

## Case T-386/04

**Eridania Sadam SpA and Others**

**v**

**Commission of the European Communities**

(Common organisation of the markets in the sugar sector — Price system — Regionalisation — Deficit areas — Classification of Italy — 2004/05 marketing year — Regulation (EC) No 1216/2004 — Action for annulment — Natural and legal persons — Inadmissibility)

Order of the Court of First Instance (Fifth Chamber), 28 June 2005 . . . . II - 2535

### Summary of the Order

1. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Provision fixing the derived intervention price for white sugar for all areas in Italy for a marketing year — Action brought by Italian sugar manufacturers — Inadmissibility*

*(Art. 230, fourth para., EC; Commission Regulation No 1216/2004, Art. 1(d))*

II - 2531

2. *European Communities — Judicial review of the legality of the acts of the institutions — Measures of general application — Need for natural or legal persons to have recourse to a plea of illegality or to a reference for a preliminary ruling on validity — Obligation on national courts to apply national procedural rules in a way that enables the legality of Community acts of general application to be challenged — Availability of an action for annulment before the Community judicature where there is an insurmountable obstacle at the level of national procedural rules — Excluded*  
(Arts 10 EC, 230, fourth para., EC, 234 EC and 241 EC)
3. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Interpretation contra legem of the condition requiring individual concern — Not permissible*  
(Art. 230, fourth para., EC; Art. 48 EU)
4. *Plea of illegality — Preliminary in nature — Main action inadmissible — Plea inadmissible*  
(Art. 241 EC)

1. Natural or legal persons can claim to be individually concerned by a measure which is not a decision addressed to them only if they are affected by the measure in question by reason of certain attributes peculiar to them or by reason of a factual situation which differentiates them from all other persons and thus distinguishes them individually in the same way as the addressee of a decision.

It is not sufficient for some operators to be economically more affected by a measure than their competitors for them to be regarded as individually concerned by that measure. It follows that the alleged injury suffered by the applicants, due to the combined effect of the application of the derived intervention price and the fall in the price of sugar in that country attributable to increased imports of sugar from the Balkans, even if proved, would not, in itself, suffice to distinguish the applicants individually from any other operator in the sector.

In that regard, Italian sugar manufacturers are not individually concerned by Article 1(d) of Regulation No 1216/2004 which fixed the derived intervention price for white sugar for all areas in Italy for the marketing year 2004/05.

(see paras 33-36)

2. By Articles 230 EC and 241 EC, on the one hand, and by Article 234 EC, on the other, the Treaty has established a complete system of legal remedies and procedures for reviewing the legality of acts of the institutions and has entrusted such review to the Community judicature. Under this system, where natural or legal persons cannot, by reason of the conditions for admissibility laid down in the fourth paragraph of Article 230 EC, directly challenge Community measures of general application, they are able, depending on the case, either indirectly to plead the invalidity of such acts before the Community judicature under Article 241 EC or to do so before the national courts and ask them, since they have no jurisdiction themselves to declare those measures invalid, to make a reference to the Court of Justice for a preliminary ruling on validity.

Thus, it is for the Member States to establish a system of legal remedies and procedures which ensure respect for the right to effective judicial protection.

Within this context, in accordance with the principle of cooperation in good faith laid down in Article 10 EC, the national courts are required, so far as possible, to interpret and apply national procedural rules governing the exercise of rights of action in a way that enables natural and legal persons to challenge before the courts the legality of any

decision or other national measure relative to the application to them of a Community act of general application, by pleading the invalidity of such an act.

However, it is not appropriate for an action for annulment before the Community judicature to be available to an individual who contests the validity of a measure of general application, such as a regulation, which does not distinguish him individually in the same way as an addressee, even if it could be shown, following an examination by that court of the particular national procedural rules, that those rules do not allow the individual to bring proceedings to contest the validity of the Community measure at issue. Such a system of remedies would require the Community judicature, in each individual case, to examine and interpret national procedural law, and that would go beyond its jurisdiction when reviewing the legality of Community measures.

Accordingly, an action for annulment before the Community judicature should not, on any view, be available, even where it is apparent that the national procedural rules do not allow the

individual to contest the validity of the Community measure at issue unless he has first contravened it.

The fact that a regulation applies directly, without intervention by the national authorities, does not, in itself, mean that an operator who is directly concerned by it can contest its validity only if he has first contravened it. It is possible for domestic law to permit an individual directly concerned by a general legislative measure of national law which cannot be directly contested before the courts to seek from the national authorities under that legislation a measure which may itself be contested before the national courts, so that the individual may challenge the legislation indirectly. It is likewise possible that under national law an operator directly concerned by a regulation may seek from the national authorities a measure under that regulation which may be contested before the national court, enabling the operator to challenge the regulation indirectly.

(see paras 39-44)

3. Although it is true that the condition according to which a natural or legal person can bring an action challenging a regulation only if it is concerned both directly and individually must be interpreted in the light of the principle of effective judicial protection by taking account of the various circumstances that may distinguish an applicant individually, such an interpretation cannot have the effect of setting aside the condition in question, expressly laid down in the Treaty, without going beyond the jurisdiction conferred by the Treaty on the Community judicature, it being for the Member States, acting in accordance with Article 48 EU, to reform the system currently in force.

(see para. 47)

4. The possibility afforded by Article 241 EC of pleading the inapplicability of a regulation or measure of general application forming the legal basis of the contested implementing measure does not constitute an independent right of action and recourse may be had to it only as an incidental plea. That article may not be invoked in the absence of an independent right of action.

(see para. 51)