JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
8 July 1999 *

In Case T-168/95,

Eridania Zuccherifici Nazionali SpA, a company incorporated under Italian law, established in Genoa, Italy,

ISI — Industria Saccarifera Italiana Agroindustriale SpA, a company incorporated under Italian law, established in Padua, Italy,

Sadam Zuccherifici, a division of SECI — Società Esercizi Commerciali Industriali SpA, a company incorporated under Italian law, established in Bologna, Italy,

Sadam Castiglionese SpA, a company incorporated under Italian law, established in Bologna,

Sadam Abruzzo SpA, a company incorporated under Italian law, established in Bologna,

Zuccherificio del Molise SpA, a company incorporated under Italian law, established in Termoli, Italy,

SFIR — Società Fondiaria Industriale Romagnola SpA, a company incorporated under Italian law, established in Cesena, Italy,

Ponteco Zuccheri SpA, a company incorporated under Italian law, established in Pontelagoscuro, Italy,

represented by Bernard O'Connor, Solicitor, and Ivano Vigliotti and Paolo Crocetta, of the Genoa Bar, with an address for service in Luxembourg at the Chambers of Arsène Kronshagen, 12 Boulevard de la Foire,

applicants,

* Language of the case: Italian.

Council of the European Union, represented by Jan-Peter Hix and Ignacio Díez Parra, of its Legal Service, acting as Agents, with an address for service at the office of Alessandro Morbilli, General Counsel of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

supported by

Commission of the European Communities, represented by Eugenio de March, Legal Adviser, and Francesco Paolo Ruggeri Laderchi, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

intervener,

APPLICATION for the annulment of Council Regulation (EC) No 1534/95 of 29 June 1995 fixing, for the 1995/96 marketing year, the derived intervention prices for white sugar, the intervention price for raw sugar, the minimum prices for A and B beet, and the amount of compensation for storage (OJ 1995 L 148, p. 11), in so far as it states, in connection with the fixing of the derived

intervention prices for white sugar, that a deficit supply situation is to be foreseen in the production areas of Italy,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (First Chamber),

composed of: B. Vesterdorf, President, J. Pirrung and M. Vilaras, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 26 January 1999,

gives the following

Judgment

Legal framework

1 Council Regulation (EEC) 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 the 'basic regulation'), as amended on a number of occasions, has as one of its objectives to ensure that the necessary guarantees in respect of employment and standards of living are maintained for Community growers of sugar beet and sugar cane (third recital in the preamble), and to that end establishes a price system and a quota system.

2 The quota system entails the fixing, for each production region in the Community, of the quantities of sugar to be produced, which the Member States are to share among the various sugar-producing undertakings in their territory in the form of production quotas. The basic regulation draws a distinction between various types of quota, including 'preferential' quotas, which may be freely marketed in the common market. These quotas relate to a specific marketing year, which begins on 1 July of one year and expires on 30 June of the following year.

3 The price system includes a system of intervention designed to guarantee the prices and sales of the products; the prices applied by the intervention agencies are fixed each year by the Council.

4 The prices of white sugar are not the same throughout the Community. Article 3(1) of the basic regulation provides for the fixing of an 'intervention price' for non-deficit areas and a 'derived intervention price' for each of the deficit areas. The second subparagraph of Article 9(1) of the basic regulation provides that these various prices are to apply according to the area in which the sugar is situated at the time of purchase. The areas to be regarded as deficit areas are those in which the quantity produced on the basis of the 'preferential' quotas is lower than consumption. The purpose of that price difference, which is known as 'regionalisation', is to ensure that deficit areas are supplied by sugar manufacturers from other areas. The derived intervention prices are fixed at a higher rate than the intervention prices and the difference between the two prices is supposed to cover the additional transport costs.

5 The basic regulation also establishes, in Article 5, a system of prices for beet which is processed into sugar. Sugar manufacturers are required to pay beet growers minimum prices, pursuant to Article 6(1) and (2), which vary according to the area in which the beet is produced. Article 5(3) provides that for areas for which a derived intervention price for white sugar is fixed, the minimum prices are to be increased by an amount equal to the difference between the derived

intervention price for the area in question and the intervention price, such amount being adjusted by the coefficient 1.30.

6 Thus for deficit areas the basic regulation provides, within the limits of the quota allocated, a higher price for the purchase of the raw material needed to produce sugar and at the same time a higher remuneration for sugar produced in those areas.

7 Until the 1994/95 marketing year the Council classified Italy among the deficit areas in the Community when fixing the annual intervention prices and therefore defined derived intervention prices applicable there, whereas according to the Italian sugar industry Italy was on the way to becoming a surplus area.

8 The intervention prices for white sugar for the 1995/96 marketing year were fixed for the non-deficit areas of the Community at ECU 63.19 per 100 kilograms by Article 1(2) of Council Regulation (EC) No 1533/95 of 29 June 1995 fixing, for the 1995/96 marketing year certain prices in the sugar sector and the standard quality for beet (OJ 1995 L 148, p. 9). The derived intervention price for white sugar for that marketing year was fixed for all the areas in Italy at ECU 65.53 per 100 kilograms by Article 1(f) of Council Regulation (EC) No 1534/95 of 29 June 1995 fixing, for the 1995/96 marketing year, the derived intervention prices for white sugar, the intervention price for raw sugar, the minimum prices for A and B beet, and the amount of the compensation for storage costs (OJ 1995 L 148, p. 11, hereinafter 'Regulation No 1534/95' or the 'contested regulation'), the

third recital in the preamble to which stated that 'a deficit supply situation [was] to be foreseen in the areas of production in Italy'.

Procedure

9 It was in those circumstances that, by an application lodged at the Court Registry on 5 September 1995, the applicants, companies established in Italy and together holding 92% of the sugar production quotas allocated to that Member State, brought the present action pursuant to the fourth paragraph of Article 173 of the EC Treaty (now, after amendment, the fourth paragraph of Article 230 EC).

10 By order of 7 November 1995 in Case T-168/95 R *Eridania and Others* v *Council* [1995] ECR II-2817 the President of the Court of First Instance dismissed the applicants' application for suspension of operation of Article 1(f) of Regulation No 1534/95.

11 By a separate document lodged at the Court Registry on 9 November 1995 the Council raised an objection of inadmissibility pursuant to Article 114(1) of the Rules of Procedure. The applicants lodged their observations on that objection on 5 January 1996.

12 By order of 19 March 1996 the President of the Second Chamber of the Court of First Instance granted the application by the Commission, lodged at the Court Registry on 31 January 1996, for leave to intervene in support of the form of order sought by the Council. On 3 May 1996 the Commission lodged a statement in intervention. By documents lodged at the Registry on 25 May and 14 June

1996 respectively the applicants and the Council submitted their observations on that statement in intervention.

13 By order of 25 June 1997 the Court of First Instance (Second Chamber) reserved a decision on that objection for the final judgment.

14 By decision of the Court of First Instance of 21 September 1998 the Judge-Rapporteur was posted to the First Chamber, to which the case was therefore assigned.

15 On hearing the report of the Judge-Rapporteur, the Court of First Instance (First Chamber) decided to open the oral procedure without any preparatory inquiry. The parties presented oral argument and replied to the questions put by the Court at the hearing on 26 January 1999.

Forms of order sought by the parties

16 The applicants claim that the Court should:

— declare the action admissible;

— annul Regulation No 1534/95 or, at the very least, Article 1(f) thereof;

— annul, in so far as necessary, all measures adopted prior to or subsequent to Regulation No 1534/95 which are connected to it, including the basic regulation or, at the very least, Articles 3, 5 and 6 thereof and all implementing measures;

— order the Council to pay the costs of the case;

— order the Commission to pay the costs associated with its application to intervene.

17 The Council contends that the Court should:

— declare the action inadmissible;

— in the alternative, declare the action unfounded;

— order the applicants to pay the costs.

18 In its statement in intervention, the Commission claims that the Court should:

— grant the form of order sought by the Council and dismiss the action as inadmissible;

— in the alternative, dismiss the action as unfounded.

Admissibility of the action

19 In support of its objection of inadmissibility, the Council submits three pleas in law. The first alleges that the time-limit for bringing an action laid down in the fifth paragraph of Article 173 of the Treaty was exceeded, the second that the applicants lack standing to bring an action under the fourth paragraph of Article 173 of the Treaty and the third a breach of the first paragraph of Article 19 of the EC Statute of the Court of Justice and of Article 44(1) of the Rules of Procedure of the Court of First Instance, in that the application lacks the precision demanded by those provisions.

Pleas in law and arguments of the parties

First plea: expiry of the time-limit for bringing proceedings

20 The Council maintains that the action, in so far as it seeks the annulment of Articles 3, 5 and 6 of the basic regulation, was introduced after the expiry of the two-month period provided for in the fifth paragraph of Article 173 of the

Treaty. The basic regulation was adopted on 30 June 1981 and the current wording of those articles was not amended in 1995.

21 The applicants submit that in their application they primarily sought the annulment of Article 1(f) of Regulation No 1534/95 and in the alternative challenged the validity of Articles 3, 5 and 6 of the basic regulation in case it should transpire that Article 1(f) of Regulation No 1534/95 was based on those articles. They point out, in that regard, that under Article 184 of the EC Treaty (now Article 241 EC) any party seeking the annulment of a regulation may indirectly challenge a second regulation on which the first is based.

Second plea: the applicants lack standing

22 The Council maintains that the applicants are neither directly nor individually concerned by Article 1(f) of Regulation No 1534/95. In particular, the Council disputes the applicants' argument that they belong to a limited class of individually distinguished and identifiable economic operators, namely Italian sugar manufacturers holding production quotas, since that class is not limited.

23 The Council points out that the system of production quotas in the sugar sector provides for the allocation of quotas to 'newcomers'. Under Article 25 of the basic regulation, Member States are free to transfer quotas between undertakings without limits on the basis of restructuring plans. Consequently, the potential class of Italian sugar manufacturers holding production quotas cannot be determined in advance. Furthermore, the contested measure concerns not only Italian sugar manufacturers but also Italian beet growers, since the minimum prices for beet are calculated according to the derived intervention prices for sugar. Since the class of persons concerned by the contested regulation is not closed and may be extended in the future, the conditions of admissibility established by the Court of Justice in Case C-152/88 *Sofrimport* v *Commission*

[1990] ECR I-2477 and Case C-354/87 *Weddel* v *Commission* [1990] ECR I-3847 are not met in the present case.

24 The Council also observes that it is settled law that the general applicability, and thus the legislative nature, of a measure is not called in question by the fact that it is possible to determine more or less exactly the number or even the identity of the persons to whom it applies at any given time, as long as it applies to them by virtue of an objective legal or factual situation defined by the measure in question in relation to its purpose (Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 18, and order of the Court of First Instance in Case T-183/94 *Cantina Cooperativa fra Produttori Vitivinicoli di Torre di Mosto and Others* v *Commission* [1995] ECR II-1941, paragraph 48). Regulation No 1534/95 was adopted precisely by virtue of an objective legal and factual situation. That regulation fixes, *inter alia*, for the 1995/96 marketing year the derived intervention prices for white sugar and the minimum prices for beet. It follows from the preamble to that regulation that, in order to determine those prices, the Council relied on objective criteria and took account in particular of the fact that a deficit supply situation was to be foreseen in certain areas, including Italy. On the other hand, there is nothing in the contested regulation to support the conclusion that the fixing of derived prices took the applicants' specific situation into account. They are therefore concerned by the contested regulation only in their objective capacity as sugar manufacturers.

25 In any event, the mere fact that the applicants hold sugar production quotas is not sufficient to establish, as case-law requires, that their legal position is affected (*Codorniu*, paragraph 20). Unlike the regulation at issue in *Codorniu*, the fixing of derived intervention prices does not adversely affect the applicants' 'legal position', nor does it affect their 'specific rights' (order in Case T-99/94 *Asociación Española de Empresas de la Carne (Asocarne)* v *Council* [1994] ECR II-871, paragraph 20).

26 In its statement in intervention the Commission supports the Council's arguments. It points out that the contested regulation is intended to provide a remedy for the deficit supply situation foreseen in Italy, on the basis of objective market criteria, including trends during previous marketing years. It concerns not only Italian sugar manufacturers but all economic operators in the sector, including producers and sellers of beet, and affords no specific protection to any group of them.

27 The applicants maintain, first, that Article 1(f) of Regulation No 1534/95 fixes the derived intervention price for white sugar for all areas in Italy, which means that they are required to pay a higher minimum price for beet than manufacturers in non-deficit areas. That provision is applied automatically and leaves no room for discretion, so that it has direct effect on the applicants.

28 Next, the applicants consider that Article 1(f) of Regulation No 1534/95 concerns them individually, since they form part of a limited class of persons whose identity was known to the Community institutions. In that context, they refer to the fact that the Member States are required to inform the Community authorities of the way in which quotas are shared between sugar-producing undertakings, pursuant to Articles 25(2) and 39 of the basic regulation and to Commission Regulation (EEC) No 787/83 of 29 March 1983 on communications in the sugar sector (OJ 1983 L 88, p. 6). When the Council adopted Regulation No 1534/95 it was aware of the identity of the Italian sugar-producing undertakings which held quotas for the 1995/96 marketing year. The applicants were among those producers, and the possibility that additional quota holders might be added was precluded.

29 In so far as the Council refers to Article 25 of the basic regulation in support of its contention that the number of sugar-producing undertakings is not fixed, but open to 'newcomers', the applicants point out that the possibility for Member

States to transfer quotas for the 1995/96 marketing year could only be used before 1 March 1995. 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) provides in Article 7 that where a Member State applies Article 25(2) of the basic regulation it is to allocate the adjusted quotas before 1 March with a view to applying them in the following marketing year. They conclude that on the date on which Regulation No 1534/95 was adopted, 29 June 1995, Article 1(f) could only concern the limited class of Italian sugar-producing undertakings defined on 1 March 1995.

30 The applicants also submit that it follows from Special Report No 4/91 of the Court of Auditors on the operation of the common organisation of the market in the sugar and isoglucose sector that long-term application of the quota system created production rights for holders of quotas, since those production quotas had resulted in genuine individual rights. As the Commission did not object to that point in its official reply to those findings, it accepted by implication that the production quotas have become genuine individual rights and that, accordingly, any measure adopted by the Community authorities in relation to those rights is of direct and individual concern to the holders of those rights.

31 The applicants refer, in particular, to the *Sofrimport* and *Weddel* judgments and also to Joined Cases 106/63 and 107/63 *Töpfer and Others* v *Commission* [1965] ECR 405 and Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, and claim that they constitute a group which is sufficiently distinguished from producer undertakings in other areas of the Community. Regulation No 1534/95 fixes derived intervention prices for six deficit areas in the Community and thus, as it is based on exceptional circumstances, constitutes a derogation from the basic rules established by Regulation No 1533/95, which fixes, *inter alia*, the intervention prices for white sugar for the non-deficit areas of the Community. Furthermore, it was adopted on the basis of information provided by the applicants themselves.

32 On this last point, the applicants state that the observation that Italy is a deficit area is based on a misunderstanding of the information which they provided via the Italian authorities and the Commission. The figures which they provided, which related to actual and foreseeable production and also to their individual production capacities, show that Italy is not a deficit area. The applicants further state that they concluded contracts with the Italian beet growers. The fixing of the derived intervention price determines the price they must pay. Furthermore, the applicants' production capacity is linked to those contracts.

33 Last, they point out that under Article 46 of the basic regulation Italy was authorised, until the 1994/95 marketing year, to grant aid to the Italian industry, which confirms that the Italian sugar-producing undertakings with quotas were in a special situation. By maintaining regionalised prices for Italy and at the same time, 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), abolishing the possibility of granting aid for the 1995/96 marketing year, the Council was perfectly aware that it was treating the applicants in a discriminatory manner.

Third plea: the application lacks the requisite precision

34 The Council submits that the application does not meet the requirements of precision laid down in the first paragraph of Article 19 of the EC Statute of the Court of Justice and Article 44(1) of the Rules of Procedure of the Court of First Instance. The claim that the Court should, generally, annul provisions other than Article 1(f) of Regulation No 1534/95 and all earlier or subsequent connected measures, including the basic regulation, does not make it possible to determine the subject-matter of the application, since the applicants fail to specify which measures of the regulations in question adversely affect them.

35 The applicants consider that the subject-matter of their application is sufficiently precise.

Findings of the Court

Lack of sufficient precision in the application and failure to observe the time-limit (first and third pleas)

36 In their application the applicants stated that they only sought the annulment of Article 1(f) of Regulation No 1534/95 and that they challenged Articles 3, 5 and 6 of the basic regulation, adopted in 1981, only 'in so far as necessary', that is to say, in so far as Article 1(f) is based on those articles. The applicants therefore rely on the inapplicability of the said articles of the basic regulation, pursuant to Article 184 of the Treaty, which amounts to raising an objection of illegality in support of their claims. Having regard to that limitation of the claims, the first plea of inadmissibility, alleging that the time-limit for initiating proceedings had expired, is devoid of purpose.

37 The applicants also sought the annulment of all measures adopted prior to or subsequent to Regulation No 1534/95, including the basic regulation, which are connected with it and of all implementing measures, but without specifying what measures or provisions were referred to. Pursuant to Article 44(1) of the Rules of Procedure of the Court of First Instance, however, the application is to state the subject-matter of the proceedings and a summary of the pleas in law on which the application is based. Furthermore, it is not for the Community judicature to substitute its own assessment for that of the applicant and itself determine which measures are capable of adversely affecting the applicant and open to an action for annulment (Case 30/68 *Lacroix* v *Commission* [1970] ECR 301, paragraphs 22 and 24). The claims in question must therefore be declared inadmissible.

The applicants' standing to bring the action (second plea)

38 Under the fourth paragraph of Article 173 of the Treaty, the admissibility of an application for the annulment of a regulation introduced by a natural or legal person is subject to the condition that the contested regulation is in reality a decision which concerns that person directly and individually. The criterion for distinguishing between a regulation and a decision must be sought in the general application or otherwise of the measure in question. 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 (order in Case C-87/95 P *Cassa Nazionale di Previdenza ed Assistenza a favore degli Avvocati e Procuratori (CNPAAP)* v *Council* [1996] ECR I-2003, paragraph 33; judgment in Case T-482/93 *Weber* v *Commission* [1996] ECR II-609, paragraph 55; and order in Case T-39/98 *Sadam Zuccherifici and Others* v *Council* [1998] ECR II-4207, paragraph 17).

39 In the present case the fixing by Article 1(f) of the contested regulation of the derived intervention price for white sugar 'for all the areas in Italy' for the 1995/96 marketing year requires the Italian intervention agency, pursuant to Article 9(1) of the basic regulation, to buy in at that price any white sugar offered to it by the Italian production undertakings provided that the conditions laid down for that purpose are met. Article 1(f) therefore applies to an indeterminate number of transactions to be carried out during the marketing year concerned. Pursuant to Article 3(1) in conjunction with Article 5(3) and Article 6(1) and (2) of the basic regulation, the fixing of the derived intervention price is also passed directly on to the purchase prices which Italian sugar manufacturers are required to pay to Italian beet growers under the contracts for the supply of beet concluded for the same marketing year. The provision in question is therefore also applicable to an indeterminate number of transactions downstream from the intervention operations. It follows that Article 1(f) of Regulation No 1534/95 applies to objectively determined situations and is aimed generally at categories of persons regarded in the abstract.

40 However, it cannot be excluded that a provision which by its nature and application is general in character may individually concern natural or legal persons where it adversely affects them by reason of certain attributes which are peculiar to them or by reason of circumstances which differentiate them from all other persons and thereby distinguish them individually in the same way as the person to whom a measure is addressed (Case C-209/94 P *Buralux and Others* v *Council* [1996] ECR I-615, paragraph 25).

41 In the present case it should be observed that Article 1(f) of the contested regulation fixes a specific and single derived intervention price for all the production areas in Italy, which is applicable, in accordance with the mechanism described above, to Italian sugar manufacturers in their relations with the intervention agency and also in their relations with beet growers. Furthermore, the statement that a deficit supply situation was to be foreseen in the areas of Italy necessarily resulted from a comparison of the production figures provided by the Italian sugar-producing undertakings, including the applicants, and the figures for national consumption. In order to determine whether those elements are sufficient for the applicants to be regarded as being individually concerned, the provision in question must be placed in the context of the common organisation of the market in the sugar sector.

42 In that regard, it should be pointed out that Article 3(1) of the basic regulation provides that for white sugar an intervention price for the non-deficit areas of the Community and a derived intervention price for each of the deficit areas are to be fixed each year. Pursuant to that provision, the Council adopted Article 1(a) to (f) of Regulation No 1534/95 for the 1995/96 marketing year, under which all areas of the United Kingdom, Ireland, Portugal, Finland, Spain and Italy are classified as deficit areas.

43 In the context of that 'regionalisation' of the price system (see paragraph 4 above), the Community legislature, in order to ensure the proper functioning of the common organisation of the markets, endeavours to take account of the specific features of the various production areas which form the market as a whole. The fact that the legislature fixes the derived intervention prices for white sugar not in a standard and general manner but on a basis as close as possible to economic realities, thus aiming, as stated in point 3 of the third recital in the preamble to the basic regulation, to 'stabilise the market in sugar', is not in itself sufficient to confer on Article 1(f) of the contested regulation the nature of a bundle of decisions of individual concern to each of the sugar-producing undertakings established in the deficit areas. The system of 'regionalisation' applies objectively to all sugar manufacturers and beet growers; it is not aimed at the applicants individually.

44 In that regard, the applicants' argument that they provided the Community institutions with their production figures before the contested regulation was adopted is irrelevant. The Court observes that the system of 'regionalisation' is necessarily based on the production figures of each sugar-producing undertaking in a deficit or non-deficit area. The various production areas in the Community can only be classified by the Council as deficit or non-deficit on the basis of the information on current and/or foreseeable production and consumption provided to it. In that regard, Regulation No 787/83 requires each Member State to communicate certain information 'in respect of each sugar-producing undertaking situated on its territory' (Article 9(1)). The fact that the applicants communicated such information to the Community institutions is therefore not capable of distinguishing them, in the context of the system of 'regionalisation', from all other Community sugar producers, especially since, as is apparent from the papers before the Court, the Council did not adopt the contested regulation on the basis of the information provided by the Commission on the specific situation of each of the applicants.

45 The Court further observes, in any event, that if the applicants' argument were upheld any sugar manufacturer established in any deficit area would be able to challenge the classification of that area as a deficit area and thus call in question the annual fixing of the derived intervention price and, accordingly, refuse to pay the beet growers a higher purchase price. Conversely, beet producers established in any of the non-deficit areas would be able to challenge the classification of their area as a non-deficit area and thus call in question the annual fixing of the intervention price and, accordingly, obtain a higher purchase price from the sugar manufacturers. Thus all economic operators belonging to the common organisation of the market in sugar who considered that they were adversely affected by the classification of their area would be able to call in question the entire system of differentiated prices applied throughout the Community, which would be contrary to the regulatory nature of the measures adopted by the Council for that purpose.

46 Nor can the applicants' argument that they are 'individually concerned' by the contested measure by reason of the fact that they belong to a 'limited class' be upheld. First, even supposing that the Council had actually been aware of the applicants' identity when it adopted the contested regulation, it is settled law that the general application and hence the legislative nature of a measure are not called in question by the fact that it is possible to define more or less precisely the number or even the identity of the persons to whom it applies at any given time, as long as it is established that such application takes effect by virtue of an objective situation of fact or of law defined by the measure in question (order in Case C-409/96 P *Sveriges Betodlares Centralförening and Henrikson* v *Commission* [1997] ECR I-7531, paragraph 37).

47 Second, as observed above, the 'limited class' to which the applicants refer is the consequence of the very nature of the system of 'regionalisation', which, because it is based on the information mechanism provided for in Regulation No 787/83, has the precise consequence that the Community institutions are able to know the identity of the sugar manufacturers established in each production area. The applicants therefore form part of a 'limited class' only in the same way as all other Community sugar manufacturers in the same situation.

48 In any event, as the Council observed at the hearing without being contradicted by the applicants, while it is the case that before the various prices for sugar are fixed for each marketing year the Member States communicate to the Commission information on developments in sugar production and consumption in their territory and on the sugar production quotas already allocated, when the Council adopted the contested regulation it nevertheless did not have any particular information on each of the Italian undertakings holding sugar production quotas for the 1995/96 marketing year but fixed the various prices for white sugar on the basis of the overall figures on sugar production in Italy.

49 Nor is the case-law on which the applicants rely in support of the admissibility of their action relevant in the present case. That case-law refers to certain specific situations concerning individual applications for import licences which were submitted during a short period and related to specific quantities (see *Töpfer* and *Weddel*) or involving the obligation imposed on the Community institutions to take account of the consequences which the measure they propose to adopt will have on the situation of certain individuals (see *Sofrimport* and *Piraiki-Patraiki*). There are no such circumstances in the present case. In particular, the applicants have not alleged that the Council is under an obligation to afford the Italian sugar-producing undertakings, in the context of the 'regionalisation' system, a particularly wide protection exceeding the purpose of 'regionalisation' itself, which consists in taking into consideration the specific features of each production area and thus the interests of all sugar manufacturers and all beet growers in the Community (see also *Buralux*, paragraphs 32 to 34).

50 The applicants also claim that the contested measure adversely affected the individual production rights which they enjoy as holders of production quotas allocated pursuant to the basic regulation (*Codorniu* v *Council* and *Weber* v *Commission*).

51 In that regard, it is sufficient to observe that the allocation of production quotas to the applicants was not, prior to the adoption of the contested regulation, accompanied by an established right that a specific intervention price would be fixed. The applicants' legal situation was therefore no different from that of other holders of production quotas, all of whom had to adjust to the intervention prices fixed by the Council in accordance with the supply situation foreseeable for the various production areas. In those circumstances, the mere fact that the applicants held production quotas is not susceptible of establishing that specific rights, within the meaning of *Codorniu* v *Council*, which they enjoyed were infringed, especially since they have not alleged that the contested measure had the effect of devaluing their quotas.

52 The arguments which the applicants derive from the alleged abolition, by Regulation No 1101/95, of the possibility for the Italian State to grant aid to the Italian sugar production industry, a possibility which had initially been provided for in Article 46 of the basic regulation, must also be rejected. Even supposing that that abolition is the result of the adoption of that regulation, it none the less remains that that circumstance, too, is incapable of sufficiently differentiating the applicants' position from that of any other operator in the sugar sector. It is clear, moreover, that the applicants have failed to adduce factors capable of showing that they were in a specific situation such that the alleged abolition of aid to the Italian sugar industry by Regulation No 1101/95 was not of general application but was aimed at them individually.

53 The same applies to the fact that the applicants had concluded supply contracts with beet growers which were governed by the derived intervention price at issue. The applicants have not alleged that they were unable to perform their specific contracts owing to the application of the contested measure and that a specific legal situation was thus adversely affected. The conclusion of such contracts can therefore only be regarded as coming within the normal commercial activity of any sugar-producing undertaking.

54 It follows that the applicants are not individually concerned by Article 1(f) of Regulation No 1534/95. The second plea of inadmissibility must therefore be upheld.

55 It follows from all the foregoing that the application must be dismissed as inadmissible.

Costs

56 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if these have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful and the Council asked for costs, the applicants must be ordered jointly and severally to pay their own costs and also those incurred by the Council in connection with the present case, including the costs associated with the application for interim measures (see paragraph 11 above). In accordance with Article 87(4) of the Rules of Procedure, the Commission must bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1. **Dismisses the application as inadmissible;**

2. **Orders the applicants jointly and severally to pay, in addition to their own costs, all the costs incurred by the Council in connection with the present case, including those associated with the application for interim measures;**

3. **Orders the Commission to bear its own costs.**

Vesterdorf Pirrung Vilaras

Delivered in open court in Luxembourg on 8 July 1999.

H. Jung

Registrar

B. Vesterdorf

President