JUDGMENT OF THE COURT
OF 16 JANUARY 1979 [1]

Sukkerfabriken Nykøbing Limiteret v Ministry of Agriculture (preliminary ruling requested by the Højesteret)

Case 151/78

Agriculture — Common organization of the market — Sugar — Relations between sugar manufacturers and beet growers — Rules — Exclusive Community competence — Intervention of the Member States — Prohibition — Derogation pursuant to a Community regulation

(Regulation (EEC) No 741/75 of the Council, Art. 1)

Since the common organization of the market in sugar covers relations between sugar manufacturers and beet growers, such relations, in so far as they specifically concern sugar production, fall exclusively within the competence of the Community so that the Member States are no longer in a position to adopt unilateral measures. In view of possible difficulties in the conclusion of inter-trade agreements concerning conditions for the delivery of sugar-beet, Regulation No 741/75 is intended to remove that disability on the part of the Member States in the cases defined by the regulation so that the Member States are entitled under Community law to intervene on the basis of their own powers and in accordance with the procedures of their own legal systems.

In Case 151/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Højesteret (Danish Supreme Court) for a preliminary ruling in the action pending before that court between

SUKKERFABRIKEN NYKØBING LIMITERET

and

MINISTRY OF AGRICULTURE

1 — Language of the Case: Danish

on the interpretation of Regulation (EEC) No 741/75 of the Council of 18 March 1975 laying down special rules for the purchase of sugar-beet (Official Journal 1975, L 74, p. 2),

THE COURT,

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), A. M. Donner, P. Pescatore, M. Sørensen, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

(a) The common organization of the market in sugar

Pursuant to Article 24 of Regulation (EEC) No 3330/74 of the Council of 19 December 1974 (Official Journal 1974, L 359, p. 1) on the common organization of the market in sugar each Member State is to be allotted a certain basic quantity.

That basic quantity is to be allocated by Member States amongst sugar-producing undertakings on the basis of their average output for the 1968/69 to 1972/73 marketing years.

In accordance with Article 24 each undertaking is to be allotted a basic quota, known as "Quota A", and is to be free to sell the sugar produced within the limits of this quota on the Community market and obtain the intervention price.

Pursuant to Article 25 each undertaking may apply to be allotted in addition a maximum quota, known as "Quota B", equal to its basic quota multiplied by a coefficient. It may also sell on the same conditions on the Community market sugar produced within those quotas provided a production levy not

exceeding 30 % of the intervention price is paid. [1]

Sugar produced by an undertaking outside its maximum quota, known as "C sugar", must be sold on the world market and does not qualify for an export refund (Article 26).

In order to ensure that these differences in price shall also apply to the production of sugar-beet the Council fixes minimum prices for beet. Such beet is produced in accordance with contracts concluded before sowing. Sugar manufacturers and beet producers are free to fix the conditions governing the delivery of beet. Regulation (EEC) No 206/68 of the Council (Official Journal, English Special Edition 1968 (I), p. 19), merely lays down outline provisions for contracts and inter-trade agreements on the purchase of beet. That regulation provides *inter alia* that contracts shall be made in writing for a specified quantity of beet and shall specify the purchase price and sugar content etc.

The division amongst the growers of sugar-beet of the quota allotted to the undertakings did not give rise to any difficulty before the request from the Danish delegation during the discussions on the provisions of the new basic regulation (Regulation No 3330/74) for the enactment of provisions intended to resolve disputes between growers of sugar-beet for an undertaking. The Commission, after consulting the Danish Government, drew up a draft of a special regulation of the Council on the basis of Article 43 of the EEC Treaty. This draft was adopted unaltered by the Council and became Regulation No 741/75 (Official Journal 1975 L 74, p. 2).

Article 1 of that regulation provides:

"Where there is no set agreement within the trade as to how the quantities of beet which the manufacturer offers to buy before sowing should be allocated among the sellers, these quantities being intended for the manufacture of sugar within the basic quota limits, the Member State concerned may itself lay down rules for such allocation.

These rules may also grant to traditional sellers of beet to co-operatives delivery rights other than those which they would enjoy if they belonged to such co-operatives."

(b) Facts

Even before accession to the EEC Denmark had set up its own national organization of the market in sugar. The production and refining of sugar were reserved to two undertakings, A/S De Danske Sukkerfabrikker and Sukkerfabriken Nykøbing, the appellant in the main action.

Sukkerfabriken Nykøbing is established as a co-operative, which traditionally obtains its supplies of sugar-beet partly from its members and partly from producers under contract. Its capital of DKR 7 000 000 is divided into 8 750 shares of DKR 800. These shares are transferable and are in fact dealt in at rates far above their face value. Each member of the co-operative is bound to cultivate one tønde (0.56 hectare) of sugar-beet and to deliver the beet harvested to the factory. After the entry into force of the national provisions members of the co-operative retained the right exclusively to cultivate 8 750 tønde, that is one tønde per share. Producers under contract, grouped into a trade organization, gained the right to deliver quantities of sugar-beet up to the

1 — No levy was charged on such production in the 1974/75 and 1975/76 marketing years.

amount which the production quota for the factory made it possible to absorb.

After accession to the Community Denmark was allotted a basic quantity of 290 000 tonnes of white sugar amounting more or less to the average sugar output of the preceding five years.

For the 1973/74 marketing year the basic quota (known as "Quota A") allotted to Sukkerfabriken Nykøbing amounted to 38 947 tonnes of white sugar corresponding to 43 400 tonnes of pole sugar. Sukkerfabriken granted the members of the co-operative rights to cultivate the equivalent of 4 167 kg of pole sugar A per tønde whilst the producers under contract were allocated the equivalent of 2 000 kg of pole sugar per tønde on Quota A intervention conditions for the beet. For the 1974/75 marketing year Sukkerfabriken Nykøbing's entire quota of A sugar was reserved to the members of the co-operative who thus obtained the right to approximately 5 000 kg of pole sugar per share.

Regulation No 3330/74 of the Council increased to 328 000 tonnes the annual basic quantity of white sugar allotted to Denmark for the period 1975/76 to 1979/80.

The members of the co-operative of Sukkerfabriken Nykøbing agreed to reserve 40% of the increase in the quota for new producers of beet. With regard to the remainder they claimed a prior right in respect of 4 167 kg of pole sugar per share from the basic quota which corresponded to the average yield per tønde in the two marketing years 1970/71 and 1971/72. The producers under contract considered that they could concede to the members of the co-operative a prior right to cultivate only 4 032 kg of pole sugar per share corresponding to the average annual output for one tønde for the five marketing years from 1969/70 to 1973/74.

The Ministry of Agriculture tried unsuccessfully to mediate and then by Order No 300 of 20 June 1975, required Sukkerfabriken Nykøbing to allocate its basic quota for the 1976/77 to 1979/80 marketing years in such a way that the prior right conferred upon the members of the co-operative did not exceed 4 053 kg of pole sugar per share, corresponding to the average yield per tønde for the 1970/71 to 1973/74 marketing years.

Sukkerfabriken Nykøbing instituted proceedings against the Ministry of Agriculture on 9 July 1975 in which it claimed that the measure whereby the Ministry had determined the extent of the members' prior cultivation right was unlawful. The Østre Landsret (Eastern Division of the High Court) found against Sukkerfabriken Nykøbing in its judgment of 4 July 1977; Sukkerfabriken then lodged an appeal against this judgment with the Højesteret (Supreme Court) in which it relied upon the claims which it had invoked before the Landsret. It maintains in particular that Regulation No 741/75 of the Council empowers the Minister to determine the allocation between the two categories of producers only if the undertaking is guilty of an abuse of the members' privileged position. It denies that an abuse of this nature can arise from the fact that the members' prior right was fixed on objective and fully justified bases at 4 167 kg of pole sugar per tønde. The Ministry of Agriculture on the other hand claims that the said Regulation No 741/75 of the Council empowers it to determine the delivery rights of traditional producers of sugar-beet within the limits of the basic quota even if it is then no longer possible to fulfil members' rights entirely within the limits of that quota.

By a decision of 28 June 1978, which was received at the Court Registry on 30 June 1978, the Højesteret referred to the Court of Justice, pursuant to Article 177

of the EEC Treaty, the following preliminary questions:

1. Where agreement cannot be reached between shareholders in a sugar factory organized as a co-operative undertaking and other traditional sellers of beet to the factory as to the allocation of the quantities which may be supplied whithin the factory's basic quota and where there is no agreement on this point within the trade, is it in accordance with the Community regulations on sugar, in particular Regulation (EEC) No 741/75 of the Council of 18 March 1975, for a Member State to determine the allocation, or is it a requirement of the regulations that a Member State can only determine the allocation where conditions other than those expressly stated in the preamble to Regulation (EEC) No 741/75 of the Council and in Article 1 (1) thereof are met?
2. If the conditions on which a Member State can lay down rules for allocating the basic quota are met and an unfair basis for such allocation has not been adopted, is it in accordance with the Community regulations on sugar, in particular Regulation (EEC) No 741/75 of the Council, for the Member State to make provision for an allocation between the members and other traditional suppliers to the undertaking in question even though such allocation means that the beet which the members of the co-operative are obliged and entitled under the undertaking's statutes to deliver to the factory cannot entirely be supplied within the basic quota alone?

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged by Sukkerfabriken Nykøbing, the appellant in the main action, represented by Bent Jacobsen, Advocate, Copenhagen, by the Danish Government, represented by Per Lachmann, acting as Agent and Tomas Christensen, Advocate for the Government, assisted by Knud Aavang Jensen and Georg Lett, Advocate, acting as Advisers and by the Commission of the European Communities represented by one of its Legal Advisers, Richard Wainwright, acting as Agent, assisted by Bjarne Hoff-Nielsen, a member of its Legal Department.

Having heard the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

II — Summary of the written observations submitted to the Court

(1) The first question

(a) *Sukkerfabriken Nykøbing,* the appellant in the main action, considers that the first question relates exclusively to Danish law.

It maintained before the Østre Landsret that, given the existence of a prior cultivation right which Sukkerfabriken Nykøbing claims, it must necessarily be accepted that the latter fixes the cultivation rights of the members of the co-operative. The Ministry of Agriculture is empowered to alter that fixing if it goes beyond the prior right properly understood and calculated.

The purpose of this argument is to establish that the Ministry's power pursuant to Regulation No 741/75 to reduce the above-mentioned prior right is dependent upon the existence of a misuse of power by the members of the co-operative or by Sukkerfabriken.

The first question asks the Court to consider whether this argument is well founded.

Sukkerfabriken considers that the point concerns Danish law alone. In case the Court considers that the question also concerns Community law the appellant in the main action suggests that the second part of the alternative referred to in the first question should be answered in the affirmative.

(b) The *Danish Government* considers with regard to the first question that Regulation No 741/75 of the Council does not subject the power of the Member State to regulate the allocation of the quantities of sugar-beet amongst suppliers to conditions other than those relating to the failure of members of the co-operative and producers under contract to reach agreement.

When those conditions are fulfilled the Ministry is empowered to intervene and proceed to make an allocation subject always to the general provisions of administrative law. This view is based on the express wording of the provision.

The basis of the problem lies in the question who has power to make the allocation where the members of the co-operative and the producers under contract disagree. Sukkerfabriken's argument is contrary to the recitals and the operative part of Regulation No 741/75 whereby, if there is no agreement, the Member State may make the allocation. Further the system for which it contends would make the members of the co-operative judge in their own cause.

Furthermore such a view would be at variance with the objective sought which is to attain a gradual concentration of production in the hands of the most productive growers. The incentive to rationalize production would lose its point if a group of growers could reserve for themselves individual rights over the most profitable production. Moreover it would be difficult to avoid such a situation if the Ministry of Agriculture possessed only *a posteriori* supervisory powers.

In conclusion the Danish Government suggests that the reply to the first question should be as follows:

"Where agreement cannot be reached between share-holders in a sugar factory organized as a co-operative undertaking and other traditional sellers of beet to the factory as to the allocation of the quantities which may be supplied within the factory's basic quota and where there is no agreement on this point within the trade, the Community regulations on sugar, in particular Regulation (EEC) No 741/75 of the Council of 18 March 1975, authorize a Member State to determine the allocation."

(c) The *Commission* considers that with regard to the conditions for the application of the measure the wording of the provisions of Regulation No 741/75 is perfectly clear. In accordance both with the recitals and with the first paragraph of Article 1 of that regulation the sole and decisive criterion for carrying out an allocation is the absence of an agreement within the trade as to the quantities of beet to be delivered so that an undertaking may manufacture the sugar laid down in its basic quota.

The purpose of the regulation is to prevent disagreement over the allocation of delivery rights from resulting in a stoppage of production. This aim could not be achieved if the Member States' right to intervene were limited exclusively to cases in which the absence of an agreement within the trade resulted from abuse of a privileged position.

The Commission suggests that the Court should reply to the first question as follows:

"Regulation (EEC) No 741/75 of the Council of 18 March 1975 must be interpreted to mean that a Member State may lay down rules for the allocation between the members of a sugar undertaking organized as a co-operative and producers under contract, of the quantities of sugar-beet which may be

delivered within the limits of the undertaking's basic quota where there is no agreement within the trade on this point, and no further conditions need be fulfilled."

(2) The second question

(a) *Sukkerfabriken Nykøbing* claims that the Ministry of Agriculture was wrong in supposing that Regulation No 741/75 of the Council has abolished rights which Sukkerfabriken considers undoubtedly belong under Danish law to the members of the Sukkerfabriken co-operative.

The origin of the dispute between Sukkerfabriken and the Ministry of Agriculture is to be found in a letter from the Ministry of 24 February 1975 in which it is stated that the allocation of the quota relating to the basic production must be effected in principle without discrimination between the traditional suppliers along the lines of that effected by A/S De Danske Sukkerfabriker. This latter undertaking is not constituted as a co-operative and the sugar-beet which it obtains is solely that offered by producers under contract.

The allocation of the basic quota effected by the Ministry's Order No 300 of 20 June 1975 is based on the same view of the law, namely that the common organization of the market in sugar, in particular Regulation No 741/75, has abolished the privileged status of the members of a co-operative.

In the course of the procedure before the Østre Landsret the Ministry of Agriculture however modified its position. It in fact recognized that members of a co-operative, including those in the present case, might have prior rights but added that such rights, being linked to the possession of shares, could be restricted by the Ministry of Agriculture.

Sukkerfabriken considers that the second paragraph of Article 1 of Regulation No 741/75 must be understood as meaning that, when a Member State lays down rules for the allocation of the quantities of sugar-beet to be cultivated in connexion with a co-operative, it must respect in their entirety any rights which may arise from membership of such a co-operative in accordance with the rules of domestic law.

According to Sukkerfabriken the basis of the second question is that the members of the co-operative enjoy a prior right and that such right was in principle maintained by Regulation No 741/75. It asks whether it can be considered that the prior right recognized by the regulation has been observed by the fixing of a reduced quantity of sugar-beet on A intervention conditions, increased and supplemented by quantities of sugar-beet on B and C conditions so that it would then be necessary to consider that the member's cultivation right was satisfied by combining supplies of sugar-beet from these three categories.

Regulation No 741/75 states expressly that it concerns exclusively the purchase of sugar-beet intended for the manufacture of sugar within the basic quota limits. This also applies to the prior rights mentioned in the second paragraph of Article 1. These prior rights are based on national law and it does not appear that any view has been expressed in the regulation as to the content or character of such preferential rights.

In conclusion Sukkerfabriken suggests that the reply to the second question should be in the negative.

(b) The *Danish Government* states that this question concerns the interpretation of the second paragraph of Article 1 of Regulation No 741/75.

The wording of the Danish version is not entirely unequivocal. In theory it is susceptible of two interpretations.

The provision may mean that the allocation effected by the Ministry of Agriculture must respect the rights to make deliveries to the factory which the members of the co-operative enjoy under the company's statutes.

Alternatively it may be understood as meaning that beet growers are recognized as having a right to deliver to the co-operative, even though *a priori* they do not possess such a right through any membership of that undertaking.

Sukkerfabriken Nykøbing's point of view appears to be based on the first interpretation. On the other hand the Danish Government considers that only the second interpretation is valid so that the Ministry of Agriculture, in allocating the basic quota amongst the various producers, is not bound by the undertaking's internal rules concerning production. The Danish Government also refers to the versions of the regulation in question in other languages and to the case-law of the Court of Justice (paragraph 14 of Case 30/77 *Regina* v *Bouchereau [1977]* ECR 1999).

One of the objectives of the common agricultural policy is to improve agricultural productivity. If the members of a co-operative were able to grant themselves a preference for their production rights within the basic quota it would be impossible to direct production towards the most efficient producers.

The Ministry of Agriculture's interpretation is based also on the background to the provision in question. As early as June 1973, during the preparatory work within the Community for Regulation No 3330/74 of the Council, the Danish representatives emphasized the problems which might arise in sharing out the quota allocated to an undertaking if there was disagreement amongst the various producers. In this connexion a proposal submitted by Denmark in 1974 to settle that point led the Commission to submit a proposal. Finally the Council adopted Regulation No 741/75.

The intention of the Ministry of Agriculture was to guarantee traditional suppliers, including producers under contract, an appropriate share of the *basic quota.* There is thus clearly a desire on the part of the Ministry to create a legal basis for measures intended to place members of the co-operative and producers under contract on an equal footing.

According to the Danish Government this situation can be brought about only if the Ministry is not restricted by the privileges conferred upon members of the co-operative under private law.

In conclusion the Danish Government considers that the answer to the second question should be in the affirmative.

(c) The *Commission* observes that pursuant to the first paragraph of Article 1 of Regulation No 741/75 Member States may lay down rules for the allocation of the supply rights within the basic quota limits. No restriction is contained in those provisions on the powers of the Member States in this sphere.

The second paragraph of Article 1 merely states that persons other than members of a co-operative may obtain delivery rights other than those granted to members.

It is logical and in accordance with the objectives of the common organization of the market to allocate the delivery rights within the basic quota limits of the undertaking amongst all sugar-beet suppliers in proportion to their deliveries in a previous marketing year.

The Commission suggests that the Court of Justice should reply to the second question as follows:

"The regulation of the Council mentioned in the foregoing question must be interpreted to mean that a Member State is entitled to make an allocation of an undertaking's basic quota, on the basis of objective criteria, between the members of a co-operative and other traditional suppliers of the undertaking even though such allocation means that the delivery rights and obligations of the members of the co-operative laid down in the undertaking's statutes cannot be exercised and fulfilled within the undertaking's basic quota alone."

III — Oral procedure

The parties to the main action, the Danish Government and the Commission of the European Communities presented oral argument at the hearing on 5 December 1978.

The Advocate General delivered his opinion in the course of the same hearing.

Decision

1 By a decision of 28 June 1978, which was received at the Court of Justice on 30 June 1978, the Højesteret submitted to the Court of Justice under Article 177 of the EEC Treaty two preliminary questions on the interpretation of Regulation (EEC) No 741/75 of the Council of 18 March 1975 laying down special rules for the purchase of sugar-beet (Official Journal L 74, p. 2).

2 In order to arrive at an interpretation this regulation must be considered in the context of the common organization of the market in sugar as it was established first by Regulation No 1009/67/EEC of the Council of 18 December 1967 on the common organization of the market in sugar (Official Journal, English Special Edition 1967, p. 304) and subsequently by Regulation (EEC) No 3330/74 of the Council of 19 December 1974 (Official Journal 1974 L 359, p. 1) which replaced it.

3 That organization entails the fixing of production quantities for each Member State whilst the latter determines quotas for sugar manufacturers in accordance with criteria laid down in the regulation.

4 The quotas fixed for manufacturers consist of a basic quota, Quota A, which corresponds to the requirements of the domestic market, may be marketed without restriction and may be offered to intervention agencies at the intervention price, with a supplement up to a maximum quota, Quota B,

which is treated as equivalent to the sugar of the basic quota only on payment of a production levy whilst any sugar produced in excess of the maximum quota may not be distributed on the domestic market but must be exported to non-member countries.

5 It is assumed in the regulations that the advantages of the guarantee of marketing both the basic quota and the maximum quota at minimum prices will be passed on by sugar manufacturers to beet growers and it is left to the manufacturers and growers to lay down the conditions governing delivery whilst Regulation No 3330/74 merely provides in Article 6 that "The Council, acting by a qualified majority on a proposal from the Commission, shall adopt outline provisions in respect of the general conditions governing purchase, delivery, acceptance and payment to which agreements within the trade at Community, regional or local level and contracts concluded between buyers and sellers of beet must conform."

6 That article is identical with Article 6 of Regulation No 1009/67 pursuant to which the Council adopted Regulation (EEC) No 206/68 laying down outline provisions for contracts and inter-trade agreements on the purchase of beet (Official Journal, English Special Edition 1968 (I), p. 19) which is still in force.

7 Furthermore Article 30 of Regulation No 3330/74, like the previous Article 30 of Regulation No 1009/67, provides that "in contracts for the delivery of beet for the manufacture of sugar, beet shall be differentiated depending on whether the quantities of sugar to be manufactured from it are

(a) within the basic quota,

(b) outside the basic quota but within the maximum quota,

(c) outside the maximum quota."

This differentiation clearly affects the agreed purchase prices.

8 Although the common organization of the market provides for general rules on the sale and purchase of sugar-beet it is nevertheless clear that the agreements and contracts referred to continue to be governed, subject to the said general rules, by the domestic law of contract under which they were concluded.

9 It appears from the decision referring the matter to the Court that the appellant in the main action (hereinafter referred to as "Sukkerfabriken") is organized in the form of a co-operative which has a share capital of Dkr 7 000 000 divided into 8 750 shares and whose members are obliged to cultivate one tønde (0.56 hectare) with sugar-beet and to deliver the beet harvested to the factory.

10 Since the members of the co-operative did not produce enough for its requirements Sukkerfabriken usually purchases more beet from other growers who are not members of the co-operative (hereinafter referred to as "producers under contract").

11 Since the production quantity allotted to Denmark on its accession to the Community exceeded the quantities which had been fixed in the past by national legislation, Sukkerfabriken's basic quota accordingly exceeded the quantities which, under the previous national system, could be produced at guaranteed prices.

12 Since Sukkerfabriken and the producers under contract could not agree how that increase should affect the fixing of the quantities covered by the basic quota to be purchased from the members of the co-operative and the producers under contract the Danish Government considered it necessary to intervene in order to effect an allocation.

13 The Danish Government reported to the Community institutions the difficulties which had arisen and the Council, on the proposal of the Commission, accordingly adopted Regulation No 741/75 whereby "failing an agreement in certain cases as to how the quantity of beet to be delivered should be allocated, the Member State concerned may lay down special rules for such allocation," it is provided in Article 1:

"Where there is no set agreement within the trade as to how the quantities of beet which the manufacturer offers to buy before sowing should be allocated among the sellers, these quantities being intended for the manufacture of sugar within the basic quota limits, the Member State concerned may itself lay down rules for such allocation.

These rules may also grant to traditional sellers of beet and to co-operatives delivery rights other than those which they would enjoy if they belonged to such co-operatives."

14 The Danish Minister for Agriculture had intervened by Order No 300 of 20 June 1975 on the allocation of the production rights within the basic quota between the members of the co-operative of Sukkerfabriken and the producers under contract and Sukkerfabriken contested the legality of the order before the national courts.

15 In the course of that action the Højesteret requested the Court of Justice to give a preliminary ruling on the following questions:

"A. Where agreement cannot be reached between shareholders in a sugar factory organized as a co-operative undertaking and other traditional sellers of beet to the factory as to the allocation of the quantities which may be supplied within the factory's basic quota and where there is no agreement on this point within the trade, is it in accordance with the Community regulations on sugar, in particular Regulation (EEC) No 741/75 of the Council of 18 March 1975, for a Member State to determine the allocation, or is it a requirement of the regulations that a Member State can only determine the allocation where conditions other than those expressly stated in the preamble to Regulation (EEC) No 741/75 of the Council and in Article 1 (1) thereof are met?

B. If the conditions on which a Member State can lay down rules for allocating the basic quota are met and an unfair basis for such allocation has not been adopted, is it in accordance with the Community regulations on sugar, in particular Regulation (EEC) No 741/75 of the Council, for the Member State to make provision for an allocation between the members and other traditional suppliers to the undertaking in question even though such allocation means that the beet which the members of the co-operative are obliged and entitled under the undertaking's statutes to deliver to the factory cannot entirely be supplied within the basic quota alone?"

16 The two questions may be considered together.

17 Since, as has been stated, the common organization of the market in sugar covers relations between sugar manufacturers and beet growers, such relations, in so far as they specifically concern sugar production, fall exclusively within the competence of the Community so that the Member States are no longer in a position to adopt unilateral measures.

18 In view of possible difficulties in the conclusion of agreements, Regulation No 741/75 is clearly intended to remove that disability on the part of the Member States in the cases defined by the regulation so that the Member States are henceforth entitled under Community law to intervene on the basis of their own powers and in accordance with the procedures of their own legal systems.

19 The statement in the preamble to the regulation which, furthermore, is exceptionally succinct, to the effect that the Member State concerned may lay down special rules, together with the fact that the regulation was adopted not in the form of an amendment either to basic Regulation No 3330/74, in particular Article 6 thereof, or to Regulation No 206/68 but as a measure based solely on Article 43 of the Treaty militate in favour of the interpretation that the regulation is intended merely to explain that the common organization of the market does not preclude action on the part of the Member States in the matter in question.

20 This interpretation is confirmed by the fact that in Regulation No 741/75 no rules or information are provided on the prescribed procedure, the forms or the competent authorities for the action contemplated, such as would be expected if a restriction were to be placed upon the freedom to contract, which on the other hand was scrupulously preserved by Regulation No 206/68.

21 The wording of the questions appears to be based on the idea that Regulation No 741/75 confers powers upon the Member States which must be exercised on conditions and in accordance with procedures governed by Community law.

22 Whilst it is true that Regulation No 741/75, in empowering the Member States to intervene, cannot release them from their duty to observe the principles and general rules of the common agricultural policy the position nevertheless remains that it constitutes a mere enabling provision so far as Community law is concerned and leaves a determination of the conditions and specific procedures which are necessary for action to be taken to the legal system of the Member State in question.

23 From this point of view the second paragraph of Article 1 of Regulation No 741/75 appears as a mere extension of the power conferred by the first paragraph to situations in which the difficulties do not concern the allocation

amongst "the sellers of beet", but also to situations, like that which is at the origin of the dispute in the main action, where the allocation must be effected between sellers of beet on the one hand and growers who are members of a co-operative which is the sugar manufacturer on the other hand, which would not, on a literal reading, be covered by the first paragraph as it is worded.

24 It follows from what has been stated concerning the meaning of the regulation that the second paragraph is not intended to lay down any Community rule affecting the legal situation of sellers to a co-operative who are not members, as against those who are, but must be interpreted as abolishing the Community prohibition on the adoption by the Member State concerned in accordance with the provisions of its own legal system of the rules and decisions necessary to permit it to carry out an allocation in the case referred to by the said regulation.

25 It is clear from the foregoing that the answer to the questions submitted must be that Article 1 of Regulation (EEC) No 741/75 of the Council of 18 March 1975 laying down special rules for the purchase of sugar-beet (Official Journal L 74, p. 2) is intended to empower the Member States having regard to impediments which might result from Community powers, to proceed in conformity with their national law to allocate delivery rights for beet within the basic quota limits of the sugar manufacturer concerned when the condition set out in Article 1 of the regulation is fulfilled.

Costs

26 The costs incurred by the Danish Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

27 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Højesteret on 28 June 1978, hereby rules:

Article 1 of Regulation (EEC) No 741/75 of the Council of 18 March 1975 laying down special rules for the purchase of sugar beet is intended to empower Member States, having regard to impediments which might result from Community powers, to proceed in conformity with their national law to allocate delivery rights for beet within the basic quota limits of the sugar manufacturer concerned when the condition set out in Article 1 of the regulation is fulfilled.

Kutscher Mertens de Wilmars Mackenzie Stuart Donner Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 16 January 1979.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 5 DECEMBER 1978

My Lords,

In this case the Court has before it very full and clear Judgments of the Østre Landsret and of the Højesteret and it has had the further advantage of thorough and careful argument on behalf of the parties and of the Commission. The questions referred to the Court by the Højesteret are, in essence, simple. In those circumstances I do not think that any useful purpose would be served by my asking Your Lordships to adjourn while I consider my Opinion and I do not think that it would be right for me to do so.