Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

27 September 2012*

(Common agricultural policy — Common organisation of the markets — Producers of sugar and of isoglucose — Calculation of production levies — Validity of a method of calculation taking into account fictitious refund amounts for those quantities of sugar exported without refund — Retroactive effect of the legislation — Exchange rate — Award of interest)

In Joined Cases C-113/10, C-147/10 and C-234/10,

REFERENCES for a preliminary ruling under Article 267 TFEU from the Finanzgericht Düsseldorf (C-113/10) (Germany), the High Court of Justice (England and Wales), Chancery Division (C-147/10) (United Kingdom) and the Tribunal de grande instance de Nanterre (C-234/10) (France), made by decisions of 22 February, 12 March and 6 May 2010 respectively, received at the Court on 2 and 29 March and 12 May 2010, in the proceedings

Zuckerfabrik Jülich AG (C-113/10)

v

Hauptzollamt Aachen,

British Sugar plc (C-147/10)

v

Rural Payments Agency, an Executive Agency of the Department for Environment, Food & Rural Affairs,

and

Tereos — Union de coopératives agricoles à capital variable (C-234/10)

v

Directeur général des douanes et droits indirects,

Receveur principal des douanes et droits indirects de Gennevilliers,

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, A. Prechal, K. Schiemann, L. Bay Larsen (Rapporteur) and C. Toader, Judges,

* Languages of the cases: German, English and French.

Advocate General: E. Sharpston,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 30 June 2011,

after considering the observations submitted on behalf of:

— Zuckerfabrik Jülich AG, by H.-J. Prieß and B. Sachs, Rechtsanwälte,

— British Sugar plc, by K. Lasok QC, and G. Facenna, Barrister,

— Tereos — Union de coopératives agricoles à capital variable, by N. Coutrelis, avocate,

— the German Government, by T. Henze and J. Möller, acting as Agents,

— the United Kingdom Government, by S. Hathaway and H. Walker, acting as Agents,

— the French Government, by G. de Bergues and B. Cabouat, acting as Agents,

— the Spanish Government, by F. Díez Moreno, acting as Agent,

— the Lithuanian Government, by R. Mackevičienė and R. Krasuckaitė, acting as Agents,

— the Austrian Government, by E. Riedl, acting as Agent,

— the European Commission, by P. Rossi, B. Schima, D. Bianchi and K. Banks, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 27 October 2011,

gives the following

Judgment

1 These references for a preliminary ruling concern primarily the validity of Commission Regulation (EC) No 1193/2009 of 3 November 2009 correcting Regulations (EC) No 1762/2003, (EC) No 1775/2004, (EC) No 1686/2005, (EC) No 164/2007 and fixing the production levies in the sugar sector for marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006 (OJ 2009 L 321, p. 1).

2 The references have been made in proceedings between, respectively, Zuckerfabrik Jülich AG ('Jülich') and the Hauptzollamt Aachen (Germany), British Sugar plc ('British Sugar') and the Rural Payments Agency, an Executive Agency of the Department for Environment, Food & Rural Affairs ('the Rural Payments Agency') (United Kingdom), and Tereos — Union de cooperatives agricoles à capital variable ('Tereos') and the Directeur général des douanes et droits indirects and the Receveur principal des douanes et droits indirects de Gennevilliers (France), concerning the amounts of levies paid during either some or all of the marketing years from 2002/2003 to 2005/2006.

Legal context

3 Article 8(1) of Council Decision 2000/597/EC, Euratom, of 29 September 2000 on the system of the European Communities' own resources (OJ 2000 L 253, p. 42), provides that the European Communities' own resources, such as the levies provided for in the context of the common

organisation of the markets in the sugar sector, in particular, are to be collected by the Member States in accordance with the national provisions imposed by law, regulation or administrative action, which must, where appropriate, be adapted to meet the requirements of Community rules.

4 The same applies to those levies under Article 8(1) of Council Decision 2007/436/EC, Euratom, of 7 June 2007 on the system of the European Communities' own resources (OJ 2007 L 163, p. 17), which, as is stated in Article 10 thereof, repealed Decision 2000/597 as of 1 January 2007.

5 Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178, p. 1) ('the basic regulation'), repealed by Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector (OJ 2006 L 58, p. 1), provided, inter alia, for a self-financing system of the sugar sector by production levies.

6 Pursuant to recital 11 in the preamble to the basic regulation, the common organisation of the markets in the sugar sector was based, firstly, on the principle that producers should bear full financial responsibility for the losses incurred each marketing year from disposing of that part of Community production under quota which is surplus to the Community's internal consumption and, secondly, on a differentiation of price guarantees for disposal reflecting the production quota allocated to each undertaking.

7 According to recital 13 in the preamble to that regulation, the principle of financial responsibility was assured by producers being charged a basic production levy on all production of A and B sugar, limited, however, to 2% of the intervention price for white sugar, and a B levy charged on the production of B sugar up to a limit of 37.5% of that price. Since those limits do not, in principle, make it possible to achieve the objective of self-financing of the sector each marketing year, it was necessary, in those cases, to charge an additional levy.

8 Recital 14 in the preamble to the basic regulation stated the following:

'In the interests of equal treatment, the additional levy should be calculated for each undertaking on the basis of its share in the revenue generated by the production levies which it has paid for the marketing year in question. A coefficient should therefore be fixed for the Community as a whole representing the ratio for that marketing year between the total loss recorded and the total revenue generated by the production levies concerned. It is necessary to specify the conditions under which beet and cane sellers are to contribute to eliminating the outstanding loss for the marketing year concerned.'

9 With regard to the calculation of levies, Article 15 of the basic regulation provided:

'1. Before the end of each marketing year, the following shall be recorded:

(a) forecast of the production of A and B sugar, A and B isoglucose and A and B inulin syrup attributable to the marketing year concerned;

(b) forecast of the quantities of sugar, isoglucose and inulin syrup disposed of for consumption within the Community during the marketing year concerned;

(c) the exportable surplus obtained by subtracting the quantity referred to in (a) from the quantity referred to in (b);

(d) an estimate of the average loss or revenue per tonne of sugar for export obligations to be fulfilled during the current marketing year.

This average loss or revenue shall be equal to the difference between the total amount of refunds and the total amount of levies on the total tonnage of export obligations in question;

(e) an estimate of overall loss or revenue, obtained by multiplying the surplus referred to in (c) by the average loss or revenue referred to in (d).

2. Before the end of the 2005/2006 marketing year and without prejudice to Article 10(3), (4), (5) and (6), the following shall be recorded cumulatively for the 2001/2002 to 2005/2006 marketing years:

(a) the exportable surplus established on the basis of the definitive production of A and B sugar, A and B isoglucose and A and B inulin syrup and the definitive quantity of sugar, isoglucose and inulin syrup disposed of for consumption within the Community;

(b) the average loss or revenue per tonne of sugar resulting from the total export obligations concerned, calculated using the method described in the second subparagraph of paragraph 1(d) above;

(c) the overall loss or revenue, obtained by multiplying the surplus referred to in (a) by the average loss or revenue referred to in (b);

(d) the sum total of the basic production levies and the B levies charged.

The estimate of overall loss or revenue referred to in paragraph 1(e) shall be adjusted by the difference between the amounts referred to in (c) and (d).

…

8. Detailed rules for applying this Article shall be adopted in accordance with the procedure referred to in Article 42(2), and shall cover in particular:

— the amounts of the levies to be collected,

…’

10 Following delivery of the judgment in Joined Cases C-5/06 and C-23/06 to C-36/06 *Zuckerfabrik Jülich and Others* [2008] ECR I-3231 and of the order of 6 October 2008 in Joined Cases C-175/07 to C-184/07 *SAFBA*, the European Commission adopted Commission Regulation No 1193/2009, by which it amended Regulation (EC) No 1762/2003 of 7 October 2003 fixing the production levies in the sugar sector for the 2002/03 marketing year (OJ 2003 L 254, p. 4), Commission Regulation (EC) No 1775/2004 of 14 October 2004 setting the production levies in the sugar sector for the 2003/04 marketing year (OJ 2004 L 316, p. 64), and Commission Regulation (EC) No 1686/2005 of 14 October 2005 setting the production levies and the coefficient for the additional levy in the sugar sector for the 2004/05 marketing year (OJ 2005 L 271, p. 12), which were declared invalid by the Court, as well as Commission Regulation (EC) No 164/2007 of 19 February 2007 fixing the production levies in the sugar sector for the 2005/06 marketing year (OJ 2007 L 51, p. 17), which was also based on the method invalidated by the Court for the 2002/2003, 2003/2004, 2004/2005 marketing years. Consequently, the Commission refixed, with retroactive effect, the production levies for the sugar sector for the 2002/2003 to 2005/2006 marketing years.

11 Recitals 5 and 6 in the preamble to Regulation No 1193/2009 are worded as follows:

‘(5) In the judgment of 8 May 2008 in [J]oined [C]ases C-5/06 and C-23/06 to C-36/06, the Court concluded that the examination of Commission Regulation (EC) No 1837/2002 of 15 October 2002 fixing the production levies and the coefficient for the additional levy in the sugar sector

for the marketing year 2001/02 [OJ 2002 L 278, p. 13] had not disclosed the existence of any factors such as to affect its validity. To fix the production levies in that marketing year, the Commission would calculate the average loss on the basis of the total quantities of sugar exported in the form of processed products, whether eligible for refunds or not.

(6) It is therefore appropriate for the Commission to fix the production levies, including, where necessary, a coefficient for the additional levy, using the same calculation method as the one used in the marketing year 2001/2002.'

12 Articles 1, 2, 3 and 4 of Regulation No 1193/2009 fix the production levies in the sugar sector for the marketing years 2002/2003 to 2005/2006.

13 Article 3 of Regulation No 1193/2009 provides:

'Articles 1 and 2 of Regulation (EC) No 1686/2005 are replaced by the following:

…

Article 2

For the marketing year 2004/2005, the coefficient provided for in Article 16(2) of [the basic regulation] … shall be 0,25466 for the Czech Republic, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia and 0,14911 for the other Member States.'

14 Article 6 of Regulation No 1193/2009 provides:

'This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

Article 1 shall apply from 8 October 2003.

Article 2 shall apply from 15 October 2004.

Article 3 shall apply from 18 October 2005.

Article 4 shall apply from 23 February 2007.'

15 In its judgment of 29 September 2011 in Case T-4/06 *Poland* v *Commission*, the General Court of the European Union held:

'Article 2 of Regulation (EC) No 1686/2005 …, as amended by Article 3 of Regulation (EC) No 1193/2009 …, is annulled.'

The disputes in the main proceedings and the questions referred for a preliminary ruling

Case C-113/10

16 Jülich is an undertaking which produces sugar.

17 By notices of 21 October 2003, of 26 October 2005 and of 21 February 2007, the Hauptzollamt Aachen (Principal Tax Office, Aachen) reclaimed levies from Jülich for the marketing years 2002/2003, 2004/2005, 2005/2006. For those three marketing years, the Hauptzollamt Aachen relied on three

Commission regulations, namely Regulation No 1762/2003 for the marketing year 2002/2003, Regulation No 1686/2005 for the marketing year 2004/2005 and Regulation No 164/2007 for the marketing year 2005/2006.

18 Jülich, challenging the fixing of the production levies for those marketing years, lodged an objection to the notice of 26 October 2005 and sought the amendment of the notices of 21 October 2003 and 21 February 2007. It claimed that Regulations No 1762/2003, No 1686/2005 and No 164/2007 were invalid because the Commission had incorrectly determined the amounts of the levies.

19 By notices of 28 and 29 December 2009, the Hauptzollamt Aachen established, on the basis of Regulation No 1193/2009, the production levies due from Jülich for the marketing years 2002/2003, 2004/2005, 2005/2006.

20 Jülich brought an action against those notices before the Finanzgericht (Finance Court) Düsseldorf on the ground that Regulation No 1193/2009 was invalid.

21 In so far as the Commission, in revising the rates of the levies, has proceeded to a new calculation not only of the total amounts of export duties but also of the totality of the amounts of refunds of the marketing years at issue in the main proceedings by calculating fictitious refunds for exports in respect of which no refund had been paid, the national court questions the compatibility of such a revision, which goes beyond the conditions imposed in the judgment in *Zuckerfabrik Jülich and Others*, and which is applicable to already-closed marketing years, with the European Union law principle of non-retroactivity.

22 By decision of 2 March 2010, the Finanzgericht Düsseldorf decided to refer the following question to the Court of Justice for a preliminary ruling:

‘Is Regulation … No 1193/2009 … valid?’

Case C-147/10

23 British Sugar, a manufacturer of products in the sugar sector, claims repayment of the amount, plus interest, of sugar production levies which it was overcharged by the Rural Payments Agency during the marketing years 2002/2003 to 2005/2006.

24 In reliance on its interpretation of the judgment in *Zuckerfabrik Jülich and Others*, British Sugar calculated the amount by which it had been overcharged for the marketing years 2002/2003 to 2005/2006 as being approximately EUR 12 531 000, before taking interest into account.

25 The Rural Payments Agency contends that Regulation No 1193/2009 now sets out the legal formula for the calculation of the overpayment due to British Sugar and is legally binding upon the parties and the national court. It submits that, pursuant to that regulation, the amount due to British Sugar is GBP 366 590,79 and that only this amount is payable to it.

26 According to British Sugar, Regulation No 1193/2009 is invalid, in particular on the ground that it is vitiated by the same fundamental defect as that which that led the Court to invalidate Regulations No 1762/2003, No 1775/2004 and No 1686/2005. The method of calculation that has been adopted in that regulation, and in particular the calculation of the ‘average loss per tonne’ referred to in Article 15(1)(d) of the basic regulation, is based on hypothetical losses reflecting export refunds that were notionally available but were never actually paid. Thus, Regulation No 1193/2009 artificially inflates the overall loss referred to in Article 15(1)(e) of the basic regulation.

27 Moreover, the Commission lacked competence to adopt Regulation No 1193/2009 under the basic regulation, in particular, because that regulation had been repealed, and was no longer in force at the time the new regulation was adopted. In the absence of competence by reason of the basic regulation, competence to set production levies is held by the Council under Article 43 TFEU.

28 Furthermore, Regulation No 1193/2009 is also invalid in so far as it requires non-euro payments to be made by reference to the exchange rates that applied at the time the overpaid levy was originally calculated, and not at the time of repayment.

29 The Rural Payments Agency submits that, in so far as Regulation No 1193/2009 appears to follow the scheme of Regulation No 1837/2002, examination of which has not disclosed the existence of any factor such as to affect its validity, it may be the case that its methodology has thus, by implication, been endorsed by the Court.

30 Concerning the appropriate euro-sterling currency exchange rate, that is the exchange rate that applied at the relevant times when the original sugar production levies were calculated.

31 Finally, according to the Rural Payments Agency, British Sugar should not be awarded interest on any repayment of overpaid levies repayable to it. Any repayment of overpayments to that undertaking would be matched by a commensurate repayment by the Commission to the Rural Payments Agency pursuant to the Community's own resources system. If there is no legal basis in the European Union legislation concerning own resources which would allow for the recovery of interest by the Member States from the Commission in relation to such repayment, it is the Rural Payments Agency's case that the same principle is to apply to any repayment to British Sugar.

32 In those circumstances, the High Court of Justice (England and Wales), Chancery Division, decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is Regulation [No 1193/2009] invalid, having regard to [the judgment in *Zuckerfabrik Jülich and Others* and the order in *SAFBA*]?

2. Is [Regulation No 1193/2009] otherwise invalid, having regard to the legal basis on which it has been adopted, namely [the basic regulation]?

3. In calculating the compensation payable in respect of overpayments of sugar production levies in the marketing years 2002/03, 2003/04, 2004/05, 2005/06, is the applicable currency exchange rate and date of conversion a matter to be determined by European Union law? If so, is Article 6 of [Regulation No 1193/2009] to be interpreted as requiring compensation to be paid by reference to the currency exchange rates that applied at the time the overpaid levy was originally calculated? If so, is Article 6 of [Regulation No 1193/2009] valid?

4. In relation to interest:

[(a)] Does [European Union] law preclude a person in the position of the [applicant] from recovering interest on sums overpaid as a result of an invalid Commission regulation from the national authority competent to collect production levies in circumstances where the national authority competent to collect production levies is precluded from recovering interest on the corresponding sums repayable to it from the Commission?

[(b)] If the answer to [question 4(a)] above is yes, does the [European Union] legislation concerning own resources (Decision 2000/597 … and its implementing Regulation (EC) No 1150/2000) preclude a national authority competent to collect production levies from recovering interest on sums repayable to it from the Commission in the circumstances of the present case?

([c)] If the answer to [question 4(a)] above is no: does [European Union] law preclude a national court or authority from exercising any discretion it may have to award no interest in such circumstances when making an award to a person in the position of the [applicant]?'

Case C-234/10

33 Taking the view that it had paid too high an amount in respect of levies due under Regulation No 1686/2005 for the marketing year 2004/2005, Tereos, which produces sugar, applied on 2 May 2007 to the Receveur des douanes et droits indirects de Gennevilliers for partial repayment. Having received no response to its claim, Tereos brought an action before the Tribunal de grande instance (Regional Court) de Nanterre, arguing that Regulation No 1686/2005 was invalid and requesting repayment of the overpayment, evaluated at EUR 11 600 782.

34 Following the adoption of Regulation No 1193/2009, Tereos asked the Tribunal de grande instance, by way of an interlocutory order, to make a reference to the Court of Justice for a preliminary ruling on questions concerning the validity of Regulation No 1193/2009 in the light of Article 15 of the basic regulation and to order repayment to Tereos of the sum of EUR 11 600 782 together with interest at the legal rate.

35 According to the national court, it was apparent that the Commission, in the framework of Regulation No 1193/2009, did not recalculate the production levy by strictly applying the method of calculation taken from Article 15 of the basic regulation as interpreted by the Court in its judgment in *Zuckerfabrik Jülich and Others* but used the method which had been applied for the marketing year 2001/2002, the Court having stated that the examination of Regulation No 1837/2002 had not disclosed the existence of any factors such as to affect its validity.

36 The Tribunal de grande instance de Nanterre therefore decided to stay the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'1. Must Article 15(1)(d) of [the basic regulation] be interpreted as meaning that, for the purpose of calculating the average loss, it is necessary to divide, for all categories of sugar exported, the total amount of the actual expenditure by the total amount of the quantities exported, regardless of whether refunds have actually been paid for those quantities or not?

2. Is Regulation No 1193/2009 invalid in the light of Article 15 of [the basic regulation] in so far as it fixes a production levy for sugar calculated on the basis of an average loss, the calculation of which involves, as regards sugar exported in processed products, a multiplication of the unit amount of the export refund relating to those products and the total quantities exported, including the quantities exported without benefiting from a refund, and not a division of the expenditure actually incurred by the total amount of the quantities exported with or without a refund?'

The joining of Cases C-113/10, C-147/10 and C-234/10

37 By order of the President of the Fourth Chamber of the Court of 15 April 2011, Cases C-113/10, C-147/10 and C-234/10 were joined for the purposes of the oral procedure and the judgment.

The questions referred for a preliminary ruling

The single question in Case C-113/10, the first question in Case C-147/10 and the two questions in Case C-234/10

38 By these questions, which need to be examined together, the national courts ask, in essence, whether the method of calculating the average loss per tonne of sugar for export obligations to be fulfilled during the marketing year concerned ('average loss'), adopted by the Commission in Regulation No 1193/2009, is consistent with the basic regulation as interpreted by the Court in the judgment in *Zuckerfabrik Jülich and Others* and the order in *SAFBA*.

39 Pursuant to Article 15(1)(d) of the basic regulation, the average loss is equal to the difference between the total amount of refunds and the total amount of levies on the total tonnage of export obligations to be fulfilled during the marketing year concerned. The estimate of the total loss is, according to Article 15(1)(e) of that regulation, calculated by multiplying the exportable surplus by the average loss.

40 It is not disputed that the method for calculating average loss used in drafting Regulation No 1193/2009 differs in two respects from the method used in drafting Regulations No 1762/2003, No 1775/2004, No 1686/2005 and No 164/2007.

41 Firstly, the 'total tonnage of export obligations' which, pursuant to Article 15(1)(d) of the basic regulation, constitutes the denominator of the ratio making it possible to calculate the average loss now includes all export obligations, including those which were not subject to an export refund. That amendment of the method for calculating average loss is, as is acknowledged, moreover, by all of the interested parties which submitted observations, consistent with Article 15(1)(d) of the basic regulation, as interpreted by the Court, in particular in its judgment in *Zuckerfabrik Jülich and Others*.

42 Secondly, the 'total amount of refunds' in respect of sugar incorporated in processed products, which, pursuant to Article 15(1)(d) of the basic regulation, constitutes part of the numerator of the ratio making it possible to calculate average loss, is the result of a three-stage operation. First, the total amount of export obligations for that category of sugar is divided by twelve, and each fraction of that total is attributed to a month of the marketing year. Second, the figure thereby obtained is multiplied, for each month, by the average amount of refund payable for that type of export during that month. Third, the results of each of those monthly products are added together to obtain the total amount of refunds for the entire marketing year.

43 The Commission submits that that method for calculating average loss has already been used in the past and, in particular, in Regulation No 1837/2002. That method was approved by the Court in its judgment in *Zuckerfabrik Jülich and Others*, in which it ruled that the examination of Regulation No 1837/2002 had not revealed any factor of such a kind as to affect its validity.

44 That argument cannot be upheld.

45 In the judgment in *Zuckerfabrik Jülich and Others*, the Court ruled on the validity of Regulation No 1837/2002 only in so far as necessary to answer the questions referred, by taking account of the arguments raised before it. More precisely, it is apparent from paragraphs 61 and 63 of that judgment that the Court ruled on the method used by the Commission to calculate the total tonnage of export obligations and not on all the elements involved in calculating the average loss. Thus, as stated by the Advocate General in point 83 of her Opinion, the Court did not examine the formula used to calculate the total amount of refunds which was used in the context of Regulation No 1193/2009. Therefore, it is necessary to examine this new question so as to give judgment on whether Regulation No 1193/2009 is compatible with Article 15(1)(d) of the basic regulation.

46 To that end, it should be noted that the basic regulation seeks to establish a system of self-financing of the costs of disposing of surpluses, which consists of ensuring, in a fair yet efficient way, that the producers themselves meet those costs in full (*Zuckerfabrik Jülich and Others*, paragraph 44). Consequently, the method of calculation adopted must not lead, in practice, to fixing *a priori* the total loss at an amount greater than that of the costs linked to refunds in relation to disposing of Community production surpluses (*Zuckerfabrik Jülich and Others*, paragraph 60).

47 Moreover, it is apparent from Article 15(1)(e) of the basic regulation that the overall loss is obtained by multiplying the exportable surplus by the average loss. Therefore, any overestimation of the average loss inevitably leads to an overestimation of the overall loss.

48 The method of calculation used by the Commission to determine production levies in the sugar sector, as fixed by Regulation No 1193/2009, is not based on the taking into account of the amount of export refunds paid to ensure the disposal of the quantities of sugar contained in processed products which have been subject to export obligations. It consists of attributing to all those quantities a theoretical amount of refund, based on the average of the amounts fixed periodically by the Commission, irrespective of how effective it is to pay a possible refund and of the actual amount of such a refund.

49 However, as is apparent from the file and, in particular, from the various working documents of the Management Committee for the Common Organisation of Agricultural Markets, in so far as a substantial part of the sugar contained in processed products is exported without the payable refunds ever being paid, that method of calculation amounts to artificially increasing the total amount of refunds. The figure retained by the Commission as the total amount of refunds thus no longer bears a direct relationship with the costs for the European Union's budget related to the disposal of sugar surpluses.

50 It should be noted that the total amount of refunds constitutes part of the numerator of the ratio making it possible to calculate average loss. Moreover, that increase of the numerator necessarily implies an overestimation of the average loss and thus of the overall loss, in infringement of Article 15(1) of the basic regulation.

51 The Commission also submits that it is restricted to using that method of calculation so as to respect the prospective nature of the system put in place by the basic regulation.

52 That argument cannot, however, be upheld. For the grounds set out in paragraph 49 above, the procedure involving the multiplying of the monthly total of the export obligations by the average amount of refund payable during the month concerned cannot be considered to be a means of forecasting the likely amount of refunds which will be paid for the sugar contained in processed products.

53 Thus, the system put in place by the Commission, in so far as it leads, in practice, to fixing *a priori* the total loss at an amount greater than that of the costs linked to refunds, exceeds the objective pursued by the basic regulation and, in particular, goes beyond a fair means of financing costs related to the disposal of Community production surpluses, as noted in paragraph 46 above.

54 In the light of the foregoing, the answer to the single question in Case C-113/10, the first question in Case C-147/10 and the two questions in Case C-234/10 must be that Regulation No 1193/2009 is invalid, with the exception of Article 3 thereof, which has already been annulled as a result of the annulment of Article 2 of Regulation No 1686/2005 by the General Court in its judgment in Case T-4/06 *Poland* v *Commission*.

The second question in Case C-147/10

55 In the light of the answer given to the single question in Case C-113/10, the first question in Case C-147/10 and the two questions in Case C-234/10, there is no need to answer the second question in Case C-147/10.

The third question in Case C-147/10

56 By its third question in Case C-147/10, the national court asks, in essence, whether the currency exchange rate applicable in calculating the compensation payable in respect of overpayments of production levies in the sugar sector must be determined by European Union law and whether Article 6 of Regulation No 1193/2009 must be interpreted as requiring compensation to be paid by reference to the currency exchange rates that applied at the time those levies were originally calculated.

57 In that regard, so far as concerns Article 6 of Regulation No 1193/2009, which has been declared invalid in paragraph 54 above, it should be noted, in any event, that that article merely determines the date on which Regulation No 1193/2009 enters into force, and the dates from which Articles 1 to 4 thereof apply, and cannot, therefore, be considered to determine the date to be taken into account for the purposes of calculating the exchange rate applicable to refunds of overpayments of production levies in the sugar sector in the marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006.

58 Moreover, since, pursuant to Article 8(1) of Decisions 2000/597 and 2007/436, those levies are collected by the Member States in accordance with national provisions imposed by law, regulation or administrative action, which are adapted, where necessary, to the requirements of European Union law, disputes relating to the recovery of sums levied on behalf of the European Union therefore come within the jurisdiction of national courts and must be settled by those courts in application of their national law as regards both procedure and substance to the extent to which European Union law has not made other provision in the matter (Case 26/74 *Roquette frères* v *Commission* [1976] ECR 677, paragraph 11, and Case 130/79 *Express Dairy Foods* [1980] ECR 1887, paragraph 11).

59 It is apparent that there is no provision of European Union law which establishes rules relating to the exchange rate applicable in calculating refunds of levies which have been unduly charged as production levies in the sugar sector.

60 In the absence of provisions of European Union law in the area, it is for the national authorities, and in particular the national courts in the case of refunds of levies unduly charged on the basis of European Union regulations which have been declared invalid, to resolve all ancillary questions related to such refunds, such as the payment of interest, by applying their domestic rules regarding the rate of interest and the date from which interest must be calculated (see, to that effect, *Express Dairy Foods*, paragraphs 14 and 17).

61 In the absence of European Union legislation, it is for the internal legal order of each Member State to lay down the conditions in which such interest must be paid, particularly the rate of that interest and its method of calculation (simple or 'compound' interest). Those conditions must comply with the principles of equivalence and effectiveness; that is to say that they must not be less favourable than those concerning similar claims based on provisions of national law or arranged in such a way as to make the exercise of rights conferred by the European Union legal order practically impossible (Case C-591/10 *Littlewoods Retail and Others* [2012] ECR, paragraph 27).

62 The same is true of the exchange rate applicable to refunds of overpayments of production levies in the sugar sector, which must therefore, in principle, be determined by the internal legal order of the Member State concerned.

63 In the light of the foregoing, the answer to the third question in Case C-147/10 must be that, in the absence of provisions of European Union law on the matter, it is for the domestic legal system of the Member State concerned to determine the applicable exchange rate for calculating the compensation payable in respect of overpayments of production levies in the sugar sector.

The fourth question in Case C-147/10

64 By its fourth question in Case C-147/10, the national court asks, in essence, whether European Union law precludes the payment of interest on sums paid unduly in respect of production levies in the sugar sector determined by an invalid regulation, in the case where the Member State concerned cannot recover the corresponding interest on the European Union's own resources and, if that is not the case, whether European Union law permits a national court or another national authority not to award any interest by relying on discretion granted to it under the domestic legal system.

65 Where a Member State has levied charges in breach of the rules of European Union law, individuals are entitled to reimbursement not only of the tax unduly levied but also of the amounts paid to that State or retained by it which relate directly to that tax. That also includes losses constituted by the unavailability of sums of money as a result of a tax being levied prematurely (see Joined Cases C-397/98 and C-410/98 *Metallgesellschaft and Others* [2001] ECR I-1727, paragraphs 87 to 89; Case C-446/04 *Test Claimants in the FII Group Litigation* [2006] ECR I-11753, paragraph 205; and *Littlewoods Retail and Others*, paragraph 25).

66 It follows from that case-law that the principle of the obligation of Member States to repay with interest amounts of tax levied in infringement of European Union law follows from that law (see *Littlewoods Retail and Others*, paragraph 26).

67 Thus, irrespective of the question whether the Member State may recover interest on the European Union's own resources — which is a question which does not have to be resolved in the context of the present case — individuals entitled to reimbursement of sums paid unduly in respect of production levies in the sugar sector determined on the basis of an invalid regulation are also entitled to payment of the interest on such sums.

68 Therefore, it is not permissible for a national court to use its discretion to refuse payment of interest on the sums charged by a Member State on the basis of an invalid regulation on the ground that that Member State could not reclaim the corresponding interest on the European Union's own resources.

69 Accordingly, the answer to the fourth question in Case C-147/10 must be that, under European Union law, individuals entitled to reimbursement of sums paid unduly in respect of production levies in the sugar sector determined on the basis of an invalid regulation are also entitled to payment of the interest on such sums. A national court cannot use its discretion to refuse payment of interest on the sums levied by a Member State on the basis of an invalid regulation on the ground that that Member State cannot reclaim the corresponding interest on the European Union's own resources.

Costs

70 Since these proceedings are, for the parties to the main proceedings, a step in the actions pending before the national courts, the decisions on costs are a matter for those courts. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

1. **Commission Regulation (EC) No 1193/2009 of 3 November 2009 correcting Regulations (EC) No 1762/2003, (EC) No 1775/2004, (EC) No 1686/2005, (EC) No 164/2007 and fixing the production levies in the sugar sector for marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006 is invalid, with the exception of Article 3 thereof, which has already been annulled as a result of the annulment, by the judgment of the General Court of the**

European Union of 29 September 2011 in Case T-4/06 *Poland* v *Commission*, of Article 2 of Commission Regulation (EC) No 1686/2005 of 14 October 2005 setting the production levies and the coefficient for the additional levy in the sugar sector for the 2004/05 marketing year.

2. **In the absence of provisions of European Union law on the matter, it is for the domestic legal system of the Member State concerned to determine the applicable exchange rate for calculating the compensation payable in respect of overpayments of production levies in the sugar sector.**

3. **Under European Union law, individuals entitled to reimbursement of sums paid unduly in respect of production levies in the sugar sector determined on the basis of an invalid regulation are also entitled to payment of the interest on such sums. A national court cannot use its discretion to refuse payment of interest on the sums levied by a Member State on the basis of an invalid regulation on the ground that that Member State cannot reclaim the corresponding interest on the European Union's own resources.**

[Signatures]