of Regulation No 1785/81 and, consequently, breach of the principle of the protection of legitimate expectations, on the ground that the fixing of prices for the 1998/99 marketing year did not take place until 26 June 1998 and was thus effected out of time.

19 Second, the Italian Government alleges infringement of Article 190 of the EC Treaty (now Article 253 EC). It claims that Regulation No 1361/98 contains neither an adequate statement of reasons for the omission to fix a derived intervention price for white sugar for Italy nor any information explaining the change in the method of assessing the situation.

20 Third and last, the Italian Government asserts that the principle of equal treatment has been breached, on the ground that the same criteria were not applied in the assessment whereby Italy was regarded as a Member State with excess production whereas other Member States were classified as deficit areas.

The plea alleging that Regulations Nos 1360/98 and 1361/98 were adopted out of time

The claim concerning infringement of Article 3(4) and (5) of Regulation No 1785/81

Arguments of the parties

21 According to the Italian Government, the Council has infringed Article 3(4) and (5) of Regulation No 1785/81, since the intervention price for white sugar and the

derived intervention prices for white sugar for the 1998/99 marketing year were respectively fixed by Regulations Nos 1360/98 and 1361/98, which were adopted on 26 June 1998 and entered into force on 1 July 1998 instead of before the month of August 1997.

22 As regards the Council's claim that it has considerable latitude in agricultural matters, particularly in relation to the observance of non-binding time-limits such as that at issue in the present case, the Italian Government denies that any such latitude exists when it comes to fixing intervention prices. Relying on the judgment in Case C-1/94 *Cavarzere Produzioni Industriali and Others* [1995] ECR I-2363, paragraph 21, it considers that the letter and spirit of Article 3(4) of Regulation No 1785/81 are such as to make the time-limit referred to therein mandatory.

23 By way of reply, the Council points out the differences which, it argues, exist between the rules which the Court was called upon to consider in *Cavarzere Produzioni Industriali and Others*, cited above, and those at issue in the present case. In addition, it states that, since the sugar COM was established, it has never adopted regulations concerning marketing years (hereinafter 'marketing-year regulations') before the date appearing in Regulation No 1785/81.

24 The Commission submits that the complaint put forward by the Italian Government is similar to that made in the case culminating in the judgment of 6 July 2000 in Case C-289/97 *Eridania* [2000] ECR I-5409, hereinafter 'the judgment of 6 July 2000'). It denies that the time-limit at issue in the present case can be mandatory, principally on the ground that failure to observe that time-limit does not result in the imposition of any penalty. According to the Commission, by contrast with the situation in *Cavarzere Produzioni Industriali and Others*, one of the effects of the rules applicable in the present case, taken as a whole, is that the Council cannot be penalised for failing to observe the time-limit in question by being deprived of its power to fix prices for a given marketing year.

Findings of the Court

25 As a preliminary point, it should be recalled that the Court held in paragraph 34 of the judgment of 6 July 2000 that the limit-date of 1 August in Article 3(4) and (5) of Regulation No 1785/81 is not peremptory and that failure to observe that date could not therefore have the effect of rendering invalid Council Regulation (EC) No 1580/96 of 30 July 1996 fixing, for the 1996/97 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 1996 L 209, p. 9), as regards the fixing therein of the intervention prices after 1 August.

26 In reaching that conclusion, the Court considered, *inter alia*, the objectives pursued by the price regime laid down by Article 3(4) and (5) of Regulation No 1785/81. In particular, it observed in paragraph 30 of the judgment of 6 July 2000 that, in the interests of the proper functioning of the intervention price machinery in the light of those objectives, it is necessary that the date on which those prices are fixed should be as close as possible to the date of commencement of the relevant marketing year. Those prices are determined by reference to the ratio between the volume of available production for the forthcoming marketing year and that of foreseeable consumption in the same year. Thus, the nearer the date of price-fixing is to 1 July, the more likely is it that the data on which the assessment of such volumes is based may be regarded as reliable.

27 That finding is equally valid as regards Regulations Nos 1360/98 and 1361/98, in so far as they were adopted after the time-limit laid down by Article 3(4) and (5) of Regulation No 1785/81.

28 In the present proceedings, the Italian Government has not put forward any argument not already rejected by the Court in its judgment of 6 July 2000.

29 Consequently, the validity of Regulations Nos 1360/98 and 1361/98 cannot be challenged on the ground that they were adopted in breach of Article 3(4) and (5) of Regulation No 1785/81.

30 The complaint alleging infringement of Article 3(4) and (5) of Regulation No 1785/81 must therefore be rejected.

The complaint alleging breach of the principle of the protection of legitimate expectations

Arguments of the parties

31 The Italian Government states that, in Italy, the sugarbeet produced for the sugar marketing year from 1 July 1998 to 30 June 1999 was delivered to the sugar undertakings from June 1998 onwards on the basis of sowings carried out in the autumn of 1997 and the spring of 1998.

32 It points out that, since the start of the sugar COM, that is to say, over the course of some 30 sugar marketing years, a derived intervention price for white sugar

intended to guarantee the income of sugarbeet producers had always been fixed for Italy, without interruption. This was therefore the first time that a derived intervention price was not fixed for Italy; moreover, no advance notice was given. The Italian sugarbeet producers, relying on a precedent which had lasted for 30 years, made their investments in the expectation of obtaining an income some 6.5% higher than that earned by them without the fixing of a derived intervention price.

33 According to the Italian Government, no change had taken place in the Italian sugar situation which could have prompted a refusal, without any warning, to grant a derived intervention price for white sugar for all areas of Italy for the 1998/99 marketing year. Such a grant represented a necessary corrective enabling producers to retain the requisite guarantees as regards their employment and their standard of living, as provided for by the third recital in the preamble to Regulation No 1785/81.

34 The Council stresses the relevance of the judgment in Case C-372/96 *Pontillo* [1998] ECR I-5091 and disputes the Italian Government's allegation that the situation appears to be even more serious than that which led to the judgment in Case C-368/89 *Crispoltoni* [1991] ECR I-3695 (see paragraph 17 et seq.).

35 The Commission likewise maintains that the answer given by the Court in *Pontillo*, cited above, is equally valid in the present case. In particular, it considers that the fact that all areas of Italy benefited from derived intervention prices for many years is not in itself enough to give rise to any legitimate expectation, since those prices have to be fixed afresh for each marketing year on the basis of the forecasts for the year in question.

36 The Commission argues that it is not correct to state that the sugar situation in Italy for the 1998/99 marketing year was the same as in the previous years. It asserts that whilst, in the previous years, the data available at the time when the prices were determined forecast a deficit, those available for the 1998/99 marketing year indicated that, by contrast with the previous years, Italy was no longer one of the Member States classified as deficit areas. From an objective point of view the *de facto* situation had changed.

37 The Commission rejects the considerations underlying the Italian Government's argument that the Community institutions should have based their forecasts for the 1998/99 marketing year on a different method of calculation. It states that it is unable to see how such considerations can have any impact on the effects of non-observance of the date provided for in Article 3(4) of Regulation No 1785/81.

Findings of the Court

38 First, there appears to be no substance to the Italian Government's argument that the fixing of prices before 1 August is intended to enable sugar and sugarbeet manufacturers to plan their activities with full knowledge of the facts.

39 The machinery for fixing intervention prices cannot be intended to lay down rules enabling operators in the sugar sector to plan their activities before contracts are concluded between sugar manufacturers and beet producers and before the latter

sow their land. The prices in question are not intended to orientate the economic conduct of operators in the sugar market but represent an attempt to anticipate, in their interests, the probable evolution of production and consumption with a view to stabilising the Community market (paragraphs 31 and 32 of the judgment of 6 July 2000).

40 Thus, in contrast to the time-limit at issue in *Cavarzere Produzioni Industriali and Others*, which was intended, according to paragraph 21 of the judgment in that case, to ensure that operators in the sugar sector would have a period of four months in which to plan their activities, the overstepping of the date of 1 August laid down in Article 3(4) and (5) of Regulation No 1785/81 cannot be capable of rendering invalid Regulation No 1361/98 in so far as it fixed intervention prices after that date (see, to that effect, paragraph 33 of the judgment of 6 July 2000).

41 Second, the fact that Italy was refused the grant of derived intervention prices for the first time after 30 years cannot amount to a breach of the principle of the protection of legitimate expectations.

42 Whilst the protection of legitimate expectations is one of the fundamental principles of the Community, economic operators cannot have a legitimate expectation that an existing situation which is capable of being altered by the Community institutions in the exercise of their discretionary power will be maintained; this is particularly true in an area such as the common organisation of the markets, which involves constant adjustments to meet changes in the economic situation (Joined Cases C-133/93, C-300/93 and C-362/93 *Crispoltoni and Others* [1994] ECR I-4863, paragraph 57, and *Pontillo*, cited above, paragraph 22).

43 The fact that intervention prices, together with minimum prices and increased prices, are fixed annually shows that the Council and the Commission are called upon, in respect of each marketing year, to carry out a fresh assessment of a complex economic situation.

44 As is apparent from paragraph 47 of the judgment of 6 July 2000, they are called upon to examine the ratio between as yet unharvested production volumes and consumption which has not yet commenced. Accordingly, they must extrapolate on the basis of information notified by the Member States which relates both to the current year, as far as the pattern of consumption is concerned, and to the prospects for the forthcoming year, as regards the pattern of available production.

45 Since Regulation No 1785/81 obliges the Council and the Commission each year to determine the intervention prices, minimum prices and increased prices afresh, on the basis, in particular, of the pattern of production and the pattern of consumption, economic operators can have no legitimate expectation that the prices fixed for previous marketing years will be repeated.

46 Moreover, the fact that no derived intervention price was fixed for Italy cannot have come as a complete surprise to operators in the sugar sector.

47 As the Advocate General states in points 20 to 22 of his Opinion, those operators were aware, even before the publication on 23 March 1998 of the Commission's

proposals regarding prices (OJ 1998 C 87, pp. 5 and 7), that Italy's classification as a deficit area for the purposes of the sugar COM had been under threat in recent years.

48 Quite apart from the fact that representatives of the sugar manufacturers and beet producers are members of the Advisory Committee on Sugar set up, pursuant to Article 40 of Regulation No 1785/81, by Commission Decision 87/75/EEC of 7 January 1987 (OJ 1987 L 45, p. 16), the various actions brought by sugar producers before both the national courts and the Court of First Instance, challenging, in particular, the classification of Italy as a deficit area in the 1995/96, 1996/97 and 1997/98 marketing years, show that, for at least three years, it had ceased to be unanimously agreed that that Member State was in a deficit situation and that a change was foreseeable.

49 Consequently, the possibility that no derived intervention price would be fixed had become a contingency which the sugar manufacturers and beet producers had to take into account.

50 The complaint alleging breach of the principle of the protection of legitimate expectations must therefore be rejected.

51 Since none of the Italian Government's complaints has been upheld, it is necessary to reject the plea alleging that Regulations Nos 1360/98 and 1361/98 were adopted out of time.

The plea alleging that no, or no sufficient, statement of reasons was given as provided for by Article 190 of the Treaty

The complaint alleging the absence of a statement of reasons for the classification of Italy as a non-deficit area

Arguments of the parties

52 The Italian Government observes that Regulation No 1361/98, which fixes the derived intervention prices for areas in which a deficit supply situation is foreseeable, simply excludes Italy from the list of Member States concerned.

53 Even if the third recital in the preamble to that regulation may be interpreted as meaning that the Council considered that a deficit supply situation was not foreseeable in the areas of production in Italy for the 1998/99 marketing year, that was not enough to justify such a serious measure as regards that Member State. Neither the sugar manufacturers and beet producers nor the Italian authorities were in a position to know which factors and criteria had been used as the basis for the forecast that there would be no deficit supply situation in Italy. Consequently, the Italian Government and the adversely affected national operators in the sugar sector have been prevented from exercising their right to a fair hearing.

54 In the Italian Government's view, that failure to state reasons is all the more serious inasmuch as a derived intervention price had always been fixed at the highest level for Italy from the start of the sugar COM to the 1997/98 marketing year. It cannot see how it can be possible to switch from fixing the highest derived intervention price to the total elimination of that price without giving any information whatever to justify such a drastic measure.

55 In response to the Council's arguments, the Italian Government states that, whilst it is not unaware of the Court's case-law regarding the limits on the obligation of a Community institution to provide a statement of reasons when it is required to intervene in a complex economic situation such as a matter concerning the common agricultural policy, it none the less considers that, in a situation such as that in the present case, it is necessary, at the very least, to indicate the criterion explaining the legal reasoning which led the Council to declare that Italy was not a deficit area.

Findings of the Court

56 As the Italian Government points out, the third recital in the preamble to Regulation No 1361/98 does indeed show that the Council formed the view that Italy could no longer be classified as a deficit area for the 1998/99 marketing year.

57 Whilst such reasoning may appear open to criticism on account of its extremely succinct nature, it cannot be regarded as failing to comply with the obligation to provide a statement of reasons as laid down by Article 190 of the Treaty and interpreted by settled case-law.

58 As is apparent from paragraph 38 of the judgment of 6 July 2000 and the case-law cited therein, the statement of reasons must be appropriate to the nature of the measure in question and must show clearly and unequivocally the reasoning of the institution which adopted the contested measure so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review.

59 In defining the scope of the obligation laid down in Article 190 of the Treaty, the Court has held that the statement of the reasons on which regulations are based is not required to specify the often very numerous and complex matters of fact or of law dealt with in those regulations, provided that the latter fall within the general scheme of the body of measures of which they form part (see, in particular, paragraph 40 of the judgment of 6 July 2000). It has also held that the question whether a statement of reasons meets the requirements of Article 190 must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see, in particular, paragraph 41 of the judgment of 6 July 2000).

60 It is apparent from the set of rules of which Regulation No 1361/98 forms part, and from the economic context in which that regulation was adopted, including in particular the developments which have occurred in the sugar market during recent marketing years, that neither the Italian Government nor economic operators in the sugar sector could have been unaware of the reasons for classifying Italy as a non-deficit area.

61 The Italian Government, as a member of the Management Committee for Sugar, and pursuant to its obligation under Commission Regulation (EC) No 779/96 of 29 April 1996 laying down detailed rules for the application of Regulation No 1785/81 as regards communications in the sugar sector (OJ 1996 L 106, p. 9) to notify at regular intervals figures concerning both current production and actual consumption, was closely associated with the process of evaluating the

ratio between production volumes not yet harvested and consumption not yet commenced. Moreover, it is apparent from the detailed description of that process given by the Council in the proceedings culminating in the judgment of 6 July 2000 that the sugar market operators, that is to say the sugar manufacturers and beet producers, took part in that process through the intermediary of their representatives. Thus, they were also aware of the assessments carried out with a view to fixing the intervention prices and minimum prices for the 1998/99 marketing year.

62 In addition, neither the Italian Government nor the beet producers could have been unaware of the way in which the sugar market had developed during the course of the 1990s. As is clear from paragraph 67 of the judgment of 6 July 2000, those developments were characterised, in particular, by a slow but constant fall in consumption.

63 It follows from the foregoing that, in the context of the set of rules in issue and the way in which the market concerned has developed, the statement of reasons given in Regulation No 1361/98 for the classification of Italy as a non-deficit area for the 1998/99 marketing year, whilst very succinct, sufficiently fulfils the requirements laid down in the Court's case-law regarding the statement of reasons.

The complaint alleging the absence of a statement of reasons for a change in forecasting method

Arguments of the parties

64 The Italian Government considers that the refusal to apply the regionalisation system to Italy can only be based on a change in the forecasting method used. In

accordance with Article 190 of the Treaty, a statement of the reasons for that change should have been given in Regulation No 1361/98. No such reasons were given, however.

65 According to the Italian Government, it was not until it submitted its defence that the Council revealed for the first time the criterion used by it to assess the future development of the Italian market and to forecast that Italy would cease to be in deficit.

66 That criterion, whereby areas in which the projected consumption is higher than the projected A and B production quotas (hereinafter 'the Community method') are to be regarded as deficit areas, is not provided for by the Community rules. According to the Italian Government, the situation must be assessed on the basis of the quantity of unrefined sugar imported less exports, which it calls 'the Italian method'. By way of justification, the Italian Government examines at length the rules applying to sugar prior to adoption of the basic regulation, Regulation No 1785/81, and infers, with regard to the current regime resulting from that regulation, that it does not indicate that any different criterion should be applied.

67 The data communicated by the Member States in accordance with Regulation No 779/96 are to be used to improve the management of the sugar market within the European Union; they have never been intended, however, for use in establishing whether or not a Member State is in a deficit situation.

68 The Italian Government analyses the situation in the most recent marketing years according to the Italian method and according to the Community method. Application of the Italian method does indeed result in a deficit situation, as recognised by the various marketing-year regulations, whereas application of the Community method results, for certain marketing years at least, in a surplus situation, in contrast to the marketing-year regulations actually adopted.

69 The Italian Government concludes from this that the Council applied the criterion of the ratio between consumption and production for the 1998/99 marketing year in an unlawful and arbitrary manner, and that, had it applied the criterion proposed by the Italian Government, the Council would have established the existence of a deficit situation and would have fixed, as regards Italy also, a derived intervention price for white sugar for that marketing year.

70 The Commission and the Council state that the marketing-year regulations are drawn up on the basis of forecasts relating to a factual situation which lies in the future and is to some extent uncertain. Although the rules concerning sugar do not provide for the application of any particular criterion, the forecasting method applied for the 1998/99 marketing year was the same as that used by the Commission and the Council for the previous years. The Italian Government was well aware of it, having been closely associated with the drawing-up of the forecasts.

Findings of the Court

71 As a preliminary point, it must be stated that, had there been a change in the method used to assess future production and consumption, Regulations Nos 1360/98 and 1361/98 would not have contained an adequate statement of reasons clearly and unequivocally informing the Italian authorities and economic operators of the justification for classifying Italy as a non-deficit Member State and enabling the Community judicature to exercise its powers of review.

72 However, the Italian Government has not proved to the requisite legal standard the existence of such a change of method.

73 It is not in dispute that, for the 1998/99 marketing year, the method used by the Commission and the Council to assess Italy's future situation consisted in comparing available production, made up of the foreseeable quantities of A sugar and B sugar, plus any C sugar carried forward, with foreseeable consumption. Thus, in order to show that a change of method had occurred for the 1998/99 marketing year, the Italian Government would have had to prove that the Commission and the Council had used another method for the previous years.

74 According to the Italian Government, proof that another method was used emerges either from the regime applicable before the introduction of Regulation No 1785/81 or from the marketing-year regulations adopted prior to that regulation. The method in question was based on the quantity of unrefined sugar imported less exports.

75 First, the fixing of a derived intervention price was not governed, prior to the entry into force of Regulation No 1785/81, by the same rules as those applicable thereafter, particularly at the time of the 1998/99 marketing year.

76 Second, in relation to the two years before the 1998/99 marketing year, it is quite clear from the judgment of 6 July 2000, as regards the 1996/97 marketing year, and from the judgment of 12 March 2002 in Case C-160/98 *Eridania* [2002] ECR I-2533, as regards the 1997/98 marketing year, that the Commission and the Council used the same method of assessment as that used by them for the marketing year at issue in the present case, by establishing the ratio between the estimated production and consumption for the coming marketing year. According to paragraph 46 of the judgment of 6 July 2000 and point 14 in the Opinion of Advocate General Mischo in Case C-160/98, there is a deficit within the meaning of Regulation No 1785/81 where the total available production falls short of consumption. It is on that basis that the Commission and the Council assessed the foreseeable situation in Italy for each of the 1996/97 and 1997/98 marketing years and that the Court and Advocate General Mischo considered whether those assessments had been properly carried out.

77 Furthermore, the Italian Government raised no protest at the time and did not even express any reservations concerning the method used, of which it was well aware on account of its close collaboration with the Commission in the context of the sugar COM.

78 Consequently, the plea that no statement of reasons was given for the alleged change in the method of assessment cannot be accepted.

The plea alleging breach of the principle of equal treatment

Arguments of the parties

79 The Italian Government complains that the principle of equal treatment has been breached in its case, on the ground that different and contradictory criteria — at which, in the total absence of any statement of reasons, it can only attempt to guess — were applied in order to establish that the United Kingdom, Ireland, Portugal, Finland and Spain were in a deficit situation and that Italy was not.

80 With a view to showing that Italy was in the same situation as the other Member States classified as being in deficit, the Italian Government takes by way of example the situation in Ireland. It maintains that it is apparent from table C annexed to its reply, headed 'Sugar sector — Comparison between physical/legal production and consumption', that, despite the fact that, for the marketing years

from 1992/93 to 1997/98, the ratio between production and consumption in Ireland was positive and consequently that that Member State showed a surplus, Ireland was nevertheless still classified amongst the Member States in deficit and obtained a derived intervention price for white sugar.

81 Accordingly, the Italian Government asserts that, notwithstanding the fact that a non-deficit situation was foreseeable in Ireland for the 1998/99 marketing year, that Member State none the less enjoyed the benefit of a derived intervention price for the marketing year in question, by contrast with the decision made in respect of Italy.

82 The Council criticises the Italian Government's table C on the ground that it is imprecise as to both the source of the data used and the time to which the figures relate. In particular, it questions whether those data are definitive and whether they were obtained after the end of the marketing year or are merely provisional.

83 As regards the assessment made of the situation in each Member State for the purposes of determining whether it shows a deficit or a surplus, the Council refers in particular to the difference between findings and forecasts. In the present case, it merely made forecasts. Thus, the fact that a production area ultimately shows a surplus at the end of the marketing year when it had been thought that it would show a deficit does not invalidate the corresponding marketing-year regulations fixing the prices, since they were fully justified by the circumstances existing at the time when the Council had to make the forecast.

84 The Council further considers that although the Italian Government is attempting to show that the Council misinterpreted the data relating to Ireland, that can in any event have no effect on the assessment of the data relating to Italy.

85 The Commission adopts the Council's arguments. In its view, the Italian Government has produced no evidence in support of its assertions, since it has not shown that Italy was in a deficit situation at the time of the 1998/99 marketing year and that it was therefore discriminated against by comparison with other deficit areas.

86 As to the alleged disparity of treatment between Italy and Ireland, the Commission observes that the Italian Government's argument may, at most, call in question the fixing of prices for Ireland but certainly not that in respect of Italy, which was properly carried out. In addition, it states that the fixing of the derived intervention prices for Ireland is fully justified, having regard to the structure of the beet market in Ireland and the United Kingdom, as well as the geographic position of those two Member States, which have always been regarded since their accession as a single production area.

Findings of the Court

87 Even assuming that there was unequal treatment, as the Italian Government claims, the application cannot be granted.

88 As stated in paragraph 76 of this judgment, there is a deficit within the meaning of Regulation No 1785/81 where the total available production falls short of consumption.

89 The Council applied that criterion, which is the relevant one, when it assessed the situation of Italy for the 1998/99 marketing year and concluded that it was not in deficit.

90 The alleged application of different criteria to the Member States classified as being in deficit for the same marketing year, even if proven, cannot call in question the validity of Regulations Nos 1360/98 and 1361/98 in relation to Italy. That Member State cannot seek to have a method different from the relevant method applied.

91 As regards, more specifically, the situation in Ireland, even assuming that the fixing of a derived intervention price for that Member State was caused by an error of assessment, that can affect the validity of Regulations Nos 1360/98 and 1361/98 only in so far as they concern Ireland. Thus, that argument cannot invalidate those regulations in so far as they concern Italy.

92 Consequently, the plea alleging breach of the principle of equal treatment cannot be accepted either.

93 It follows that the Italian Republic's application must be dismissed.

Costs

94 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has applied for costs and the Italian Republic has been unsuccessful, the Italian Republic must be ordered to pay the costs. Pursuant to the first subparagraph of Article 69(4), the Commission, which intervened in the proceedings, must bear its own costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the Italian Republic to pay the costs;**

3. **Orders the Commission of the European Communities to bear its own costs.**

Macken Colneric Gulmann

Puissochet Cunha Rodrigues

Delivered in open court in Luxembourg on 14 March 2002.

R. Grass

Registrar

F. Macken

President of the Sixth Chamber