JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
21 February 1995 *

In Case T-472/93,

Campo Ebro Industrial, SA, Levantina Agrícola Industrial, SA, and Cerestar Iberica, SA, companies established under Spanish law, represented by Paul Glazener, of the Rotterdam Bar, with an address for service in Luxembourg at the Chambers of Marc Loesch, 11 Rue Goethe,

applicants,

v

Council of the European Union, represented by Arthur Brautigam, Legal Adviser, and Guus Huittuin, of its Legal Service, with an address for service in Luxembourg at the office of Xavier Herlin, Manager of the Legal Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

supported by

Commission of the European Communities, represented by Xavier Lewis, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, of the Legal Service, Wagner Centre, Kirchberg,

intervener,

* Language of the case: English.

APPLICATION pursuant to Article 173 of the EEC Treaty for annulment of Council Regulation (EEC) No 3814/92 of 28 December 1992 amending Regulation (EEC) No 1785/81 and introducing application in Spain of the sugar sector prices provided for by that regulation (OJ 1992 L 387, p. 7) and for damages under Article 178 and the second paragraph of Article 215 of the EEC Treaty,

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

composed of: R. Schintgen, President, R. García-Valdecasas, H. Kirschner, B. Vesterdorf and C. W. Bellamy, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 8 July 1994,

gives the following

Judgment

The facts

1 The common organization of the markets in the sugar sector is governed by the basic regulation, Council Regulation (EEC) No 1785/81 of 30 June 1981 (OJ 1981 L 177, p. 4), as subsequently amended ('Regulation No 1785/81').

2 Article 70(3)(a) of the Act concerning the Conditions of Accession of the Kingdom of Spain and the Portuguese Republic, annexed to the Treaty concerning the Accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community, signed on 12 June 1985 (OJ 1985 L 302, p. 9) ('the Act of Accession'), which by virtue of Article 108 is applicable to sugar and isoglucose, provides that where the price of an agricultural product in Spain at the time of accession is higher than the common price, the price in Spain is to be frozen at the higher level and that alignment of prices is to result from the development of common prices during the seven years following accession. If, at the end of the fourth year following accession, the price in Spain of an agricultural product is significantly higher than the common price, the Council is required, under Article 70(3)(b) of the Act of Accession, to carry out an analysis of the developments towards price alignment on the basis of an opinion from the Commission accompanied, where appropriate, by suitable proposals.

3 Since the price alignment envisaged by the Act of Accession did not happen, the Council carried out an examination of prices after the first five years and adopted Regulation (EEC) No 1716/91 of 13 June 1991 concerning the alignment of the sugar and beet prices applicable in Spain on the common prices (OJ 1991 L 162, p. 18) ('Regulation No 1716/91').

4 The Council decided to prolong the period for moving towards price alignment to 1 July 1995 and to introduce an alignment in two stages. Article 2 of Regulation No 1716/91 thus provides as follows:

'The period for moves towards price alignment in Spain shall be prolonged until 1 July 1995 inclusive. The moves towards alignment referred to in Article 1 shall be carried out in two stages, the first stage covering the 1991/1992 and 1992/1993 marketing years and the second stage the 1993/1994, 1994/1995 and 1995/1996 marketing years.'

5 Under Council Regulation (EEC) No 1718/91 of 13 June 1991 fixing, for the 1991/1992 marketing year, the derived intervention prices for white sugar, the intervention price for raw sugar, the minimum prices for A and B beet, the threshold prices, the amount of compensation for storage costs and the prices to be applied in Spain and Portugal (OJ 1991 L 162, p. 23), the intervention price for sugar in Spain was reduced for the 1991/1992 marketing year. Council Regulation (EEC) No 1749/92 of 30 June 1992 fixing, for the 1992/1993 marketing year, the derived intervention prices for white sugar, the intervention price for raw sugar, the minimum prices for A and B beet, the threshold prices, the amount of compensation for storage costs and the prices to be applied in Spain and Portugal (OJ 1992 L 180, p. 14) ('Regulation No 1749/92') did the same for the 1992/1993 marketing year. The respective reductions were ECU 0.41 and ECU 1.72 per 100 kilograms of white sugar.

6 Council Regulation (EEC) No 3814/92 of 28 December 1992 amending Regulation (EEC) No 1785/81 and introducing application in Spain of the sugar sector prices provided for by that regulation (OJ 1992 L 387, p. 7) ('the contested regulation') provides for full alignment of prices from 1 January 1993 with a view to achieving the single market. The intervention price for sugar in Spain was thus reduced by ECU 5.16 per 100 kilograms of white sugar, this new price replacing the higher price fixed pursuant to the transitional measures adopted under the Act of Accession, that is to say, *inter alia*, Regulation No 1716/91, which was for that reason abrogated by the contested regulation.

7 Article 2 of the contested regulation provides for temporary degressive aid for beet and sugar-cane growers in Spain. In the case of sugar producers, the contested regulation provides for aid amounting to ECU 5.16 per 100 kilograms of sugar expressed as white sugar for products forming part of the quotas in stock, with the exception of the minimum stock, in the hands of those eligible for reimbursement

of storage charges under Article 8 of Regulation No 1785/81 at midnight on 31 December 1992.

8 In addition, Article 1(2)(b) of the contested regulation fixes a new reduced minimum price for beet to be paid by sugar producers for whom beet is a raw material for the period from 1 January 1993 to 30 June 1993.

9 Finally, as part of restructuring plans for rationalizing the Spanish sugar industry, Article 3 of the contested regulation authorizes Spain to grant adjustment aid during the 1993/1994 to 1995/1996 marketing years to undertakings producing sugar.

10 The applicants are the only producers of isoglucose in Spain. When the quota system for isoglucose production was introduced at the time of Spanish accession, the quotas for Spanish undertakings producing isoglucose (75 000 tonnes of A quota and 8 000 tonnes of B quota) were allocated to the applicants. The applicants did not receive any Community aid when the contested regulation entered into force.

Procedure

11 It was in those circumstances that the applicants, on 23 March 1993, brought their action before the Court of Justice.

12 By order of the President of the Court of Justice of 13 September 1993, the Commission was granted leave to intervene in support of the Council.

13 Since, pursuant to Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 amending Council Decision 88/591/ECSC, EEC, Euratom establishing a Court of First Instance of the European Communities (OJ 1993 L 144, p. 21), the action falls, since 1 August 1993, within the jurisdiction of the Court of First Instance, the Court of Justice referred the case to the Court of First Instance by order of 27 September 1993.

14 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (First Chamber) decided to open the oral procedure without any preparatory inquiry.

15 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 8 July 1994.

Forms of order sought by the parties

16 The applicants claim that the Court should:

(i) annul the contested regulation;

(ii) order the Council to make good the damage suffered by the applicants as a result of that regulation, and to assess the damages at ECU 3 540 650 for Campo Ebro Industrial, SA, ECU 1 313 415 for Levantina Agrícola Industrial, SA, and ECU 1 865 029 for Cerestar Iberíca, SA, or at such other amounts as the Court

may consider appropriate, increased by annual interest of 8% from the date on which the application was lodged until the date of payment; and/or

(iii) order the Council to provide such other relief as the Court may deem lawful or equitable;

(iv) order the Council to pay the costs.

17 The Council contends that the Court should:

(i) dismiss the proceedings for annulment brought by the applicants as inadmissible or at least as unfounded;

(ii) dismiss the claim for damages brought by the applicants as unfounded;

and in both cases:

(iii) order the applicants to pay the costs.

18 The Commission claims that the Court should:

(i) dismiss the application for annulment as inadmissible or, in the alternative, as unfounded;

(ii) dismiss the application for damages as unfounded;

(iii) order the applicants to pay the costs.

Admissibility of the application for annulment

Arguments of the parties

19 Although it does not formally raise an objection of inadmissibility under Article 114 of the Rules of Procedure, the Council takes the view that the application for annulment is inadmissible on the ground that the contested regulation is not a decision which, although adopted in the form of a regulation, is of direct and individual concern to the applicants.

20 The Council first points out that the contested regulation is a measure of general application and that the applicants are affected only in their objective capacity as traders exercising an activity within the sector in question.

21 The Council goes on to argue that the existence of a quota system in the isoglucose sector does not suffice to establish that the applicants are affected in 'their legal position because of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as a person to whom' the measure in question is addressed, as required by the case-law of the Court of Justice (see, in particular, the judgment in Case 26/86 *Deutz und Geldermann* v *Council* [1987] ECR 941, the order in Case C-131/92 *Arnaud and Others* v *Council* [1993] ECR I-2573, and the unpublished order of 21 June 1993 in Case C-282/93 *Comafrica and Others* v *Council and Commission*). The Council points out that it has also been held that 'the possibility of determining more or less precisely the number or even the identity of the persons to whom a measure applies by no means implies that it must be regarded as being of individual concern to them, as long as it is established that such application takes effect by virtue of an objective legal or factual situation defined by the measure in question'.

22 The Council also points out that in their statement of reply the applicants have acknowledged that Spanish sugar producers would be as equally affected as themselves by reduced profit margins on sales by reason of the adoption of the contested regulation. So the applicants are no more 'individually' concerned by the contested regulation than Spanish sugar producers.

23 The Council accordingly concludes that, in accordance with the case-law of the Court of Justice (judgments in Case 307/81 *Alusuisse* v *Council and Commission* [1982] ECR 3463 and in Joined Cases C-15/91 and C-108/91 *Buckl and Others* v *Commission* [1992] ECR I-6061), the application for annulment must be dismissed as inadmissible on the ground that the applicants are not individually concerned.

24 The applicants maintain that the conditions laid down in the second paragraph of Article 173 of the EEC Treaty are satisfied. In the first place, the contested regulation is directly applicable, not leaving Member States any discretion as to the

choice of implementing measures. Secondly, the contested regulation is of individual concern to them, in accordance with the criteria laid down in that regard by the Court of Justice in its judgments in Case 25/62 *Plaumann* v *Commission* [1963] ECR 95 and Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207.

25 In support of this argument, the applicants point out, first, that they are the only producers of isoglucose in Spain following the introduction of the quota system at the time of Spain's accession and will continue to remain so for the foreseeable future and, secondly, that they are the only producers to have been placed in a particularly disadvantageous competitive position by reason of the reduction in the intervention price of sugar. In that connection, the applicants add that in view of the very close competitive relationship between the intervention price of sugar and the selling price of isoglucose, as recognized by the Council (see, in particular, the second and third recitals in the preamble to Regulation No 1785/81 and the judgment of the Court of Justice in Joined Cases 103/77 and 145/77 *Royal Scholten-Honig and Another* v *Intervention Board for Agricultural Produce* [1978] ECR 2037), they were prevented from increasing their selling prices in order to take account of the depreciation of the 'green' peseta following the reduction in the intervention price of sugar. Unlike sugar producers, the applicants did not receive any compensation for the fall in their profit margin resulting from the contested regulation.

26 The applicants also claim that the Council, in adopting the contested regulation without introducing transitional measures for isoglucose producers, was in a position to know that the regulation would affect the applicants' interests only (see the judgment in *Piraiki-Patraiki and Others* v *Commission*, cited above).

27 Finally, in their reply the applicants added that the Court of Justice, in dismissing the application in *Alusuisse* v *Council and Commission*, cited above, as inadmissible, stressed the fact that the applicant in that case was entitled to challenge the

individual measures adopted by the national authorities for implementation of the Community regulations in question before the national courts. The present applicants point out that they have no such possibility.

28 The Commission, as intervener, essentially supports the Council's arguments, adding that the applicants' position is similar to that of the applicant in the *AEFMA* case (order of the Court of Justice in Case C-107/93 *AEFMA* v *Commission* [1993] ECR I-3999), in which the Court dismissed the application as inadmissible.

Findings of the Court

29 The fourth paragraph of Article 173 of the EC Treaty, which reproduces the second paragraph of Article 173 of the EEC Treaty, gives natural or legal persons the right to contest decisions addressed to them or decisions which, although in the form of a regulation or a decision addressed to another person, are of direct and individual concern to them. However, it follows from a consistent line of case-law that an application for annulment brought by an individual will not be admissible if it is brought against a regulation of general application, within the meaning of the second paragraph of Article 189 of the Treaty, since the criterion which must be used for distinguishing between a regulation and a decision is, according to established case-law, whether or not the measure in question is of general application (see the judgment in *Alusuisse* v *Council and Commission*, cited above). In the present case, therefore, it is necessary to examine the nature of the contested regulation and, in particular, its intended and actual legal effects.

30 According to the contested regulation, it is intended to amend Regulation No 1785/81, which is the basic regulation in the sugar sector, and relates to the application in Spain, within that sector, of the prices laid down in Regulation No 1785/81. It provides for the alignment of the sugar prices applicable in Spain with

the common prices, that is to say, a reduction of the intervention price of sugar and the minimum price of sugar beet in Spain. In order to facilitate the alignment of prices, the contested regulation provides for the granting of aid to beet and sugar-cane growers and also aid to sugar producers for sugar in stock on 31 December 1992.

31 Such provisions appear to be measures of general application, within the meaning of Article 189 of the Treaty, which apply to objectively determined situations and produce legal effects *vis-à-vis* classes of persons envisaged in a general and abstract manner, namely producers within the sugar sector. It should be noted that producers of isoglucose are not mentioned in those provisions.

32 Next, it must be remembered that, according to settled case-law, the general application, and thus the legislative nature, of a measure cannot be called in question by the fact that it is possible to determine the number or even the identity of the persons to whom it applies at any given time, so long as it is established that such application takes effect by virtue of an objective legal or factual situation defined by the measure in question in relation to its purpose (see, for instance, the judgment in *Alusuisse* v *Council and Commission*, cited above, and the order of the Court of Justice in Case C-128/91 *Government of Gibraltar and Gibraltar Development Corporation* v *Council* [1993] ECR I-3971, paragraph 15).

33 Even if, following the introduction of a quota system, the present applicants are now the only producers of isoglucose in Spain and even assuming, further, that they are affected by the contested regulation in so far as it applies to future situations, they are in any event affected only in their objective capacity as isoglucose producers in the same way as any other trader in the sugar sector who, actually or potentially, is in an identical situation.

34 As regards the applicants' argument that they are the only traders in a particularly disadvantageous competitive position since they did not, unlike Spanish sugar producers, receive any compensation following the reduction in the intervention price

of sugar, it is necessary to consider whether such a situation can be regarded as constituting specific circumstances within the meaning of the judgment of the Court of Justice in Joined Cases 10/68 and 18/68 *Eridania and Others* v *Commission* [1969] ECR 459.

35 As is clear from the Court's findings with regard to the substance of the case in respect of the claim for damages (see paragraphs 82 to 91 below), the Community legislature's choice of economic policy was based on factual circumstances particular to the traders directly affected by the contested regulation. The mere fact that the applicants are in an allegedly disadvantageous competitive position cannot therefore constitute specific circumstances of such a kind as to make them individually concerned by the contested regulation even though they are in a factual situation different from the situations defined objectively by that regulation.

36 Furthermore, even on the assumption that the contested regulation applied to the applicants, it follows from case-law that the fact that a legal provision may have different specific effects on the various persons to whom it applies is not inconsistent with its nature as a regulation when that situation is objectively defined (see the judgments of the Court of Justice in Case 6/68 *Zuckerfabrik Watenstedt* v *Council* [1968] ECR 409 and in Case 101/76 *Koninklijke Scholten Honig* v *Council and Commission* [1977] ECR 797). That case-law is all the more relevant in the present case since the contested regulation is not applicable to the applicants. Moreover, under the system of remedies established by Community law, the question whether it ought to have been applicable is a matter which falls to be examined in the context of possible non-contractual liability on the part of the Community.

37 It follows that the application for annulment must be dismissed as inadmissible.

The claim for damages

Basis of liability

Arguments of the parties

38 The applicants submit that, by adopting the contested regulation, the Council committed a wrongful act which may engage the Community's liability.

39 Referring to the Opinion of Advocate General VerLoren van Themaat in Case 59/84 *Tezi* v *Commission* [1986] ECR 887, beginning at 889, the applicants submit that the conditions laid down by the Court of Justice for liability to be incurred for legislative measures are not applicable on the ground that the contested regulation is in fact, in their regard, a decision of direct and individual concern to them. The mere fact that there have been breaches of principles of Community law renders the Community liable for the resultant damage, without its being necessary to examine the gravity of the infringement.

40 The Council maintains that the contested regulation is a legislative measure, the contested regulation being applicable to all traders having an economic link to the sugar sector in Spain. The regulation involves a choice of economic policy made in a legislative context which is characterized by the exercise of a wide discretion which is essential for the implementation of the Common Agricultural Policy.

Findings of the Court

41 The Court observes first of all that, given the context in which the contested regulation was adopted, that of the common organization of the agricultural markets, the contested measure is a legislative measure of general application which involves a choice of economic policy. Moreover, the Court has already held that for that reason the applicants are not directly and individually concerned by the contested regulation.

42 The second paragraph of Article 215 of the EEC Treaty provides that, in the case of non-contractual liability, the Community, in accordance with the general principles common to the laws of the Member States, is to make good any damage caused by its institutions in the performance of their duties. In the case of legislative measures involving choices of economic policy, the Community will incur liability only where there has been a sufficiently serious breach of a superior rule of law protecting individuals (see the judgments of the Court of Justice in Case 5/71 *Zuckerfabrik Schöppenstedt* v *Council* [1971] ECR 975 and in Joined Cases C-104/89 and C-37/90 *Mulder and Others* v *Council and Commission* [1992] ECR I-3061).

43 It has been consistently held that a sufficiently serious breach implies, in a legislative field such as the one in question, which is characterized by the exercise of a wide discretion essential for the implementation of the Common Agricultural Policy, that the Community cannot incur liability unless the institution concerned has manifestly and gravely disregarded the limits on the exercise of its powers (see the judgments of the Court of Justice in Joined Cases 83/76 and 94/76, 4/77, 15/77 and 40/77 *HNL and Others* v *Council and Commission* [1978] ECR 1209 and in *Mulder and Others* v *Council and Commission*, cited above).

44 It is therefore necessary to consider whether such a breach has been committed in the present case. It is appropriate in that regard to examine the applicants' pleas in

law alleging breach of the principle of the protection of legitimate expectations and breach of the principle of non-discrimination.

The alleged breach of the principle of the protection of legitimate expectations

Arguments of the parties

45 Referring to the judgment of the Court of Justice in Case 74/74 *CNTA* v *Commission* [1975] ECR 533, the applicants submit that the Council acted in breach of the principle of the protection of legitimate expectations by adopting the contested regulation without prior notice and without transitional measures to protect their interests.

46 In support of that contention, the applicants submit that the alignment of the intervention prices of sugar was to occur through the development of common prices in Spain during the seven years following accession. However, since common prices did not develop as expected, the period for alignment was prolonged, in two stages, by Regulation No 1716/91 until the 1995/1996 marketing year.

47 According to the applicants, their legitimate expectations regarding the fixing of the levels of alignment for the remainder of the first stage, that is to say, from 1 January 1993 to 1 July 1993, are beyond dispute. Although Regulation No 1716/91 did not contain any specific provision regarding price alignment during the second

stage, it extended the period of price alignment until the 1995/1996 marketing year, which implied that price changes would be gradually introduced throughout that period.

48 The applicants point out that Regulation No 1716/91, based on an analysis of the sugar market pursuant to Article 70(3)(b) of the Act of Accession, was adopted at a time when the need to establish the single market already existed. The contested regulation, which was adopted with a view to achieving the single market, came as a total surprise to them.

49 The Council first points out that the applicants admit in their statement of reply that they did not lower their selling prices in pesetas on 1 January 1993 because the reduction in the intervention price of sugar in ecu had been entirely offset by the depreciation of the 'green' peseta. As the applicants conduct their business in national currency and as their ostensible legitimate expectation lies, according to the Council, in the fact that they assumed, on the basis of Regulation No 1716/91, that sugar prices (in pesetas) would remain higher in Spain until the 1995/1996 marketing year, there was in this case no legitimate expectation which could have been disappointed.

50 Even if this was not the case, the Council points out that, according to the case-law of the Court of Justice, any prudent and well-informed trader must expect the relevant rules to be modified in order to take account of market developments (see the judgment in Case 78/77 *Lührs* v *Hauptzollamt Hamburg-Jonas* [1978] ECR 169 and in Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395) and that traders cannot rely on a legitimate expectation warranting protection in maintaining an economic benefit accorded to them under a common market organization and certainly not in circumstances where there is no longer economic justification for such a measure. On this point the Council states that the date of

1 July 1995, which marks the end of the prolongation of the period of alignment provided for by Regulation No 1716/91, was not such as to give rise to a legitimate expectation, since the only justification for that prolongation lay in the economic situation of Spanish beet growers and sugar producers, a situation which changed in the interim so as to allow an early alignment of prices on 1 January 1993.

51 The Commission supports the arguments of the Council and adds that the relevant provisions of the contested regulation were identical to the corresponding provisions contained in the Commission proposal to the Council of 11 November 1992 and debated in the Spanish press as early as July 1992.

Findings of the Court

52 It follows from the case-law of the Court of Justice that there is a breach of the principle of the protection of legitimate expectations if, in the absence of an overriding matter of public interest, a Community institution abolishes with immediate effect and without warning a specific advantage, worthy of protection, for the undertakings concerned without adopting appropriate transitional measures (see the judgment in *CNTA* v *Commission*, cited above). As is also clear from the case-law, the scope of the principle of the protection of legitimate expectations cannot be extended to the point of generally preventing new rules from applying to the future effects of situations which arose under the earlier rules, especially in a field such as the common organization of the markets, whose very purpose involves constant adjustments to the variations in the economic situation (see the judgment of the Court of Justice in Case 203/86 *Spain* v *Council* [1988] ECR 4563).

53 It is thus for the Court to determine whether the legislation existing prior to the contested regulation gave rise to a legitimate expectation among traders within the sector concerned.

54 First, it follows from Article 70(3)(a) of the Act of Accession that a transitional period of seven years after accession was envisaged in order for sugar prices in Spain to align themselves with the common prices, the common prices being applicable, without prejudice to Article 70(3)(b), when the seventh move towards adjustment takes place. According to the third recital in the preamble to Regulation No 1716/91, the transitional period was to end by the 1992/1993 marketing year.

55 Second, Article 70(3)(b) of the Act of Accession provides that, where the prices of sugar in Spain were significantly higher than the common prices, the Council was to carry out, at the end of the fourth year following accession, an analysis of the moves towards price alignment, on the basis of an opinion from the Commission accompanied, where appropriate, by suitable proposals. The Council could, in particular, prolong the period for moves towards price alignment and decide on other methods of accelerated moves towards price alignment.

56 It follows that the Council had the power, after the first four marketing years, to adopt a different method of alignment and, at least after the seventh move towards alignment following accession, to carry out a complete alignment of sugar prices by way of regulation. Consequently, the applicants could not, on the basis of the Act of Accession, entertain legitimate expectations that a transitional period of alignment would remain guaranteed beyond the start of the 1992/1993 marketing year.

57 Next, it is necessary to consider whether the adoption of Regulation No 1716/91 could have given rise to a legitimate expectation on the applicants' part.

58 So far as concerns the first stage in the move towards alignment, provided for in that regulation, the Court observes first of all that the contested regulation

amended the price scheme for sugar during the 1992/1993 marketing year, as fixed by Regulation No 1749/92 in the context of Articles 3 and 4 of Regulation No 1716/91. The Court must therefore consider whether that amendment to the price scheme constituted the abolition, with immediate effect and without warning, of a specific advantage worthy of protection.

59 It must be noted in this regard that the fourth and fifth recitals in the preamble to Regulation No 1716/91 provide for the period for moves towards alignment to be prolonged for a period covering five marketing years, up to 1 July 1995, in order to prevent farmers from being affected by too swift a drop in beet prices and also to take account of the extremely difficult situation in the Spanish sugar sector as shown by the analysis carried out at that time.

60 It is also clear from the contested regulation that the Community legislature, at the time when the contested measure was adopted, took the view (see the third recital in the preamble to the regulation) that a complete price alignment, with effect from 1 January 1993, was possible if Spanish beet growers and, if necessary, sugar-cane growers were compensated through the grant of temporary degressive aid. The Community legislature did in fact take the view that the achievement of the single market on 1 January 1993 made it desirable to remove all barriers to trade (see the first recital in the preamble to the regulation).

61 It must also be noted that, according to established case-law, the Community institutions have a wide discretionary power in matters relating to the Common Agricultural Policy and expectations that an existing situation, which may be altered by those institutions in the exercise of their discretionary power, will be maintained cannot be legitimately entertained by traders (see the judgment in *Delacre and Others* v *Commission*, cited above).

62 On the basis of those findings, the Court takes the view that the Council did not, in its choice of economic policy, exceed the limits of its discretionary power. The statement of reasons given for the contested measure demonstrates that the grant of aid was based on considerations which did not go beyond the bounds of its discretion. The decision to discontinue the alignment period was therefore a legitimate choice of economic policy and a legislative measure which the Community was entitled to adopt in the higher interest of achieving the single market.

63 Moreover, although Regulation No 1716/91 extending the period of alignment was adopted after entry into force of the Single European Act, prudent and well-informed traders ought to have realized that achievement of the single market might also lead to an early alignment of the intervention prices of sugar, since the price disparities existing in that sector had led to the introduction of a system of 'accession' compensatory amounts which could maintain barriers to trade between Member States, contrary to the objective of achieving the single market.

64 That is so *a fortiori* here since the proposals which the Commission submitted to the Council on 11 November 1992 and which led to the adoption of the contested regulation received close attention in the Spanish press in July 1992.

65 The Court holds for those reasons that, so far as the first stage in the move towards alignment is concerned, the applicants have not established that legitimate expectations were frustrated in their case.

66 With regard to the second stage in the move towards alignment, it suffices to state that it follows from both the seventh recital in the preamble to Regulation No 1716/91 and Article 7 thereof that the conditions of alignment for that period were

not laid down at the time when that regulation was adopted. Under Article 7, the Council was required, before 1 January 1993, to lay down the conditions for alignment in respect of this second stage. That reason alone warrants dismissal of the argument that the applicants could have had a legitimate expectation worthy of protection in the conditions under which price alignment was carried out with effect from the 1993/1994 marketing year.

67 It follows that the applicants have not established that the total alignment of sugar prices carried out with effect from 1 January 1993 frustrated their legitimate expectations.

68 Consequently, the plea in law alleging breach of the principle of the protection of legitimate expectations must be dismissed.

The alleged breach of the principle of non-discrimination

Arguments of the parties

69 The applicants claim that the contested regulation was also adopted in breach of the principle of non-discrimination laid down in the second subparagraph of Article 40(3) of the Treaty.

70 The applicants first submit that there is no objective justification for the difference in treatment of traders as the contested regulation contains no grounds for such a difference. On that ground alone, therefore, it ought to be annulled for breach of the second subparagraph of Article 40(3) of the Treaty.

71 Secondly, the applicants point out that the Court of Justice ruled in its judgment in *Royal Scholten-Honig*, cited above, that sugar and isoglucose ought in principle to be treated equally. However, the contested regulation treats the two products differently: unlike the applicants, sugar producers were able to benefit from aid for products in stock on 1 January 1993 (Article 2(2)) and from a reduction in the price of sugar beet, which is one of their raw materials (Article 1(2)(b)).

72 The applicants argue in that regard that the question of storage, raised by the Council, is immaterial in view of the fact that both sugar producers and the applicants themselves suffered a loss of profit margin on sales made after entry into force of the contested regulation, irrespective of the proportion of quantities in stock on 1 January 1993. Moreover, the applicants must also buy in their raw material, cereals, at minimum prices under the common organization of the market in cereals, which sets an intervention price defining the market floor price.

73 Finally, the applicants submit, with regard to the authorization given to Spain to grant adjustment aid to sugar-producing undertakings under certain conditions, that they are faced with problems comparable to those of the latter, following a reduction of approximately 30% of their production capacity when the quota system was introduced.

74 The Council disputes the claim that the contested regulation breaches the principle of non-discrimination, on the ground that the position of sugar producers is objectively different from that of isoglucose producers.

75 The Council first of all contends that the aid granted for sugar in stock was justified on objective grounds since isoglucose producers, unlike sugar producers, are

not obliged to hold stocks as an unavoidable consequence of processing, since isoglucose must be used immediately after manufacture. With regard to sugar in stock on 1 January 1993, sugar producers had, for the beet from the 1992 harvest, paid the higher minimum price applicable during the 1991/1992 marketing year and had not therefore benefited from the reduction in the price of beet following entry into force of the contested regulation. Isoglucose producers, in contrast, were free to buy their raw material without being obliged to pay a minimum price fixed by the Community.

76 Next, as regards the national aid which Article 3 of the contested regulation authorizes Spain to pay to sugar producers in order to facilitate structural adjustments, the Council submits that isoglucose producers do not have comparable structural problems. In fact, Spanish isoglucose producers' working methods and plant are more suitable and more modern than those used by sugar producers.

77 In conclusion, the Council denies that there is any causal link between entry into force of the contested regulation and the losses which the applicants claim to have incurred. The Council points out, first, that the applicants have acknowledged that they did not reduce their selling prices in pesetas after entry into force of the contested regulation and, second, that the information provided by the applicants appears to contradict their claim that they would have raised their prices had the contested regulation not been adopted.

78 The Commission states that the contested regulation did not actually grant aid to sugar producers, as the applicants maintain. Apart from aid granted to those who held stocks on 31 December 1992, aid to sugar producers was limited to the national aid authorized under Article 3 of the contested regulation in connection with restructuring. Had aid been granted to isoglucose producers in that

regulation, they would then have been treated differently from sugar producers since they had no need of restructuring aid.

Findings of the Court

79 The Court points out first of all that, according to settled case-law, the statement of the reasons on which a measure is based, which is required by Article 190 of the Treaty, must be adapted to the nature of the measure in question. It must enable the reasoning of the Community institution responsible for adopting the measure to be understood clearly and unequivocally so as to enable those concerned to know the reasons for the measure adopted and the Court to exercise its power of review (see the judgment of the Court of Justice in Case 108/81 *Amylum* v *Council* [1982] ECR 3107).

80 In its statement of reasons, the contested regulation mentions that 'the achievement of the single market on 1 January 1993 makes it desirable to remove all barriers to trade', that 'accession compensatory amounts are due to be applied to trade in sugar sector products between Spain and the other Member States until the end of the 1994/95 marketing year', and also that 'prices can be aligned at the earlier date of 1 January 1993, and in consequence all accession compensatory amounts abolished, if Spanish beet producers are compensated by a temporary degressive aid'. Finally, the preamble to that regulation states that 'the Spanish market situation is such that the prices laid down by this regulation can be applied in Spain'.

81 That statement of reasons, laconic though it may be, satisfies the requirement laid down by Article 190 of the Treaty. The contested regulation cannot be required to indicate why no transitional measures for producers who might be indirectly affected by the regulation are provided for therein. The applicants' argument that the regulation is vitiated by insufficient reasoning must therefore be rejected.

82 Next, it must be pointed out that it is settled law that the principle of non-discrimination precludes comparable situations from being treated differently unless the difference in treatment is objectively justified (see, most recently, the judgment of the Court of Justice in Joined Cases C-267/88 to C-285/88 *Wuidart and Others* v *Laiterie Coopérative Eupenoise and Others* [1990] ECR I-435).

83 As far as the existence of a competitive relationship between isoglucose and sugar is concerned, the second and third recitals in the preamble to Regulation No 1785/81 state that 'isoglucose is a direct substitute for liquid sugar obtained from sugar beet or sugar cane; ... therefore, the markets in sugar and isoglucose are closely linked; ... and any Community decision relating to one of these products inevitably has repercussions on the other; ... these price guarantees given for sugar also benefit sugar syrups and isoglucose, the prices of which are based on those of sugar'.

84 Secondly, it should be borne in mind that the Court of Justice, in its judgment in *Royal Scholten-Honig*, cited above, a case involving the introduction of a system of levies on the production of isoglucose, held, with reference to the preambles to the regulations at issue concerning the existence of a competitive link between the two products — which were substantially reproduced in Regulation No 1785/81 — that sugar and isoglucose were in comparable situations.

85 The Court, however, considers that it cannot be ruled out that there may be circumstances particular to the production of sugar which may in some cases justify treating sugar producers differently from producers of isoglucose.

86 The Court must therefore examine whether there is any difference in treatment between sugar producers and isoglucose producers and, if so, to what extent such a difference in treatment is justified.

87 First, as regards the aid which Spain is authorized to grant to sugar-producing undertakings as part of restructuring plans to rationalize the sugar industry, the Court notes that the applicants have not adduced any evidence or made any submissions capable of rebutting the Council's arguments. On the basis of the reasons set out by the Council (see paragraph 76 above), the Court therefore takes the view that the Community legislature, in authorizing that aid, did not manifestly and seriously disregard the limits on the exercise of its powers.

88 Second, as regards the aid paid to sugar producers holding stocks on 31 December 1992, it should be noted, as the Council has correctly pointed out, that this aid was intended to provide compensation for sugar producers who had, for products held in stock at that date, paid for beet from the 1992 harvest at the higher minimum price in force before entry into force of the contested regulation.

89 It appears from the documents before the Court — and the applicants have not denied — that sugar producers are in fact obliged, as an unavoidable result of sugar processing (beet is harvested in the autumn of a given year, subsequently processed into sugar and gradually marketed throughout the year), to maintain stocks; further, the total amount of sugar to be sold during the remainder of the 1992/1993 marketing year was in stock on 31 December 1992. The applicants acknowledged, during the written procedure, that only a limited proportion of their produce, that is to say approximately 7% (Campo Ebro Industrial), 2% (Levantina Agrícola Industrial) and 1% (Cerestar Iberíca), which was to be sold during the last six months of the abovementioned marketing year, was in stock when the contested regulation entered into force. It also appears from the documents that, by its very nature, production of isoglucose does not necessarily entail formation of stocks of

the finished product and that, unlike sugar, isoglucose is not suitable, by reason of its characteristics, for long-term storage.

90 Moreover, isoglucose producers, in contrast to sugar producers, are not obliged to pay a minimum price fixed by the Community for their raw materials. The arguments put before the Court by the applicants during the oral procedure show that they paid, for their raw materials, a price determined by market conditions, of which the intervention price was merely one factor.

91 Finally, with regard to the reduction in the minimum price of beet pursuant to Article 1(2)(b) of the contested regulation, it must be pointed out that, even though production of isoglucose, like production of sugar, is subject to a system of quotas, producers of isoglucose have, as stated above, not been subject to the obligation to purchase their raw materials at a minimum price fixed by the Community. In some cases the applicants can therefore profit directly from any improvements in conditions on the cereals market, whereas sugar producers do not have the same opportunity as far as their raw materials are concerned.

92 The Court accordingly considers that it has not been shown that the Council, by not adopting similar transitional measures in favour of isoglucose producers, manifestly and seriously disregarded the limits on the exercise of its powers, since the applicants were in a situation which was objectively different from that of sugar producers.

93 It follows that the plea in law alleging breach of the principle of non-discrimination must also be dismissed.

94 It follows from all the foregoing considerations that the Council cannot be held to have committed a serious breach of a superior rule of law for the protection of individuals. The claim for damages must therefore be dismissed as unfounded, without its being necessary to examine whether the damage alleged goes beyond the limits of the normal economic risks inherent in the sector in question.

Costs

95 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful and the Council has applied for costs, the applicants must be ordered to pay their own costs as well as those of the Council.

96 Under Article 87(4) of the Rules of Procedure, the Commission, which has intervened in support of the Council, must bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1. **Dismisses the application as inadmissible in so far as it seeks annulment of Council Regulation (EEC) No 3814/92 of 28 December 1992 amending Regulation (EEC) No 1785/81 and introducing application in Spain of the sugar sector prices provided for by that regulation;**

2. **Dismisses the application as unfounded in so far as it seeks damages;**

3. **Orders the applicants to pay their own costs and jointly and severally to bear the costs incurred by the Council;**

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

Schintgen García-Valdecasas Kirschner

Vesterdorf Bellamy

Delivered in open court in Luxembourg on 21 February 1995.

H. Jung R. Schintgen

Registrar President