

In Case 23/75

Reference to the Court by the Pretura di Abbiategrasso for a preliminary ruling in the action pending before that court between

REY SODA

ASSOCIAZIONE INDUSTRIE PRODUTTI ALIMENTARI

ASSOCIAZIONE INDUSTRIALI BEVANDE GASSATE

ASSOCIAZIONE INDUSTRIALI PRODUTTI ALIMENTARI

and

CASSA CONGUAGLIO ZUCCHERO

on the validity and interpretation of Article 6 of Regulation (EEC) No 834/74 of 5 April 1974 laying down requisite provisions to prevent the sugar market from being disturbed as a result of the price increase in this sector for the 1974/75 sugar marketing year, (OJ 1974, L 99, p. 15).

THE COURT

composed of: R. Lecourt, President, R. Monaco and H. Kutscher, Presidents of Chambers, A. M. Donner, J. Mertens de Wilmars, P. Pescatore, M. Sorensen, A. J. Mackenzie Stuart and A. O'Keeffe, Judges,

Advocate-General: H. Mayras

Registrar: A. Van Houtte .

gives the following

## **JUDGMENT**

### **Law**

- 1 By order dated 30 January 1975, received at the Court on 19 February 1975, the Pretura di Abbiategrosso requested the Court under [Article 267 TFEU] to give a preliminary ruling on the validity and interpretation of Article 6 of Regulation (EEC) No 834/74 of the Commission (OJ 1974, L 99, p. 15) supplemented and amended by Regulations of the Commission (EEC) No 1495/74 (OJ L 158, p. 20) and No 2106/74 (OJ 1974, L 218, p. 53).
- 2 It appears from the order for reference that the answer to the questions is intended to enable the national court to judge whether the levying by the Cassa Conguaglio Zucchero of a tax on sugar stocks held by the Italian industrial users on the change-over to the 1974/75 sugar year conforms with [Union] law.
- 3 Since the tax on sugar stocks was introduced by an Italian decree-law referring to the aforesaid regulations of the Commission, the national court asks the Court in its first question whether Article 6 of Regulation (EEC) No 834/74 must be interpreted as meaning that it contains no authority for Italy to impose pecuniary charges on users of sugar, and for the benefit of beet growers.
- 4 In the second question the national court asks the Court to say whether this

provision was adopted illegally inasmuch as a charge of the kind authorized must be expressly approved by the Council of Ministers.

- 5 Since these two questions are closely related it is appropriate to join them for the purposes of the answer.

The first two questions

- 6 Article 6 of Regulation No 834/74 was adopted by the Commission under Article 37 (2) of Regulation No 1109/67 of the Council, the basic regulation in the sugar sector.
- 7 The plaintiff in the main action maintains in the first place that Article 37 (2) did not enable the Commission to require a Member State to impose a pecuniary charge on sugar stocks held in that State.
- 8 In the second place, even if the Commission had been so enabled it could not impose such an obligation save to offset the alteration in the level of [Union] prices expressed in units of account and not variations of these prices in national currency as a result of a devaluation of that currency.
- 9 Since the objective of [the first paragraph of Article 17 TEU] is the preservation of the balance between the powers of the Council and the Commission, the powers conferred on the Commission by Article 37 (2) must be interpreted strictly.
- 10 When [the first paragraph of Article 17 TEU] provides that 'the Commission shall exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter', it follows from the context of the Treaty in which it must be placed and also from practical requirements that the concept of implementation must be given a wide interpretation.
- 11 Since the Commission alone is able continually to follow with attention trends on the agricultural markets and to act with urgency as the situation

requires, the Council may be led in the sphere of the common agricultural policy, to confer on the Commission wide powers of discretion and action.

- 12 Further the provisions cited in [the first paragraph of Article 17 TEU] allows the Council to determine any conditions to which it may subject the exercise by the Commission of the power granted to it.
- 13 The powers entrusted to the Commission under Article 37 (2) of the basic regulation must be adopted under the so-called 'Management Committee' procedure, a mechanism which allows the Council to give the Commission an appreciably wide power of implementation whilst reserving where necessary its own right to intervene.
- 14 When the Council has thus conferred extensive power on the Commission the limits of this power must be judged with regard to the basic general objectives of the organization of the market and less in terms of the literal meaning of the enabling word.
- 15 Having regard to these principles, it is proper to examine in the first place whether Article 37 (2) of Regulation No 1009/67 could supply a valid legal basis for the provisions in question adopted by the Commission.
- 16 Article 37 (1) provides:

'The Council ... shall, in respect of sugar in stock on 1 July 1968 adopt provisions concerning the measures needed to offset the difference between national sugar prices and prices valid from 1 July 1968' (date on which the common system of prices established by this regulation becomes applicable).

17 Article 37 (2) provides:

'The requisite provisions to prevent the sugar market from being disturbed as a result of an alteration in price level at the change-over from one marketing year to the next may be adopted in accordance with the procedure laid down in Article 40' (that is to say, according to the so-called Management Committee procedure).

18 The similarity in powers reserved to the Council on the change-over to the first sugar year and conferred on the Commission for the purpose of subsequent marketing years is explained by the Council in the 15th recital to this regulation.

19 It is there explained:

'whereas the transition to the system established by this Regulation must be effected as smoothly as possible; whereas to this end certain transitional measures may prove necessary; whereas the same need may arise at each change-over from one marketing year to the next; whereas provision must therefore be made for the possibility of adopting appropriate measures'.

20 Accordingly under Article 37 (2) the Commission is given the power to adopt, just as the Council did in Regulation No 769/68 laying down the measures necessary to offset the difference between [Union] prices from July 1968 (J 1968, L 143, p. 14), a measure of equalization in order to prevent the market from being disturbed as a result of an alteration in price level on the change-over from one sugar year to the next.

21 In the present case the Council decided that the application of the new conversion rate of the Italian lira in relation to the unit of account should be related in the sugar market to the beginning of the 1974/75 sugar year, thus leaving to the Commission the obligation to take account of it in

adopting provisions which might be necessary to avoid a disturbance in the Italian market.

- 22 The attainment of the objective of Article 37 (2) which consists in enabling the Commission to prevent the disturbances which a substantial alteration in the prices of sugar might have on the markets, in the present case the Italian market, would be frustrated if the Commission did not also have to take account of the alteration of the prices expressed in the national currency.
- 23 A substantial increase in [Union] prices expressed in national currency could encourage excessive stocking.
- 24 A provision requiring holders of quantities exceeding certain limits to pay a tax on these stocks was in itself a measure likely to discourage excessive stocking and to encourage a regular supply to consumers provided that the measure was announced in good time and expressed in forcible and precise terms.
- 25 Nevertheless Article 37 (2) of the basic regulation enabling the Commission to take, in accordance with the consultation procedure of the Management Committee, measures directly applicable in a Member State, cannot be interpreted as enabling the Commission to impose upon a Member State the obligation to draw up, under the guise of implementation measures, essential basic rules which would not be subject to any control by the Council.
- 26 Thus under the system established by Article 37 (2) of the basic regulation it is for the Commission, when it decides after consultation with the Management Committee to require certain holders of sugar of a Member State to pay a tax on the stocks, itself to determine in a precise manner the essential basic rules.

- 27 Since the effects of an announcement of a tax to discourage excessive stocking of a product depends to a large extent on the rate of the tax, the announcement must show, in addition to the parties liable, the bases of the calculation of the tax.
- 28 Accordingly in fulfilling the obligation which is placed on it under Article 37 (2), the Commission should have fixed the basis of the calculation of the tax and the categories of persons liable and submitted this decision to the Management Committee for its opinion.
- 29 Accordingly the Commission was validly enabled by Article 37 (2) to adopt, after receiving a favourable opinion from the Management Committee, a provision providing for the imposition of a pecuniary charge on holders of stocks of sugar in a Member State as a result of an alteration in the common prices and in these prices expressed in national currencies, at the change-over to a new sugar year in so far as this provision itself fixed the essential basic rules.
- 30 Next it is necessary to examine whether the Commission has validly used this power in the present case.
- 31 Article 6 of Regulation No 834/74 provides that: ·
- '1. Italy shall take national measures to prevent disturbances on the market resulting from the increase on 1 July 1974 in the price of sugar expressed in Italian lire. These provisions shall consist in particular of a payment to beet growers of the increased value of stocks.
2. The measures referred to in [this] Article which have been adopted or are to be adopted shall be communicated in writing to the Commission before 5 June 1974.'

- 32 Although the first paragraph of this article requires Italy to make a payment to beet growers, it does not define what is meant by the concepts 'increased value' and 'stocks'.
- 33 It is therefore necessary to examine whether the context and the [Union] precedents are such as to give a precise content to this provision.
- 34 In Regulation (EEC) No 750/68 of the Council of 18 June 1968 laying down general rules for offsetting storage costs for sugar it is explained that although sugar is normally held in store by sugar manufacturers, in some Member States it is also held in store by persons engaged in other businesses.
- 35 In the recitals to Regulation (EEC) No 748/68 of the Council of 18 June 1968 laying down general rules for postponing part of the sugar production to the following marketing year (OJ No 137, p. 1) it is explained that the manufacturer who carries forward sugar 'can obtain a price equal to the intervention price valid for that marketing year' and 'under Article 37 (2) of Regulation No 1009/67/EEC in the event of an alteration of price levels ... measures may be adopted to offset the price difference in respect of sugar in store on 1 July'.
- 36 It follows that the concept of stocks in regard to sugar covers mainly stocks held by manufacturers.
- 37 The stocks held by industrial users, just as those of other consumers, do not as a general rule, come under common organization of the markets since, once sugar has arrived at this stage, the production and marketing cycle is finished.

- 38 Although as a general rule an industrial user of sugar does not stock within the meaning of the agricultural regulations, but holds only those quantities which by reason of the nature and time-schedules of his activity are necessary for a normal production, he may nevertheless be encouraged in certain circumstances to engage in speculative stocking and thus disturb the market.
- 39 Thus although Regulation No 769/68 of the Council exempted the quantities of sugar which these industries require for a normal working period of 4 weeks from the tax established by this regulation, it nevertheless subjected these industries to a tax on the remainder of their stocks.
- 40 In order to avoid disturbances on the market in France, Regulation No 1344/71 of the Commission provided for the levying of a tax on stocks notified on 1 July 1971, but exempted stocks regarded as working stock of users up to a maximum amount of 20 000 metric tons.
- 41 Although the last recital to Regulation No 834/74, in explaining that the measures which Italy is required to take must 'result in the removal of any incentive to excessive stocking' may give the impression that working or normal stocks of industrial users are exempt, it is nevertheless necessary that this should be stated clearly as was done in previous [Union] regulations.
- 42 The Commission has claimed that Article 6 of Regulation No 834/74, in not making any distinction, was intended to apply to all sugar stocks without distinction, including the working stock of industrial users.
- 43 It says that this argument is confirmed by Regulation No 1495/74 of the Commission which imposes an obligation to declare on 'All holders in Italy

at 00.00 hours on 1 July 1974, *on whatever basis, ...?*

- 44 An obligation to declare of this kind is compatible with exemption of working stocks as it was in the previous [Union] regulations.
- 45 Article 6 of Regulation No 834/74, either taken alone or in conjunction with Regulation No 1495/74 or in the light of previous [Union] regulations, cannot be interpreted as defining the classes of traders subject to the tax.
- 46 It must be concluded from this that the Commission, having defined the aim of the measures which the Italian authorities were required to take, should have determined in respect of each class of business, having regard to the size of the undertakings, what was to be understood by 'excessive stocking'.
- 47 Moreover, since the concept of 'increased value' is a new term in agricultural regulations, as the Commission explained in the course of the proceedings, the method of calculating this increased value requires precise rules.
- 48 In addition, by not specifying the bases of the calculation of the tax in the provision in question and leaving Italy to choose them, the Commission discharged itself of its own responsibility to adopt the basic rules and to submit them by way of the Management Committee procedure to the approval if need be of the Council.
- 49 Therefore the answer to the first two questions from the national court must be that Article 6 of Regulation No 834/74 is invalid.

## Question nine

50 The ninth question asks whether the [Union] legal system recognizes principles which enable a legislative measure of a Member State to be declared illegal in so far as it conflicts with [Union] law when that measure is adopted for the purpose of implementing invalid measures of [Union] institutions.

51 It is first of all for the national authorities to draw the consequences in their legal system of the declaration of such invalidity made under [Article 267 TFEU].

## The other questions

52 The other questions of the national court relate to the validity of the provision of Article 6 of Regulation No 834/74 in other respects, so that, in view of the answer to the first two questions, they serve no purpose.

## Costs

53/54 The costs incurred by the Commission of the European [Union] and by the Italian Republic, which have presented observations to the Court, are not recoverable and as these proceedings are, in so far as the parties to the main action are concerned, 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 Pretura di Abbiatagrasso by order of that court dated 30 January 1975,

hereby rules:

**Article 6 of Regulation No 834/74/EEC of the Commission is invalid.**

Lecourt	Monaco	Kutscher	Donner	Mertens de Wilmars
Pescatore		Sorensen	Mackenzie Stuart	O'Keeffe

Delivered in open court in Luxembourg on 30 October 1975.

A Van Houtte

R. Lecourt

Registrar

President