JUDGMENT OF THE COURT (Fifth Chamber)
22 January 1986 *

In Case 250/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the tribunale di Roma for a preliminary ruling in the action pending before that court between

Eridania zuccherifici nazionali SpA and Others

v

Cassa conguaglio zucchero and the Italian Ministry of Finance and Treasury

on the validity of Articles 24 and 28 of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector (Official Journal 1981, L 177, p. 4),

THE COURT (Fifth Chamber)

composed of: U. Everling, President of Chamber, R. Joliet, O. Due, Y. Galmot and C. Kakouris, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of

the plaintiffs in the main proceedings, by Mauro de André, Giuseppe Marchesini and Frederico Sorrentino,

the Italian Government, by Ivo M. Braguglia, Avvocato dello Stato,

the Council of the European Communities, by Antonio Sacchettini and Arthur Brautigam,

* Language of the Case: Italian.

the Commission of the European Communities, by Alberto Prozzillo,

after hearing the Opinion of the Advocate General delivered at the sitting on 22 October 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an order dated 11 November 1983, which was received at the Court on 23 October 1984, the tribunale di Roma [District Court, Rome] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the validity of Articles 24 and 28 of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector (Official Journal 1981, L 177 p. 4).

2 The questions were raised in the course of an action brought by Eridania zuccherifici nazionali SpA, 15 other Italian sugar-producing companies, the Consorzio nazionale bieticultori and the Associazione nazionale bieticultori against the Cassa conguaglio zucchero and the Italian Ministry of Finance and the Italian Treasury. In 1982 the plaintiffs in the main proceedings received demands for the payment of sugar production levies pursuant to Articles 24 and 28 of Regulation No 1785/81. In their action they request the tribunale di Roma to declare that those levies are not payable owing to the unlawfulness of those two articles and to order the defendants to repay with interest the levies already paid.

3 Considering that its decision depended on the answer to the question whether or not Articles 24 and 28 of Regulation No 1785/81 are valid, the tribunale di Roma stayed the proceedings and referred the following questions to the Court:

(a) Inasmuch as it requires Italian producers to pay a levy for the sale of sugar at a guaranteed price calculated on the basis of the production quotas fixed in Article 24, is Article 28 of Council Regulation (EEC) No 1785/81 unlawful as being contrary to the prohibition of discrimination laid down in Articles 7 and 40 (3) of the EEC Treaty and contrary to the principle of proportionality having regard to the aim laid down in Article 39 (1) (b) of that Treaty?

(b) In determining the Italian A production quotas and the ratio between the A quota and the B quota, is Article 24 of Regulation No 1785/81 unlawful because the reasons on which it is based are not stated, as required by Article 190 of the Treaty?

4 In its order for reference the national court states that Italy is the Member State having the lowest ratio between its A quota and its internal consumption (85% compared with a Community average of 101% with a maximum of 194% in Belgium). As a result Italy can export only B quota sugar, on which a levy of 39.5% of the intervention price must be paid, whilst the other Member States may also export A quota sugar, on which a lower levy of 2% must be paid. That situation constitutes an infringement of Article 7 of the EEC Treaty.

5 According to the national court, discrimination also exists between producers within the meaning of the second subparagraph of Article 40 (3) of the Treaty. The ratio between the levies paid on quantities charged to the B quota and the amount of that quota for Italy is the highest in the Community (Lit 138 per kg as against a Community average of Lit 113 per kg). Secondly, the fixed production costs for A quota quantities in Italy are the highest in the Community because the average factory production in Italy is the lowest (293 333 quintals as against the Community average of 466 471 quintals). Furthermore, the levies imposed on Italian producers in respect of the B quota are disproportionate in relation to the aim of ensuring a fair standard of living for the agricultural community set out in Article 39 (1) (b) of the Treaty.

6 Finally, it is stated in the order for reference that Regulation No 1785/81 does not contain an adequate statement of reasons since, as far as the production quotas are concerned, the regulation merely states that the reasons which led to their introduction remain valid and it is not explained why the changes which had occurred in the meantime in the market situation were insignificant.

The system of quotas and sugar production levies

7 The common organization of the markets in sugar was created by Council Regulation No 1009/67 of 18 December 1967 (Official Journal, English Special Edition 1967, p. 304). That regulation introduced a system, initially applicable until July 1975, which provided for a 'basic quota' and a 'maximum quota' to be allocated to each undertaking for each marketing year. Any quantity of sugar exceeding the maximum quota could not be sold in the Community. Provision was also made for a Community system for financing the costs of disposing of surpluses; these were borne within certain limits by producers as a whole by means of a production levy whilst the remaining costs were borne by the Community budget. That system was extended, subject to certain modifications, by Council Regulation No 3330/74 of 19 December 1974 (Official Journal, L 359, p. 1) and Council Regulation No 1592/80 of 24 June 1980 (Official Journal, L 160, p. 12). Regulation No 3330/74 increased the basic quotas only for the major sugar-producing Member States. Italy was therefore excluded from that increase, which was intended to offset the negative effects of preferential sugar imports from ACP countries under Community commitments.

8 As from 1 July 1981 the aforesaid regulations were replaced by Council Regulation No 1785/81 of 30 June 1981. That regulation, at issue in the present case, distinguishes between three types of quota: the A quota, which represents consumption within the Community, may be freely marketed on the common market and the disposal of A quota sugar is guaranteed by the intervention price; the B quota is the quantity of sugar produced in excess of the basic quota ('A quota') without exceeding the 'maximum quota', which is equal to the A quota multiplied by a coefficient; it may also be freely marketed on the common market, but without an intervention price guarantee, or exported to non-member countries with export aid; that aid, equal to the difference between the intervention price and the price of sugar on the world market, is paid in the form of export refunds;

finally, the C quota, which is the quantity produced in excess of the 'maximum quota' (A and B quotas), may be marketed only in non-member countries and no export aid may be granted.

9 Regulation No 1785/81 also reformed the system for financing the costs of exporting sugar. First, it introduced the principle of 100% producer responsibility — they must bear all of the costs of disposing on export markets of sugar on which refunds have been granted. Secondly, not only sugar produced under the B quota but also sugar produced under the A quota was made subject to the production levy.

10 Under Articles 24 and 28 of Regulation No 1785/81 the system established is as follows:

The reference quantities ('basic quantities') for determining the basic quotas (the 'A quotas') remain the same as under the previous system except the basic quantity for Italy, which increases from 1 230 0000 tonnes to 1 320 000 tonnes (Article 24 of Regulation No 1785/81).

The quotas exceeding the basic quotas but remaining within the limit of the maximum quota (the 'B quotas') are established on the basis of actual production but may not be less than 10% of the basic quotas. To take account of regional trends in the production of sugar beet and sugar cane, the B quotas are fixed at an amount equal to the average of the three highest annual production figures recorded in the last five marketing years (Article 24).

The costs of disposing of the surpluses resulting from the ratio between the Community's production and its consumption are financed in full by the producers themselves, the whole of production under the A and B quotas being subject to a levy to be paid in accordance with the following system (Article 28 of Regulation No 1785/81):

The total losses arising from the disposal of the surpluses in question are first of all spread over the entire production under the A and B quotas with a production levy which may not be higher than 2% of the intervention price for white sugar;

The proportion of those losses not covered by the yield from that levy is financed by a supplementary production levy on B quota production, which may not be higher than 30% of the same intervention price. However, if this last financing method is still insufficient, the maximum may be raised to 37.5% so that the total charge on B quota production may be 39.5%.

The first question

The alleged discrimination

11 In its first question the national court is in effect asking whether the levy imposed on Italian producers under Articles 24 and 28 of Regulation No 1785/81 is contrary to the prohibition of discrimination laid down in Article 7 and 40 (3) of the EEC Treaty.

12 The plaintiffs in the main proceedings and the Italian Government suggest that this question should be answered in the affirmative. They contend that the discrimination arises from the fact that the total of the charges connected with the financing of the quota system is calculated on the basis of consumption within the Community, whereas the charges to be borne by the individual undertakings are calculated on the basis of their actual production during the reference period. The application of different criteria as regards the total of the charges and their division between individual undertakings means that the A quota allocated to Italy, which is subject to a levy of only 2%, is fixed at a level which is much lower than internal consumption in Italy.

13 The plaintiffs in the main proceedings support their contention by referring to various facts: the basic quota for Italy did not increase between 1968 and 1981 whereas the quotas of all the other Member States did. Although under Regulation No 1785/81 Italy was allocated an A quota 7.3% higher than its existing basic quota, the total increase in Italy's basic quota (or A quota) is still lower than the average increase in the Community since 1968 (7.3% compared with 18%). However, Italian consumption of sugar has increased by 9.1% since 1968 whereas it has fallen by 2.1% in the Community as a whole. Owing to those changes, Italy,

together with the Federal Republic of Germany, has the lowest ratio between its A quota and its internal consumption (85% as against a Community average of 101%).

14 According to the plaintiffs, Italian producers may, as a result, export only sugar produced under their B quota, which is subject to a higher levy, and for that reason they bear, on their B quota, the charges created by exports effected by producers in other Member States which have an A quota higher than their internal consumption. Consequently, Italian producers, who have never created surpluses, are obliged to finance the disposal at guaranteed prices of the sugar produced by their Community partners.

15 In this regard the Italian Government further points out that the situation it describes threatens gradually to upset the balance of production in the Community because the producer of surpluses who suffers only partly the effects of his own surpluses will tend to increase his production and thereby acquire the right to an increase in his quota, whereas the producer with the highest costs who does not generally produce surpluses is obliged to contribute towards the costs of exporting the surplus production.

16 The Council and the Commission deny that there is any discrimination on the grounds of nationality or between producers in the Community. In their view, the quotas are fixed on the basis of objective criteria having regard to the aim of the regulations, which is to provide a degree of control over sugar production whilst at the same time enabling production to be re-orientated.

17 The Commission states that the fixing of national quotas on the basis of the actual production of undertakings is consistent with the principles of solidarity between producers, product specialization and free trade in the Community. Any difference resulting from that system in the burden borne by Italian producers compared with other producers in the Community is merely the result of a different level of production in the Member States. For the same reason, the ratio between the levies

charged and Italy's B quota is of no significance since the undertakings of the various Member States always use a different proportion of their B quota during different marketing years. As regards the contention that it is impossible for Italian producers to export sugar other than sugar produced under the B quota, the Commission observes that Italian producers do not in fact export sugar produced under quota to non-member countries and that furthermore there is no relationship between the levies paid and the product's destination. Finally, the refunds are paid without distinction on exports of sugar produced under the A quota and of sugar produced under the B quota.

18 The Council and the Commission also point out that, having regard to the lack of competitiveness of Italian sugar-beet producers, they benefit in many respects from a more favourable regime than producers in other Member States. For example, the basic quantities for Italy were initially fixed in Regulation No 1009/67 at a higher level than the basic quantities allocated to the other Member States; in addition, only Italy received an A quota higher than its existing basic quantity under Regulation No 1785/81. Thirdly, in the case of Italian producers, the production levy is calculated by reference to the intervention price and not by reference to the (higher) derived intervention price which applies to Italy as a deficit area. Consequently, Italian producers are in fact subject to a lower levy than other producers in the Community. Finally, the system in force allows Italy to grant national aid to its producers of sugar beet and sugar in addition to the guarantee of regional prices and also allows Italy to adjust the quotas of its undertakings without limit to the extent necessary to achieve restructuring plans.

19 The Court would first observe that, as the Council and Commission have explained, the quota sytem for the production of sugar is an essential part of the common organization of the markets in that commodity. At a time when surpluses exist on both the common market and the world market, the quota system curbs production and aligns it as closely as possible with internal consumption whilst promoting regional specialization. To that end, it provides for the disposal at guaranteed prices of qualifying quantities by means of a system for financing the costs of disposal, which are borne jointly by all the producers. That financing system is designed in such a way that the A quota, which represents internal consumption, attracts only a minimal levy whereas the B quota, which is mainly

for export, is subject to a much higher levy in order to finance the necessary refunds whilst discouraging production.

20 In those circumstances, the Council was justified in dividing the quotas between the individual undertakings on the basis of their actual production. Indeed, such a distribution of the burden is consistent with the principle of regional specialization, which is one of the foundations of the common market and which requires production to occur at the place that is economically the most suitable. It is also consistent with the principle of solidarity between producers, since production is a legitimate criterion for assessing the economic strength of producers and the benefits which they derive from the system.

21 The fact that the distribution of the burden between undertakings on the basis of their production gives rise to an A quota for Italy which is lower than its internal consumption and also a particularly high ratio between the levies paid and its B quota cannot lead to a different assessment. On the contrary, those consequences are due to the requirement that, in a common market characterized by regional specialization, production in the individual Member States must be able to develop independently of the level of consumption in those States. Those consequences cannot therefore constitute discrimination.

22 The complaint of discrimination is even more unsustainable if the provisions at issue are considered in their legislative context. It was precisely in order to lessen the disparities arising from Italy's specific structural difficulties that the Council linked the quota system to various specific measures taking the form of aid to Italian producers, such as a higher basic quantity at the outset, a higher intervention price and allowing national aid to be granted to them.

23 The plaintiffs in the main proceedings and the Italian Government also claim that the rules in question are discriminatory inasmuch as the average quota allocated to Italian establishments is lower than the average quota allocated to the establishments in the Community (29 233 tonnes as against 51 873 tonnes). Consequently, the fixed costs to be borne by Italian producers are higher than those borne by producers in other Member States and this situation has led to the insolvency of a number of Italian undertakings.

24 In reply the Council and the Commission point out that the production quotas are not allocated to establishments but to undertakings and that on average Italian undertakings have the highest A quotas in the Community. However, they do not dispute that the costs of sugar production in Italy are higher than the Community average.

25 It must be borne in mind in this regard that the aim of the quota system is not to support the least profitable undertakings but to provide a degree of control over production whilst re-orientating it towards the needs of the market. There is therefore justification for not taking account of differences in production costs when quotas are allocated between the individual producers; that is particularly true when, as in the present case, the quota system is linked to a set of measures designed to offset at least some of the structural difficulties of the poorer regions.

26 It is clear from those considerations that Italian producers do not suffer any discrimination in relation to other producers in the Community. The argument alleging a breach of Articles 7 and 40 (3) of the EEC Treaty must therefore be rejected.

The alleged breach of Article 39 (1) (b) of the EEC Treaty

27 The second part of the national court's first question asks in substance whether the level of the levy imposed on Italian producers under Articles 24 and 28 of Regulation No 1785/81 is contrary to the aim laid down in Article 39 (1) (b) of the EEC Treaty. According to that provision, the aim of the common agricultural policy is 'to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture'.

28 The plaintiffs in the main proceedings take the view that this question must be answered in the affirmative because Italian producers are not responsible for the sugar surpluses which led to the introduction of the quota system in question. In this regard, they observe in particular that the levy on the B quota imposes a disproportionate sacrifice on Italian producers and that, furthermore, 60% of that

levy is borne by Italian producers of sugar beet. Those factors result in a reduction of earnings for Italian producers, contrary to the aim laid down in Article 39 (1) (b) of the EEC Treaty.

29 The Council and the Commission, on the other hand, maintain that the rules in question have been framed in such a way as to take sufficient account of the specific needs of the deficit areas, of which Italy is one. First, the minimum price for both A sugar beet and B sugar beet is higher in the deficit areas. Secondly, since the production levy on sugar is calculated on the basis of the intervention price and not on the basis of the derived intervention price, Italian sugar-beet producers pay, in percentage terms, a lower levy on B sugar than producers in other Member States (28.8% of the intervention price as against 30% in the 1981/82 marketing year). Thirdly, Italian sugar-beet and sugar producers receive national aid which is authorized by Article 46 of Regulation No 1785/81. Finally, Italian production of B sugar is almost non-existent at the present time so that Italian producers do not in fact pay any levy on that sugar. The Commission adds that it is precisely because of the quota system that Italy has been able to maintain production of sugar beet, although the constituents of that beet are considerably less useful than those of sugar beet produced in other Member States.

30 In so far as those arguments are identical to those advanced in support of the first submission, it is sufficient to refer to the foregoing observations.

31 As regards the contention of the plaintiffs in the main proceedings to the effect that the system established by Regulation No 1785/81 is not capable of providing Italian producers, in particular Italian sugar-beet producers, with a fair standard of living, it must be pointed out that the market in sugar as a whole is characterized by surplus production. Consequently, the intervention and co-financing machinery set up in order to dispose of the surpluses at guaranteed prices serves the interests of all sugar producers in the Community, including Italian producers. As the Commission has rightly pointed out, that minimum price guarantee is specifically intended to protect the earnings of those producers as a whole.

32 In those circumstances, the burden to be borne by Italian producers under the system established by Regulation No 1785/81 cannot be regarded as inconsistent with the aim laid down in Article 39 (1) (b) of the EEC Treaty. More particularly, the argument that those producers are obliged to assist in financing surpluses for which they are not responsible must be rejected. Such a view is incompatible with the very principle of a common market, in which the undertakings or the Member State responsible for any surplus production cannot be identified. As far as the system introduced by Regulation No 1785/81 is concerned, all undertakings which exceed their A quota therefore produce, by definition, surpluses for export.

33 Consequently, the argument alleging a breach of Article 39 (1) (b) of the EEC Treaty must also be rejected.

The second question

34 The national court's second question asks in substance whether Article 24 of Regulation No 1785/81 is valid in view of the requirement in Article 190 of the EEC Treaty that a statement of reasons be given.

35 The plaintiffs in the main proceedings and the Italian Government contend that Regulation No 1785/81 does not contain an adequate statement of reasons explaining how Italy's quotas were determined. They point out that the preamble to that regulation merely states that the reasons which have hitherto led the Community to retain a production quota system remain valid. However, the preamble does not mention the level of the quotas or the fact that the situation regarding production and consumption in the various Member States as well as the structure of the levies have changed in the meantime.

36 For their part the Council and the Commission contend that the requirement laid down in Article 190 of the Treaty is satisfied because more detailed reasons are given in the preambles to the previous Regulations, Nos 1009/67 and 3330/74, to which the preamble to Regulation No 1785/81 refers.

37 According to the established case-law of the Court, the statement of reasons required by Article 190 of the Treaty must be appropriate to the nature of the measure in question. It must show clearly and unequivocally the reasoning of the Community authority 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.

38 It is also clear from that case-law, as confirmed most recently in the Court's judgment of 28 October 1982 in Joined Cases 292 and 293/81 (*Société Jean Lion et Cie, Société Loiret & Haentjens SA and Others* v *Fonds d'Intervention et de Régularisation du Marché du Sucre* [1982] ECR 3887), that the statement of the reasons on which regulations are based is not required to specify the often very numerous and complex matters of fact or of law dealt with in the regulations, provided that the latter fall within the general scheme of the body of measures of which they form part. Consequently, if the contested measure clearly discloses the essential objective pursued by the institution, it would be excessive to require a specific statement of reasons for each of the technical choices made by the institution.

39 That applies to the explanation given for the production quota scheme in Regulation No 1785/81. The reasons set out in that regard in its preamble, in particular the 11th recital, combined with the preambles to the previous Regulations, Nos 1009/67 and 3330/74, show clearly and unequivocally the reasons which led the Council to maintain the general outline of the system already in existence whilst amending it in certain respects, particularly as regards the bases for calculating the quotas and the financing of the system. Those preambles are sufficient to enable the producers concerned to become acquainted with the rationale of the contested rules and to enable the Court to exercise its powers of review.

40 Consequently, the argument that a sufficient statement of reasons was not provided, contrary to Article 190 of the EEC Treaty, must also be rejected.

41 For all those reasons the answer to be given to the tribunale di Roma must be that consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Articles 24 and 28 of Council Regulation No 1785/81 of 30 June 1981.

Costs

42 The costs incurred by the Italian Government, the Council and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of 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 (Fifth Chamber),

in answer to the questions submitted to it by the tribunale di Roma by order of 11 November 1983, hereby rules:

Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Articles 24 and 28 of Council Regulation No 1785/81 of 30 June 1981.

Everling Joliet

Due Galmot Kakouris

Delivered in open court in Luxembourg on 22 January 1986.

P. Heim
Registrar

U. Everling
President of the Fifth Chamber