JUDGMENT OF THE COURT (Sixth Chamber)

6 July 2000 *

In Case C-289/97,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by Giudice di Pace di Genova (Italy) for a preliminary ruling in the proceedings pending before that court between

Eridania SpA

and

Azienda Agricola San Luca di Rumagnoli Viannj

on the validity of Article 1(f) of 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 206, p. 9)

* Language of the case: Italian.

and 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. 1), as amended by Council Regulation (EC) No 1101/95 of 24 April 1995 (OJ 1995 L 110, p. 1),

THE COURT (Sixth Chamber),

composed of: P.J.G. Kapteyn, acting for the President of the Sixth Chamber, G. Hirsch (Rapporteur) and H. Ragnemalm, Judges,

Advocate General: J. Mischo,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Eridania SpA, by C. Cacciapuoti and I. Vigliotti, of the Genoa Bar, and B. O'Connor, solicitor,

— Council of the European Union, by I. Díez Parra and J.-P. Hix, Legal Advisers, acting as Agents,

— Commission of the European Communities, by M. Condou and F. Ruggeri Laderchi, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Eridania SpA, represented by I. Vigliotti and B. O'Connor, the Council, represented by I. Díez Parra and J.-P. Hix, and the Commission, represented by F. Ruggeri Laderchi, at the hearing on 4 March 1999,

after hearing the Opinion of the Advocate General at the sitting on 22 April 1999,

gives the following

Judgment

1 By order of 16 July 1997, received at the Court on 4 August 1997, the Giudice di Pace di Genova (Magistrate, Genoa) referred to the Court for a preliminary ruling under Article 177 EC of the EC Treaty (now Article 234 EC) two questions on the validity of Article 1(f) of 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 206, p. 9) and 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. 1), as amended by Council Regulation (EC) No 1101/95 of 24 April 1995 (OJ 1995 L 110, p. 1, hereinafter 'Regulation No 1785/81' or 'the basic regulation').

2 Those questions were raised in proceedings between Eridania SpA (hereinafter 'Eridania'), a producer of sugar in Italy, and Azienda Agricola San Luca di Rumagnoli Viannj (hereinafter 'Agricola'), a company which supplied it with sugarbeet, concerning the validity of the classification of Italy as a deficit area for the marketing year 1996/97 and, consequently, of the application of a derived intervention price for white sugar for the areas of that Member State and of increased minimum prices payable to sugarbeet producers.

The Community legislation

The common organisation of the markets in sugar

3 In the context of the common organisation of the market in sugar (hereinafter 'the sugar COM'), Title I of Regulation No 17 established a price regime and Title III thereof a quota regime.

4 For each Member State, the regime provides for specific basic quantities for the production of sugar and isoglucose. Those quantities are subdivided into basic A quantities and basic B quantities. Those quantities are then attributed to the producers so that each of them receives an A production quota and a B production quota (commonly known as 'A sugar' and 'B sugar'), the basic A quantity corresponding, at least initially, to Community consumption, and the basic B quantity being the quantity in excess of the A quota but not exceeding the sum of the A and B quotas for a given producer.

5 The excess production, exceeding the sum of the A and B quotas (known as 'C sugar') cannot be disposed of on the domestic market of the Community and

must be exported to non-member countries, without any Community intervention, unless that quantity is carried forward, subject to fixed limits, to the next marketing year.

6 For the two quotas of A and B sugar, sugar producers enjoy guaranteed appropriate remuneration as a result of an intervention price and export refunds. However, for A sugar, intended both for consumption on the Community market and for export, the guaranteed intervention price is higher than the intervention price for B sugar. Because of levies which differ according to the quota, A sugar enjoys a guarantee equal to 98% of the intervention price and B sugar a guarantee equal to 68 or 60.5% of that price.

7 As regards intervention prices, they are divided into two categories, under Article 3 of Regulation No 1785/81, which 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.'

8 In order to provide 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.

...

2. The minimum price for A beet shall be equal to 98% of the basic price for beet.

... the minimum price for B beet shall be equal to 68% of the basic price for 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 ...

...'

9 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.

...'

10 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 (hereinafter 'the increased prices'). That system is commonly known as 'regionalisation' enabling higher prices than the corresponding prices for non-deficit areas to be fixed for deficit areas.

The regulations for the 1996/97 marketing year

11 At its session on 24 and 25 June 1996, the Council did not reach an overall agreement on the whole 'price package' for various common organisations of markets.

12 The Commission therefore adopted Regulation (EC) No 1252/96 of 28 June 1996 on precautionary measures in the sugar sector (OJ 1996 L 161, p. 142). As a precautionary measure, the Commission fixed for the 1996/97 marketing year a sum of ECU 63.19 per 100 kg of sugar as the intervention price for white sugar for non-deficit areas and, as the derived intervention price for white sugar, the sum of ECU 65.53 per 100 kg of sugar for all areas of Italy. Moreover, the amounts of ECU 46.72 per tonne as a minimum price for A sugarbeet and ECU 32.42 per tonne as the minimum price for B sugarbeet were fixed in Article 2 of that regulation.

13 After an agreement was concluded on the whole 'price package' on 22 and 23 July 1996, on 30 July 1996 the Council adopted Council Regulations (EC)

No 1579/96 of 30 July 1996 fixing, for the 1996/97 marketing year, certain sugar prices and the standard quality of beet (OJ 1996 L 206, p. 7) and No 1580/96.

14 Those regulations, adopted on 30 July 1996 and published in the *Official Journal of the European Communities* of 16 August 1996, did not affect the precautionary measures adopted by the Commission. Thus, in Article 1(2) of Regulation No 1579/96, the Council confirmed the sum of ECU 63.19 per 100 kg as the intervention price for white sugar for the non-deficit areas of the Community and, in Article 1(f) of Regulation No 1580/96, it maintained the sum of ECU 65.53 per 100 kg as the derived intervention price for white sugar for all areas of Italy. Second, according to Article 3 of Regulation No 1580/96, the minimum prices for A sugarbeet and B sugarbeet are identical to those which had been fixed by the Commission.

The facts in the main proceedings and the questions referred to the Court

15 With a view to supplying its plant, Eridania concluded with Agricola for the 1996/97 production year a contract for the growing of sugarbeet. It stipulated that the sugarbeet would be paid for at the price and under the conditions laid down in the Community and/or national rules and/or by the inter-trade agreement for 1996/97.

16 Consequently, Eridania paid the minimum prices for sugarbeet together with the increase provided for by Article 5(3) of Regulation No 1785/81, such prices therefore being higher than the minimum prices applicable in the non-deficit areas.

17 In the main proceedings, Eridania is claiming repayment of a sum of ITL 2 710 672 paid to Agricola in respect of the increase of the sugarbeet price brought about by regionalisation.

18 The national court observes, with respect to the sugar market in Italy, that in the past that Member State's production fell short of the quantity consumed. Following reorganisation of the Italian industry over the last 25 years, the situation has nevertheless gradually changed, with the result that, since 1990, the conditions for regionalisation are no longer satisfied. According to the national court, although the Community authorities ought to have identified that development, Regulation No 1101/95 unexpectedly maintained the system of regionalisation for the years 1995/96 and 1996/97.

19 In those circumstances, the Giudice di Pace di Genova, entertaining the same doubts as Eridania as to the validity of maintaining the regionalisation system for Italy, stayed proceedings pending a preliminary ruling from the Court on the following two questions:

'1. Is Regulation (EC) No 1580/96 of 30 July 1996, published in the *Official Journal of the European Communities* on 16 August 1996, and in particular Article 1(f) thereof, valid, above all having regard to the arguments set out in paragraph 3 of the section of this order entitled "Law"?

2. If the answer to the first question is "Yes", is Regulation (EEC) No 1785/81 of 30 June 1981, published in the *Official Journal of the European Communities* on 1 July 1981, and in particular, Articles 3(1), 5(3) and 6(2) thereof as subsequently amended, valid, and in consequence is Regulation

(EC) No 1580/96 of 30 July 1996 valid, with particular reference to Article 1(f), especially in the light of the arguments set out in paragraph 4 of the section of this order entitled "Law"?'

The first question

20 By this question the national court seeks essentially to ascertain whether the regionalisation applied to Italy for the marketing year 1996/97 by Regulation No 1580/96 is valid in so far as it was adopted belatedly in breach of Article 3(4) and (5) of Regulation No 1785/81, there is no statement of reasons which might justify such regionalisation and the conditions for treating Italy as a deficit area were not satisfied.

The belated fixing of the derived intervention price for white sugar and of the increased prices for sugarbeet

21 According to Eridania, the date 1 August appearing in Article 3(4) and (5) of Regulation No 1785/81 marks a peremptory time-limit so that any fixing of intervention prices after 1 August of the previous year renders the regulation concerned illegal. That date is intended to ensure that operators in the sugar sector will be in a position to ascertain the ground rules sufficiently in advance, that is to say before contracts are concluded between sugar manufacturers and sugarbeet producers and before the sowing of the land with a view to the forthcoming marketing year.

22 The Council and the Commission contend that the date 1 August is purely indicative. They contend that the latitude available to the Community legislature in agricultural matters applies also to time-limits laid down measures of in secondary law, which are not binding.

23 According to those institutions, the relevant prices can, moreover, be fixed more precisely on a date close to the start of the marketing year. Therefore, it is sufficient for the prices mentioned in Article 3(4) and (5) of Regulation No 1785/81 to be determined before 1 July, the date on which the marketing year starts. That was the course which the Commission followed in setting the indicative prices on a provisional basis, and those measures were fully confirmed by the Council after the marketing year commenced. In support of that rather unusual procedure, the Commission points to the risk that the functioning of the sugar COM might be totally blocked in the event of Regulation No 1580/96 being declared invalid as a result of belated adoption.

24 First, it must be pointed out that, for the 1996/97 marketing year, the Council did not fix the intervention prices referred to in Article 3(4) and (5) of the basic regulation before 1 August 1995, contrary to the requirements of that provision. The Council did not take a decision on the 'price package' until 22 or 23 July 1996 and it adopted Regulation No 1580/96 on 30 July 1996. The latter was published in the *Official Journal of the European Communities* on 16 August 1996. Thus, all action taken by the Council regarding the fixing of intervention pricing postdated the start of the abovementioned marketing year.

25 It must be noted in that connection that, according to the wording of Article 3(4) and (5) of the basic regulation, the intervention prices must be fixed before

1 August of the year prior to the marketing year; under Article 2(1) of the same regulation, that year commences on 1 July each year.

26 However, that reading of the wording of Article 3(4) and (5) is not supported in any way by the objectives pursued by the price regime laid down in that provision.

27 In that connection, first, the Commission's argument that failure to observe the date of 1 August is justified by the need, in the context of the common agricultural policy, to negotiate concomitantly a number of prices deriving from the various common organisations of the markets and thus to establish a 'price package' must be dismissed as irrelevant. That argument, which has no direct bearing on the intervention-price regime for sugar, cannot be taken into account.

28 Next, with regard more specifically to the objectives of the price regime, the third recital in the preamble to Regulation No 1785/81 shows that the aim pursued, in particular through the various intervention prices, is to lay down measures conducive to stabilisation of the sugar market in order to ensure that the necessary guarantees in respect of employment and standards of living are maintained for Community growers of sugar beet and those objectives can be attained by providing for purchase by intervention agencies at intervention prices.

29 The fourth recital in the preamble to that regulation extends those same guarantees to sugar manufacturers.

30 In the interests of the proper functioning of the intervention price machinery in the light of those objectives, it is necessary, as rightly pointed out by the Council, 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.

31 Finally, contrary to Eridania's assertions, that price-fixing machinery 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.

32 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.

33 Thus, in contrast to the time-limit at issue in Case C-1/94 *Cavarzere Produzioni Industriali and Others* [1995] ECR I-2363, which was intended to ensure that operators in the sugar sector would have a period of four months in which to plan their activity, the overstepping of the date 1 August laid down in Article 3(4) and (5) of the basic regulation cannot be capable of rendering invalid Regulation No 1580/96 in so far as it fixed intervention prices after that date.

34 It follows that the limit-date of 1 August in Article 3(4) and (5) of Regulation No 1785/81 is not peremptory and, therefore, that failure to observe that date cannot have the effect of rendering invalid Regulation No 1580/96 as regards the fixing therein of the intervention price after 1 August.

The lack of a statement of reasons for the application of regionalisation to Italy

35 According to Eridania, the mere mention in the third recital in the preamble to Regulation No 1580/96 of a foreseeable deficit supply situation does not constitute an adequate statement of reasons within the meaning of Article 190 of the EC Treaty (now Article 253 EC). The term deficit situation must refer to the existence of a real deficit established by reference to statistics. Moreover, since a derived intervention price constitutes an exception to the normal price regime, it should for that reason be justified by a specific statement of reasons.

36 As a preliminary point, it must be observed that the third recital in the preamble to Regulation No 1580/96 confines itself to noting that a deficit supply situation is foreseeable in the production areas of Italy, Ireland, the United Kingdom, Spain, Portugal and Finland.

37 That statement of reasons, although open to criticism for being extremely succinct and although appearing highly likely to raise problems in other contexts, cannot however be regarded as having contravened that provision as interpreted in the light of settled case-law of the Court.

38 In that connection, it must be borne in mind that 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 (see, in particular, Case 250/84 *Eridania and Others* v *Cassa Congualglio Zucchero* [1986] ECR 117, paragraph 37, and Case C-75/97 *Belgium* v *Commission* [1999] ECR I-3671, paragraph 81).

39 First, with regard to Eridania's argument as to the exceptional nature of the derived intervention price, which calls for a more specific statement of reasons, the Advocate General has rightly pointed out, at point 55 of his Opinion, that there are no grounds for contending that the derived intervention price constitutes an exception to the normal price regime. The derived intervention price and the intervention price are responses to two different economic situations and both the intervention price and the derived intervention price are an expression of the general principle of equal treatment in Community law (see for example Case C-372/96 *Pontillo* [1998] ECR I-5091, paragraph 41).

40 Second, with regard to the allegation of inadequacy of the statement of the reasons on which Regulation No 1580/96 is based, in that there are no statistics justifying the classification of Italy as one of the deficit areas for the 1996/97 marketing year, it must be borne in mind that, according to settled case-law, 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 the regulations, provided that the latter fall within the general scheme of the body of measures of which they form part (see *Eridania*, cited above, paragraph 38).

41 It is also clear from settled case-law that the question whether the statement of reasons meets the requirements of Article 190 of the Treaty 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 relation to State aid, Case C-367/95 P *Commission* v *Sytravel and Brink's France* [1998] ECR I-1719, paragraph 63).

42 The scheme of the sugar regime as a whole and the particular context of Regulation No 1580/96 are characterised by the fact that Italy has been included in the deficit areas for numerous years. Despite the restructuring efforts undertaken by the Italian sugar industry over the last 25 years, which raised the expectation, as from 1990, that sugar production in Italy would increase, that Member State remained in deficit except in the marketing years 1993/94 and 1994/95, as a result of excess production in the 1992/93 marketing year and a quantity carried forward in 1994.

43 Against that background, the Commission rightly pointed out, in relation to estimates for the 1996/97 marketing year, that Eridania could neither be unaware of the statistics on which the Council and the Commission relied in classifying Italy as a deficit area, even though Eridania may not approve the inferences drawn from those data by those institutions, nor be unaware of the fact that the institutions adopted a cautious approach in their estimates particularly since the operators in the sugar market took part, through their representatives, of which Eridania was one, in the meetings of the Advisory Committee on sugar set up by Commission Decision 87/75/EEC of 7 January 1987 (OJ 1987 L 45, p. 16).

44 It follows that, in the specific context of the 1996/97 marketing year, the statement of the reasons on which Regulation No 1580/96 is based, as regards

the classification of Italy as a deficit area for that year, meets the requirements concerning statements of reasons laid down by the case-law of the Court.

The forecast of a deficit

45 Eridania contests the validity of the regionalisation, and more specifically the fixing of a derived intervention price for Italy, provided for in Article 1(f) of Regulation No 1580/96, contending that the conditions for Italy to be regarded as a deficit area were not met for the 1996/97 marketing year. In that connection, Eridania and the institutions disagree as to the estimated figures to be relied on as regards available production for that year and those relating to consumption in the same year.

46 First, it must be borne in mind, as noted by the Advocate General at point 60 of his Opinion, that there is a deficit within the meaning of the basic regulation where the total available production falls short of consumption. Available production must be taken to mean the total quantities of A sugar and B sugar plus the carry forward of C sugar effected in accordance with the Community rules.

47 The Council and the Commission are thus called on to examine, with a view to fixing intervention prices, minimum prices and increased prices, 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.

48 In that connection, when the implementation by the Council of the agricultural policy in the sugar sector involves the need to evaluate a complex economic situation, the discretion which it has does not apply exclusively to the nature and scope of the measures to be taken but also to some extent to the finding of the basic facts (see Case 138/79 *Roquette Frères* v *Council* [1980] ECR 3333, paragraph 25, and Case C-285/94 *Italy* v *Commission* [1997] ECR I-3519, paragraph 23).

49 In reviewing the exercise of such a power the Court must confine itself to examining whether it contains a manifest error or constitutes a misuse of power or whether the authority in question did not clearly exceed the bounds of its discretion (see *Roquette Frères*, cited above, paragraph 25).

50 It is against that factual and legal background, and in the light of the abovementioned case-law, that the estimate of production and consumption made by the Council and Commission by the 1996/97 marketing year must be examined.

The evaluation of the volume of estimated production

51 Referring to the table entitled 'Estimate of sugar production in 1996/97', emanating from the Commission and dated 17 July 1996, Eridania contends that

the production available for the marketing year in question in the main proceedings should have been fixed at 1 568 000 tonnes.

52 According to Eridania, that figure is in line with the results obtained for the previous three marketing years in which the available quantities were, in particular, 1 568 250 tonnes for 1993/94 and 1 558 687 tonnes for 1994/95. Having regard to those two years, the more modest result of 1 461 670 tonnes for 1995/96 is meaningless and can be accounted for by wholly exceptional climatic conditions affecting northern Italy at that time.

53 The Council and the Commission claim that, when they took the decision on the prices to be adopted for 1996/97, namely on 24 and 25 June 1996, they possessed reliable figures notified by the Italian Government, which allowed only an estimate of 1 465 000 tonnes, to which 75 000 tonnes carried forward from the previous year had to be added.

54 In order to decide whether the figure for estimated sugar production relied on by the institutions in classifying Italy as a deficit zone is correct, it is first necessary to identify the relevant date on which the decision on prices was or should have been taken and then to examine the information available on that date.

55 As the Advocate General observed at points 67 to 69 of his Opinion and contrary to Eridania's contention, the relevant date can only be 24 and 25 June 1996. According to the information provided by the Commission and the Council, and not contested by Eridania, the Council, at its session on the above dates, reached

an agreement on prices within the sugar COM even though it had not been possible to reach an overall agreement on the 'price package'. It was those prices, decided on within the sugar COM, which were subsequently rendered official by the Commission in the form of precautionary measures adopted under Regulation No 1252/96.

56 Unusual though it might be, the procedure followed in fixing the prices for the 1996/97 marketing year, characterised, as is apparent from the first recital in the preamble to Regulation No 1252/96, by the fact that the Commission was prompted to adopt the precautionary measures essential to ensuring continuity of operation of the common agricultural policy in the sugar sector, such measures being without prejudice to any subsequent decisions which the Council might take, does not in any way detract from the appropriateness of the date on which those prices were fixed.

57 By endorsing, without changing, those precautionary measures by Regulations No 1579/96 and 1580/96, the latter relating to derived intervention prices and more particularly the one applicable to Italy, the Council thereby rendered official the figures adopted at its session of 24 and 25 June 1996. It could not have acted otherwise since it was not under any obligation at that time to review the result at which it arrived about one month earlier on the ground that a forecast based on recent information was likely to reverse the trend displayed by the evolution of production over the previous months.

58 First, such an agreement, concluded on completion of difficult negotiations but within a reasonable period having regard to the starting date of the marketing

year at issue in the main proceedings, cannot be revised on the basis of a single estimate, even though the latter was liable to cast doubt on the trend identified on the basis of the earlier forecasts.

59 Second, although the rules on the sugar COM do not impose, subsequent to the start of a marketing year, any obligation to change the prices, there is likewise no valid reason for introducing the possibility of such a change being made.

60 Furthermore, as regards the information on which the Commission legitimately relied in deciding on the prices for Italy at the end of June 1996, it is clear from the documents before the Court and in particular the evidence produced by the Council and the Commission that, despite regular updating, to which no exception was taken, of the information notified by the Member States, updating which took place 20 times a year on average, the estimate of available production for the 1996/97 marketing year remained unchanged between March 1996 and the beginning of June of the same year.

61 The tables entitled 'Estimate of sugar production in 1996/97', referred to by the Commission as the 'sugar balance sheet', which are dated 1 February and 15 March 1996, indicate estimated production of 1 431 000 tonnes of sugar. Those figures are corroborated by those in the tables entitled 'Prospects of beet sowing and sugar production for 1996/97', dated 13 March and 29 May 1996. In view of the fact that the table 'Italy: sugar production and consumption', dated 18 June 1996, gives a figure of 1 461 670 tonnes for the year preceding the year at issue in the main proceedings, the Commission had good grounds for

considering that the production of the then current year would be close to that of the previous year.

62 It follows from all the foregoing that consideration of the estimated production of available sugar for the 1996/97 marketing year made by the Commission when fixing the intervention price applicable to Italy and included unchanged by the Council in Regulation No 1580/96 has disclosed no factor, relating to that aspect, of such a kind as to affect the validity of that regulation.

Evaluation of the probable volume of consumption

63 Eridania criticises the method employed by the Council and the Commission in evaluating the volume of probable consumption during 1996/97, which was provisionally estimated by the Commission on the basis of figures available on 18 June 1996 at 1 532 000 tonnes.

64 Eridania itself puts forward various alternative methods of evaluation, summarised by the Advocate General at points 72 to 76 of his Opinion, which all give a volume of consumption between 1 446 000 and 1 467 000 tonnes of sugar, thereby enabling Eridania to conclude, by comparing that figure with the production figure, that Italy was in surplus in the year at issue in the main proceedings.

65 As a preliminary point, it must be borne in mind that the Commission evaluated probable consumption during the 1996/97 marketing year on the basis of information relating to the previous year. Since the actual volume of consumption

in a given marketing year is not definitively determined until 1 October following the end of that marketing year, the Commission had to extrapolate figures and information known in June 1996 when the Council adopted the decisions on prices in the sugar COM.

66 Whilst recognising that the latest figures available to it in June 1996, which related to consumption during the second half of 1995, presaged a slight decrease in consumption, the Commission was nevertheless in a position to affirm, convincingly, that it had serious reasons for not interpreting that decrease as a major fall in consumption, even if it could not fail to recognise a general tendency towards lower consumption.

67 The Commission's estimate is referential to a pattern of development in sugar consumption as shown in the table 'Italy: sugar production and consumption' dated 18 June 1996. Thus, despite certain irregularities in that pattern, in particular a considerable drop in sugar consumption in the year 1993/94 — for which the Commission gave convincing explanations — the market appeared to display, since 1989/90, a slow but constant downward trend, with consumption exceeding 1 600 000 tonnes for 1989/90 and consumption exceeding the threshold of 1 500 000 tonnes again in 1994/95.

68 In those circumstances, it appears neither arbitrary nor unreasonable for the Commission to have treated the information relating to consumption over the last six months of 1995 as indicating a mere fall-off and not a significant drop in consumption as compared with 1996/97, which was ultimately less than 1 500 000 tonnes.

69 It follows that the Council and the Commission did not exceed the limits of the discretion afforded to them in relation to agricultural policy when they estimated that sugar consumption for 1996/97 would amount to 1 532 500 tonnes. In view of their valid estimate of production of 1 465 000 tonnes and a comparison of those last two figures, the classification of Italy in Regulation No 1580/96 as a deficit area is not vitiated by any error.

70 In view of all the foregoing, the answer to the first question must be that consideration of the grounds of complaint raised by Eridania against Regulation No 1580/96 and set out by the national court in the grounds of the order for reference has disclosed no factor of such a kind as to affect the validity of that regulation.

The second question

71 By this question, the national court essentially queries the validity of Regulation No 1785/81 for the reasons put forward by Eridania, which are summarised in paragraph 4 of the part of the order for reference devoted to legal considerations.

72 According to that paragraph 4, Eridania criticises that regulation for detracting from the principle of non-discrimination as between producers or consumers within the meaning of the second subparagraph of Article 40(3) of the EC Treaty (now, after amendment, Article 34(2) EC), for having introduced obstacles to the

free movement of sugar within the Community, in breach of Articles 30 and 34 of the EC Treaty (now Articles 28 EC and 29 EC) and for introducing unjustified aid for beet producers in deficit areas to be borne by sugar manufacturers.

The alleged discrimination

73 Eridania maintains that sugar manufacturers in the deficit areas must pay a higher price for beet than their competitors in surplus areas but are not able to recover the difference by charging higher selling prices. Moreover, Italian manufacturers are excluded from export tendering procedures because they cannot compete with exporters in surplus areas in view of the fact that export refunds are calculated on the basis of the intervention prices applicable to those areas.

74 Without there being any need to examine the observations of the Council and the Commission in response to Eridania's allegations, it is sufficient to observe in that connection, as does the Advocate General at point 95 of his Opinion, that the principle of non-discrimination is not affected by the fact that a derived intervention price applies to the deficit areas.

75 Given that the derived intervention price and, consequently, the increased prices are designed to take account of the specific situation of operators in deficit areas, which differs from that of operators in surplus areas, such differences of treatment are based on objective differences, namely insufficient beet and sugar

production. The regionalisation of prices cannot therefore be regarded as discrimination (see in that connection Case 230/78 *Eridania and Società Italiana per l'Industria degli Zuccheri* [1979] ECR 2749, paragraph 19).

76 It must be added, as noted in paragraph 48 of this judgment, that, in order to compensate, in the context of the sugar COM, for insufficiencies of production in the deficit areas, the Council enjoys a discretion which applies, in particular, to the nature and scope of the provisions to be adopted.

77 It follows from those considerations that the regionalisation system does not involve discrimination either because the prices payable to beet growers by manufacturers are higher than in the non-deficit areas or because the latter encounter obstacles in relation to exports.

Restrictions on the free movement of Italian sugar

78 In this connection, it need merely be observed that the restrictions on free movement within the Community of sugar produced in deficit areas and the denial to producers in those areas of the opportunity to export sugar which derives in practice from the regionalisation system are the necessary, and indeed deliberate, consequences of that system. In order to reduce the production deficit in a given area without undermining the safeguard enjoyed by beet growers regarding employment and standard of living or the equivalent safeguards granted to manufacturers, it does not seem arbitrary to ensure, by setting up a system of that kind, that production originating in a deficit area should be disposed of as far as possible in that area.

The alleged aid for beet growers

79 As regards the allegation that the regionalisation system constitutes aid to beet growers the burden of which must be borne by sugar manufacturers, it need merely be observed, as pointed out by the Advocate General at point 98 of his Opinion, that the increase in the minimum purchase price for beet is likewise no more than a logical consequence, at the stage of production of the raw material, of the derived intervention price.

80 It follows that consideration of the second question has disclosed no factor of such a kind as to affect the validity of Regulation No 1785/91.

81 Consequently, the answer to the two questions submitted by the national court must be that consideration of the questions submitted has disclosed no factor of such a kind as to affect the validity of Regulations Nos 1580/96 and 1785/81.

Costs

82 The costs incurred by the Council and Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber)

in answer to the questions referred to it by the Giudice di Pace di Genova by order of 16 July 1997, hereby rules:

Consideration of the questions submitted has disclosed no factor of such a kind as to affect the validity of 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 and of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector.

Kapteyn Hirsch Ragnemalm

Delivered in open court in Luxembourg on 6 July 2000.

R. Grass
Registrar

J.C. Moitinho de Almeida
President of the Sixth Chamber