JUDGMENT OF THE COURT
21 February 1991 *

In Joined Cases C-143/88 and C-92/89,

REFERENCES to the Court under Article 177 of the EEC Treaty by the Finanzgericht Hamburg (Federal Republic of Germany) and the Finanzgericht Düsseldorf (Federal Republic of Germany) for a preliminary ruling in the proceedings pending before those courts between

Zuckerfabrik Süderdithmarschen AG

and

Hauptzollamt Itzehoe,

and between

Zuckerfabrik Soest GmbH

and

Hauptzollamt Paderborn,

on the interpretation of Article 189 of the EEC Treaty (Case C-143/88) and on the validity of Council Regulation (EEC) No 1914/87 of 2 July 1987 introducing a special elimination levy in the sugar sector for the 1986/87 marketing year (OJ L 183, p. 5) (Cases C-143/88 and C-92/89),

* Language of the case: German.

THE COURT,

composed of: O. Due, President, G. F. Mancini, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias and M. Díez de Velasco (Presidents of Chambers), Sir Gordon Slynn, C. N. Kakouris, R. Joliet, F. A. Schockweiler, F. Grévisse and M. Zuleeg, Judges,

Advocate General: C. O. Lenz
Registrar: H. A. Rühl, Principal Administrator

after considering the written observations submitted on behalf of:

Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest, by Messrs Ehle, Schiller and Associates, Rechtsanwälte, Cologne,

the Italian Government, by Professor L. Ferrari Bravo, Head of the Contentious Diplomatic Affairs Department of the Ministry of Foreign Affairs, acting as Agent, assisted by I. M. Braguglia, Avvocato dello Stato,

the United Kingdom, by J. A. Gensmantel, of the Treasury Solicitor's Department, acting as Agent,

the Council of the European Communities, by A. Bräutigam, a member of its Legal Department, acting as Agent,

the Commission of the European Communities, by D. Booß and G. zur Hausen, Legal Advisers, acting as Agents,

having regard to the Report for the Hearing,

after hearing oral argument presented by Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest, represented by D. Ehle and J. Sedemund, Rechtsanwälte, Cologne; by the Italian Government; by the United Kingdom, represented by C. Bellamy, acting as Agent; and by the Council and Commission, at the hearing on 20 March 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 8 November 1990,

gives the following

Judgment

1 By order of 31 March 1988, which was received at the Court Registry on 20 May 1988, the Finanzgericht (Finance Court) Hamburg referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions relating, on the one hand, to the jurisdiction of national courts, in proceedings for interim relief, to suspend the enforcement of a national measure based on a Community regulation and, on the other hand, to the validity of Council Regulation (EEC) No 1914/87 of 2 July 1987 introducing a special elimination levy in the sugar sector for the 1986/87 marketing year (OJ L 183, p. 5).

2 Those questions were raised in proceedings between Zuckerfabrik Süderdithmarschen, a sugar producer, and the Hauptzollamt (Principal Customs Office) Itzehoe. By decision of 19 October 1987 the Hauptzollamt Itzehoe required Zuckerfabrik Süderdithmarschen to pay DM 1 982 942.66 in respect of the special elimination levy for the 1986/87 sugar marketing year.

3 The object of that levy, which was introduced by way of the abovementioned Regulation No 1914/87, adopted on the basis of Article 43 of the Treaty, is to eliminate in full the losses suffered by the Community in the sugar sector during the marketing year which ran from 1 July 1986 to 30 June 1987. Those losses had been occasioned by the particularly high export refunds which the Community was required to pay during that marketing year in order to ensure that excess sugar production within the Community could be disposed of in non-member countries.

4 Zuckerfabrik Süderdithmarschen lodged an objection against that decision, but this was rejected. It thereupon brought proceedings before the Finanzgericht Hamburg seeking suspension of enforcement of that decision. It also brought an action for annulment of that decision before the same court. In support of its actions, Zuckerfabrik Süderdithmarschen claimed that Regulation No 1914/87, on which the Hauptzollamt's decision was based, was invalid.

5 The Finanzgericht Hamburg granted the application for suspension of enforcement of the decision taken by the Hauptzollamt Itzehoe and referred the following questions to the Court of Justice for a preliminary ruling:

'(1) (a) Is the second paragraph of Article 189 of the EEC Treaty to be interpreted as meaning that the general application of regulations in Member States does not preclude the powers of national courts to suspend, by way of an interim measure, the operation of an administrative measure based on a regulation until a decision is reached in the main action?

(b) If so, under what conditions may national courts adopt interim measures? Is there an applicable criterion of Community law and if so which? Or do interim measures depend on national law?

(2) Is Council Regulation (EEC) No 1914/87 of 2 July 1987 introducing a special elimination levy in the sugar sector for the 1986/87 marketing year valid? In particular, is it invalid because it infringes the principle that regulations imposing taxation must not be retroactive?'

6 The Finanzgericht Hamburg also ordered that the proceedings on the substance of the case should be stayed pending a preliminary ruling by the Court of Justice on the two questions referred to it.

7 In addition, the Finanzgericht Düsseldorf, by order of 19 October 1988 received at the Court on 20 March 1989, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty five questions which also concern the validity of Council Regulation No 1914/87.

8 Those five questions were raised in proceedings between Zuckerfabrik Soest GmbH, which is also a sugar producer, and the Hauptzollamt Paderborn. By a decision of 20 October 1987 the Hauptzollamt Paderborn required Zuckerfabrik Soest to pay DM 1 675 013.71 in respect of the special elimination levy already referred to.

9 Zuckerfabrik Soest lodged an objection against that decision, but this was rejected. It then brought proceedings before the Finanzgericht Düsseldorf seeking suspension of enforcement of the decision taken by the Hauptzollamt Paderborn. It also brought an action for annulment of that decision before the same court. In support of its application for suspension and its action for annulment, Zuckerfabrik Soest claimed, as did Zuckerfabrik Süderdithmarschen in the other proceedings, that the regulation introducing the special elimination levy, on which the Hauptzollamt Paderborn had based its decision, was invalid.

10 By order of 10 February 1988 the Finanzgericht Düsseldorf, adjudicating on the application for interim relief, granted the application for suspension of enforcement of the decision adopted by the Hauptzollamt Paderborn on the ground that serious doubts existed as to the validity of the regulation introducing the special elimination levy.

11 By order of 19 October 1988 that court also stayed the proceedings on the substance of the case and requested the Court of Justice to give a preliminary ruling on the following questions:

'(1) Is Regulation No 1914/87 introducing a special elimination levy in the sugar sector for the 1986/87 marketing year (OJ 1987 L 183, p. 5) invalid because the special elimination levy constitutes a financing levy which could be introduced only on the basis of Article 201 of the Treaty?

In the alternative,

(2) Is the introduction of the special elimination levy in the sugar sector for the 1986/87 marketing year by Regulation No 1914/87 compatible with the limitation on self-financing which is laid down in Article 28 of Regulation No 1785/81 and with the principle of non-interference with the legislative system of the Community?

In the alternative,

(3) Is the introduction of the special elimination levy in the sugar sector for the 1986/87 marketing year compatible with the prohibition on subjecting a sector of the economy to risks which constitute extraneous risks within the context of an organization of the market and with the principle of the prohibition of unreasonable financial burdens?

In the alternative,

(4) Does Article 1 of Regulation No 1914/87 introducing a special elimination levy in the sugar sector for the 1986/87 marketing year conflict with the prohibition of discrimination (second subparagraph of Article 40(3) of the EEC Treaty) because the levy applied to B sugar is considerably higher than that applied to A sugar?

In the alternative,

(5) Does Article 1 of Regulation No 1914/87 introducing a special elimination levy in the sugar sector for the 1986/87 marketing year conflict in such cases with fundamental rights applying in Community law, namely the right to property and freedom to pursue economic activities, when the levy can no longer be financed out of earned profits but only out of reserves and as a result the existence of the undertaking concerned is threatened?'

12 Reference is made to the Report for the Hearing for a fuller account of the facts in the main proceedings, the provisions of Community law at issue, the course of the procedure before the Court and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

13 Having regard to the similarity of subject-matter in and the connection between the two cases, which were confirmed by the oral argument presented to the Court, it is appropriate to join the cases for the purposes of the judgment, in accordance with Article 43 of the Rules of Procedure.

Suspension of enforcement of a national measure based on a Community regulation

The principle

14 The Finanzgericht Hamburg first seeks, in substance, to ascertain whether the second paragraph of Article 189 of the EEC Treaty must be interpreted as meaning that it denies to national courts the power to suspend enforcement of a national administrative measure adopted on the basis of a Community regulation.

15 In support of the existence of the power to grant such a suspension, the Finanzgericht Hamburg states that such a measure merely defers any implementation of a national decision and does not call in question the validity of the Community regulation. However, by way of explanation of the reason for its question, it points out, as a ground for denying that national courts have such jurisdiction, that the granting of interim relief, which may have far-reaching effects, may constitute an obstacle to the full effectiveness of regulations in all the Member States, in breach of the second paragraph of Article 189 of the Treaty.

16 It should first be emphasized that the provisions of the second paragraph of Article 189 of the Treaty cannot constitute an obstacle to the legal protection which Community law confers on individuals. In cases where national authorities are responsible for the administrative implementation of Community regulations, the legal protection guaranteed by Community law includes the right of individuals to challenge, as a preliminary issue, the legality of such regulations before national courts and to induce those courts to refer questions to the Court of Justice for a preliminary ruling.

17 That right would be compromised if, pending delivery of a judgment of the Court, which alone has jurisdiction to declare that a Community regulation is invalid (see judgment in Case 314/85 *Foto-Frost* v *Hauptzollamt Lübeck-Ost* [1987] ECR 4199, at paragraph 20), individuals were not in a position, where certain conditions are satisfied, to obtain a decision granting suspension of enforcement which would make it possible for the effects of the disputed regulation to be rendered for the time being inoperative as regards them.

18 As the Court pointed out in its judgment in *Foto-Frost*, cited above, (at paragraph 16), requests for preliminary rulings which seek to ascertain the validity of a measure, like actions for annulment, constitute means for reviewing the legality of acts of the Community institutions. In the context of actions for annulment, Article 185 of the EEC Treaty enables applicants to request suspension of the enforcement of the contested act and empowers the Court to order such suspension. The coherence of the system of interim legal protection therefore requires that national courts should also be able to order suspension of enforcement of a national administrative measure based on a Community regulation, the legality of which is contested.

19 Furthermore, in its judgment in Case C-213/89 (*The Queen* v *Secretary of State for Transport*, ex parte *Factortame Ltd and Others* [1990] ECR I-2433), delivered in a case concerning the compatibility of national legislation with Community law, the Court, referring to the effectiveness of Article 177, took the view that the national court which had referred to it questions of interpretation for a preliminary ruling in order to enable it to decide that issue of compatibility, had to be able to grant interim relief and to suspend the application of the disputed national legislation until such time as it could deliver its judgment on the basis of the interpretation given in accordance with Article 177.

20 The interim legal protection which Community law ensures for individuals before national courts must remain the same, irrespective of whether they contest the compatibility of national legal provisions with Community law or the validity of secondary Community law, in view of the fact that the dispute in both cases is based on Community law itself.

21 It follows from the foregoing considerations that the reply to the first part of the first question must be that Article 189 of the Treaty has to be interpreted as meaning that it does not preclude the power of national courts to suspend enforcement of a national administrative measure adopted on the basis of a Community regulation.

Conditions for suspension

22 The Finanzgericht Hamburg then goes on to ask under what conditions national courts may order the suspension of enforcement of a national administrative measure based on a Community regulation, in view of the doubts which they may have as to the validity of that regulation.

23 It must first of all be noted that interim measures suspending enforcement of a contested measure may be adopted only if the factual and legal circumstances relied on by the applicants are such as to persuade the national court that serious doubts exist as to the validity of the Community regulation on which the contested administrative measure is based. Only the possibility of a finding of invalidity, a matter which is reserved to the Court, can justify the granting of suspensory measures.

24 It should next be pointed out that suspension of enforcement must retain the character of an interim measure. The national court to which the application for interim relief is made may therefore grant a suspension only until such time as the Court has delivered its ruling on the question of validity. Consequently, it is for the national court, should the question not yet have been referred to the Court of Justice, to refer that question itself, setting out the reasons for which it believes that the regulation must be held to be invalid.

25 As regards the other conditions concerning the suspension of enforcement of administrative measures, it must be observed that the rules of procedure of the courts are determined by national law and that those conditions differ according to the national law governing them, which may jeopardize the uniform application of Community law.

26 Such uniform application is a fundamental requirement of the Community legal order. It therefore follows that the suspension of enforcement of administrative measures based on a Community regulation, whilst it is governed by national procedural law, in particular as regards the making and examination of the application, must in all the Member States be subject, at the very least, to conditions which are uniform so far as the granting of such relief is concerned.

27 Since the power of national courts to grant such a suspension corresponds to the jurisdiction reserved to the Court of Justice by Article 185 in the context of actions brought under Article 173, those courts may grant such relief only on the conditions which must be satisfied for the Court of Justice to allow an application to it for interim measures.

28 In this regard, the Court has consistently held that measures suspending the operation of a contested act may be granted only in the event of urgency, in other words, if it is necessary for them to be adopted and to take effect before the decision on the substance of a case, in order to avoid serious and irreparable damage to the party seeking them.

29 With regard to the question of urgency, it should be pointed out that damage invoked by the applicant must be liable to materialize before the Court of Justice has been able to rule on the validity of the contested Community measure. With regard to the nature of the damage, purely financial damage cannot, as the Court has held on numerous occasions, be regarded in principle as irreparable. However, it is for the national court hearing the application for interim relief to examine the circumstances particular to the case before it. It must in this connection consider whether immediate enforcement of the measure which is the subject of the application for interim relief would be likely to result in irreversible damage to the applicant which could not be made good if the Community act were to be declared invalid.

30 It should also be added that a national court called upon to apply, within the limits of its jurisdiction, the provisions of Community law is under an obligation to ensure that full effect is given to Community law and, consequently, where there is doubt as to the validity of Community regulations, to take account of the interest of the Community, namely that such regulations should not be set aside without proper guarantees.

31 In order to comply with that obligation, a national court seised of an application for suspension must first examine whether the Community measure in question would be deprived of all effectiveness if not immediately implemented.

32 If suspension of enforcement is liable to involve a financial risk for the Community, the national court must also be in a position to require the applicant to provide adequate guarantees, such as the deposit of money or other security.

33 It follows from the foregoing that the reply to the second part of the first question put to the Court by the Finanzgericht Hamburg must be that suspension of enforcement of a national measure adopted in implementation of a Community regulation may be granted by a national court only:

(i) if that court entertains serious doubts as to the validity of the Community measure and, should the question of the validity of the contested measure not already have been brought before the Court, itself refers that question to the Court;

(ii) if there is urgency and a threat of serious and irreparable damage to the applicant;

(iii) and if the national court takes due account of the Community's interests.

Validity

34 The Finanzgericht Hamburg has called in question the validity of Regulation No 1914/87 on the ground that it runs counter to the principle of non-retroactivity and thereby fails to comply with the principle of legal certainty.

35 The Finanzgericht Düsseldorf, for its part, has expressed doubts as to the validity of that regulation by referring to the Court five questions which disclose a number of grounds of objection concerning the proper legal basis for the introduction of the special elimination levy, the compatibility of that regulation with the basic Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector (Official Journal L 177, p. 4), breach of the principle that a branch of the economy is not to be burdened with risks extraneous to it and with unreasonable financial charges, and breach of the principles of protection of the right to own property and of the freedom to pursue an economic activity.

36 As the questions referred to the Court in these two cases represent no more than different angles from which the same legal measure might be criticized, they may be considered together.

Breach of the procedure established by Article 201 of the EEC Treaty

37 The Finanzgericht Düsseldorf considers, essentially, that for a levy to be capable of being adopted on the basis of Article 43 of the EEC Treaty, within the framework of the common organization of agricultural markets, its purpose must be to regulate the market in question. A measure of this kind can relate only to the present or the future. This, according to the Finanzgericht Düsseldorf, is not so in the case of the special elimination levy, since its objective is to eliminate losses incurred during a previous marketing year. Furthermore, sugar manufacturers alone are required to pay this levy, whereas a measure designed to regulate the market should primarily affect the sugar-beet producers. Therefore, according to the Finanzgericht Düsseldorf, the contested levy is in the nature of a financing charge which could have been validly introduced only on the basis of Article 201 of the Treaty.

38 It should be pointed out in this regard that Article 2 of Council Decision 85/257/EEC of 7 May 1985 on the Communities' system of own resources (OJ L 128, p. 15), which was in force when the contested regulation was adopted, distinguishes between 'contributions and other duties provided for within the framework of a common organization of the markets in sugar', which already constitute own resources, and 'revenue accruing from other charges introduced within the framework of a common policy', in accordance with the provisions of the Treaties. That revenue constitutes own resources only in so far as the procedure laid down in Article 201 of the EEC Treaty and the corresponding provisions of the other founding Treaties has been completed.

39 In view of the developments which could not fail to take place in sugar production and on the Community market in sugar, it could not have been intended, in subparagraph (a) of the first paragraph of Article 2 of the abovementioned Decision of 7 May 1985, that the decision should apply only to those levies already provided for when it was adopted, namely the levies fixed at that time by Council Regulation No 1785/81 (hereinafter referred to as 'the basic regulation'). Since the special elimination levy complements the levies which already existed

when the Decision of 7 May 1985 was adopted, it must be included among the 'contributions and other duties provided for within the framework of the common organization of the markets in sugar' within the meaning of that decision.

40 It should in any event be stressed that, as the Court has already held in its judgment in Case 108/81 *Amylum* v *Council* [1982] ECR 3107 with regard to the Council Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources (OJ, English Special Edition 1970 (I), p. 224), the Decision of 7 May 1985, as a measure of budgetary law, has as its purpose to define own resources allocated to the Community budget and not to specify the Community institutions which are competent to impose duties, taxes, charges, levies or other forms of revenue.

41 It therefore follows that it was not necessary to have recourse to the procedure laid down in Article 201 in order to adopt a measure such as the special elimination levy provided for in Regulation No 1914/87, even if that measure was in the nature of a financing charge.

42 The question whether Article 43 of the EEC Treaty may serve as a legal basis for the introduction of a levy designed to charge economic operations that have already terminated is identical to the question whether a levy may be introduced with retroactive effect on the basis of Article 43. This objection therefore overlaps with that concerning failure to comply with the principle of non-retroactivity, which will be examined below.

The compatibility of Regulation No 1914/87 with the basic regulation

43 The Finanzgericht Düsseldorf, referring to the judgment of the Court in Case 113/77 *NTN Toyo Bearing Company* v *Council* [1979] ECR 1185, claims that once the Council, in Article 28 of the basic regulation, had laid down a maximum percentage for the levies which sugar manufacturers could be required to pay, it was prohibited from introducing, by way of another regulation based directly on Article 43 of the Treaty, a levy which exceeded that maximum percentage.

44 It should be recalled in this regard that both the basic regulation and the contested Regulation No 1914/87 were adopted on the basis of Article 43 of the Treaty. Regulation No 1914/87 cannot therefore be regarded as a regulation implementing the basic regulation, as was the regulation criticized in the case which gave rise to the judgment of the Court in Case 46/86 *Romkes* v *Officier van Justitie* [1987] ECR 2671.

45 The Council may amend, complement or repeal a basic regulation adopted under Article 43 of the EEC Treaty, provided that the provisions amending, complementing or repealing that regulation are adopted pursuant to the same procedure; it is not required to insert these provisions into the basic regulation.

46 The position in the present case is different from that which gave rise to the judgment in *NTN Toyo Bearing Company*. In that case the Council had adopted a general regulation in order to implement one of the objectives set out in Article 113 of the Treaty and had subsequently derogated, in an implementing regulation designed to deal with a particular case, from the rules thus laid down.

47 In those circumstances it must be held that the basic regulation did not preclude the Council from adopting Regulation No 1914/87, since it complied with the procedure laid down in Article 43 of the Treaty.

Breach of the principle of non-retroactivity

48 The Finanzgericht Hamburg, like the Finanzgericht Düsseldorf, considers that Regulation No 1914/87 breaches the principle of non-retroactivity because it was adopted on 2 July 1987, that is to say, after the end of the 1986/87 marketing year on 30 June 1987, the losses in respect of which it is designed to eliminate. That regulation thus links payment of the levy to events which occurred in the past, namely the production of sugar during the aforesaid marketing year. Furthermore, according to the national courts, the legitimate expectations of sugar producers were not respected inasmuch as they were entitled to expect that the levies provided for under the basic regulation would not be increased and that, if they were increased, they would be passed on in full to the sugar-beet producers.

49 The Court has already held, in particular in its judgments in Case 98/78 *Racke* v *Hauptzollamt Mainz* [1979] ECR 69, Case 99/78 *Decker* v *Hauptzollamt Landau* [1979] ECR 101 and in Case 108/81 *Amylum* v *Council* [1982] ECR 3107, that although as a general rule the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication, it may exceptionally be otherwise when the purpose to be achieved so demands and when the legitimate expectations of those concerned are duly respected.

50 With regard to the first of those two conditions, it is necessary to bear in mind certain matters of fact and of law. Surpluses arising from the ratio of production to consumption of sugar within the Community must be disposed of on the markets of non-member countries. The difference between rates and prices on the world market and prices in the Community is covered by export refunds. The basic regulation provided that the resultant financial charges were to be borne in full by the producers themselves.

51 In order to keep as close as possible to economic reality and thereby to enable the market to be stabilized, which is one of the objectives of Article 39 of the Treaty, Article 28 of the basic regulation provided that in principle the levies were due before the end of each marketing year and would consequently be calculated on the basis of normally foreseeable losses in respect of export obligations for the marketing year in question.

52 However, at the time when the levies were introduced the influence of certain exceptional events such as, in the present case, the sharp fall in the value of the dollar and the collapse of world sugar prices, both of which occurred during the marketing year in question, may not have been predicted with sufficient accuracy. It is legitimate in such a case that the charges to be financed by the producers may be established only after determination of the full effects of such events and, if necessary, after the expiry of the marketing year during which they occurred.

53 If the Council, after determining all the losses for the marketing year 1986/87, had failed to adopt any measure to complement the charges already borne by producers, the objective pursued by it, namely the stabilization of the sugar market in the common interest, in particular by means of export refunds, could have been

achieved only through charging the Community budget, whereas total financing by producers is a principle of the common organization of the market in sugar.

54 The Council was thus entitled to consider that the objective to be attained in the common interest, namely the stabilization of the Community market in sugar, required that the contested regulation should apply to the 1986/87 marketing year. Consequently, the first of the conditions governing the applicability of a Community measure on a date prior to its publication may be regarded as satisfied.

55 In order to determine whether the second of the conditions mentioned above is also satisfied, it is necessary to examine whether the action by the Council was in breach of a legitimate expectation which was entertained by the persons concerned as to the maximum amount fixed for the levies by the basic regulation and which was disappointed by the publication on 2 July 1987 of Regulation No 1914/87.

56 The applicants in the main proceedings are, however, not entitled to rely on any legitimate expectation deserving of protection.

57 In the first place, the 11th recital in the preamble to the basic regulation informed sugar producers that they would be required to meet in full the cost of disposing of the surpluses of Community production over consumption.

58 Secondly, the Commission had published on 9 September 1986 an estimate bearing the reference number VI PC 2—408, which clearly revealed the likelihood of a deficit for the marketing year 1986/87.

59 Thirdly, sugar producers were aware, by reason of the publication of the proposal in the Official Journal of 3 April 1987 (OJ C 89, p. 18), that its to say, before the end of the marketing year, that the Commission had submitted to the Council a proposal for a regulation introducing a special elimination levy in the sugar sector

for the 1986/87 marketing year, which was subsequently incorporated in the contested Regulation No 1914/87.

60 It follows that the ground of objection relating to the failure to comply with the principle of non-retroactivity cannot be upheld.

The prohibition of subjecting a sector of the economy to risks extraneous to the organization of the market applicable to that sector or to unreasonable financial burdens

61 The Finanzgericht Düsseldorf believes that the disturbances of the market which may be remedied by measures adopted within the context of common organizations of the market are those which may be attributed to causes within that market. In organizations of markets other than that of sugar, risks resulting from a fall in world market prices and a reduction in the value of the dollar are financed exclusively by the EAGGF. This proves that the Community legislature regards them as risks which are beyond the control of traders, who cannot therefore be made to bear them.

62 It should first be observed that it is indeed true that risks of this kind are most often financed by the EAGGF. However, this is not prescribed by the Treaty, Article 40(4) of which authorizes the setting-up of such a fund, without however requiring that it participate in every measure of market organization. If the sugar sector is the only one which is subject to the principle of self-financing, the reason for this, as the Council stated in its reply to a question put by the Court, is that producers in other agricultural sectors enjoy lower guaranteed prices, a fact which explains why they should not be made liable for the financing.

63 It should next be pointed out that Community sugar producers, by virtue of the system of export refunds, have access to the world market in order to dispose of part of their production. The risks which producers incur must be assessed in the light of that world market. Factors such as excess sugar production or fluctuations in the exchange rates between European currencies and the dollar are likely to have an effect on supply and demand and consequently on the price of the product. The risks connected with these factors cannot therefore be regarded as extraneous to the market in question.

64 Furthermore, the special elimination levy does not in any way impose unreasonable financial burdens on sugar producers. In the first place, it is a counterpart to the advantages represented by the opportunity which they had to qualify for export refunds for the purpose of disposing of quantities which they produce in excess of Community consumption. Secondly, sugar manufacturers may, under Article 1(3) of Regulation No 1914/87, require from sellers of beet or of cane growing in the Community reimbursement of the greater part of the levy in question.

65 For those reasons, the ground of objection put forward by the national court cannot be upheld.

Discrimination

66 The Finanzgericht Düsseldorf considers that the fact that the special elimination levy affects producers of B sugar to a greater degree than it does producers of A sugar, even though the product is the same in both cases, constitutes discrimination prohibited under the second subparagraph of Article 40(3) of the Treaty.

67 In that connection it should be pointed out that the basic regulation fixes a basic A quantity and a basic B quantity for each sugar marketing year and for each production area. The Member States allocate their basic A quantity to undertakings in the form of A quotas and their basic B quantity in the form of B quotas. The total of A quotas allocated for a particular marketing year corresponds approximately to human sugar consumption in the Community during that particular year. Sugar produced within the limits of the A and B quotas (A sugar and B sugar) may be freely marketed within the Community: prices and disposal are guaranteed through the intervention system. The sugar may also be exported to non-member countries, if necessary with the help of export refunds. Finally, all sugar produced by an undertaking in excess of its A and B quotas (C sugar) may be marketed only in non-member countries and does not qualify for export refunds.

68 It follows from this system that any undertaking which produces sugar in excess of its A quota, that is to say, in excess of its share in the production of sugar intended for Community consumption, necessarily produces surplus quantities for which the sole normal means of disposal is exportation to non-member countries.

69 As has already been pointed out, the purpose of the special elimination levy is to eliminate the exceptional losses caused by the granting of large export refunds intended to promote the disposal of surplus Community production on the markets of non-member countries.

70 It was for that reason justified that proportionately higher levies should be imposed in respect of sugar produced in excess of the A quota.

71 For that reason, the argument based on an alleged infringement of the second subparagraph of Article 40(3) of the Treaty must also be rejected.

Infringement of the right to own property and of the freedom to pursue an economic activity

72 The Finanzgericht Düsseldorf considers that the right to own property and the freedom to pursue an economic activity, which constitute fundamental rights, are adversely affected in an unlawful manner where an undertaking is not in a position to pay out of the normal profits made during a particular marketing year the successive levies which have built up during that year and must draw upon its reserves, that is to say, its very economic substance.

73 In this regard, the Court has already held (see in particular the judgment in Case 265/87 *Schräder* v *Hauptzollamt Gronau* [1989] ECR 2237, at paragraph 15) that the right to property and the freedom to pursue a trade or profession may be restricted, particularly in the context of a common organization of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and that they do not constitute a disproportionate and intolerable interference which infringes upon the very substance of the rights guaranteed.

74 The obligation to pay a levy cannot, as the United Kingdom has rightly pointed out, be regarded as a measure restricting the right to own property.

75 It must therefore be held that the special elimination levy in no way adversely affects the sugar producers' right to own property.

76 With regard to the freedom to pursue an economic activity, it has already been pointed out that the special elimination levy constitutes a response to objectives of general interest since it ensures that losses incurred by an economic sector are not borne by the Community. Such intervention cannot be regarded as disproportionate. The levy, which may in part be passed on to the sugar-beet producers, was introduced with the essential objective of 'not [calling] in question before the date laid down the production quota arrangements', as stated in the fourth recital in the preamble to Regulation No 1914/87. As the Commission correctly pointed out, any reduction in quotas, which would have resulted in the long term in a diminution of the share of the Community sugar-processing industry on the world market, would have represented a much more serious interference with the interests of sugar producers and sugar-beet growers.

77 The argument based on infringement of the right to pursue an economic activity cannot therefore be accepted.

78 It follows from all the foregoing considerations that the reply to the questions referred to the Court by the Finanzgericht Hamburg and the Finanzgericht Düsseldorf must be that consideration of the questions referred has disclosed no factor of such a kind as to affect the validity of Council Regulation No 1914/87 of 2 July 1987 introducing a special elimination levy in the sugar sector for the 1986/87 marketing year.

Costs

79 The costs incurred by the Italian Government, the United Kingdom, the Council of the European Communities and the Commission of the European Communities, 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 actions pending before the national courts, a decision on costs is a matter for those courts.

On those grounds,

THE COURT,

in reply to the questions referred to it by the Finanzgericht Hamburg, by order of 31 March 1988, and by the Finanzgericht Düsseldorf, by order of 19 October 1988, hereby rules:

(1) Article 189 of the EEC Treaty must be interpreted as meaning that it does not preclude the power of national courts to suspend the enforcement of an administrative measure adopted on the basis of a Community regulation;

(2) Suspension of enforcement of a national measure adopted in implementation of a Community measure may be granted by a national court only if that court entertains serious doubts as to the validity of the Community measure and, should the question of the validity of the contested measure not already have been brought before the Court of Justice, itself refers that question to the Court of Justice, if there is urgency and a threat of serious and irreparable damage to the applicant and if the national court takes due account of the Community's interests;

(3) Consideration of the questions referred to the Court has disclosed no factor of such a kind as to affect the validity of Council Regulation No 1914/87 of 2 July 1987 introducing a special elimination levy in the sugar sector for the 1986/87 marketing year.

Due Mancini Moitinho de Almeida Rodríguez Iglesias

Díez de Velasco Slynn Kakouris

Joliet Schockweiler Grévisse Zuleeg

Delivered in open court in Luxembourg on 21 February 1991.

J.-G. Giraud
Registrar

O. Due
President