ORDER OF THE COURT OF FIRST INSTANCE
(Fourth Chamber, Extended Composition)
8 December 1998 *

In Case T-38/98,

Associazione Nazionale Bieticoltori (ANB), an association constituted under Italian law, established in Rome,

Francesco Coccia, residing in Manfredonia (Italy),

Vicenzo Di Giovine, residing in Lucera (Italy),

represented by Luigi Filippo Paolucci and Gian Piero Galletti, of the Bologna Bar, with an address for service in Luxembourg at the Chambers of Arsène Kronshagen, 22 Rue Marie-Adélaïde,

applicants,

v

Council of the European Union, represented by John Carbery and Antonio Tanca, Legal Advisers, with an address for service in Luxembourg at the office of Alessandro Morbilli, Director-General of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

* Language of the case: Italian.

APPLICATION for the annulment of Article 2 of Council Regulation (EC) No 2613/97 of 15 December 1997 authorising Portugal to grant aid to sugar beet producers and abolishing all State aid from the 2001/2002 marketing year (OJ 1997 L 353, p. 3),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(Fourth Chamber, Extended Composition),

composed of: R. M. Moura Ramos, President, R. García-Valdecasas, V. Tiili, P. Lindh and P. Mengozzi, Judges,

Registrar: H. Jung,

makes the following

Order

Legal framework

1 Article 46 of Council Regulation No 1785/81 of 30 June 1981 on the common organisation of the market in the sugar sector (OJ 1981 L 177, p. 4, hereinafter 'Regulation No 1785/81'), as amended by Council Regulation (EC) No 1101/95 of 24 April 1995 amending Regulation No 1785/81 and Regulation (EEC) No 1010/86 laying down general rules for the production refund on certain sugar products used in the chemical industry (OJ 1995 L 110, p. 1), authorises the Italian

Republic and the Kingdom of Spain, *inter alia*, to grant adjustment aid to producers of sugar beet, under the conditions which it defines.

2 Article 46(2) of Regulation No 1785/81 divides Italy into 'northern Italy', 'central Italy' and 'southern Italy'. The amount of aid authorised is progressively reduced over the relevant period ('soft landing'): the rate of reduction is very steep in the case of northern and central Italy and less so in the case of southern Italy. For the 1995/1996 marketing year the amount authorised was ECU 8.15 per 100 kilogrammes of white sugar for northern Italy, central Italy and southern Italy, whereas for the last marketing year in which the aid is payable in all three regions of Italy, the 1999/2000 marketing year, the amounts are fixed at ECU 1.09 (northern Italy), ECU 2.17 (central Italy) and ECU 5.98 (southern Italy) per 100 kilogrammes of white sugar. Finally, the regulation authorises aid for southern Italy alone for the 2000/2001 marketing year, at the rate of ECU 5.43 per 100 kilogrammes of white sugar.

3 Under Article 1 of Council Regulation (EC) No 2613/97 of 15 December 1997 authorising Portugal to grant aid to sugar beet producers and abolishing all State aid from the 2001/2002 marketing year (OJ 1997 L 353, p. 3, hereinafter 'Regulation No 2613/97'), the Portuguese Republic is authorised, under certain conditions, to grant adjustment aid to sugar beet producers during the 1998/1999 to 2000/2001 marketing years. Article 2 of that regulation provides that '[w]ith effect from the 2001/2002 marketing year, the aid referred to in Article 1 and the aids referred to in Article 46 of ... Regulation No 1785/81 are hereby abolished'.

4 Regulation No 2613/97 was published in the *Official Journal of the European Communities* on 24 December 1997.

Facts and procedure

5 The applicant Associazione Nazionale Bieticoltori (ANB) is an association which protects the interests of Italian sugar beet producers. The other applicants are Italian sugar beet producers who operate in southern Italy as defined in Article 46(4) of Regulation No 1785/81.

6 The applicants considered that the interests of sugar beet producers operating in southern Italy were unlawfully harmed by Article 2 of Regulation No 2613/97 and, by application lodged at the Court Registry on 5 March 1998, brought the present action.

7 Pursuant to Article 114(1) of the Rules of Procedure, the defendant, by a separate document lodged at the Court Registry on 28 May 1998, raised an objection of inadmissibility. The applicants lodged their observations on that objection on 13 July 1998.

8 By applications lodged at the Court Registry on 17 July and 11 August 1998 the Commission and the Associação dos Refinadores de Açúcar Portugueses, an association constituted under Portuguese law, applied for leave to intervene in support of the form of order sought by the Council.

Forms of order sought by the parties

9 In their application the applicants claim that the Court should:

— annul Article 2 of Regulation No 2613/97;

— order the unsuccessful party to pay the costs.

10 The defendant contends that the Court should:

— dismiss the application as manifestly inadmissible;

— order the applicants to pay the costs.

11 In their observations on the objection of inadmissibility the applicants claim that the Court should reject it.

Admissibility

12 Under Article 114 of the Rules of Procedure, where a party makes application for a decision on the admissibility of an action the Court may determine that application without proceeding to consider the substance of the case. Article 114(3) provides that unless the Court otherwise decides the remainder of the proceedings are to be oral. In the present case the Court considers that it has sufficient information from the documents before it and decides that there is no need to open the oral procedure.

Arguments of the parties

13 The defendant points out that Article 173 of the EC Treaty does not as a rule entitle natural or legal persons to bring an action against measures having general application, such as Council regulations.

14 The defendant states that it follows not only from the title of the contested act but also from its content that it has general application. In any event, Article 2 of Regulation No 2613/97 is not of individual concern to the applicants; nor is it of direct concern to them, since it leaves a discretion to the Member States until the end of the 2000/2001 marketing year.

15 The applicants state that Article 2 of Regulation No 2613/97 produces a legal effect, namely a prohibition on aid from the 2001/2002 marketing year. That prohibition concerns them directly, since Article 2 does not require implementing measures on the part of the national authorities.

16 They further submit that Italian sugar beet producers in southern Italy are the only ones to be directly affected by the contested provision. Those producers have a direct interest in the extension beyond the 2000/2001 marketing year of a system which, albeit subject to gradual reductions, allows aid to be granted to offset the disadvantages peculiar to the cultivation of sugar beet in that region.

17 In any event, the contested provision is not of general application inasmuch as, essentially, it is above all sugar beet producers in southern Italy who are affected by it. The prohibition on aid imposed by Regulation No 2613/97 is especially onerous for southern Italy, since that region remains eligible for aid during the 2000/2001 marketing year, unlike Spain and northern and central Italy. Consequently, sugar beet producers in southern Italy are in a specific situation which differentiates them from all other persons.

Findings of the Court

18 Under the fourth paragraph of Article 173 of the Treaty the admissibility of an action for annulment brought by a natural or legal person against a regulation is subject to the condition that the contested regulation is in reality a decision which concerns the applicant directly and individually. It has also been held that the criterion for distinguishing between a regulation and a decision must be sought in the general application or otherwise of the measure in question (see, for example, order in Case C-168/93 *Government of Gibraltar and Gibraltar Development Corporation* v *Council* [1993] ECR I-4009, paragraph 11, and order in Case T-107/94 *Kik* v *Council and Commission* [1995] ECR II-1717, paragraph 35). An act has general application if it applies to objectively determined situations and entails legal effects for categories of persons regarded generally and in the abstract (Case 307/81 *Alusuisse Italia* v *Council and Commission* [1982] ECR 3463, paragraph 9, Case C-321/95 P *Greenpeace Council and Others* v *Commission* [1998] ECR I-1651, paragraphs 27 and 28, and order in *Kik* v *Council and Commission*, cited above, paragraph 35).

19 Article 2 of Regulation No 2613/97 provides that the aid referred to in Article 1 of that regulation and those referred to in Article 46 of Regulation No 1785/81 are to

be abolished with effect from the 2001/2002 marketing year. Such a measure applies to an objectively determined situation and entails legal effects for categories of persons regarded generally and in the abstract, namely the Member States and sugar beet producers. It is therefore a measure of general application.

20 None the less, it has been held that in certain circumstances a provision in a measure of general application may be of individual concern to certain of the economic operators concerned (Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501, paragraph 13, and Case C-308/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 19). In such a case a Community measure may be of a legislative nature and, at the same time, *vis-à-vis* some of the economic operators concerned, in the nature of a decision (Joined Cases T-481/93 and T-484/93 *Vereniging van Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 50). That is so where the provision in question affects natural or legal persons by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons (*Cordorniu* v *Council*, cited above, paragraph 20; Case T-12/93 *Comité Central d'Entreprise de la Société Anonyme de Vittel and Others* v *Commission* [1995] ECR II-1247, paragraph 36).

21 In the light of that line of decisions, it is appropriate to determine whether in the present case the applicants are concerned by Article 2 of Regulation No 2613/97 by reason of certain attributes which are peculiar to them or by reason of circumstances in which, for the purposes of that provision, they are differentiated from all other persons.

22 The Court observes, first, that even if the regulation is susceptible of affecting the situation of the applicants Mr Coccia and Mr Di Giovine, that circumstance is not sufficient to differentiate them from all other persons. The contested provision concerns them only by reason of their objective attribute as economic operators active in the sugar beet sector, in the same way as any economic operator engaged in the same business in the European Community.

23 Admittedly, a comparison between the system currently applicable in southern Italy and that applicable in the other regions of Italy and in Spain (see paragraph 2 above) shows that the effects of Article 2 of Regulation No 2613/97 are likely to be felt more severely in southern Italy, since the gradual reduction in the amount of authorised aid is less pronounced than in the other regions. However, the fact that the contested provision may have different specific effects on the various persons to whom it applies is not inconsistent with its nature as a regulation (see, in that regard, Case T-472/93 *Campo Ebro and Others* v *Council* [1995] ECR II-421, paragraph 36, and order in Case C-409/96 P *Sveriges Betodlares and Henrikson* v *Commission* [1997] ECR I-7531, paragraph 37). Furthermore, in relation to the system of authorisation of aid established by Article 46(2) of Regulation No 1785/81 and the system of prohibition established by Article 2 of Regulation No 2613/97, Mr Coccia and Mr Di Giovine are in any event in the same situation as any other Italian sugar beet producer operating in southern Italy (see, by analogy, orders in Case 34/88 *Coopérative Agricole de l'Anjou et du Poitou and Others* v *Council* [1988] ECR 6265, paragraph 15, Case C-10/95 P *Asociación Española de Empresas de la Carne (Asocarne)* v *Council* [1995] ECR I-4149, paragraph 42, and Joined Cases T-14/97 and T-15/97 *Sofivo and Others* v *Council* [1998] ECR II-2601, paragraph 37).

24 It follows from all those considerations that Regulation No 2613/97 cannot be regarded as being of individual concern to Mr Coccia and Mr Di Giovine.

25 It should be pointed out, second, that an application for annulment lodged by an association may be admissible in three types of situation, namely:

(a) where a legislative provision expressly confers a range of procedural powers on trade associations (Case 191/82 *Fediol* v *Commission* [1983] ECR 2913, paragraphs 28 to 30; *CCE de Vittel and Others* v *Commission*, cited above, paragraphs 39 to 42);

(b) where the association represents the interests of undertakings having *locus standi* to seek the annulment of the provision in question (Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and Others* v *Commission* [1995] ECR II-1971, paragraph 62);

(c) where the association is distinguished because its own interests as an association are affected, in particular because its position as a negotiator has been affected by the measure whose annulment is sought (Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219, paragraphs 21 to 24; *Exporteurs in Levende Varkens and Others* v *Commission*, cited above, paragraph 64).

26 In those three types of situation the Court of Justice and the Court of First Instance have also taken into account the participation of the associations in question in the procedure (order in Case T-122/96 *Federolio* v *Commission* [1997] ECR II-1559, paragraph 62).

27 As regards the first type of situation, mentioned above, it is sufficient to point out that the regulations on the common organisation of the markets in the sugar sector do not recognise that associations have any right of a procedural nature.

28 As regards the second of the abovementioned types of situation, it should be observed that the fact that the contested provision will affect sugar beet producers whose interests are represented by the Associazione Nazionale Bieticoltori is not such as to differentiate those producers from all other persons, since they are in a

situation which is comparable to that of any other operator who may enter the same market (see, in that regard, orders in Case T-116/94 *Cassa Nazionale di Previdenze ed Assistanza a favore degli Avvocati e Procuratori* v *Council* [1995] ECR II-1, paragraph 28, and in *Federolio* v *Commission*, cited above, paragraph 67).

29 As regards, last, the third type of situation referred to above, it should be pointed out that, according to a consistent line of decisions, an association formed to promote the collective interests of a category of persons cannot be regarded as individually concerned by a measure affecting the general interests of that category, and is therefore not entitled to bring an action for annulment where its members may not do so individually (Case 72/74 *Union Syndicale and Others* v *Council* [1975] ECR 401, paragraph 17, order in Case 117/86 *UFADE* v *Council and Commission* [1986] ECR 3255, paragraph 12; *AITEC and Others* v *Commission*, cited above, paragraph 54; and order in Case T-585/93 *Greenpeace and Others* v *Commission* [1995] ECR II-2205, paragraph 59). None the less, the existence of particular circumstances, such as the role played by an association in a procedure leading to the adoption of an act within the meaning of Article 173 of the Treaty, may justify admitting an action brought by an association whose members are not directly and individually concerned by the act at issue, particularly when its position as negotiator is affected by it (order in *Federolio* v *Commission*, cited above, paragraph 69).

30 In that regard, it should be pointed out that Regulation No 2613/97 does not concern the members of the applicant association individually (see paragraph 27 above) and, on the other hand, it does not affect the association's own interests. The association merely protects the interests of its sugar beet producer members. Its interest cannot be distinguished from the interest of the Italian sugar beet producers (see, by analogy, order in *Federolio* v *Commission*, cited above, paragraphs

71 and 72). Furthermore, the applicant association did not play a role as negotiator in the procedure leading to the adoption of the regulation in question.

31 It follows from the foregoing considerations that the applicant Associazione Nazionale Bieticoltori is not distinguished by any of the criteria which have been identified by the Court of Justice and by the Court of First Instance in their decisions on the admissibility of actions for annulment brought by associations.

32 Consequently, none of the applicants meets the conditions of admissibility laid down in the fourth paragraph of Article 173 of the Treaty.

33 It follows from all the foregoing that the present application must be dismissed as inadmissible without there being any need to determine the applications for leave to intervene.

Costs

34 Under Article 87(2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been applied for. Since the applicants have been unsuccessful, they must be ordered jointly and severally to pay the costs, as applied for by the defendant.

On those grounds,

THE COURT OF FIRST INSTANCE
(Fourth Chamber, Extended Composition)

hereby orders:

1. The application is dismissed as inadmissible.

2. The applicants shall jointly and severally pay the costs.

Luxembourg, 8 December 1998.

H. Jung — R. M. Moura Ramos

Registrar — President