JUDGMENT OF THE COURT (Fifth Chamber)
11 August 1995 *

In Case C-1/94,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Consiglio di Stato (Italy) for a preliminary ruling in the proceedings pending before that court between

Cavarzere Produzioni Industriali SpA and Others

and

Ministero dell'Agricoltura e delle Foreste and Others

on the interpretation of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector (OJ 1981 L 177, p. 4) and Council Regulation (EEC) No 193/82 of 26 January 1982 laying down general rules for transfers of quotas in the sugar sector (OJ 1982 L 21, p. 3),

THE COURT (Fifth Chamber),

composed of: C. Gulmann, President of the Chamber, P. Jann, J. C. Moitinho de Almeida, D. A. O. Edward and L. Sevón, Judges,

* Language of the case: Italian.

Advocate General: P. Léger,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Cavarzere Produzioni Industriali SpA and Saccarifera del Rendina SpA, by S. Panunzio, A. Guarino and F. Sette, all of the Rome Bar,

— ISI-Industria Saccarifera Italiana Agro-Industriale SpA, by L. F. Paolucci, of the Bologna Bar,

— the Italian Government, by U. Leanza, Head of the Legal Affairs Department of the Ministry of Foreign Affairs, assisted by I.-M. Braguglia, Avvocato dello Stato,

— the Commission of the European Communities, by E. de March, Legal Adviser, acting as Agent, assisted by A. Dal Ferro, of the Vicenza Bar,

having regard to the Report for the Hearing,

after hearing the oral observations of Cavarzere Produzioni Industriali SpA and Saccarifera del Rendina SpA, of ISI — Industria Saccarifera Italiana Agro-Industriale SpA, of Eridania — Zuccherifici Nazionali SpA and Industria Sarda Zuccheri SpA, represented by P. Crocetta, of the Genoa Bar, and of the Italian Government and the Commission at the hearing on 6 April 1995,

after hearing the Opinion of the Advocate General at the sitting on 1 June 1995,

gives the following

Judgment

1 By order of 24 April 1992, received at the Court Registry on 4 January 1994, the Consiglio di Stato (Council of State) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty six questions on the interpretation of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector (OJ 1981 L 177, p. 4) and Council Regulation (EEC) No 193/82 of 26 January 1982 laying down general rules for transfers of quotas in the sugar sector (OJ 1982 L 21, p. 3).

2 Those questions arose in proceedings between Cavarzere Produzioni Industriali SpA and Saccarifera del Rendina SpA, companies belonging to Gruppo Saccarifero Veneto (hereinafter 'GSV'), and the Ministries of Agriculture and Forestry and of Industry, Commerce and Crafts for the annulment of three ministerial orders on the allocation of sugar production quotas for the 1986/87, 1987/88 and 1988/89 marketing years. Interveners in the proceedings included ISI — Industria Saccarifera Italiana Agro-Industriale SpA (hereinafter 'ISI') and also Eridania — Zuccherifici Nazionali SpA and Industria Sarda Zuccheri SpA.

3 The common organization of the market in the sugar sector is governed by Regulation No 1785/81. It includes a quota system for sugar production. The regulation distinguishes between three types of quota. The A quota, which represents consumption within the Community, may be freely marketed in 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 A quota but without exceeding a 'maximum quota' equal to the A quota multiplied by a coefficient. It

may also be freely marketed in the common market, but without an intervention price guarantee, or exported to non-member countries with export aid. Finally, the C quota is the quantity produced in excess of the 'maximum quota' (quota A plus quota B). It may be marketed only in non-member countries and no export aid may be granted.

4 Article 24 of Regulation No 1785/81 fixes the A and B basic quantities for each Member State and provides that they are to allocate, under the conditions laid down in the regulation, an A quota and a B quota to each sugar-producing undertaking established in their territory. The quotas relate to a marketing year which runs from 1 July of one year to 30 June of the following year.

5 Under the original version of Regulation No 1785/81, the quota system applied only to the 1981/82 to 1985/86 marketing years. However, it was extended to the 1986/87 to 1990/91 marketing years by Council Regulation (EEC) No 934/86 of 24 March 1986 amending Regulation No 1785/81 (OJ 1986 L 87, p. 1).

6 Article 1(2) of Regulation No 934/86, replacing Article 23 of Regulation No 1785/81, provides that 'for the 1986/87 and 1987/88 marketing years, and without prejudice to Article 25, the A and B quotas of sugar-producing undertakings ... shall be those which obtained in the 1985/86 marketing year'. Subsequently, Council Regulation (EEC) No 1107/88 of 25 April 1988 amending Regulation No 1785/81 (OJ 1988 L 110, p. 20) similarly fixed the quotas for the 1988/89 to 1990/91 marketing years.

7 Article 25(1) of Regulation No 1785/81 permits Member States to transfer A and B quotas between undertakings, taking into consideration the interests of

each of the parties concerned and in particular those of sugar beet or sugar cane producers.

8 The conditions for the exercise of that 'power of manoeuvre' are defined by Article 25(2), which reads as follows:

'Member States may reduce the A quota and the B quota of each sugar-producing undertaking ... situated in their territories by a total quantity not exceeding, for the period referred to in Article 23(1), 10% of the A quota or of the B quota, as the case may be, fixed for each of them in accordance with Article 24.

The limit of 10% referred to in the first subparagraph shall not apply in Italy ... in cases where the transfer of quotas is made on the basis of restructuring plans in the beet, cane and sugar manufacturing sectors in the region concerned and to the extent necessary to permit such plans to be implemented.

...'

9 Under Article 25(3), the withdrawn quantities of A and B quotas are to be allocated by the Member States to one or more other undertakings established in their territory.

10 Finally, Article 25(4) provides that the Council is to adopt general rules for the adjustment of quotas, in particular where that results from the amalgamation

or transfer of undertakings. Such rules were introduced by Regulation No 193/82 laying down general rules for transfers of quotas in the sugar sector.

11 Article 7 of Regulation No 193/82 provides that where a Member State applies Article 25(2) of Regulation No 1785/81, it is to allocate the adjusted quotas before 1 March with a view to applying them in the following marketing year.

12 With respect to the 1986/87 marketing year, however, Article 1(1) of Commission Regulation (EEC) No 1662/86 of 29 May 1986 laying down transitional measures on the transfer of quotas in the sugar sector (OJ 1986 L 145, p. 41) provided that, by way of derogation from Article 7 of Regulation No 193/82, Member States were to allocate before 1 July 1986 the quotas adjusted under the first subparagraph of Article 25(2) of Regulation No 1785/81.

13 Article 2 of Regulation No 193/82 lays down the manner in which the A and B quotas are to be adjusted in the event of the merger or transfer of sugar-producing undertakings or the transfer of sugar factories. It provides *inter alia* that quotas are to be allocated in proportion to the sugar production absorbed by each undertaking. Under Article 6 of the regulation, if the merger or transfer occurs between 1 July of the current year and 31 January of the following year, that allocation is to take effect for the marketing year current during that period.

14 The first of the three ministerial orders at issue in the main proceedings concerns the 1986/87 marketing year. It was adopted jointly by the Minister of

Agriculture and the Minister of Industry on 11 August 1986 and published in the *Gazzetta Ufficiale della Repubblica Italiana* on 19 August 1986. As is clear from the order for reference, that ministerial order adjusted GSV's sugar production quotas, previously allocated by Ministerial Order of 22 April 1986, taking into account the sale of some of the GSV group's factories to ISI in July 1986.

15 The second ministerial order, relating to the 1987/88 marketing year, was adopted on 27 February 1987 and published on 16 March 1987. According to the order for reference, that order reduced the production quotas for some producing undertakings and increased them for others, without changing those allocated to GSV for the previous marketing year by the Order of 11 August 1986.

16 The third ministerial order was adopted on 30 June 1988 and published on 10 August 1988. According to the national court, that order allocated the production quotas for the 1988/89 marketing year pursuant to Regulation No 1107/88 and in the exercise of the power of manoeuvre under Article 25(2) of Regulation No 1785/81. On that occasion the quotas allocated to GSV were reduced.

17 The three ministerial orders were challenged by the two GSV undertakings in proceedings before the Tribunale Amministrativo Regionale del Lazio (Lazio Regional Administrative Court) as being contrary to Community law. The Tribunale Amministrativo dismissed the applications against the Ministerial Orders of 11 August 1986 and 27 February 1987, but upheld the application against the Order of 30 June 1988 on the ground that the power of manoeuvre had been exercised after 1 March of that year. That order was thus annulled.

18 Appeals against the judgments of the Tribunale Amministrativo were lodged with the Consiglio di Stato, which joined the cases, stayed the proceedings, and referred the following questions to the Court:

'(1) Overall, having regard to the need to maintain a unified approach in Community matters, it may be considered that the date 1 March laid down in Article 7 of Regulation No 193/82 is mandatory, particularly since, in order to suspend the effect of that time-limit, it was considered necessary in 1986 to adopt a specific regulation (Regulation No 1662/86).

However, it is still necessary to clarify what effects may arise in a system of that kind where the regulations which determine the quotas are adopted after 1 March.

In that case, the question may be asked whether the quotas thus determined are not capable of amendment or, as contended by the Ministries for Agriculture and for Industry, the time-limits for redistribution, having regard to all the other conditions, may be deemed by implication to have been deferred and, as regards the time of adoption of the Community provisions and the commencement of the marketing year (1 July), for how long, in the absence of any time-limit.'

'(2) Where (as in the present case) undertakings or production plants are disposed of, is it the case that, as regards the allocation of quotas, the provisions which govern such transfers (Article 2 of Regulation No 193/82), based on a strictly proportional division of production capacity, apply exclusively or may the "power of manoeuvre" in respect of the quotas provided for in Article 25(2) of Regulation No 1785/81 also be exercised?

(3) If such a possibility exists, the problem arises — as it appears to have done in this case — of the circumstances in which the relevant powers were

exercised, it being expressly stated in the Ministerial Order of 11 August 1986 that, in the determination of quotas as between the undertakings no longer within the group, application had been made of "the criteria" on which the previous allocation was based, laid down by the Ministerial Order of 22 April 1986 for general purposes unconnected with those to be upheld in the apportionment of quotas, in the case of the disposal of undertakings. In that connection, it must be borne in mind that the apportionment of quotas is not subject to time-limits, whereas, by virtue of Article 7 of Regulation No 193/82, the transfers under Article 25(2) may take place, as already indicated, "before 1 March" of each year. Which, regardless of the mandatory nature or otherwise of the said time-limit, gives the impression that the difference between the aims pursued by the two provisions would make it advisable to adopt different measures for their application.

(4) Does the first subparagraph of Article 25(2) allow the "manoeuvre of quotas" for both quota A and quota B, provided that the limit of 10% of the total allocation is not exceeded or the said 10% constitutes the limit for the individual quotas, or does the adjustment of one of the two quotas preclude adjustment of the second? The text of the provision treats the two quotas as alternatives (cf. "of the A quota or of the B quota, as the case may be").

(5) Is the quota that is to be reduced the one indicated in the order making the initial allocation or must it be arrived at by adding to it any supplementary allocations brought forward from previous years or by deducting from it the quantity of sugar not produced?

(6) Does the existence of "restructuring plans" — which in Italy entails authorization for the limit of 10% to be exceeded — relate to individual undertakings or to the entire production sector in the country as a whole or in a smaller territorial unit (the Community regulations under review often refer to "regions" of a smaller area than that of the individual Member State) which includes a number of undertakings? In the first case, the national administrative measure would have no effect on undertakings not covered by the plan; in the second case, there could be repercussions for all the undertakings and it would be

necessary to consider whether the power may be exercised several times during the marketing year and how a guarantee could be given to undertakings that their programmes would definitely be implemented.

It is therefore necessary to establish the extent of the restructuring "on the basis" of which the transfer of quotas may be carried out; must it be regarded as linked strictly to a sub-national area (cf. Article 1(4) of Regulation No 934/86)? Is it sufficient for there to exist plans approved by individual undertakings, irrespective of any national or regional plan? Must the existence of a structuring plan (as in the case of ISI, which purchased a number of production units from Cavarzere), "on the basis" (cf. Regulation No 1785/81) of which the transfer of quotas can be carried out, necessarily have the effect of excluding undertakings that have not yet submitted such plans to the competent authorities, not being under an obligation to do so?'

Question 1

19 By its first question the national court essentially asks whether Member States may, for the marketing year starting on 1 July, exercise the power of manoeuvre conferred on them by Article 25(2) of Regulation No 1785/81 after the date of 1 March laid down by Regulation No 193/82, where the Council regulation fixing the quotas and stating that power to be applicable has been adopted after 1 March.

20 To begin with, as the national court considered, the time-limit of 1 March prescribed for the exercise by Member States of their power of manoeuvre is mandatory.

21 As the GSV undertakings, ISI and the Commission observe, that follows in particular from the fact that the time-limit is intended to ensure that operators

in the sugar sector will have a period of four months in which to plan their activity, since the marketing year starts on 1 July. They thus need to know, before 1 March, the production quotas they can count on, in order to conclude contracts for the purchase of beet in good time.

22 Moreover, observance of the 1 March time-limit is necessary to ensure the proper functioning of the quota system as a whole. As the Commission notes, Article 30(1) of Regulation No 1785/81 provides that sugar manufacturers are to inform the Member State concerned of the quantities of beet corresponding to the A quota for which contracts have been signed before sowing, which normally takes place in March or April. Article 30(2) provides that where pre-sowing delivery contracts have not been signed, manufacturers are required to pay at least the minimum price for all beet processed into sugar in the undertaking concerned.

23 The mandatory nature of the time-limit is also confirmed by the fact that when the Commission wished to authorize Member States to use their power of manoeuvre after 1 March, it adopted an express derogation in that respect. Thus in 1986 the Council regulation determining the quotas for the 1986/87 marketing year was adopted after 1 March, with the result that, according to information supplied by the Commission, some Member States requested a deferment of the time-limit for that year. The Commission thereupon adopted Regulation No 1662/86 of 29 May 1986, authorizing Member States, by way of derogation from Article 7 of Regulation No 193/82, to exercise their power of manoeuvre before 1 July 1986.

24 The Italian Government does not dispute that the time-limit of 1 March is mandatory. It submits, however, that an implied derogation from that time-limit must be assumed if the determination of production quotas by the Coun-

cil and the express confirmation of the possibility of using the power of manoeuvre take place after 1 March, as was the case in 1988 in particular. Regulation No 1107/88, fixing the quotas for the 1988/89 to 1990/91 marketing years and declaring the power of manoeuvre to be applicable without restriction, was adopted on 25 April 1988.

25 That argument cannot be accepted.

26 There is nothing to show that by adopting Regulation No 1107/88 the Council intended tacitly to abolish the 1 March time-limit for the 1988/89 marketing year.

27 Contrary to the Italian Government's view, the fact that Member States did not know before the adoption of Regulation No 1077/88, and hence before 1 March 1988, what quotas were to be allocated or whether they would have a power of manoeuvre, and if so under what conditions, could not in itself enable that power to be exercised after the time-limit.

28 The correct interpretation, by contrast, as submitted *inter alia* by the GSV undertakings and the Commission, is that while the power of manoeuvre can be exercised by Member States for the 1989/90 and 1990/91 marketing years, it cannot be regarded as applicable to the 1988/89 marketing year, in view of the practical impossibility of complying with the 1 March time-limit.

29 In view of the manner in which the Commission acted when the same situation occurred in 1986, it is hardly conceivable that in 1988 the Council intended tacitly to abolish the time-limit and allow Member States to adjust the quotas with no express time-limit being set.

30 Moreover, the interpretation suggested by the Italian Government would clash with the principle of legal certainty. It follows from that principle that undertakings should be able to rely on the date of 1 March fixed by the Community legislature, so that a derogation from that time-limit, which could have serious consequences for undertakings, cannot be derived from a regulation either tacitly or by implication.

31 The answer to Question 1 must therefore be that Member States may not, for the marketing year starting on 1 July, exercise the power of manoeuvre conferred on them by Article 25(2) of Regulation No 1785/81 after the date of 1 March laid down by Regulation No 193/82, even if the Council regulation fixing the quotas and stating that power to be applicable has been adopted after 1 March, since no Community legislation expressly derogating from that time-limit has been enacted.

Questions 2 and 3

32 By its second and third questions the national court essentially asks whether the power of manoeuvre conferred on Member States by Article 25 of Regulation No 1785/81 may be exercised at the same time as an adjustment of quotas pursuant to Article 2 of Regulation No 193/82 following a transfer of undertakings or factories. In this respect the national court rightly observes that those two provisions pursue different objectives and are subject to different rules on time-limits.

33 There is no reason why the power of manoeuvre conferred on Member States by Article 25 of Regulation No 1785/81 cannot be exercised at the same time — and possibly in the same measure — as an adjustment of quotas pursuant to Article 2 of Regulation No 193/82, provided however that the specific conditions governing the application of each provision are complied with: in partic-

ular, that the allocation of quotas under Article 2 of Regulation No 193/82 is proportional to the quantities of sugar production absorbed by each undertaking, and that transfers pursuant to Article 25 of Regulation No 1785/81 take place before 1 March each year.

34 The answer to Questions 2 and 3 must therefore be that the power of manoeuvre conferred on Member States by Article 25 of Regulation No 1785/81 may be exercised at the same time as an adjustment of quotas pursuant to Article 2 of Regulation No 193/82 following a transfer of undertakings or factories, provided that the specific conditions governing the application of each of those provisions are complied with.

Question 4

35 By its fourth question the national court asks whether the 10% margin of manoeuvre laid down by Article 25(2) of Regulation No 1785/81 refers to each of the A and B quotas, or to the total of the two quotas, or whether a reduction of one quota — even if it is by less than 10% — prevents the other one from being reduced as well.

36 It follows from Article 25(2), which uses the disjunctive conjunction 'or' in the phrase 'of the A quota or of the B quota, as the case may be', that the 10% margin of manoeuvre must be calculated for the A quota by reference to the A quantity and for the B quota by reference to the B quantity, and that the exercise of the power of manoeuvre in respect of one of the two quotas does not preclude its exercise in respect of the other.

37 Moreover, that interpretation must prevail, as the Commission has noted, on the basis of a rational and systematic argument, since the A quota has a function which differs from, and is independent of, that of the B quota, as explained in paragraph 3 above.

38 The answer to Question 4 must therefore be that Article 25(2) of Regulation No 1785/81 is to be interpreted as meaning that Member States may reduce the A quota and the B quota by 10% each.

Question 5

39 By its fifth question the national court asks whether the quota in respect of which the Member State may exercise the 10% margin of manoeuvre provided for in the first subparagraph of Article 25(2) of Regulation No 1785/81 is that stated in the original allocation order or whether it should be determined by adding thereto any allocations brought forward from preceding years or subtracting therefrom the quantity of sugar not produced.

40 It should first be noted, as the Commission has pointed out, that the 10% margin of manoeuvre applies for the period referred to in Article 23(1) of Regulation No 1785/81, as amended by Regulation No 934/86, in other words for the 1986/87 to 1990/91 marketing years. During that period the Member State may thus reduce the A and B quotas of each undertaking by a total not exceeding 10%.

41 It follows, secondly, from the actual wording of the first subparagraph of Article 25(2) of Regulation No 1785/81 that the A and B quotas in respect of which the Member State may exercise its 10% margin of manoeuvre are those allocated to the undertaking, within the framework of the quota system in force, by a national decision taken by the Member State on the basis of Article 24 of that regulation, sharing out among the undertakings operating in its territory the basic A and B quantities allocated to it.

42 It follows that the margin of manoeuvre does not relate to quotas which have been adjusted under Article 2(6) of Regulation No 193/82 for one or more

marketing years where it is established that the sugar-producing undertaking in question can no longer ensure that it meets its obligations towards sugar-beet or sugar-cane producers. Nor is the margin of manoeuvre affected by the carrying forward to the next marketing year, under Article 27 of Regulation No 1785/81, of production in excess of the A quota.

43 The answer to Question 5 must therefore be that the 10% margin of manoeuvre provided for in the first subparagraph of Article 25(2) of Regulation No 1785/81 relates to the A and B quotas allocated to an undertaking, within the framework of the quota system in force, by a national decision taken by the Member State on the basis of Article 24 of that regulation, sharing out among the undertakings operating in its territory the basic A and B quantities allocated to it.

Question 6

44 By its sixth question the national court essentially asks whether the term 'restructuring plans' within the meaning of the second subparagraph of Article 25(2) of Regulation No 1785/81, which allows quotas to be adjusted in Italy without the 10% limit applying, refers to plans concerning undertakings taken individually or to plans concerning the production sector as a whole at national or regional level.

45 It follows from the second subparagraph of Article 25(2), which refers to 'restructuring plans in the ... sectors in the region concerned', that those plans must concern the restructuring of the sugar sector of the Member State in question. That interpretation is confirmed by the fourteenth recital in the preamble to Regulation No 1785/81.

46 Although, as can be seen from Article 24(2), Italy constitutes a 'region' for the purposes of the regulation, it is clear that difficult situations may arise in areas which are geographically less extensive that the entire territory of that Member State. The term 'restructuring plans' must therefore, as *inter alios* the GSV undertakings and the Commission propose, be interpreted as also covering plans which apply to the sugar sector at regional level.

47 It follows that exercise of the power of manoeuvre provided for in the second subparagraph of Article 25(2) is conditional on the adoption of a restructuring plan concerning the sugar sector as a whole at national or regional level. Where such a plan has been adopted or approved by the Member State, it can exercise the power of manoeuvre to the extent necessary to enable the plan to be implemented.

48 Specific plans, on the other hand, concerning individual producing undertakings which form part of a sugar sector that also includes other undertakings are neither sufficient nor necessary to enable Member States to exceed the 10% limit. Moreover, the consequences of the submission or non-submission by undertakings of specific plans of that kind are a matter for national law.

49 The answer to Question 6 must therefore be that the term 'restructuring plans' within the meaning of the second subparagraph of Article 25(2) of Regulation No 1785/81, allowing quotas to be adjusted in Italy without the 10% limit applying, refers to plans concerning the sugar sector as a whole at national or regional level.

Costs

50 The costs incurred by the Italian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action 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 referred to it by the Consiglio di Stato by order of 24 April 1992, hereby rules:

1. Member States may not, for the marketing year starting on 1 July, exercise the power of manoeuvre conferred on them by Article 25(2) of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector after the date of 1 March laid down by Council Regulation (EEC) No 193/82 of 26 January 1982 laying down general rules for transfers of quotas in the sugar sector, even if the Council regulation fixing the quotas and stating that power to be applicable has been adopted after 1 March, since no Community legislation expressly derogating from that time-limit has been enacted.

2. The power of manoeuvre conferred on Member States by Article 25 of Regulation No 1785/81 may be exercised at the same time as an adjustment of quotas pursuant to Article 2 of Regulation No 193/82 following a transfer of undertakings or factories, provided that the specific conditions governing the application of each of those provisions are complied with.

3. Article 25(2) of Regulation No 1785/81 must be interpreted as meaning that Member States may reduce the A quota and the B quota by 10% each.

4. The 10% margin of manoeuvre provided for in the first subparagraph of Article 25(2) of Regulation No 1785/81 relates to the A and B quotas allocated to an undertaking, within the framework of the quota system in force, by a national decision taken by the Member State on the basis of Article 24 of that regulation, sharing out among the undertakings operating in its territory the basic A and B quantities allocated to it.

5. The term 'restructuring plans' within the meaning of the second subparagraph of Article 25(2) of Regulation No 1785/81, allowing quotas to be adjusted in Italy without the 10% limit applying, refers to plans concerning the sugar sector as a whole at national or regional level.

Gulmann Jann Moitinho de Almeida

Edward Sevón

Delivered in open court in Luxembourg on 11 August 1995.

R. Grass

Registrar

C. Gulmann

President of the Fifth Chamber