

JUDGMENT OF THE COURT OF FIRST INSTANCE  
(Third Chamber, Extended Composition)

15 November 2007\*

In Case T-310/06,

**Republic of Hungary**, represented by J. Fazekas, R. Somssich and K. Szíjjártó, acting  
as Agents,

applicant,

v

**Commission of the European Communities**, represented by F. Clotuche-  
Duvieusart and Z. Pataki, acting as Agents,

defendant,

APPLICATION for annulment of certain provisions of Commission Regulation (EC) No 1572/2006 of 18 October 2006 amending Regulation (EC) No 824/2000 establishing procedures for the taking-over of cereals by intervention agencies and laying down methods of analysis for determining the quality of cereals (OJ 2006 L 290, p. 29),

\* Language of the case: Hungarian.

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES  
(Third Chamber, Extended Composition),

composed of M. Jaeger, President, V. Tiili, J. Azizi, E. Cremona and O. Czúcz, Judges,

Registrar: K. Andová, Administrator,

having regard to the written procedure and further to the hearing on 22 May 2007,

gives the following

## **Judgment**

### **Legal background**

- <sup>1</sup> The common organisation of the market in cereals is governed by Council Regulation (EC) No 1784/2003 of 29 September 2003 (OJ 2003 L 270, p. 78, 'the COM Regulation').

- 2 Article 5 of the COM Regulation provides that the intervention agencies designated by the Member States are to buy in common, *inter alia*, maize offered to them and harvested in the Community, provided that the offers comply with conditions laid down, in particular in respect of quality and quantity. Buying-in may take place only during the intervention periods, that is in this case to say, for Hungary the period from 1 November 2006 to 31 March 2007.
  
- 3 The detailed rules for the application of the COM Regulation are laid down in Commission Regulation (EC) No 824/2000 of 19 April 2000 establishing procedures for the taking-over of cereals by intervention agencies and laying down methods of analysis for determining the quality of cereals (OJ 2000 L 100, p. 31). This regulation also determines the criteria in respect of the minimum quality for intervention purchase.
  
- 4 On 18 October 2006 the Commission adopted Regulation (EC) No 1572/2006 amending Regulation (EC) No 824/2000 (OJ 2006 L 290, p. 29, 'the Regulation'), in order to take into account the new situation in the intervention scheme, in particular the long-term storage of certain cereals and its effects on product quality. The Regulation adapts the quality criteria laid down by Regulation No 824/2000 and introduces a new criterion of specific weight for maize. The changes so effected are applicable from 1 November 2006.
  
- 5 Article 3 of Regulation No 824/2000, as amended by the Regulation, specifies the methods to be used in determining the quality of cereals offered for intervention. Article 3.9 provides the standard method for determining specific weight, namely, the method under ISO 7971/2:1995 and, for maize, 'the traditional methods applied'.

- 6 In accordance with Article 8(1) of Regulation No 824/2000, the price payable to the offerer is the intervention price referred to in Article 4(1) of the COM Regulation, that is to say, EUR 101.31 per tonne. This price is adjusted in accordance with the increases and reductions referred to in Article 9 of Regulation No 824/2000.
- 7 Article 9 of Regulation No 824/2000, as amended by the Regulation, specifies the amounts of the increases and reductions to be applied to the intervention price. It provides, *inter alia*:

‘The price increases or reductions by which the intervention price is increased or decreased shall be expressed in euro per tonne and applied jointly, as provided below:

...

- (b) where the specific weight of cereals offered for intervention differs from the weight/volume ratio of ... 73 kg/hl for maize, the reductions to be applied shall be those listed in Table III of Annex VII.

...’

- 8 Annex I to Regulation No 824/2000, as amended by the Regulation, provides, in point E, that the minimum specific weight for maize is 71 kg/hl.

- 9 Table III in Annex VII to Regulation No 824/2000, as amended by the Regulation, provides for the following price reductions in terms of specific weight for maize: EUR 0.50 per tonne for a specific weight less than 73 to 72 kg/hl and EUR 1 per tonne for a specific weight less than 72 to 71 kg/hl.

### **Facts giving rise to the dispute**

- 10 By letter of 13 January 2006, addressed to the Director General of the Commission Directorate-General 'Agriculture and Rural Development', the Hungarian authorities gave notice of difficulties encountered in intervention storage for keeping maize grain stored for long periods, of an increase in the percentage of broken grains and of the need for the European Agricultural Guarantee Fund to take over the costs involved in long-term storage.
- 11 After several discussions the Commission presented to the group of experts of the Management Committee for Cereals ('the cereals experts' group') on 27 July 2006 a draft regulation on the upgrading of the conditions relating to maximum moisture content, broken grains and grains overheated during drying and on the introduction of a new minimum specific weight criterion for maize (of 73 kg/hl). It was stated that those changes were to be adopted before 1 November 2006, the date on which the intervention period started in most Member States.
- 12 As a result of the draft issued by the Commission, many discussions and an exchange of correspondence between the representatives of the Hungarian Government and those of the Commission took place. In those discussions, the Hungarian Government let it be known that in its view the Commission's proposals

relating to broken grains and specific weight would have an especially serious and unjustified effect on Hungary, given that in ordinary weather conditions 90% of Hungary's annual maize production would be excluded from intervention. The Hungarian Government added that to reduce the intervention price below 75 kg/hl would affect Hungarian production in its entirety.

- 13 By letter of 8 August 2006, the Hungarian Secretary of State for Agriculture and Rural Development reasserted the Government's position, supporting it with facts from quality analysis institutions, and asked the Commission to reconsider the draft regulation.
- 14 On 31 August 2006, the draft regulation was debated for a second time by the Cereals Experts' Group. At that meeting, several Member States expressed their opposition or their objections, especially as regards the introduction of the criterion of minimum specific weight.
- 15 By letter of the same date addressed to the Commission, the Hungarian Secretary of State repeated the Hungarian Government's position and again requested the Commission to reconsider its point of view.
- 16 On 6 September 2006 the draft regulation was placed in the electronic information system intended for the national administrations of the Member States with a view to a vote by the Management Committee for Cereals before the end of September 2006.

- 17 On 7 September 2006 the Cereals Experts' Group once again discussed the draft regulation.
- 18 On 18 September 2006, at the meeting of the Council of Agriculture Ministers, the Republic of Hungary, the Republic of Slovakia and the Republic of Austria pronounced themselves opposed to the draft regulation and the Member of the Commission responsible for Agriculture and Rural Development, Mariann Fischer Boel, undertook to make certain alterations to the draft, while stating that it was the Commission's duty to watch over the Community's financial interests.
- 19 On 21 September 2006, in order to take into account the points of view of the Republic of Hungary, the Slovak Republic and the Republic of Austria and the undertaking entered into by the Commission, the latter presented to the Management Committee for Cereals an amended draft regulation in which the specific weight condition for maize was thenceforth fixed at 71 kg/hl instead of 73 kg/hl and a price reduction was provided for any value between 71 and 73 kg/hl.
- 20 On 28 September 2006, at the meeting of the Management Committee for Cereals, the maximum moisture content of grain allowed in the draft regulation was raised from 13% to 13.5%.
- 21 On 18 October 2006 the Commission adopted the Regulation, which entered into force on the day it was published in the *Official Journal of the European Union*, 20 October 2006, and it has been applicable since 1 November 2006.

22 The second and third recitals in the preamble to the Regulation state as follows:

- (2) Cereals of inadequate quality for use or storage should not be accepted into intervention. To this end, account should be taken of the new situation regarding intervention, in particular the long-term storage of certain cereals and its effects on product quality.
- (3) Therefore, in order to protect intervention products from deterioration and to maintain their suitability for subsequent use, the quality criteria for maize set out in Annex I to Regulation (EC) No 824/2000 should be upgraded. To this end, the maximum moisture content and the maximum percentage of broken grains and grains overheated during drying should be reduced. Given the agronomic similarities of sorghum and maize, and in the interests of consistency, the same measures should be laid down for sorghum. Moreover, in the interests of consistency with the other cereals that are eligible for the intervention scheme, a new specific minimum weight criterion should be laid down for maize.'

### **Procedure and forms of order sought**

23 By application lodged at the Registry of the Court of First Instance on 17 November 2006, the applicant brought this action seeking annulment of certain provisions of the Regulation ('the contested provisions'), viz:

- in Article 1(1), the words 'and, in the case of maize, with the traditional methods applied';



- in Article 1(3)(b), the words ‘73 kg/hl for maize’;
  
- in line ‘E. Minimum specific weight (kg/hl)’ of the table in point 1 of the Annex, the value ‘71’ for maize;
  
- in table III in point 2 of the Annex, the reduction values for the intervention price for maize.

24 The applicant requested the Court of First Instance to refer the case to the Grand Chamber pursuant to Articles 14(1) and 51(1) of the Rules of Procedure of the Court of First Instance.

25 By decision of 11 December 2006, the Court of First Instance, interpreting the applicant’s request for referral of the case to the Grand Chamber as seeking, in the alternative, referral of the case to a Chamber composed of five Judges, on the proposal of the Third Chamber referred the case to the Third Chamber (Extended Composition) pursuant to the second subparagraph of Article 51(1) of the Rules of Procedure, according to which the case is to be decided by a Chamber composed of at least five Judges when a Member State or an institution of the European Communities which is a party to the proceedings so requests.

26 By separate document lodged on the same day, the applicant made an application for the Court of First Instance to decide the case under an expedited procedure, in accordance with Article 76a of the Rules of Procedure.

- 27 By separate document lodged on the same day, the applicant made an application for interim measures pursuant to Article 242 EC, seeking suspension of operation of the contested provisions.
- 28 By letter of 4 December 2006 the Commission made known its opposition to the request for an expedited procedure.
- 29 By decision of 13 December 2006 the Court of First Instance granted the application for an expedited procedure.
- 30 By order of 16 February 2007 (Case T-310/06 R *Hungary v Commission*, not published in the ECR), the President of the Court of First Instance rejected the application for suspension of operation and reserved the costs.
- 31 On hearing the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber (Extended Composition)) decided to open the oral procedure.
- 32 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 22 May 2007.
- 33 The applicant claims that the Court should:
- annul the contested provisions;

— order the Commission to pay the costs.

34 The Commission contends that the Court should:

— dismiss the action;

— make an appropriate order as to costs.

## **Admissibility**

### *Arguments of the parties*

35 The Commission observes that the sole aim of the action is annulment of the provisions of the Regulation relating to the condition of minimum specific weight for maize and wonders whether the action is admissible, given that the contested provisions cannot be detached from the rest of the Regulation in accordance with the Court of Justice's case-law. In its view, specific weight is an essential criterion chosen by the legislature to increase the quality of grain bought in intervention and to ensure, as a result, the sale of quality grain after long-term storage.

36 The Commission argues that the criterion of specific weight is necessarily linked to the other yardsticks of quality strengthened by the Regulation and that the latter

therefore constitutes an indissoluble whole. In point of fact, reducing the moisture content will inevitably lead to an increase in specific weight. Without this new criterion of specific weight, any real chance of selling the grain would not be guaranteed and the current criteria, even if upgraded, would be ineffective. That connection between the various criteria of quality is, moreover, recognised by the applicant in paragraph 95 of its application.

- 37 The applicant maintains that the application for annulment in part of the Regulation is admissible. The specific weight condition fixed for maize is a factor severable from the other intervention criteria, to annul which would not objectively alter the substance of the Regulation (Case C-29/99 *Commission v Council* [2002] ECR I-11221, paragraphs 45 and 46, and Case C-239/01 *Germany v Commission* [2003] ECR I-10333, paragraphs 34 and 37). According to the applicant, annulment of that condition would in no way change the essential terms of the Regulation, for the situation would revert to what it had been before that measure was adopted.

### *Findings of the Court*

- 38 The Commission challenges the admissibility of the action on the ground that the contested provisions cannot be severed from the rest of the Regulation.
- 39 It is to be borne in mind on this point that, as follows from settled case-law, annulment in part of a Community measure is possible only if the elements annulment of which is sought may be severed from the remainder of the measure (*Commission v Council*, cited in paragraph 37 above, paragraphs 45 and 46; Case C-378/00 *Commission v Parliament and Council* [2003] ECR I-937, paragraph 30,

and *Germany v Commission*, cited in paragraph 37 above, paragraph 33). Similarly, the Court of Justice has repeatedly ruled that that requirement of severability is not satisfied when partial annulment of a measure would have the effect of altering its substance (Case C-36/04 *Spain v Council* [2006] ECR I-2981, paragraphs 13 and 14, and Case C-540/03 *Parliament v Council* [2006] ECR I-5769, paragraph 28).

40 In this instance, the Regulation makes it clear that its central concern is the raising of the quality of maize accepted for intervention. To that end, the Regulation provides two differing kinds of measure, that is to say, according to the first sentence of the recital 3 in the preamble to the Regulation, the upgrading of the quality criteria for maize laid down in the period before Annex I to Regulation No 824/2000, which the applicant does not seek to have annulled, on the one hand, and on the other, according to the last sentence of that same recital, the introduction of a new specific weight criterion for maize in the interests of consistency with the rules applicable to other cereals eligible for intervention.

41 It follows that those two kinds of measure are not indissociably linked and that any annulment in part of the Regulation, in so far as it introduces a new criterion of specific weight for maize, would not alter the actual substance of the provisions that did not form the subject-matter of that annulment. In this regard, the quality criteria for maize upgrading of which is provided for by the Regulation (namely, the maximum moisture content of maize, the maximum percentage of broken grains and the percentage of grains overheated during drying), unlike the new criterion of specific weight for maize, are those already in existence under the former rules, save the criterion of specific weight.

42 The Commission's argument that specific weight is an essential criterion chosen by the legislature in order to improve the quality of grain bought in intervention must be rejected. In the first place, contrary to what the Commission maintains, the

Regulation in no way makes it plain that specific weight is an essential condition if the quality of maize accepted for intervention is to be improved. In the second place, even if that were the case, the Commission has not been able to explain how annulling just the provisions providing for the introduction of that new condition would alter the substance of the Regulation.

43 With regard to the argument that the criterion of specific weight is necessarily linked to the other conditions upgraded by the Regulation, since a reduction in moisture content causes an increase in specific weight, the Regulation establishes no connection between those two criteria and the moisture content criterion was already in existence when there was no specific weight criterion.

44 Moreover, in its written pleadings the Commission has argued that the purpose of upgrading the pre-existing quality criteria, in particular that of the maximum moisture content of maize, is to permit improved keeping of maize accepted for intervention, whereas the purpose of introducing the criterion of specific weight for maize is to establish a quality standard for the grain bought so as to ensure that, even after a long period of storage inevitably causing a degree of deterioration, the product will still be of sufficient quality to be sold on the market.

45 It follows from the foregoing that the contested provisions are dissociable from the rest of the Regulation, so that the application for annulment in part is admissible.

## **Substance**

46 The applicant puts forward six pleas in law in support of its action for annulment. The first alleges breach of the principles of protection of legitimate expectations,

legal certainty and proportionality. The second alleges that the author of the Regulation lacked the competence to adopt it. The third alleges misuse of powers. The fourth alleges a manifest error of assessment. The fifth alleges that there has been a breach of the requirement to state reasons. Finally, the sixth alleges infringement of the rules of procedure of the Management Committee for Cereals.

*Regarding the first plea: breach of the principles of protection of legitimate expectations, legal certainty and proportionality*

The first part of the first plea, alleging breach of the principle of legitimate expectations

— Arguments of the parties

<sup>47</sup> The applicant maintains that the Commission has frustrated the legitimate expectations of Hungarian producers inasmuch as, in introducing a new criterion of quality relating to the specific weight of maize 12 days before the Regulation became applicable, it has changed, fundamentally and unforeseeably, the conditions of intervention in respect of maize, even for responsible and well-informed producers.

<sup>48</sup> The applicant recognises that, in the sphere of the common organisation of markets where the subject-matter has constantly to be adjusted depending on variations in the economic situation, traders cannot have a legitimate expectation that an existing situation which is capable of being altered by the Community institutions in the exercise of their discretionary power will be maintained (Case C-350/88 *Delacre and*

*Others v Commission* [1990] ECR I-395, paragraph 33). Nevertheless, it takes the view that there are, in this case, special circumstances that make it possible to invoke the principle of the protection of legitimate expectations.

- 49 On this score, the applicant argues that the conditions set out by the Court of Justice concerning the protection of legitimate expectations in Case C-368/89 *Crispoltoni* [1991] ECR I-3695, '*Crispoltoni I*', have in the circumstances of this case been satisfied. In the first place, the changes relating to the quality of the product bought in intervention were made after the Hungarian producers had already taken decisions involving considerable investment (buying seeds and sowing equipment, ploughing, etc.). The new criterion of minimum specific weight depends mainly on the variety of seed used and was introduced when farmers were no longer in a position to alter the ploughed areas or, therefore, their investments.
- 50 In the second place, the introduction of the quality criterion relating to minimum specific weight for maize is quite unheard of and unprecedented in both Community law and European custom. On this head, the applicant emphasises that the amendment of the quality conditions for maize put forward for intervention was suggested for the first time on 27 July 2006 at a meeting of the Management Committee for Cereals. That being so, the Hungarian producers, even if prudent and circumspect, could not, for want of prior information, reasonably have expected that the variety of maize sown and the technology used would no longer enable them to produce maize meeting the quality conditions for buying in intervention. Although farmers produce for the free market, the conditions for intervention buying nevertheless influence their financial decisions.
- 51 In the third place, the date on which the contested provisions entered into force took producers by surprise, for they had reasonably expected to have time in which to adjust to the introduction of such a novel obligation.



52 Finally, the applicant claims that the establishment of the new criterion of specific weight, reflecting the aim of consonance with other cereals eligible for intervention, was unforeseeable and could not have been anticipated by changes on the market. While the applicant admits that responsible and well-informed producers must expect reasonable risks arising out of economic change and must provide for any alterations made by the Commission in order to cope with an unbalanced market, it none the less takes the view that those producers could not have anticipated the introduction of the specific weight condition when assessing the risks attaching to the produce. In consequence, they ought not to be required, according to the applicant, to bear the financial burden of the introduction of that new criterion, which goes beyond the economic risks inherent in their farming activity.

53 The Commission maintains, first, that the objective pursued by the adoption of the Regulation is not the introduction of a measure of standardisation but the resolution of a new problem occurring in the field of intervention since the year 2004/05, linked to the long-term storage of maize and its effect on the quality of the produce. As a matter of fact, maize being a cereal that, on account of its biological characteristics, tends to deteriorate very rapidly, the proper management of stocks made it necessary, in the Commission's opinion, to raise the quality criteria. It claims thus that upgrading the current criteria, viz, moisture content and the percentage of broken and overheated grains, must make it possible to avoid too rapid a deterioration of maize grains and so to guarantee longer keeping, and also that introducing the new criterion of minimum specific weight must make it possible to ensure a certain quality in the grain bought so that the grain available after long-term storage is of merchantable quality.

54 The Commission stresses that, in order to guarantee maize producers a certain market price, it is not necessary for the Community to buy, through the intervention scheme, the entire production of the Member States, particularly cereals of lesser quality. So, supposing that a large part of the Hungarian harvest did not meet the intervention conditions, the intervention agency would still play its part in protecting the market, since it would make it possible to maintain a certain price level, the only change being that the grain bought in intervention would be of better quality.

- 55 Then, the Commission, although accepting that the variety of grain can influence the final specific weight of the crop, nevertheless challenges the applicant's assertion that specific weight depends mainly on the variety of grain sown.
- 56 The Commission states in this connection that specific weight enables the density of grain to be measured, when a known volume of grain is weighed and compared with an equal volume of water. The criterion of minimum specific weight is a grain classification factor according to which a superior quality of grain corresponds to a high specific weight. It argues that, in general, specific weight depends on water content and the level of impurities, with the result that specific weight increases when the moisture content of cereal decreases and conversely. Consequently, when a crop yield is high on account of ideal weather conditions in terms of sunshine and above all of the amount of water, specific weight tends to be low and the other way round in dry seasons. It follows, according to the Commission, that the specific weight of the maize harvested is an open parameter depending on numerous factors, the chief of which is the weather in the year in question. Other factors to be taken into account are the seed variety, the quality of the soil and farming practice.
- 57 The Commission asserts that the 'horse-tooth' variety, grown mainly in Hungary, produces a maize grain that may, according to climatic conditions, attain highly variable specific weights and that the minimum specific weight fixed for intervention buying (71 kg/hl) is broadly attained, depending on the marketing year. It maintains that the applicant itself has stated, moreover, that that variety produces a maize grain varying between 68 kg/hl and 74 kg/hl. The fact that maize-seed catalogues do not state the specific weight of each of the seeds sold is an indication that that criterion is not linked principally to the variety chosen and that it changes in similar proportions for all varieties. The variations found between the marketing years for maize harvested in Hungary from 2001 to 2006, as shown in the table in Annex A.12 to the application, demonstrate that the average specific weight of a harvest is essentially dependent on climate factors.

- 58 Specific weight not depending principally on the variety of maize grain sown, the adoption of the contested provisions does not, according to the Commission, constitute the adoption of measures having effects on producers' investments.
- 59 Furthermore, the Commission challenges the analysis of the Hungarian authorities, which takes as its starting point the supposed normality of the year 2005/06 in order to determine average specific weight for the harvest of 2006/07. It explains in this respect that the marketing year 2006/07 produced a harvest which was normal, even good in terms of rain and sunshine, and which cannot be compared with the previous marketing year which had been exceptional and had produced a harvest of an average specific weight very slightly under the minimum specific weight of 71 kg/hl. The Commission goes on to say that, having regard to the favourable weather conditions until November 2006, Hungarian producers, advised of the new quality requirements, were able to leave the harvest standing, which must have made it possible to reduce its moisture content. The Commission considers, in consequence, that the applicant has not supplied sufficient evidence in support of its claim that half the Hungarian harvest did not satisfy the conditions for intervention buying.
- 60 Last, the Commission emphasises that upgrading the maize quality criteria, with a view to ensuring that stocks can be sold in order to protect the Community's financial interests, has not, none the less, made it impossible for most of the Hungarian production to be offered for intervention for, following the discussions of the Management Committee for Cereals and in order to take into consideration the concerns of the Hungarian authorities, it has changed the parameter of the minimum specific weight, reducing it from 73 kg/hl to 71 kg/hl.
- 61 It adds, on this point, that the present position on the domestic and international cereals markets differs fundamentally from what it was before. Thus, the market price is currently very high and generally greater than the intervention price. The offers made in November 2006 in connection with an invitation to tender for maize held by the Hungarian intervention agency for resale on the domestic market varied

between EUR 123 per tonne and EUR 103 per tonne for the purchase of intervention maize and sales were made on the basis of a minimum price fixed, according to week, at EUR 112 or 113 per tonne, at a price varying between EUR 112 and 123 per tonne. The Commission observes, furthermore, that because throughout the Community conditions on the free market are more favourable to producers than an offer for intervention, offers of maize for intervention received to date come to 8 355 tonnes (all in Hungary), which is a paltry amount in comparison with the quantities offered at the same period in 2005 (1 755 825 tonnes, 1 273 106 of which was in Hungary). In addition, the Commission indicates that there has been a sharp fall on the world market of stocks held in countries that are 'net exporters' of maize and that world production is less than consumption.

— Findings of the Court

- <sup>62</sup> The applicant maintains that, by introducing a new criterion relating to the specific weight of maize 12 days before the Regulation became applicable, the Commission has dashed the legitimate expectations of Hungarian producers.
- <sup>63</sup> According to settled case-law, traders cannot have a legitimate expectation that an existing situation which is capable of being altered by the Community institutions in the exercise of their discretionary power will be maintained (Case 245/81 *Edeka* [1982] ECR 2745, paragraph 27, and *Delacre and Others v Commission*, cited in paragraph 48 above, paragraph 33). That is particularly true in an area such as that of the common organisation of the markets, the objective of which involves constant adjustment to reflect changes in economic circumstances (Joined Cases C-133/93, C-300/93 and C-362/93 *Crispoltoni and Others* [1994] ECR I-4863, '*Crispoltoni II*', paragraph 57, and Case C-104/97 P *Atlanta v European Community* [1999] ECR I-6983, paragraph 52).

- 64 Furthermore, as the Court held in *Crispoltoni I*, cited in paragraph 49 above, paragraph 17, it is settled case-law (see, inter alia, Case 98/78 *Racke* [1979] ECR 69, paragraph 20, and Case 99/78 *Decker* [1979] ECR 101, paragraph 8), 'that, although in general the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected' and 'that case-law also applies where the retroactivity is not expressly laid down by the measure itself but is the result of its content'.
- 65 In that judgment the Court ruled that, by introducing during the course of the year, after decisions involving investment had been taken (areas to be cultivated, planting out etc.), a maximum guaranteed quantity for tobacco and by providing for a proportionate reduction in the intervention price and premium if that quantity was exceeded, the regulations at issue had prejudiced the legitimate expectations of the economic operators concerned. The Court held that 'Although those operators must have considered that measures to limit any increase in tobacco production in the Community and to discourage the production of varieties which were difficult to dispose of were foreseeable, they were entitled to expect that they would be notified in good time of any measures having effects on their investments' (*Crispoltoni I*, cited in paragraph 49 above, paragraph 21).
- 66 The circumstances of the present case are altogether comparable to those in question in the case giving rise to the judgment in *Crispoltoni I*, cited in paragraph 49 above.
- 67 The Regulation was adopted on 18 October 2006, published on 20 October 2006 and has been applicable since 1 November 2006, that is to say, the first day of the intervention period concerned, with the result that the new quality criteria which it lays down apply to maize planted in the spring of 2006 and harvested in the autumn of 2006.

- 68 Thus, by introducing a new criterion relating to the specific weight of maize 12 days before the Regulation became applicable, that is to say, at a time when the producers had already sown the seeds and when they could no longer influence the specific weight of the crop, the contested provisions produce effects on the investments made by the producers concerned in that they made fundamental changes to the conditions for offering maize for intervention.
- 69 Furthermore, the measures at issue were not notified to the farmers concerned in good time. Moreover, in its arguments concerning breach of the principle of protection of legitimate expectations, the Commission has not put forward any evidence that might disprove the applicant's assertion that even responsible and well-informed producers could not have foreseen that the Regulation would be adopted. At the very most, the Commission confines itself to the mention, in the introduction to its defence, of a letter of 13 January 2006 addressed by the Hungarian authorities to the Commission, recounting the difficulties encountered in intervention storage in respect of the conservation of the grain, the discussion of 9 March 2006 within the Management Committee for Cereals on the matter of long-term storage of maize, a letter from the Commission to the Hungarian authorities and further discussions held in June 2006. It would seem, however, that none of those discussions or letters referred in any way whatsoever to the question of introducing, even potentially, a new criterion of specific weight.
- 70 On the contrary, the documents in the file show that it was only on 27 July 2006, that is to say, long after investment decisions had been taken by the farmers concerned, that the Commission placed before the Management Committee on Cereals the draft regulation designed to introduce the contested new criterion of specific weight.
- 71 It is, in addition, to be emphasised, first, that the contested provisions did not merely reinforce the pre-existing criteria, but introduced a new criterion and, second, that the specific weight condition is quite unprecedented in the maize trade in the Community. As was stated in Case C-324/96 *Petridi* [1998] ECR I-1333, paragraphs 43 to 45, the Court had held in *Crispoltoni I* that the regulations at issue had

infringed the legitimate expectations of the traders concerned, in that they introduced a system of maximum guaranteed quantities unfamiliar to the traders concerned both in regard to the nature of the new measures for the organisation of the tobacco market in the Community and in respect of the date on which those measures were to come into effect.

72 It follows from the foregoing that, by introducing a new criterion of minimum specific weight below which maize may not be offered to the intervention agency or must be reduced in price, without the producers concerned having been notified in good time, the contested provisions have infringed the legitimate expectations of those producers. The first part of the first plea in law is therefore well founded.

73 No argument put forward by the Commission is such as to shake that conclusion.

74 In the first place, the argument that good management of stocks required an upgrading of quality criteria and that specific weight was one aspect of quality is irrelevant to the examination of the first plea, alleging breach of the principle of protection of legitimate expectations. The question is not, in point of fact, whether the contested measures are appropriate (that issue is the subject-matter of the pleas based on misuse of powers and manifest error of assessment) but whether, even supposing that they are, their introduction has not caused a breach of the principle of protection of legitimate expectations.

75 In the second place, the argument that the contested measures are not measures affecting investments because specific weight does not principally depend on the variety sown must also be rejected.

76 In reality, investment decisions cannot be reduced merely to the choice of a seed variety, but rather include all the stages from the actual decision to plant maize and determination of the areas to be planted until harvest. With a view to showing that the contested provisions did damage the investments made by the producers in question, the applicant has further argued that the Commission had changed the conditions for intervention in respect of maize at a time when producers had already made their sowings. Although the applicant has indeed asserted that the type of seed chosen largely determines the specific weight of the produce harvested, it has none the less defined investments more broadly and in this regard has mentioned other materials and methods used, the preparation of the soil, the machines used for sowing, the special adaptor for combine-harvesters and, in more general fashion, the technology employed.

77 Furthermore, in addition to the fact that it is without any bearing, the Commission's argument that specific weight does not depend on variety is not persuasive. First of all, it is to be observed that the Commission does no more than make an unsupported assertion and that the argument appears therefore incapable of confuting the evidence and studies relied on by the applicant. So, the Commission's statement that the table presented by the applicant (Annex A.12), showing the average specific weight of maize harvested in Hungary between 2001 and 2006 demonstrates that the specific weight of a harvest depends chiefly on meteorological factors, that weight varying from year to year without any great alteration in the varieties of maize sown, is groundless. The table shows that average specific weight has varied from 70.90 kg/hl to 73.22 kg/hl and it is clear from the documents produced by the applicant (Annex A.6) that the 'horse-tooth' variety, mainly grown in Hungary, produces maize of a specific weight between 68 and 74 kg/hl, whereas other varieties reach a higher specific weight (74 to 82 kg for the Keményszemű variety and 72 to 79 kg for the Puhaszemű variety). Then, the Commission has acknowledged, both in its written pleadings and at the hearing, that the variety may, to a certain extent, influence the specific weight of the crop. Last, the Commission maintains that the specific weight of maize is an open parameter subject to a large number of factors, the chief being the weather in the particular year, and others being the quality of the soil and above all the manner of cultivation (date of sowing,



quality of planting, care taken in irrigation, date of harvest etc.). However, apart from the climate, all the other factors mentioned could have been taken into account by the producers concerned in order to produce maize of a higher specific weight if they had been informed timeously of the measures contemplated.

78 In the third place, with regard to the contention that the applicant has not sufficiently demonstrated that more than half the Hungarian harvest did not meet the specific weight condition, it is enough to remark that in *Crispoltoni I*, cited in paragraph 49 above, the Court of Justice laid down no condition regarding the extent of effects on investments in order to make a finding of breach of the principle of protection of legitimate expectations. What is more, the Commission does not indicate on what basis such a condition might be founded or what proportion of the harvest need be affected for it to be admitted that legitimate expectations have been frustrated.

79 In addition, the table (Annex A.12) produced by the applicant and not challenged by the Commission shows that, even in years in which the average specific weight of the harvest was highest, 10% of that harvest would not have satisfied the criterion fixed by the contested provisions for admission to intervention and nearly 40% of production would have been affected by a price reduction.

80 Moreover, even if farmers produce first for the free market, the fact remains that the conditions for intervention influence their economic decisions and that they might reasonably expect, when making their investments (sowing of seeds, cultivation etc.), that the varieties and technology hitherto employed would continue to meet the Community quality conditions required for it to be possible for the maize they produced to be offered for intervention. What is more, in *Crispoltoni I*, cited in paragraph 49 above, the Court of Justice declared invalid the contested regulation which merely provided that for each 1% by which the maximum guaranteed quantity was exceeded the intervention prices and premiums for the different varieties of tobacco should be reduced by 1%, and the national court had referred to the case of one producer only.

- 81 It follows from the foregoing that the contested provisions must be annulled.
- 82 Furthermore, in the plea in law alleging breach of the duty to state reasons, the applicant has also claimed that the Commission had not indicated the particular reasons why the new, stricter, criteria were to apply from the time of opening offers into intervention, 1 November 2006, which is 12 days after the Regulation was published.
- 83 According to settled case-law, the purpose of the statement of reasons required by Article 253 EC is to enable the persons concerned to know the reasons for the measure adopted and thus enable them to defend their rights and the Community judicature to exercise its power of review. The statement must accordingly disclose in a clear and unequivocal fashion the reasoning followed by the Community authority which adopted the measure in issue. In that regard, it is to be borne in mind that in Joined Cases C-260/91 and C-261/91 *Diversinte and Iberlacta* [1993] ECR I-1885, paragraph 10, the Court of Justice declared invalid the regulation challenged in the case giving rise to that judgment, considering that the statement of the grounds on which it was based did not enable the Court to check, in particular, how the desired retroactive effect was justified by the purpose of the regulation or whether the legitimate expectations of the traders concerned had been duly respected.
- 84 The Regulation gives no indication whatsoever of the reasons why the new provisions at issue must apply immediately after the current harvest, the recital 9 in the preamble merely stating that '[t]he amendments provided for in this Regulation should apply to cereals offered into intervention as from 1 November 2006', adding that '[t]his Regulation should therefore enter into force on the date of its publication in the *Official Journal of the European Union*'.
- 85 The Commission in its defence is content simply to state that fixing a starting date of 1 November 2006 for the regulation to become applicable was justified, as indicated from the outset by its staff, by the opening on that date of the intervention

period in most Member States. Furthermore, the accession to the European Union on 1 January 2007 of Romania and Bulgaria, producing between them some 12 to 13 million tonnes of maize, would have justified the urgent need to take action.

86 In addition to the fact that the complete lack of any reasons given in the Regulation for the date of its applicability cannot be mitigated by information supplied during the drafting process, the fact that the opening date of the intervention period was 1 November 2006 is no more than a finding of a general nature which cannot be regarded as a specific reason demonstrating the intended effect and enabling the Court to determine whether the legitimate expectations of the traders concerned had been duly respected.

87 So far as concerns the amount of maize produced by Romania and Bulgaria, whose accession was fixed to take place on 1 January 2007, not only does the Commission not contend that that fact was mentioned at any stage of the legislative process at all, but also it cannot reasonably be maintained that such a circumstance was unforeseeable and could not be taken into account in good time by the Commission with a view to avoiding damage to the legitimate expectations of those concerned. What is more, such reasoning would tend to lend credence to the applicant's argument that the purpose of introducing the criterion of specific weight was not to improve storage conditions or to harmonise intervention systems, but rather to restrict the quantities of maize eligible for intervention.

88 The contested provisions must therefore also be annulled because the Regulation is vitiated by breach of the obligation to state reasons.

89 At the hearing, the Court questioned the parties on the effects in time of any annulment arising from the breach of the principle of protection of legitimate expectations, that matter not having been dealt with in the written pleadings.

- 90 As the Commission has correctly argued, as long as it is found under this part of the plea in law that Community law has been infringed only in so far as the contested provisions fix a new criterion of minimum specific weight immediately applicable to the harvest of autumn 2006 without the producers concerned having been so informed in good time, annulment on that ground can affect only maize planted and cultivated before the contested provisions were adopted.
- 91 It follows from the foregoing considerations that, on the basis of this part of the plea, the contested provisions must be annulled in so far as, at the very least, they apply to the maize harvest of 2006.
- 92 The applicant's other pleas in law and arguments will now be examined.

The second part of the first plea, alleging breach of the principles of legal certainty and proportionality

— Arguments of the parties

- 93 The applicant maintains that the Commission has acted in breach of the principles of legal certainty and proportionality inasmuch as, the Regulation being published just 12 days before the opening of the intervention period in Hungary, the new Community rules could not possibly have been foreseen by producers. The rules were all the more unforeseeable because the objective pursued was not swift adjustment to new economic data on the market but standardisation of the quality criteria for cereals eligible for intervention, which is an objective that may logically be presumed to be of a technical and long-term nature.

- 94 In the applicant's opinion, the Commission ought to have taken into consideration the special situation of Hungarian producers and have adjusted the application of the new criteria for buying in for intervention, in accordance with the principles set out by the Court of Justice in Joined Cases C-487/01 and C-7/02 *Gemeente Leusden and Holin Groep* [2004] ECR I-5337 and Case C-17/03 *Vereniging voor Energie and Others* [2005] ECR I-4983. A significant feature of the farmers' situation is the adjustment of agricultural activity to biological and maize-production cycles, starting with the taking of decisions, continuing with actions putting them into effect (purchase of seeds, sowing etc.), and finishing with a harvest several months later.
- 95 The applicant argues that the Commission, by introducing the contested provisions without a transitional period or without phasing in their application, has failed to have regard to the principle of proportionality and to the principle enshrined in Article 33(2)(b) EC, which requires account to be taken of the need to effect the appropriate adjustments by degrees in the agricultural sphere. It stresses the scale of Hungarian production in the Community (17 to 18%) and the effect of a demanding new quality criterion which will cause half of Hungary's production to be ineligible for intervention. It observes that, having regard to the excellent quality of Hungarian maize, the new criterion will cause a considerable part of European production also to be ineligible. In addition, the objective of standardisation pursued by the new rules provides still less justification for the immediate application of the new criterion of minimum specific weight.
- 96 Last, the applicant is of the view that the new parameter, which is not used in commercial dealing in maize in Europe, cannot be applied as it stands. Farmers would not be in a position to determine which variety might produce grain satisfying that new quality criterion, particularly having regard to seed catalogues which do not list specific weight and having regard to the specific weight of the 'horse-tooth' variety of maize grown in Hungary, which varies between 68 and 74 kg/hl. The applicant therefore considers that about half the seed varieties will not produce a grain of maize eligible for intervention, irrespective of the farmers' wishes. Furthermore, to introduce new varieties of seed capable of producing grain that

satisfied the minimum specific weight condition would take a long time, that is to say, about 10 years, so that it was almost impossible for Hungarian producers to prepare themselves for compliance with the Regulation.

- 97 The Commission notes first that the objective pursued in upgrading the quality criteria for maize eligible for intervention cannot be reduced to a matter of standardisation. The actual objective was to avert a deterioration of stocks and to enable their future use.
- 98 Next, the Commission denies having failed to respect the principle of legal certainty. The Regulation being published 12 days before the opening of the intervention period for Hungary, 1 November 2006, its application was predictable. Likewise, it submits that there was no retroactive effect, having regard to the Regulation's content (*Crispoltoni I*, cited in paragraph 49 above). The specific weight criterion not being dependent principally on the variety of maize seed but on weather conditions during the season, it has not actually been established that compliance with that criterion would have had any effect on the investments made by producers before the harvest. As a result, the situation in this instance, so far as the financial consequences for the farmers are concerned, may be distinguished from the cases mentioned in the decisions in the spheres of tax and agriculture relied on by the applicant.
- 99 The Commission emphasises that the principle of legal certainty does not require that there should be no legislative amendment whatsoever. Its decision to upgrade the quality criteria for intervention buying-in met a specific need, required by prudent management of stocks, and was justified by considerations of a technical nature seeking to ensure a degree of quality in the grain bought so that it could still be sold after long-term storage.

100 The Commission argues that the issue of the quality of stored maize and its effect on the new problem of long-term storage was foreseeable by the parties concerned, for that question had already been broached in March 2006 and followed up in discussions of the cereals experts' group on 1 and 29 June 2006 (that is to say, a month or a month and a half after the sowing of the cultivated areas). Subsequently, the draft relating to the upgrading of quality criteria was formally discussed time and again in meetings of the Management Committee for Cereals.

101 Furthermore, the late introduction of the contested provisions was due, essentially, to the fact that it was not immediately apparent, by reason of the derogations granted to the Hungarian authorities for intervention buying-in, that the 2005/06 marketing year would be exceptional and would entail a further increase in stocks justifying the urgent need for action. The discussions did not begin until the Commission had been warned by the Member States of the rapid deterioration of their stores.

102 In addition, the Commission maintains that it took account of the special situation of maize producers in central Europe, since it reduced the minimum specific weight required from 73 to 71 kg/hl. In its opinion, that criterion is relevant in light of the lawful aim pursued and is not damaging to Hungarian farmers. Introduction of the criterion of minimum specific weight alone did not have the effect on harvests described by the applicant, for the reduction in maximum moisture content, provided for by the Regulation, 13.5% instead of 14.5%, and not challenged in the action, brought about an increase of 0.5 to 1 kg/hl in the specific weight of maize presented for intervention. The introduction of that new quality criterion cannot therefore be regarded as disproportionate, in light of the aim pursued.

103 Last, with regard to its supposedly being difficult for farmers to ascertain the specific weight of the maize harvest, the Commission observes that there are traditional methods throughout the Community and that Hungary's decision to use the ISO

method, used for rye, causes no difficulty today in measuring specific weight. In any event, the specific weight of the maize could not have been anticipated before harvest.

— Findings of the Court

- <sup>104</sup> While accepting that producers must make the best of a certain degree of financial inconvenience arising from legislative amendments made during the course of the year, the applicant maintains that in this instance the Commission, by making the new criterion of specific weight immediately applicable and by excluding the greater part of Hungarian maize from any possibility of being bought in intervention, has violated the principles of legal certainty and proportionality.
- <sup>105</sup> Inasmuch as the present line of argument challenges the lawfulness of the contested provisions in that they apply to the harvest currently under way, there is no need to examine it further since annulment of the Regulation has already been sought on this head.
- <sup>106</sup> In so far as the applicant, although in essence setting out in connection with this plea arguments concerning the harvest of 2006, intends none the less to challenge the lawfulness of the contested provisions for intervention periods in subsequent years, it is to be borne in mind that, according to settled case-law, the principle of legal certainty is a fundamental principle of Community law which requires, in particular, that rules should be clear and precise, so that individuals may be able to ascertain unequivocally what their rights and obligations are and may take steps accordingly (Case C-143/93 *van Es Douane Agenten* [1996] ECR I-431, paragraph 27, and Case C-110/03 *Belgium v Commission* [2005] ECR I-2801, paragraph 30), and that traders are not justified in having a legitimate expectation that an existing



situation which is capable of being altered by the Community institutions in the exercise of their discretionary power will be maintained, particularly in an area such as that of the common organisation of the markets, the objective of which involves constant adjustment to reflect changes in economic circumstances (*Crispoltoni II*, cited in paragraph 63 above, paragraph 57).

107 First, the applicant does not explain in what manner the contested provisions are not clear enough to enable the producers concerned to ascertain unequivocally what conditions must be satisfied in order for them to present their maize for intervention and, second, it does not set out the reasons why those producers would not be able to take the steps needed if the maize they produce is to meet the criterion of specific weight demanded as from the next harvest. In addition to the fact that the arguments put forward by the applicant seem to refer only to the current harvest, it may be remarked that the applicant maintains, moreover, that specific weight essentially depends on the variety of seed used and that, according to the study attached as Annex A.6 to the application, two varieties of seeds produce maize of a specific weight considerably greater than the minimum demanded by the contested provisions.

108 Furthermore, as regards the argument that the Regulation is contrary to the principle of proportionality to the extent that its effect is to exclude from intervention the greater part of Hungarian production, it will suffice to state that that allegation is formally denied by the Commission and supported by no evidence. Moreover, information supplied by the applicant makes it clear that even in years gone by a significant proportion of Hungarian production had already reached the minimum specific weight demanded by the new provisions. Finally, as has been stated above, there are, according to the study produced by the applicant, seed varieties that enable production of a specific weight greater than the minimum required.

109 It follows from the foregoing considerations that the second part of the first plea in law has to be rejected.

*Concerning the second plea in law: that the author of the Regulation lacked competence*

Arguments of the parties

- 110 The applicant maintains that, in light of Article 5 of the COM Regulation, the Commission lacked competence to adopt the new criterion of quality relating to the minimum specific weight of maize on the ground that the latter was not an adequate criterion of quality.
- 111 In point of fact, first, the applicant stresses that when the Regulation was drawn up it argued, time and again, that the criterion of minimum specific weight was irrelevant having regard to the objective pursued by that measure, which was the long-term conservation of stocks.
- 112 In the second place, the applicant denies that specific weight is a matter of quality. One of the documents (Annex A.3c to the application, p. 5) produced by the Commission in support of its proposed adoption of the new criterion reveals that the specific weight of maize has no bearing on the nutritional value of that cereal, whether it is intended for animal consumption or human. That analysis is borne out by a publication, reproduced in Annex A.10 to the application, according to which specific weight and moisture content do not influence the quality of maize for animal consumption, having regard to the quality of the dry material in the cereal.
- 113 In the third place, the applicant maintains that specific weight is not used as a criterion in business dealings in Europe involving maize and that there are no

relevant rules. That factor does not, therefore, enter into the determining of the price of the cereal and cannot be regarded as a condition of quality of any relevance for the purposes of Article 5 of the COM Regulation.

114 In the fourth place, that parameter is used in the United States and Canada, but only because the maize is intended, essentially, for human consumption. Now, in Europe, maize is intended above all for animal fodder, as stated in recital 2 in the preamble to Commission Regulation (EC) No 1068/2005 of 6 July 2005 amending Regulation No 824/2000 (OJ 2005 L 174, p. 65).

115 The Commission argues that adopting for maize, as for other cereals, the criterion of minimum specific weight in order to guarantee a certain quality for that cereal falls altogether within the ambit of the powers delegated to it under the COM Regulation.

116 First, the Commission believes that the new minimum specific weight factor is relevant in light of the object of improving the quality of maize with a view to its long-term keeping and subsequent use. In fact, it takes the view that in so far as the moisture content of the grain affects its specific weight and its keeping, the specific weight criterion will make it possible to improve the quality of maize.

117 Second, the Commission maintains that specific weight is the yardstick generally used to classify maize grain according to its quality. Contrary to the applicant's assertions, the test of specific weight is a factor that makes it possible to distinguish in the United States the five American grain qualities. Furthermore, the Commission observes that the minimum specific weight criterion fixed by the Regulation at

71 kg/hl is slightly lower than that of prime quality grain in the United States (71.4 kg/hl), whereas the latter is stored for very short periods only, unlike the situation pertaining in the Community. On the other hand, the new specific weight criterion falls short of the standard recommended in France by the Institut technique des céréales et des fourrages (Technical Institute of Cereals and Fodder), which is of at least 75 kg/hl for good quality maize.

- 118 The Commission emphasises that it has nowhere found corroboration of the applicant's claim that top quality American maize is intended solely for human consumption. Nevertheless, even if that were so, it would still be the Commission's view that the fact that the specific weight criterion used corresponds to a reference criterion for human foodstuffs in the United States is a sign of the quality of the maize grain.
- 119 Third, according to the Commission, the nutritional quality of maize grain depends on its specific weight. Analysis of various batches of maize of different specific weights reveals a variation in both the chemical composition and the nutritional value (energy and amino-acids) of the various types of grain. On this point the Commission states that the analysis relied on by the applicant and appearing in Annex A.10 to the application refers to nutritional value 'in terms of dry matter' and has, therefore, only relative value in so far as it is the whole grain (composed of dry matter and water) that is used for cattle fodder.
- 120 Last, the fact that the specific weight criterion is not used in commercial dealings in the European Union is of no relevance, since the point is to determine the conditions for intervention in order to guarantee long-term storage of good quality grain and not to regulate the maize trade in the Community. The Commission adds that the subsequent use of cereals is not known when they are bought by the intervention agency, with the result that it is reasonable to ensure that the grain held is of good quality, whether it is intended for human or for animal consumption.

## Findings of the Court

- 121 The applicant maintains that in accordance with Article 5 of the COM Regulation the Commission had no power to adopt the new criterion of minimum specific weight for maize on the ground that the latter was not an adequate criterion of quality.
- 122 It is to be borne in mind in this connection that, in the sphere of the common agricultural policy, the Council may find it necessary to confer on the Commission wide implementing powers, the Commission alone being able to monitor continually and closely trends on the agricultural markets and to act with urgency if the situation requires (Case 23/75 *Rey Soda* [1975] ECR 1279, paragraph 11). Thus, in Joined Cases C-296/93 and C-307/93 *France and Ireland v Commission* [1996] ECR I-795, the Court held that a limitation on the weight of carcasses eligible for intervention fell within the implementing measures which the Commission was empowered to take, although such a measure might lead to a reorientation of beef and veal production and although the applicants had argued that the provision on the basis of which it was adopted gave the Commission no more than the power to determine the categories (which include the sex and age of the animal) and the qualities (defined as the conformation of the carcass and its degree of fat cover) of the meat, whereas the Commission had altered the list of products eligible for intervention.
- 123 In accordance with Article 6(b) of the COM Regulation, the Commission is empowered to fix, according to the Management Committee's procedure, 'the minimum conditions, in particular with respect to quality and quantity required of each cereal in order to be eligible for intervention'.
- 124 The applicant does not deny that, according to the second and third recitals in the preamble to the Regulation, the criterion of specific weight has been introduced in order to reinforce the quality of maize or, at the very least, in the interests of

consistency with the quality criteria fixed for other cereals, but confines itself to maintaining that the Commission lacked competence on the ground that specific weight does not constitute an adequate criterion of quality and is, in actual fact, intended to restrict the quantities eligible for intervention. Now that, if it were established as fact, would lead to the finding that the Commission had committed a manifest error of appreciation or misused its powers, but could not give rise to annulment for want of competence. Misuse of powers presupposes, *ex hypothesi*, that the institution responsible was competent to adopt a measure but used that competence for the purpose of attaining ends other than those stated. The arguments advanced by the applicant belong therefore to the pleas alleging misuse of powers and a manifest error of assessment and will be examined in that connection.

<sup>125</sup> It follows that the plea in law based on lack of competence must be rejected.

<sup>126</sup> The third and fourth pleas in law, which allege misuse of powers and a manifest error of assessment respectively, being closely linked, the Court considers it opportune to examine them together.

*Concerning the third and fourth pleas in law: misuse of powers and a manifest error of assessment*

#### Arguments of the parties

<sup>127</sup> The applicant maintains that the Commission misused its implementing powers conferred by the Council in accordance with the COM Regulation when, purporting to strengthen the quality criteria for the buying-in of maize for intervention, it in fact altered the very substance of the intervention rules for that cereal.

128 The applicant questions whether it is believable that the objective of standardisation should be pursued by means of adoption of the criterion of minimum specific weight. Adopting that new yardstick of quality for maize is obviously inapt for the purpose of attaining the objective of standardisation inasmuch as it is not yet a criterion for the eligibility of sorghum for intervention.

129 Even supposing that it was necessary to introduce the specific weight condition for the purposes of harmonisation and in so far as that objective leaves considerable discretion, the situation of Hungary and that of other Member States ought, according to the applicant, to have led the Commission to fix the condition of specific weight at a lower level and to apply a greater reduction than the two points decided on in the end.

130 The applicant argues that the contested provisions are not designed to bring about standardisation, but to exclude from intervention a significant proportion of Hungarian and Central European production of maize on account of the problem of storage management. That is borne out by the fact that half the varieties called 'horse-tooth' cultivated by Hungarian producers do not satisfy the specific weight criterion fixed by the Commission.

131 In that regard the applicant refers to the speech made by Commissioner Fischer Boel in Budapest on 11 May 2006 in which she stressed that the cereals sector faced a serious problem of increasing stocks that was only in part the result of the abundant harvests of the two previous years, for it was in fact caused by malfunctions on the internal market, namely, the difficulty of exporting surplus stocks from regions in which the price is lower than the intervention price to regions in which prices are higher. At that meeting, the Commission expressed its wish to find a long-term solution to that new problem.

- 132 In addition, the applicant argues that, if the objective actually pursued was to transform the intervention system, the Commission, in upgrading the quality criteria mentioned in Regulation No 824/2000, exceeded its implementing powers and failed to have regard to the competence of the Council whose responsibility it was to amend the COM Regulation.
- 133 The applicant maintains that the Commission made a manifest error of assessment in that, in fixing the specific weight of maize at such a high level, it did not take account of the chief use of the maize as cattle-fodder or of the average quality of cereals harvested in the Community as stated in recital 1 in the preamble to Regulation No 824/2000.
- 134 In the applicant's opinion, the criteria defining the average quality of the cereal are to a considerable degree influenced by whether the maize is to be used for human or animal consumption, so that, when maize is intended for human consumption, a high level of quality criteria is justified.
- 135 The applicant argues that, in the Community, maize is mainly intended to feed cattle and that until the Regulation entered into force the criterion of specific weight had not been used for that cereal. The standard values fixed in the United States and Canada are justified because North American maize is intended for human consumption, which European maize is not. The specific weight criterion of 71 kg/hl imposed by the Commission corresponds, according to those standards, to maize of superior quality intended for human consumption whereas, in those countries, maize used as cattle-fodder corresponds to a quality lower than the quality of maize intended for human consumption and has a specific weight of 64.8 kg/hl for Canada and of 67.2 kg/hl for the United States.



136 As a result, the applicant submits that the level of specific weight as fixed by the Commission at 71 kg/hl is unwarranted for maize chiefly intended for animal consumption and ought to have been adjusted to the average quality of the maize used for that purpose and been between 64.8 kg/hl and 67.2 kg/hl, or even less.

137 Finally, the applicant observes that the specific weights imposed by the Commission in respect of other types of cereal are of the same order as the American values.

138 The Commission denies that it sought, on the pretext of upgrading the quality criteria for maize, to change the very basis of the intervention scheme. It considers that the applicant has advanced no body of evidence in support of that argument which is based solely on one speech given by Commissioner Fischer Boel in May 2006. It maintains that while, in her speech, the Commissioner did in fact mention the need to set up long-term solutions to settle the new problem affecting the intervention system, she was thinking of a proposal for a regulation amending the common organisation of the market in cereals under the COM Regulation with a view to removing maize from the intervention system. On this point the Commission states that it adopted a proposal for a regulation to that effect on 15 December 2006.

139 The Commission, while acknowledging that the introduction of the contested provisions is linked to the problem of the increase in intervention stocks ascribable in particular to the exceptional seasons of 2004/05 and 2005/06, contends that the statement of reasons given for the Regulation makes it plain that the objective pursued is to ensure that current intervention stocks consist of good quality cereals that can be kept and to guarantee subsequent use. It denies that the Regulation does no more than reflect a mere desire to standardise, for no specific weight criterion has been fixed for sorghum, inasmuch as the intervention agencies are not faced with a long-term storage problem for that cereal.

140 The Commission also denies making any manifest error of assessment in upgrading the quality criteria for maize.

141 The Commission argues that until then the fact that no specific weight criterion had been fixed for maize justified the terms of recital 1 in the preamble to Regulation No 824/2000, which refers to quality criteria 'corresponding as far as possible to the average quality' of the cereals harvested in the Community. However, the Commission judged it necessary, as in the case of the other cereals eligible for intervention, to improve the quality of the maize offered for intervention in order to avoid too rapid a deterioration of stocks and to ensure that it remained of 'merchantable' quality subsequently. The defendant consequently considers that the current amendments were dictated by the objective pursued by the Regulation and that it was not bound by recital 1 in the preamble to Regulation No 824/2000.

142 The Commission maintains that the choice of the minimum specific weight fixed at 71 kg/hl corresponds to the American standard and enables the greater part of European production to satisfy that criterion, having regard to weather conditions during the 2006/07 season.

143 The Commission emphasises that the applicant has not shown that higher-quality American maize is intended for human consumption alone. It notes that maize for human consumption is composed of very particular varieties that are not covered by the contested provisions ('flint' maize, sweetcorn). In addition, the American and European situations are not comparable, given that storage in the United States is of short duration and that maize is usually marketed immediately.

## Findings of the Court

- 144 The applicant's primary claim is, in substance, that specific weight is not a factor of quality, at least when, as in the Community, maize is intended essentially for animal consumption. Its secondary argument is that, in any event, the contested provisions have fixed the minimum specific weight at too high a level.
- 145 According to an earlier explanation put forward in connection with preliminary issues by the Commission, specific weight is a relevant criterion for maize because there is a link between its water content and its specific weight.
- 146 That line of argument has to be rejected at the outset. First, not only does that reasoning find no support in the words of the Regulation, but also the Commission has expressly maintained that upgrading of the criteria relating to moisture content and the percentages of broken and overheated grains was intended to avoid too rapid a deterioration of maize grains, whereas the specific weight criterion concerned the intrinsic quality of the maize. Second, the Commission cannot prove that the specific weight criterion was relevant by arguing from the indirect effect, if any, of specific weight on moisture content when the Regulation already provides a criterion directly and expressly fixing the maximum moisture content for the purpose of admitting maize to intervention.
- 147 More fundamentally, the Commission maintains that specific weight influences the quality of the grain and that the level selected is suitable. It explains that, while the three pre-existing factors, moisture, percentage of broken grains and percentage of overheated grains, make it possible to avoid too rapid a deterioration, the criterion of specific weight makes it possible to guarantee the intrinsic quality of the maize.

148 There is good reason to note that recital 2 in the preamble to the Regulation states that cereals of inadequate quality for use or storage ought not to be accepted into intervention and that to that end account must be taken of the new situation, in particular long-term storage and its effects on product quality. Recital 3 is worded as follows:

‘Therefore, in order to protect intervention products from deterioration and to maintain their suitability for subsequent use, the quality criteria for maize set out in Annex I to Regulation ... No 824/2000 should be upgraded. To this end, the maximum moisture content and the maximum percentage of broken grains and grains overheated during drying should be reduced. ... Moreover, in the interests of consistency with the other cereals that are eligible for the intervention scheme, a new specific minimum weight criterion should be laid down for maize.’

149 So, while it is to be found that, formally, introducing a new criterion of specific weight for maize appears, in that recital, among the measures introduced for the purpose of satisfying the general objective of storing cereals mentioned in the second recital, the fact remains that it is apparent from the wording of the third recital that the introduction of that criterion is not expressly warranted by the need to make intervention produce less fragile in terms of deterioration and subsequent use, only the upgrading of the criteria of quality which are the maximum moisture content and the maximum percentage of broken grains and of grains overheated during drying being referred to in that connection, but forms the matter of a particular reason, namely, the need to ensure consistency with the rules applicable to other cereals eligible for the intervention system.

150 The Regulation does not state clearly and expressly that the introduction of the criterion of specific weight for maize is intended, in addition to the need to ensure consistency with the rules applicable to other cereals, to upgrade the quality criteria for maize.

151 Thus, the Regulation does not state that specific weight forms a criterion of quality for maize, and still less does it explain how that factor may be considered to be relevant in evaluating the quality of the maize.

152 It follows that the explanations furnished by the Commission during the proceedings, to the effect that specific weight forms a relevant criterion of quality, do not reflect the fundamental reason for the introduction of that criterion as it appears from a close reading of the Regulation. Assuming, nevertheless, that those explanations, although they differ appreciably from the reasons set out in the Regulation, may be regarded as complementary to and not inconsistent with those reasons, the Court of First Instance will examine whether it was without committing any manifest error of assessment that the Commission considered that specific weight really constitutes a yardstick of quality of relevance to maize, which the applicant disputes.

153 In that respect, in support of its head of claim the applicant has produced two studies (Annex A.3c and Annex A.10 to the application) according to which the specific weight of maize has no effect on the nutritional value of the produce for animal or human consumption.

154 Replying to those duly supported arguments, the Commission has contented itself with the repeated affirmation that specific weight affects the quality of maize grain. Apart from a single passage in its defence, it has not indicated how that criterion is of relevance in evaluating the intrinsic quality of maize, nor has it produced even one study or yet one document in support of that allegation. Likewise, at the hearing, despite the repeated questions asked by the Court, the Commission was unable to give any precise explanations in that regard.

155 As regards the sole statement, appearing in the defence (paragraph 90), seeking to explain how specific weight is of relevance in evaluating the quality of maize, it may appropriately be recalled that, according to that statement, specific weight has an effect on the nutritional value of maize.

156 As the applicant claims, however, that assertion is expressly gainsaid by the one study supplied by the Commission itself in this connection. According to the unequivocal words of that document, attached as Annex B.20 to the defence, entitled 'Practical Guide — Storing and keeping grains on the farm — General Principles', '[t]here is, however, no relation between nutritional value for animal feeding and human food and the specific weight of grain'. Moreover, that document explains that, in the past, knowledge of the specific weight of a batch of maize was essential given that, until the middle of the 20th century, cereals often still being sold by volume, their specific weight had to be calculated in order to know the exact quantities delivered. Nowadays specific weight serves a purpose no longer, weigh-bridges having come into general use.

157 Questioned by the Court at the hearing about that obvious contradiction between its assertions and the documents intended to support them, the Commission contented itself with remarking that that same document states that specific weight reflects a certain physical quality. In addition to the fact that such a statement is not related to the issue of a link between the specific weight of maize and its nutritional value, careful reading of that document shows that, if specific weight has admittedly been preserved, it has only been so 'in trading transactions involving straw cereals' and in so far as that 'at the very most reflects a certain physical quality of the grain'.

158 The Commission was not, therefore, able to dispel the established contradiction, with the result that not only is its claim that specific weight reflects the nutritional value of maize not supported by any evidence but it constitutes, moreover, a manifest error of assessment in light of the only evidence available to the Court in these proceedings.

159 In the circumstances, and having regard to the fact that it is not for the Court to assume the role of the parties in adducing evidence, the Court cannot but declare that the Regulation is vitiated by a manifest error of assessment.

160 The arguments put forward by the Commission at the hearing, based on three passages from publications attached as Annexes A.3b, A.3d and A.11 to the application, cannot call that conclusion in question.

161 As for the document of the Food and Agriculture Organisation of the United Nations entitled 'L'après-récolte des grains — organisation et techniques' ('Grain after harvest — Organisation and Techniques') (appearing in Annex A.3b to the application), it will suffice to state that it does not deal in any way with the issue of the specific weight of maize.

162 While, as the Commission has emphasised, the study produced by the University of Minnesota entitled 'Drying, Handling, and Storing Wet, Immature, and Frost-Damaged Corn' (attached as Annex A 3 d to the application) indicates that poor quality grain keeps less well than grain of higher quality, it does not, however,

establish any link between the quality of the grain and its specific weight, which is, moreover, not even mentioned.

163 It is to be noted that the document of the Canadian Grain Commission attached as Annex A.11 to the application is a paper print-out of an internet page headed 'Test weight conversion chart' containing links to conversion sites for the units of measurement used in anglophone and European countries for the specific weight of various cereals and that it is thus quite irrelevant to the circumstances of this case.

164 Finally, in answer to questions asked by the Court, the Commission refers to a study which, it acknowledges, is not included in the file but which is annexed to its further observations lodged in connection with the interlocutory proceedings. That document not being one of those before the Court in the present action, the Court cannot evaluate its relevance. Moreover, the Commission has not made an express request for that document to be produced in evidence. Even if the Commission's reply must be interpreted as being such a request, it is to be borne in mind that, under Article 46 of the Rules of Procedure, the arguments of fact and law relied on, and the nature of any evidence offered, must as a rule be stated in the defence. In accordance with Article 48(1) of those Rules, the parties may offer further evidence in the reply or rejoinder, on condition that they give reasons for the delay in offering it, failing which the evidence will be rejected (Case T-84/92 *Nielsen and Møller v ESC* [1993] ECR II-949, paragraph 39; Case T-66/92 *Herlitz v Commission* [1994] ECR II-531, paragraph 41; and Case T-100/00 *Campoli v Commission* [2001] ECR-SC I-A-71 and II-347, paragraph 19). What is more, it is to be stressed that the relevance of specific weight as a criterion of quality for maize was the crucial matter that was raised by the applicant at the stage of the application and that had earlier been raised by the applicant and other Member States when the draft regulation was prepared. Consequently, there being no reasons whatsoever given for the delay in offering that evidence, it would on any view be inadmissible.



165 It follows from all the foregoing that the provisions of the Regulation relating to the criterion of specific weight for maize must be annulled in accordance with the forms of order sought by the applicant.

166 Furthermore, it is to be observed that the proposal for a regulation of 15 December 2006 intended to remove maize from the intervention system as from the year 2007/08 mentions, as criteria of quality upgraded by the Regulation, only moisture content and the proportions of broken and overheated grains, without even alluding to the criterion of specific weight.

167 In those circumstances, there is no need to consider whether all the evidence relied on by the applicant is such as to establish misuse of powers on the part of the Commission or to consider the other pleas in law alleging breach of the duty to state reasons and infringement of the Rules of Procedure of the Management Committee for Cereals.

## **Costs**

168 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 other party's pleadings. As the Commission has been unsuccessful, it is to be ordered to pay the costs in accordance with the form of order sought by the applicant, including the costs of the interlocutory proceedings.

On those grounds,

THE COURT OF FIRST INSTANCE  
(Third Chamber, Extended Composition)

hereby:

1. **Annuls the provisions of Commission Regulation (EC) No 1572/2006 of 18 October 2006 amending Regulation (EC) No 824/2000 establishing procedures for the taking-over of cereals by intervention agencies and laying down methods of analysis for determining the quality of cereals relating to the criterion of specific weight for maize, viz:**
  - **in Article 1(1), the words ‘and, in the case of maize, with the traditional methods applied’;**
  - **in Article 1(3)(b), the words ‘73 kg/hl for maize’;**
  - **in line ‘E. Minimum specific weight (kg/hl)’ of the table in point 1 of the Annex, the value ‘71’ for maize;**
  - **in table III in point 2 of the Annex, the reduction values for the intervention price for maize.**

**2. Orders the Commission to bear its own costs and to pay those incurred by the applicant, including the costs relating to the interlocutory proceedings.**

Jaeger

Tiili

Azizi

Cremona

Czúcz

Delivered in open court in Luxembourg on 15 November 2007.

E. Coulon

Registrar

M. Jaeger

President