

3. Article 6 is not valid, for, in not specifying the bases of the calculation of the tax on sugar stocks held and the classes of traders subject thereto, the Commission has omitted basic rules.
4. It is first of all for the national authorities to draw the consequences in their legal system of the declaration of such invalidity made under Article 177 of the EEC Treaty as regards the national measure implementing the Community measure in question.

In Case 23/75

Reference to the Court by the Pretura di Abbiategrasso for a preliminary ruling in the action pending before that court between

REY SODA

ASSOCIAZIONE INDUSTRIE PRODOTTI ALIMENTARI
ASSOCIAZIONE INDUSTRIALI BEVANDE GASSATE
ASSOCIAZIONE INDUSTRIALI PRODOTTI ALIMENTARI

and

CASSA CONGUAGLIO ZUCCHERO

on the validity and interpretation of Article 6 of Regulation (EEC) No 834/74 of 5 April 1974 laying down requisite provisions to prevent the sugar market from being disturbed as a result of the price increase in this sector for the 1974/75 sugar marketing year, (OJ 1974, L 99, p. 15).

THE COURT

composed of: R. Lecourt, President, R. Monaco and H. Kutscher, Presidents of Chambers, A. M. Donner, J. Mertens de Wilmars, P. Pescatore, M. Sørensen, A. J. Mackenzie Stuart and A. O'Keefe, Judges,

Advocate-General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts and procedure and the observations presented under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

Facts of the case

Relying on Article 77 of the Italian constitution which authorizes the executive in cases of exceptional necessity and urgency to adopt temporary measures having the force of law, the Italian Government, by Decree-law No 255 of 8 July 1974 implementing the Community Regulations Nos 834/74 and 1495/74 relating to sugar intended for human consumption (Official Journal of the Italian Republic No 177 of 8 July 1974, p. 4522) laid down that all who at 00 a.m. on 1 July 1974 had stocks of raw sugar or sugar syrup in excess of 500 kg or to whom such stocks were in transit should pay the Cassa Conguaglio Zucchero the sum shown in the table annexed to the said Decree-law by 30 September 1974 at the latest.

This Decree-law provided *inter alia* that the aforesaid Cassa should directly distribute the sums so received to all the Italian beet growers as from 31 December 1974 in accordance with the conditions laid down by the Inter-ministerial Committee on prices.

The Decree-law came into force on publication.

The Cassa Conguaglio Zucchero is an Italian public body created by Decree No

1195 of the Inter-ministerial Committee on prices on 22 June 1968 (Official Journal of the Italian Republic No 162 of 27 June 1968), the objective of which was to 'equalize prices' on the Italian sugar market.

Although the undertaking Rey Soda, a sugar user, considered the obligation which was thus imposed to be illegal it paid the Cassa Conguaglio Zucchero lit. 366 910 under the aforesaid provisions in order to avoid the penalties for which they provide in the event of non-compliance, but it reserved the right to seek repayment.

On 19 November 1974 Rey Soda applied to the Pretura di Abbiategrosso for permission to seize as security assets of the Cassa Conguaglio Zucchero to the value of lit. 366 910.

Rey Soda's application for seizure was supported by arguments based on national and Community law and inspired by the fear of not being able to recover the debt once the Cassa Conguaglio Zucchero had paid the sums in question to the beet growers.

On 22 November 1974 the Pretura authorized the seizure which was effected in Rome on 26 November 1974.

The Cassa Conguaglio Zucchero was cited before the Pretura and made a party to the proceedings. On 17 January 1975 three national associations representing Italian industrial users of sugar intervened in the proceedings in support of the claims made by Rey Soda.

After hearing argument from the parties the Pretura by order dated 30 January

1975 submitted to the Court the following questions:

1. Is Article 6 of Regulation (EEC) No 834/74 of the Commission, as supplemented and amended by Regulations (EEC) Nos 1495/74 and 2106/74 of the Commission, to be interpreted as meaning that it contains no authority for the Italian State to impose pecuniary charges also on consumers of sugar, and for the benefit of beet growers?
If the answer to Question 1 is in the negative, in other words, if the Italian State is authorized to impose such a charge, the following further questions arise:
 2. Was Article 6 of Regulation (EEC) No 834/74 of the Commission, as supplemented and amended by Regulations (EEC) Nos 1495/74 and 2106/74 of the Commission, adopted illegally, inasmuch as a charge of the kind authorized must be expressly approved by the Council of Ministers?
 3. In so far as Article 6 of Regulation (EEC) No 834/74 of the Commission, as supplemented and amended by Regulations (EEC) Nos 1495/74 and 2106/74 of the Commission, may (if at all) be interpreted as authorizing Italy to require consumers of sugar to make payments to sugar-beet producers, is it illegal on the ground that it is in breach of the principle of equality and non-discrimination (in the fiscal as well as other fields), introduced by Articles 40 (3) and 7 of the EEC Treaty and common to the constitutions of the Member States?
 4. Is Regulation (EEC) No 1495/74 of the Commission illegal for want of a statement of reasons, in so far as it imposes also on consumers of sugar the obligation to declare the quantities of sugar held, and in that:
 - (a) it bases its reasoning (first recital) on Regulation (EEC) No 834/74 of the Commission, whereas the latter Community measure does not introduce, or state reasons for, any obligation on the part of consumers of sugar also to make declarations;
 - (b) it bases its reasoning on the need 'to allow Italy to take the measures of application very rapidly', whereas the Italian Constitution provides for legal instruments which render unnecessary any legislative intervention by the Community solely for such purpose;
 - (c) it does not give reasons for fixing 500 kg as the quantity of sugar not subject to declaration?
5. Is Article 6 of Regulation (EEC) No 834/74 of the Commission, as amended by Regulations (EEC) Nos 1495/74 and 2106/74 of the Commission illegal, in so far as it may (if at all) be interpreted as authorizing the Italian State to require payments to be made by consumers of sugar in respect of stocks of over 500 kg, thus constituting inequality of treatment, that is to say, treatment of Italian nationals which is less favourable than that accorded to French nationals under Regulation (EEC) No 1344/71 of the Commission?
6. Is Article 6 of Regulation (EEC) No 834/74 of the Commission as supplemented and amended by Regulations (EEC) Nos 1495/74 and 2106/74 of the Commission, illegal on grounds of incorrect appraisal, misrepresentation of the facts and contradictory reasoning:
 - (a) in that the holding by industrial consumers on 1 July 1974 of stocks of sugar in excess of 500 kg does not amount to any 'excessive stocking of sugar' (seventh recital of Regulation (EEC) No 834/74) but corresponds to technical requirements in the organization of production;
 - (b) in that, at the time when Regulation (EEC) No 834/74 was adopted, and on and after 1 July 1974 there were in Italy no 'disturbances on [the] market resulting from the increase... in

the price of sugar expressed in Italian lire' such as to justify the steps authorized by the Community measures (if authorized at all);

- (c) in that the imposition of a pecuniary charge on consumers in respect of the stocks of sugar on 1 July 1974 was, in fact, liable to produce that distortion of competition which Regulation (EEC) No 834/74 was intended to prevent (second recital)?
7. Is Article 6 of Regulation (EEC) No 834/74 of the Commission, as supplemented and amended by Regulations (EEC) Nos 1495/74 and 2106/74 of the Commission, illegal since, despite the democratic basis of Community law and that of the Member States, it was adopted without any prior consultation with the Community citizens affected and/or with their representative organizations?
 8. Is Article 6 of Regulation (EEC) No 834/74 of the Commission, as supplemented and amended by Regulations (EEC) Nos 1495/74 and 2106/74 of the Commission, illegal since it creates obligations, including financial obligations, without a sufficient period of *vacatio legis*, and is capable of affecting situations which were already in existence and, in some cases, had even come to an end before its publication?
 9. Does the Community legal system recognize principles which enable the legislative act of a Member State to be declared illegal in so far as it conflicts with Community law, in circumstances:
 - (a) when the legislative act is adopted for the purpose of implementing measures of the Community institutions, which, whilst in theory provided for under Article 189 of the EEC Treaty are, in fact, illegal and invalid;
 - (b) when the Constitution of the Member State allows the adoption of such a legislative act only in the case of 'extreme need and urgency' whereas the act was adopted so that the powers which, many months earlier, the Member State had received (in theory) from the Community institutions, could be exercised in time;
 - (c) when the national legislative act imposes pecuniary obligations, with heavy penalties in case of breach, in respect of situations already in existence, and which, in some cases, had actually come to an end before the adoption and publication of the act in question?
 10. Under the principles on which the European Community is based, is it lawful for one category of citizens, namely sugar consumers, to be subjected to a pecuniary charge the proceeds of which are used for the benefit of another category of citizens, namely beet growers, notwithstanding that there is no justification for less favourable treatment for the first category or for more favourable treatment for the second?
 11. In the light of Articles 3 (f), 85 and 86 as well as of Article 5 of the Treaty of Rome, is it permissible to introduce into an agricultural sector governed by EEC rules a system of control which distorts competition between Community dealers operating in that sector?
 12. Is the expression, 'the increased value of stocks', in Article 6 of Regulation No 834/74 (on the assumption that it is held to be valid by the Court of Justice and, moreover, to be applicable to consumers of sugar for processing) to be interpreted as meaning that such increased value represents the difference between two prices, one of which is obtainable as the Community intervention price for sugar laid down for the 1973/74 marketing year whereas the other is obtainable as the threshold price laid down for the 1974/75 marketing year; or as

meaning that such increased value is calculated on the basis of prices actually prevailing on the Italian market at the material times?

The economic and legislative context of the questions raised

1. Having regard to Articles 42, 43 and 227 of the EEC Treaty, the Council adopted Regulation No 1009/67/EEC of 18 December 1967 on the common organization of the market in sugar.

It emerges from this regulation that the common market in sugar has a system of target and intervention prices for sugar and minimum prices for beet. 'Derived intervention prices shall be fixed..., account being taken of the regional variations which, given a normal harvest and free movement of sugar, might be expected to occur in the price of sugar under natural conditions of price formation.' (Article 3 (2)).

Under Article 6 of this regulation the Council '...shall adopt outline provisions dealing in particular with the general conditions governing purchasing, delivery, reception and payment to which agreements within the trade at Community, regional or local level and contracts concluded between buyers and sellers of beet must conform'.

Since 'the establishment of a single market based on a common price system would be jeopardized by the granting of certain aids', Articles 92 to 94 of the Treaty have been applied to the sugar sector (Article 36). However, Article 34 provides:

1. During the 1968/69 and 1974/75 marketing years, Italy may grant adaptation subsidies to its beet growers and to its beet-processing industries. These subsidies shall be abolished on 30 June 1975.
2. The subsidy to beet growers may not exceed 1.10 u.a. per metric ton of beet... (As from July 1971, 1.80 u.a. per metric ton of beet).

2. Article 37 of the basic regulation provides:

1. The Council acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, shall, in respect of sugar in stock on 1 July 1968 adopt provisions concerning the measures needed to offset the difference between national sugar prices and prices valid from 1 July 1968.
2. The requisite provisions to prevent the sugar market being disturbed as a result of an alteration in price level at the change-over from one marketing year to the next may be adopted in accordance with the procedure laid down in Article 40.'

In Regulation No 769/68 adopting the measures necessary to compensate the difference between national sugar prices and Community prices valid from July 1968 (OJ 1968, L 143, p. 14), the Council provided for a return to be made throughout the Community of the sugar stocks in excess of 1 000 kg per stockist. The Member State was required to levy a certain tax on the stocks save in respect of working stock. The amount of the sugar which constitutes the working stock of a consumer is defined in Article 1 (3) as 'the amount of sugar held by industrial users necessary for normal working for a maximum of four weeks'.

Following the devaluation of the French franc Regulation (EEC) No 1344/71 of the Commission (OJ 1971, L 140, p. 27) provided that France should obtain a return of the quantities of sugar in excess of 5 000 kg per holder. A tax of FF 10.70 per 100 kg of white sugar was provided for in respect of the quantities referred to.

Nevertheless, it was provided that there should be no tax on stock regarded as working stock. It was moreover provided that the total tonnage of working stock exempted from tax could not exceed 20 000 metric tons. To apportion this

quantity France was obliged to take all the measures necessary to avoid different treatment between those concerned.

Neither Regulation No 769/68 of the Council nor Regulation No 1344/71 of the Commission obliged the Member State to use the product of the tax or charge to any particular end.

3. Following the devaluation of the Italian lira a conversion rate for the lira at a level more closely related to the actual economic situation was fixed on 31 October 1973 by the Council in Regulation No 2958/73 (OJ 1973, L 303, p. 1).

On the same date, the Council nevertheless adopted Regulation No 2959/73 which, taking the view that the short-term economic situation at that time made the increase of prices of agricultural products unacceptable in respect of sugar but that, on the other hand, Italian prices for this product could be adjusted within a reasonable period of time, by reference to the beginning of the marketing year, laid down that the intervention price for sugar and the minimum prices for sugar beet, applicable in Italy should be maintained until the end of the 1973/74 sugar year, that is to say, until the end of June 1974, at their level on 31 October 1973, expressed in Italian lire.

The devaluation of the lira was not to effect the intervention price of sugar until 1 July 1974.

When in March 1974 the Council fixed the intervention price for the 1974/75 sugar year (as from 1 July 1974) at a level in excess of 7% of the price applicable for the preceding sugar year, the intervention price, expressed in lire, should by the combined effect of the introduction of the new representative rate and the new intervention price have increased by some 37%.

4. The Commission adopted Regulation (EEC) No 834/74 of 5 April 1974 laying

down requisite provisions to prevent the sugar market being disturbed as a result of the price increase in this sector for the 1974/75 sugar marketing year (OJ L 99, p. 15). The regulation entered into force on the day following its publication in the Official Journal, that is to say, 10 April 1974.

This regulation is based expressly on Article 37 (2) and Article 38 of Regulation No 1009/67/EEC of the Council, Article 11 of Regulation (EEC) No 206/68 laying down outline provisions for contracts and intertrade agreements on the purchase of beet and Council Regulation (EEC) No 974/71 of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of margins of fluctuation for the currencies of certain Member States (OJ L 106, 1971, p. 1).

The seventh recital states that 'the increase in Italy of the prices of sugar expressed in Italian lire resulting from the exchange rate to be applied for the Italian lira in the sugar sector is appreciably higher than the Community increase; whereas it is absolutely necessary to prevent disturbances on the Community market on the one hand by providing a reduction of the monetary compensatory amounts for sugar imported before 1 July 1974 and marketed for consumption from this date, but on the other by requiring Italy to adopt national measures on its market; whereas these national measures must result in the removal of any incentive to excessive stocking of sugar before 1 July 1974 ...'

Article 6 provides:

'1. Italy shall take national measures to prevent disturbances on the market resulting from the increase on 1 July 1974 in the price of sugar expressed in Italian lire. These provisions shall consist in particular of a payment to beet growers of the increased value of stocks.'

2. The measures referred in (this) Article which have been adopted or are to be adopted shall be communicated in writing to the Commission before 5 June 1974.'

Italy did not adopt the requisite measures within the period laid down. Regulation (EEC) No 1495/74 of the Commission of 14 June 1974 supplementing Regulation (EEC) No 834/74 (OJ 1974 L 158, p. 20) which refers to Article 37 (2) of Regulation No 1009/67/EEC provided for the insertion of the following paragraph in Article 6 of Regulation (EEC) No 834/74:

3. 'All holders in Italy at 00.00 hours on 1 July 1974, on whatever basis, of white sugar, raw sugar, syrups of sugar, or to whom such products are in transit, shall declare to the competent Italian authorities by 10 July 1974 at the latest such quantities in question in excess of 500 kg.'

The reason for this provision given by the Commission in the regulation is that it would enable Italy to take national measures speedily to prevent disturbances on its market.

Difficulties having arisen in making this notification of stocks the date was postponed until 30 August 1974 by Regulation (EEC) No 2106/74 of 8 August 1974 (OJ L 218 of 9. 8. 1974, p. 53).

The application of this measure brought to light the existence of 307 946 metric tons of which 202 312 metric tons were held by sugar manufacturers, 81 943 metric tons were held by industrial users and 23 691 metric tons were held by wholesalers and retailers.

According to the Commission's estimate the position of sugar stocks in Italy on 1 July 1973 was as follows: 353 000 metric tons of which 298 000 metric tons were held by sugar manufacturers, 20 000 metric tons by industrial users and 35 000 metric tons by traders.

Procedure

The order for reference was received at the Court Registry on 19 February 1975.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on behalf of the Commission of the European Communities on 21 April 1975, on behalf of the Italian Republic on 12 May 1975 and on behalf of the Rey Soda and the intervening Italian associations on 13 May 1975.

On hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided to open the oral procedure without a preparatory inquiry. Nevertheless questions were put by the Court to the Commission.

II — Summary of the written observations

(a) The scope of Article 6 of Regulation No 834/74 (Question 1)

Observations of the Commission and of the Italian Republic

The *Commission's* fear that those holding sugar would retain the quantities they have available in order later to benefit from the new higher prices was the main reason why the provision in question was adopted.

The Commission had likewise to concern itself with the income of beet growers to avoid a situation where only the other categories of persons concerned on the market would benefit from the situation created.

The Commission concludes that it follows from the situation of the sugar market in Italy, the objective of the measure and the wording of the applicable rule that, even disregarding

the interpretation of Article 6 of Regulation No 834/74 subsequently given by Regulation No 1495/74, all those holding sugar on 1 July 1974, including users, must logically be subject to the payment of a sum from which the beet growers would benefit.

The *Italian Government* adds that it would be wrong to call the measure imposed by the national rules applying the Community provision a pecuniary charge. If account were taken of the increased value which sugar stocked before 1 July 1974 had, then it would have to be admitted that the measure referred to does not constitute a charge, that is to say, a tax applying to an already existing situation, but that it was limited to preventing the whole of this increased value from being realized.

The charge is not therefore of a fiscal nature, but constitutes an equalizing measure between classes interested in the same sector of the market. From the fact that the provision in question expressly mentions stocks without making any distinction between the products which may constitute these stocks and from the fact that Article 1 of Regulation No 1495/74 expressly imposes the obligation to make a declaration on all holders of sugar in Italy, on whatever basis, it is obvious that the provision in question applies to all stocks of sugar.

Observations of Rey Soda and the associations intervening in the main action (hereinafter together called 'Rey Soda')

Rey Soda observes that it is sufficient to find that the provision in question states who are to benefit from the transaction. The provision states moreover the amount of the payment but it does not, on the other hand, give the least indication of those who must bear the pecuniary charge. The provision does not indicate whether the payment to the beet growers must be made by the State or by those holding sugar and whether in the

second case the payment must be made by all those holding sugar or only by some of them.

Regulation No 1495/74 did not clarify the position. Article 1 of this regulation is limited to imposing an obligation to declare. Neither Article 1 of the regulation nor the corresponding recitals on their own show that this provision is intended to define the persons on whom the obligation to pay is placed.

It is not proper to infer from the simple obligation to make a declaration of any indication of the person subject to the payment of the tax. There is not necessarily any causal link between the obligation to declare and the obligation to pay the tax.

A statement of the persons required to make a declaration is perfectly reasonable. This obligation is explicable by the reasonable concern of the Community institutions to know the position of the Italian market in order in consequence to adopt adequate measures.

The Commission could not reasonably have expected manufacturers of confectionery and users in general to be able to liquidate their stocks within a period of 15 days so as to escape a charge since users normally have stocks sufficient for some months' work. Nor could they have increased production so as to use the stocks within 15 days. Even less could they have liquidated their stocks. Moreover they did not have available a distribution network for the sale of the sugar.

The only possible interpretation of Regulation No 1495/74 is that the only objective of the obligation to declare is a statistical one and is not to designate who were liable to make a payment.

Article 1 of Regulation No 2106/74 does not give any enlightenment on the question either.

Although, separately considered, none of the three provisions in question allows it to be assumed that all the holders of sugar may be liable to the payment of the tax in favour of beet growers, one cannot proceed to draw further inferences from these various provisions taken together. Moreover the provisions considered differ *inter se*. The first is an authorization given to a Member State and the others are directions given to persons governed by private law. Since the different provisions are addressed to various persons it is difficult to combine them.

In these circumstances it is right in any event to give to the provisions of Article 6 of Regulation No 834/74 and to the subsequent provisions an interpretation having the least serious consequences.

As regards Article 6 of Regulation No 834/74, the authorization given to the Member State ought not to be understood as meaning that it is intended to allow the imposition of a tax on those, such as users, who have not had the benefit of any increased value.

If Regulation No 834/74 were intended to authorize the Member State to strike at speculation the Member State could have struck solely at holders of sugar who were in a position to speculate and therefore not at users. The products manufactured by industrial users of sugar are sold according to price scales which do not vary from day to day. The processing industry, and in particular large-scale industry, is very often tied to long-term sale contracts for deliveries which have their prices fixed in advance. To impose a tax on stocks intended for a production which has already been sold at agreed prices would prejudice vested rights and disappoint legitimate expectations.

The interpretation proposed by Rey Soda is in accordance with the provisions of Regulation Nos 769/68 and 1344/71. The previous practice is an indication

having the value of a precedent for the interpretation of the provisions in question.

Respect of the principle of proportionality likewise requires that the provision in question should receive the least onerous interpretation. From among the various meanings which it is possible to give to the provisions in question only the one which is in accordance with the general principles of Community law is to be accepted. In particular it is to be assumed that the provisions in question respect the principle of proportionality and that moreover their author did not intend to authorize a levy on working stock which represents the normal requirements of the processing industry. The institutions must ensure, in the exercise of their powers, that the amounts which commercial operators are charged are no greater than is required to achieve the aim which the authorities are to accomplish (Case 5/73 *Balkan Import-Export v Hauptzollamt Berlin Packhof* [1973] ECR 1091).

Rey Soda mentions the measures which the Community institutions applied when the goods in short supply on the market before Regulation No 834/74 was adopted, that is, during the summer and autumn of 1973. But none of the measures provided for by the Community institutions authorized the imposition of a tax on stock and even less so on working stock.

To impose on sugar users a payment in favour of beet growers would have required obviously difficult checking to establish whether the increased value of stocks had not been absorbed by other higher charges which the concern had to face. Users should have been exempted, especially since, on the one hand, the processing costs had increased and, on the other hand, consumer prices had been largely frozen as a result of the Italian provisions in force at the time.

Rey Soda concludes that the attainment of the objectives aimed at and a sense of

proportion between the end and the means require the provision in question to be interpreted solely as meaning that it strikes at stocks accumulated by producers or wholesalers or retailers. But it did not authorize these provisions to be understood as allowing the normal stocks of products which users had to build up for the needs of their business to be hit.

(b) The validity of Article 6 of Regulation No 834/74

Observations of the Commission and the Italian Republic

(i) Powers

The Commission states that Article 155 provides that it should exercise the powers conferred on it by the Council for the implementation of the rules laid down by the Council. The so-called Management Committee procedure is part of the conditions to which the Council has subjected the exercise of certain powers conferred on the Commission.

The Italian Republic states that the second recital to Regulation No 1009/67 provides that one of the aims of the common agricultural policy on sugar is 'to ensure that the necessary guarantees in respect of employment and standards of living are maintained for Community growers of sugar beet'.

In the opinion of the Commission and the Italian Republic Articles 37 and 38 of Regulation No 1009/67 and Article 11 of Regulation No 206/68 constitute a valid basis for the provision in question: they are implementing measures adopted within the terms of Article 37 (2). The Commission was therefore justified in adopting them: see Case 25/70 — *Einfuhr- und Vorratsstelle für Getreide v Köster* [1970] ECR.

The Commission does not see which representative body other than the

Management Committee should have been consulted. The 'democratic basis of the Community legal order and the legal order of the Member State' would not have been more respected if the regulation had been adopted by the Council.

In order to ensure an ordered supply to the market the Commission, taking guidance from the objective set out in Article 39 (b) and taking account of the necessity to encourage beet production in Italy, decided that the benefit of this increased value should also extend to beet growers.

(ii) Discrimination

The Commission does not see wherein the discrimination lies in the present case; in relation to this concept it refers to the case of the *Government of the Italian Republic v Commission* [1963] ECR 165.

The difference in the treatment of Italy in relation to that of the other Member States is explained by the fact that in the latter the Commission was anxious about the disturbances the increase of some 7 % in the intervention prices for sugar for the new marketing year could cause to the market whereas in Italy the position was much more serious.

Moreover the position which existed in France three years previously and which gave rise to Regulation No 1344/71 of the Commission is not comparable to that of Italy. In 1974 a serious sugar shortage was recorded both in the Community and on a world scale. Italy is one of the countries where the market supply caused and still causes serious anxiety. In 1971 on the other hand, in France, the largest sugar producer in the Community, there was a large surplus of stock.

The Commission had to intervene *ex ante*; it could not wait until the disturbances occurred. To judge the

Commission's behaviour it is necessary to put oneself in the position at the time, that is to say, at the beginning of 1974. Such a situation was completely new for there had always been surpluses previously in the EEC. No one at that time suspected a scarcity and a great increase in prices on the world market.

(iii) *Restriction to 500 kg*

The fixing of a limit of 500 kg was justified because it was not possible to check stocks less than this quantity. 500 kg was a quantity which the Italian administration could check.

In this respect it is obvious, in the opinion of the *Italian Republic*, that it was likewise necessary to provide for a minimum amount below which stocking is shown to be not capable of causing serious disturbances or undue enrichment. Further, fixing the minimum quantity at 500 kg enables Italy effectively to check that the obligation provided for is respected. The *Italian Republic* is of the opinion that to question the choice of the criterion of 500 kg would obviously raise a problem of the appropriateness of administrative action. The Court is not competent to decide such a question. The *Italian Republic* adds that Article 1 of Regulation No 1495/74 is the instrumental and implementing provision of the measure referred to in Article 6 of Regulation No 834/74 so that Article 1 does not require any additional justification in relation to that already given for Article 6.

(iv) *Vacatio legis and retroactive nature*

The *Commission* refers to the dates on which the various regulations entered into force and concludes that it is not possible to speak of inadequate *vacatio legis*. The legislature had imposed the obligation well in advance on those who 2 months and 22 days later would be holders of substantial stocks of sugar.

In the opinion of the *Italian Republic* to query the length of the period laid down for the *vacatio legis* constitutes an impermissible attempt to review its justification. The *Italian Republic* adds that neither the Community rules nor the Decree-law No 255 are of a retroactive nature. On the other hand neither Community law nor Italian law prevents a national legislative act, not being a penal one, from adopting provisions referring also to the past.

The *Commission* finally maintains that it has not sought to distinguish deserving categories (beet growers) from undeserving categories (sugar users). The *Commission* was concerned to ensure the regular supply of the sugar market in the Community by supplementing the provisions in force by special measures applicable to a particular situation such as existed in Italy. It could have placed a tax on sugar stocks, but it preferred to follow the course outlined by the social and economic objectives set out in Article 39 of the Treaty and ensure beet growers part of the profits obtained by holders of sugar and thus encourage beet cultivation.

It states that, as distinct from the market in other agricultural products, that of sugar is based on the processed product, sugar itself and not on the direct agricultural product, which is beet. Beet cannot be preserved by the growers who cannot therefore enjoy price increases except in the form of a refund equal to the increase in the value of the processed product.

By exacting a payment intended to ensure the regular supply to the market the *Commission* knew that in the absence of express provision the payments would go to the Italian Treasury. Assigning the sums to the State or paying them to the beet growers did not compromise the attainment of the objective pursued which was to ensure the regular supply of the market. Taking guidance from the objectives of the

Treaty, the Commission judged it necessary to ensure that Italian agricultural producers had the benefit of the increase in sugar prices.

In the situation of the Italian market, if sugar users had been exempted from the payment of the increased value the object pursued could easily have been frustrated by means of fictitious sales effected by sugar producers to their profit.

The Commission was informed that users were making massive purchases on the market which could have caused grave prejudice to consumers.

In spite of the announcement of measures as from March, users continued to stock sugar to such an extent that the quantities stocked by them were more than 400 % higher than those of the previous year. Exemption is justified in the case of urgent measures but there is no reason for it when the payment to be made on stocks was notified long in advance so as to allow dealers to take it into account in fixing prices for their products sold after 1 July 1974.

Those who had manufactured products intended to be sold after 1 July 1974 from sugar from previous marketing years have already benefited by virtue of this, and, in proportion to the sugar used in the manufacture of the products, benefited from a substantial increase for they had been able to take account, in fixing the price of the product to be delivered after 1 July 1974, of the increase which sugar had been subject to after this date. The normally prudent and informed manufacturer should have considered that Community intervention would certainly take place and should therefore have fixed the prices on the basis of the sugar prices applicable on 1 July 1974.

In the situation existing when Regulations Nos 769/68 and 1344/71 were adopted it was not possible, in view of the urgency, to adopt national

measures to ensure the attainment of the objectives pursued. In the present case the Community measures were adopted well in advance on 5 April 1974 and it appeared appropriate to leave it to Italy to specify in national measures the measures which had already been clearly defined in the Community provisions.

Observations of Rey Soda

(i) *The Commission's powers*

Rey Soda considers the legal basis of the establishment of the common organization of the markets in sugar and the distribution of powers between the Council, the Commission, the subsidiary bodies and the national administration.

It states that Article 155 of the Treaty applies to the rules of the agricultural market, cf. Cases *Einfuhr- und Vorratsstelle für Getreide v Köster* [1970] ECR and *Mercur v Commission* [1973] ECR 1055.

Rey Soda concludes that in the agricultural markets it must always be a question of the implementation by the Commission of rules which the Council lays down and solely of implementation. Where the power of implementation is conferred it presupposes a provision by the Council laying down the basic rules.

Since the implementation of rules laid down by the Council constitutes the limit of the power given to the Commission is to be interpreted restrictively. To exceed this limit would prejudice the balance of powers and the respect for the powers which constitute a 'fundamental guarantee' laid down by the Treaty.

It is always possible to delegate provided that this does not disturb the balance of powers within the Community, cf. *Meroni v High Authority* (Rec. 1958, Vol. IV, p. 9 at p. 42).

Any possibility for the Commission to amend or derogate from or exceed the

powers which are specifically conferred on it must be ruled out. (Case 38/70 *Deutsche Tradax GmbH v Einfuhr- und Vorratsstelle* [1971] ECR and Opinion).

The rule in Article 42 of the Treaty means that in creating a European organization of the markets the Council can decide whether aid should be completely or partially prohibited. Only the Council may 'authorize the granting of aid'. The Council may transfer part of its powers to the Commission, but the power conferred must be limited to the implementation of the basic rules laid down by the Council.

An aid or subsidy is a benefit in cash or in kind granted for the support of an undertaking and is distinct from the payment by the purchaser or user of the goods or services which it produces. (Case 30/59, *De Gezamenlijke Steenkolenmijnen, Limburg v High Authority*, Rec. 1961, p. 1).

It does not matter that the payment is made with the aid of funds arising from taxation having its origin in a special law of the State constituting a tax on or contribution from certain parties.

As for fiscal charges, any decision with regard to their application is for the Council of Ministers. The Council can only confer on the Commission implementing powers.

The levying of taxes is according to the law of the Member States a prerogative of Parliament and not the executive. The way in which the Community system is built up, the technical institution, the Commission, cannot be called upon to legislate in this matter. The only deliberative institution capable of doing it is of necessity the Council.

As for the power of national administrations Rey Soda refers to Case 31/74, *Galli* [1975] ECR 47. The problem arises when the Commission, given certain powers by the Council,

seeks to authorize the Member State to act under these same powers. In this case if respect is to be had to the political will of the Council such authorization cannot be accepted: *delegatus delegare non potest*. Applying these principles to the present case, Rey Soda concludes that Article 37 of the basic Regulation has a very limited scope. It cannot justify the rules in Article 6 of Regulation No 834/74.

Article 37 (2) does not refer to any disturbance but only to possible disturbances of the sugar market

- as a result of an alteration in price levels
- at the change-over from one marketing year to the next.

Article 37 (2) refers not to price variations but solely to alterations in the Community price levels.

The Commission is not empowered to take measures against disturbances having a different origin such as those arising from over-stocking or from the devaluation of what is convenient to call the 'green lira' nor to take measures involving a fiscal charge.

It is true that the Council in implementation of Article 37 (1) had put a levy on stocks whilst excluding the working stock of industrial users but the Council had the power to impose this levy in so far as it can be recognized to have powers in the sphere of taxation.

Further, Article 37 (2) did not give the Commission the power to dispose of the income from the levy in order to introduce an aid to beet growers. There is no rule in the basic regulation providing for the aid in question. On the contrary, in Article 34 of the basic regulation, the Council, as an exceptional measure, authorized Italy to grant certain aids subject to a clearly-defined ceiling. No implementing power was reserved to the Commission.

Rey Soda concludes that the reference which is made in Regulation No 834/74 to the rule in Article 37 (2) authorizes the Commission to make only simple rules implementing the provisions of the Council such as those of Article 2 of the regulation in question.

This is confirmed by Regulation No 1344/71 which does not refer to Article 37 (2) of the basic regulation.

Rey Soda then examines the other regulations of the Council referred to in the regulation in question and concludes that the Commission had no power to dictate the rules of Article 6 in question.

Rey Soda finally concludes that the provision in question violates the respective powers of the institutions and of the Member States. If the second sentence of Article 6 of Regulation No 834/74 were for the purpose of example and not of general scope, as appears from the words 'in particular' and from paragraph 1 taken as a whole, it would mean the rule in Article 6 authorized the Italian State to do whatever it liked. It cannot be ruled out that this was in fact the intention of the Commission, but such an intention would certainly be unlawful: see the abovementioned case of *Galli*.

(ii) Illegality of the legal rules in question on the ground of violating the prohibition against discrimination

Rey Soda considers the situation in the spring of 1974 when the price increase encouraged certain traders to store sugar in quantities larger than normal requirements. It then considers what the national legislature did in similar situations during the last world war and cites in particular the judgment of the Italian Corte di Cassazione of 14 February 1941:

'It would be wrong to accuse a wholesaler of withdrawing goods from national

consumption only on the ground that he has been found in possession of a certain quantity of goods. The trial judge should ... investigate the facts chronologically in their context and as they took place in order to obtain a full and accurate picture of the whole activity'.

On the other hand what the Commission claims to have done is to treat in the same way:

- (a) a speculator who has bought up very large quantities of sugar for the purpose of making a profit solely due to the increase in price;
- (b) a small business man who uses sugar and keeps some sacks of the product in his shop;
- (c) the large processing industries which use enormous quantities of sugar daily.

It has thus treated different situations in the same way.

Rey Soda considers the facts and concludes that it is not possible in any way to suspect the industrial users represented here of speculation.

Taking the figures supplied by Cassa Conguaglio Zucchero for confectionery makers it concludes that the quantities of sugar held in store represented a stock sufficient for scarcely more than four weeks and for many undertakings even less than that which they held, for example, in the previous year.

The provisions aimed at reducing stocks affected producers in the essential nature of their business. On the other hand users were affected by the provisions in a completely different way, contrary to their business as buyers and contrary to the prudence which it is normally necessary to show in the management of a business of this kind.

The institutions recognized the situation in adopting Regulations Nos 1344/71 and 769/68. Moreover if the Commission had really wanted to take account of a

certain increased value, the tax should have been calculated only on the basis of the various prices of the raw material.

Producers were easily in a position to pass on the tax. The position of processors was completely different. For them to pass on the tax down the line is neither lawful nor possible in practice.

Rey Soda concludes that the equal treatment of unequal situations is thus shown not only from the formal point of view but also and above all with regard to the practical effect. Producers could well pay the tax but not so processors.

A consideration of the Decree-law No 255 of 8 July 1974 leads Rey Soda to conclude:

- either that the measures introduced by the decree were adopted without Community authorization;
- or that the authorization derives from an institution which does not have the power to grant it;
- or that the authorization was given by an institution having the necessary power but in violation of the fundamental principles of Community law.

(c) Rules of competition (Question No 11)

The *Italian Republic* and the *Commission* are of the opinion that the provisions governing competition cannot be taken into account save when it is established that there is an agreement between undertakings or at least a concerted practice or an abuse of a dominant position.

Rey Soda observes that the establishment of a system ensuring that competition is not distorted in the common market is one of the main objectives of the Community.

In the sugar sector competition plays a more restricted rôle within the Community than in the other sectors.

One of the reasons of this situation is the large extent of the cartel structure of the sector. The rules introduced as a result of the adoption of Article 6 of Regulation No 834/74 make the conditions of competition in the sugar market even worse.

Rey Soda shows first of all that the provision in question wrought a change for the worse in competition between differently-sized industrial users of sugar.

Undertakings whose necessary stocks do not exceed 500 kg and who do not hold any more do not have to pay the contribution and are thus in a more advantageous competition position than undertakings obliged to pay the contribution for such part of their necessary stocks which exceeds 500 kg.

On the other hand the contested measures were capable of affecting competition between the Italian processing industry, for example confectioners, on the one hand, and undertakings distributing goods from other Member States of the EEC on the other.

The pecuniary contribution in question is exacted only in relation to sugar stocks built up in Italy.

Finally, the legal rules effect the conditions of competition between producers and users of sugar in the common market.

The passing on to users of the financial charge related to the contribution in question was all the more easy for producers to effect since the sugar shortage experienced in Italy in 1974 and the necessity to have this material in order to continue production put industrial users in a position of even greater weakness with regard to producers.

The agricultural rules of the Treaty can authorize the exacting of a contribution

which creates distortions in competition only if it relates to production or trade in agricultural products. Simply to store an agricultural product when it is in no way put or even intended to be put on the market does not come within this case. In so far as Regulation No. 834/74 levies the contribution in question also on stocks of sugar held by industrial users and not marketed by them it is not a Community 'agricultural' rule.

The legality of the regulation of the Commission must therefore be considered in relation to the rules on competition laid down in Article 3 (f) or Articles 85 and 94 of the Treaty.

Moreover the unlawful nature of the regulation of the Commission must appear in the light of the rules on competition in force in the agricultural sector. Even assuming that the Commission intended to attain certain of the objectives set out in Article 39, in any case the means used were quite disproportionate to the objectives which the Commission intended to attain.

(d) The interpretation of the words 'increased value' (Question 12)

Observations of the Commission

The Commission maintains that the words 'increased value' in Regulation No 834/74 clearly mean the increase in value of a product, expressed in Italian lire, due to causes which have nothing to do with the activity of traders and more especially to those which result from the application of a conversion rate for the Italian lira in the sugar sector at 1 July 1974.

The Commission maintains that although this provision does not forcibly show the way in which the increased value must be calculated, it fixes a limit which the Italian authorities cannot exceed without violating Community law. In ordering the payment to beet growers the Italian authorities could not

fix a figure higher than the amount of this increased value.

As regards the methods to be followed in the calculation of the increased value, having regard to the objective of the provision, the Commission considers that the Italian authorities did not have necessarily to refer to Community prices but could take account of the prices at which commercial transactions were effected.

The Commission suggests the following reply to the last question.

'The increased value on stocks referred to in Article 6 of Regulation No 834/74 could be determined on the basis of sale prices free ex factory applicable on the sugar market in Italy.'

In the opinion of *Rey Soda* the words 'increased value' are currently used to refer mainly to an unmerited profit. If there were an increased value only the sugar industry could have benefited and not industrial users which are buyers of sugar.

The words 'increased value' refer to the difference between the original cost of an article and the value which it possesses at a subsequent moment in time. This increased value always establishes a relationship between two amounts which exist at two different but clearly determined points in time. The original point may be fixed arbitrarily by the rules. When no date is fixed the original point is that when the item in question comes into the possession of the tax-payer; the final point in time, in the absence of any indication, is when the article in question is sold.

The Community rules seem to indicate the final point as the date laid down for the notification of stocks. On the other hand it does not contain any implicit or express indication of the original point. It is therefore necessary to infer that the original point is that when the article was

acquired by the holder as is normally provided by national revenue law.

In a market in which prices are rising the rules favour holders who long in advance had begun to stock up in excess of their normal needs. On the other hand they to the disadvantage of undertakings which have maintained their stocks at a modest level frequently replenishing them by small amounts.

Such rules are contrary to the prohibition against discrimination in the widest sense of the Community law. More precisely they are contrary to the principle of neutrality in taxation.

In financial theory there is a distinction between monetary increased value and real or economic increased value. The increased values which in a general way should be subject to tax are the economic increased values.

In the present case it is the monetary increased values which have been taxed. The tax on the monetary increased value is not a tax on the income of the tax-payer since there has been no actual increase in his wealth. A tax on the monetary increased value confiscates a sum of money which basically represents the apparent increase in value. The tax which is funded by the confiscation of private property should not be created by a decision of the Commission. This is confirmed by Article 222 of the Treaty.

As a wholly ancillary matter, Rey Soda observes that Italy has exceeded the limits fixed by Regulation No 834/74 of the Commission. According to the seventh recital to Regulation No 834/74, which is drafted in watertight terms, the prices which the Italian State should take as a basis seem to be solely the Community intervention prices of sugar. However the Italian Government has calculated the tax by reference to the national prices without taking account of the Community prices.

III — Oral procedure

At the hearing on 17 September 1975 Messrs Capelli and Ubertaini for Rey Soda and the intervening Italian associations stressed the following four points:

1. The Commission could not grant to Italian beet growers sums of money on whatever basis in view of the precise prohibition laid down by Article 34 of the basic regulation. By approving Article 6 of Regulation No 834 the Commission assumed a power which it does not have.
2. To recognize the Commission as having the power to impose or authorize the imposition of a tax on all Italian subjects who met certain well defined conditions, would constitute the most serious violation of the fundamental principles on which the European Community is founded.
3. The tax on increased value was not capable of allowing the objective which the Commission had set itself, of avoiding stocking and price increases in sugar in Italy, to be attained. Notwithstanding the regulations of the Council the devaluation of the Italian lira had already been reflected in the price of sugar. The sugar industries established in the other Member States were not able to offer granulated sugar on the Italian market except at the current prices of the European market. They should already have included the devaluation of the lira without concerning themselves with the measures adopted by the Commission for the Italian market. Granulated sugar is largely imported into Italy from other countries from the Community. There was therefore no incentive for the Italian sugar industry to stock granulated sugar in order to sell it in July 1974 at a higher price.
4. In view of the fact that industrial users were certain to be subjected to this tax solely on 8 July 1974, 8 days after the expiration of the period for

notification of stocks, excessive stocking, if there were such, could not have been avoided. The amount of the tax and the manner of its application should have been known to the industrial users of sugar for a much longer period after the day when stocks were notified. In any case the tax-payers must know in advance what taxes they will have to pay and be free to act in consequence.

Rey Soda contests the value of the Commission's estimate of the stocks of sugar held by industrial users in 1973. The total figure of 20 000 metric tons is purely arbitrary and was also used during the previous years. The manner of judging whether the stocks built up in 1974 were excessive was to check whether the stocks exceeded an average amount of working stock which the industrial user needed to run its business.

Mr Braguglia, on behalf of Italy, observes that if in the matter of taxation and subsidies in agriculture the Council of Ministers has exclusive power, this case is not important since the Commission has not imposed fiscal measures nor granted subsidies on its own authority. Following the measures of the Council which had delayed the influence of devaluation of the lira on the Italian market and following the increase in Community prices of 7 % those who had acquired the product at the old prices enjoyed an increase in value of some 37 %. In deciding that a part of the increased value should be redistributed to beet growers the Commission had introduced a measure to level the market and balance the burdens resulting from the Community measures. With regard to the delegation to Italy of powers to adopt national measures of implementation the Commission did not violate any Community principle. The maximum *delegatus non potest delegare* does not strictly apply to modern institutions and cannot constitute a true principle of Community law.

In reply to the argument that industrial users could not pass on the financial charge down the line as could the production industry Italy states that the price-freezing measures brought in by it were repealed in July 1974 so that even industrial users could have passed on the tax by increasing the price of their products.

Mr Maestriperi, as Agent for the Commission, put forward the following four arguments:

1. The Commission had under Article 37 (2) of Regulation No 1009/67 the power to lay down a tax on stocks of sugar held in Italy.

The Council expressly used a wide formula in delegating powers to the Commission and only the Commission by its careful and continual consideration of the markets and by reason of the method of prompt intervention of the Management Committee procedure is capable of meeting the unexpected changes in the market situation.

The interpretation of the Commission finds valid confirmation in the exercise by the Council of its legislative power.

The Commission wished to introduce into the basic regulation in the milk sector a formula similar to that of Article 37 (2) of Regulation No 1009/71. However, certain delegations in the Special Committee on Agriculture were firmly opposed to this. They declared that they did not wish to accept the proposed wording because among the various possibilities of action left to the Commission there was power to impose taxes on stocks of powdered milk.

Article 1 of Regulation No 419/74 of 18 February 1974 (OJ L 49, p. 2) had to be worded as follows:

'In order to prevent the market in milk and milk products being disturbed as a result of price alterations at the time of

the change-over from one milk year to the next, the necessary measures may be taken in accordance with the procedure laid down in Article 30.

A measure providing for the taxation of stocks and milk products stored before the beginning of a new milk year, may, however, only be taken by the Council, acting on a proposal from the Commission, in accordance with the voting procedure provided for in Article 43 (2) of the Treaty.

The Ministers for Agriculture at their meeting on 26 and 27 May 1975 were concerned with the shortage of sugar on the Italian market. The French Minister stated that France had sugar to meet the needs of the Italian market but that no one at that date wished to sell in anticipation of 1 July at which date the prices were to be increased by 15 %. The Ministers declared that the fact of announcing taxation of stocks would cause sugar to find its way back to the markets. It was understood that this measure would be adopted by the Commission.

The interpretation advocated by the Commission was the *raison d'être* of the said provision. In certain circumstances the only effective means, in the absence of which the delegation to the Commission would lose all effectiveness, is the payment such as has been imposed in the present case.

The Commission's interpretation is in accord with previous regulations and case-law: Regulation No 769/68 of the Council and Regulation No 1344/71 of the Commission. The Commission refers to Article 37 (1) of Regulation No 1009/67 and Regulation No 769/68 of the Council which have already been examined by the Court: Case 5/71 *Zuckerfabrik Schöppenstedt v Council*. Mr Advocate-General Roemer observes:

'Mention is made quite generally of "measures necessary" which properly

understood refers to a discretion on the part of the legislature.'
([1971] ECR)

2. The Commission was entitled to decide that the benefit of this payment should go to beet growers.

By Article 34 of Regulation No 1009/77 which is a concrete application of Article 42 of the Treaty, the Council authorized within certain limits, certain national aid. The position created by Article 6 of Regulation No 834/74 is quite different. It is here a question of 'joint measures' or 'joint aids' in the sense that the grant is decided by the Community and the financing is effected by the State. Articles 92 to 94 and Article 42 do not apply to these 'joint measures'. By these 'joint measures' the Community assumes its responsibility of managing a market and it only remains to examine in the context of Article 40 (3) whether the measure of equalization in the present case comes within the measures necessary to attain the objectives defined in Article 39.

3. The Commission was entitled to impose this payment on all holders of sugar including users.

Even if there had been no interest in exporting sugar during the last quarter of the sugar year because of special export levies it was obvious however that there was always an interest in stocking up sugar at the prices for the 1973/74 marketing year and keeping it in store until 1 July 1974. Apart from the measures applicable in all the Member States and provided for by the first three articles of Regulation No 834/74, special measures had to be taken for Italy and the only measure of a kind to guarantee the security of supplies was the payment of the increased value on stocks.

The Commission stresses the difference between this situation and the previous ones dealt with by Regulations Nos 769/68 of the Council and 1344/71 of the Commission.

Since the Commission adopted the measure in question well in advance, there was in this respect no comparison with the regulations of 1968 and 1971 which were adopted only some days before the beginning of the sugar year.

The reason which led the Commission not to exempt the working stock of users from payment was the seriousness of the situation on the Italian sugar market. The Commission feared that consumers would be deprived of sugar, which explains the severity of the measure adopted. The Commission wonders on what basis users ought to be protected from measures brought about by the situation on the sugar market. Both sugar producers and traders have working stocks. Why should not the exemption claimed by users be given to these categories as well?

4. The Commission simply entrusted Italy with the levying of the tax.

The measure to be adopted is clearly stated: it is a payment to beet growers of the increased value of stock at 1 July 1974.

The national administrations do not have a discretionary power enabling them to adopt measures the scope of which would exceed the limits imposed by Community rules: Mr Advocate-General Mayras in *Wasaknacke v Einfuhr- und Vorratsstelle für Getreide* (Case 32/72, Rec. 1972, p. 1188). The Commission also cites the case of *Westzucker* [1973] ECR 321 343) and in particular the opinion of the Advocate-General.

The Advocate-General delivered his opinion at the hearing on 1 October 1975.

Law

- 1 By order dated 30 January 1975, received at the Court on 19 February 1975, the Pretura di Abbiategrasso requested the Court under Article 177 of the EEC Treaty to give a preliminary ruling on the validity and interpretation of Article 6 of Regulation (EEC) No 834/74 of the Commission (OJ 1974, L 99, p. 15) supplemented and amended by Regulations of the Commission (EEC) No 1495/74 (OJ L 158, p. 20) and No 2106/74 (OJ 1974, L 218, p. 53).
- 2 It appears from the order for reference that the answer to the questions is intended to enable the national court to judge whether the levying by the Cassa Conguaglio Zucchero of a tax on sugar stocks held by the Italian industrial users on the change-over to the 1974/75 sugar year conforms with Community law.
- 3 Since the tax on sugar stocks was introduced by an Italian decree-law referring to the aforesaid regulations of the Commission, the national court asks the Court in its first question whether Article 6 of Regulation (EEC) No 834/74 must be interpreted as meaning that it contains no authority for Italy to impose pecuniary charges on users of sugar, and for the benefit of beet growers.

- 4 In the second question the national court asks the Court to say whether this provision was adopted illegally inasmuch as a charge of the kind authorized must be expressly approved by the Council of Ministers.
- 5 Since these two questions are closely related it is appropriate to join them for the purposes of the answer.

The first two questions

- 6 Article 6 of Regulation No 834/74 was adopted by the Commission under Article 37 (2) of Regulation No 1109/67 of the Council, the basic regulation in the sugar sector.
- 7 The plaintiff in the main action maintains in the first place that Article 37 (2) did not enable the Commission to require a Member State to impose a pecuniary charge on sugar stocks held in that State.
- 8 In the second place, even if the Commission had been so enabled it could not impose such an obligation save to offset the alteration in the level of Community prices expressed in units of account and not variations of these prices in national currency as a result of a devaluation of that currency.
- 9 Since the objective of Article 155 of the Treaty is the preservation of the balance between the powers of the Council and the Commission, the powers conferred on the Commission by Article 37 (2) must be interpreted strictly.
- 10 When Article 155 of the Treaty provides that 'the Commission shall exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter', it follows from the context of the Treaty in which it must be placed and also from practical requirements that the concept of implementation must be given a wide interpretation.
- 11 Since the Commission alone is able continually to follow with attention trends on the agricultural markets and to act with urgency as the situation requires, the Council may be led in the sphere of the common agricultural policy, to confer on the Commission wide powers of discretion and action.

- 12 Further the provisions cited in Article 155 allows the Council to determine any conditions to which it may subject the exercise by the Commission of the power granted to it.
- 13 The powers entrusted to the Commission under Article 37 (2) of the basic regulation must be adopted under the so-called 'Management Committee' procedure, a mechanism which allows the Council to give the Commission an appreciably wide power of implementation whilst reserving where necessary its own right to intervene.
- 14 When the Council has thus conferred extensive power on the Commission the limits of this power must be judged with regard to the basic general objectives of the organization of the market and less in terms of the literal meaning of the enabling word.
- 15 Having regard to these principles, it is proper to examine in the first place whether Article 37 (2) of Regulation No 1009/67 could supply a valid legal basis for the provisions in question adopted by the Commission.
- 16 Article 37 (1) provides:

'The Council ... shall, in respect of sugar in stock on 1 July 1968 adopt provisions concerning the measures needed to offset the difference between national sugar prices and prices valid from 1 July 1968' (date on which the common system of prices established by this regulation becomes applicable).
- 17 Article 37 (2) provides:

'The requisite provisions to prevent the sugar market from being disturbed as a result of an alteration in price level at the change-over from one marketing year to the next may be adopted in accordance with the procedure laid down in Article 40' (that is to say, according to the so-called Management Committee procedure).
- 18 The similarity in powers reserved to the Council on the change-over to the first sugar year and conferred on the Commission for the purpose of subsequent marketing years is explained by the Council in the 15th recital to this regulation.

19 It is there explained:

‘whereas the transition to the system established by this Regulation must be effected as smoothly as possible; whereas to this end certain transitional measures may prove necessary; whereas the same need may arise at each change-over from one marketing year to the next; whereas provision must therefore be made for the possibility of adopting appropriate measures’.

20 Accordingly under Article 37 (2) the Commission is given the power to adopt, just as the Council did in Regulation No 769/68 laying down the measures necessary to offset the difference between Community prices from July 1968 (OJ 1968, L 143, p. 14), a measure of equalization in order to prevent the market from being disturbed as a result of an alteration in price level on the change-over from one sugar year to the next.

21 In the present case the Council decided that the application of the new conversion rate of the Italian lira in relation to the unit of account should be related in the sugar market to the beginning of the 1974/75 sugar year, thus leaving to the Commission the obligation to take account of it in adopting provisions which might be necessary to avoid a disturbance in the Italian market.

22 The attainment of the objective of Article 37 (2) which consists in enabling the Commission to prevent the disturbances which a substantial alteration in the prices of sugar might have on the markets, in the present case the Italian market, would be frustrated if the Commission did not also have to take account of the alteration of the prices expressed in the national currency.

23 A substantial increase in Community prices expressed in national currency could encourage excessive stocking.

24 A provision requiring holders of quantities exceeding certain limits to pay a tax on these stocks was in itself a measure likely to discourage excessive stocking and to encourage a regular supply to consumers provided that the measure was announced in good time and expressed in forcible and precise terms.

25 Nevertheless Article 37 (2) of the basic regulation enabling the Commission to take, in accordance with the consultation procedure of the Management

Committee, measures directly applicable in a Member State, cannot be interpreted as enabling the Commission to impose upon a Member State the obligation to draw up, under the guise of implementation measures, essential basic rules which would not be subject to any control by the Council.

26 Thus under the system established by Article 37 (2) of the basic regulation it is for the Commission, when it decides after consultation with the Management Committee to require certain holders of sugar of a Member State to pay a tax on the stocks, itself to determine in a precise manner the essential basic rules.

27 Since the effects of an announcement of a tax to discourage excessive stocking of a product depends to a large extent on the rate of the tax, the announcement must show, in addition to the parties liable, the bases of the calculation of the tax.

28 Accordingly in fulfilling the obligation which is placed on it under Article 37 (2), the Commission should have fixed the basis of the calculation of the tax and the categories of persons liable and submitted this decision to the Management Committee for its opinion.

29 Accordingly the Commission was validly enabled by Article 37 (2) to adopt, after receiving a favourable opinion from the Management Committee, a provision providing for the imposition of a pecuniary charge on holders of stocks of sugar in a Member State as a result of an alteration in the common prices and in these prices expressed in national currencies, at the change-over to a new sugar year in so far as this provision itself fixed the essential basic rules.

30 Next it is necessary to examine whether the Commission has validly used this power in the present case.

31 Article 6 of Regulation No 834/74 provides that:

'1. Italy shall take national measures to prevent disturbances on the market resulting from the increase on 1 July 1974 in the price of sugar expressed in Italian lire. These provisions shall consist in particular of a payment to beet growers of the increased value of stocks.

2. The measures referred to in [this] Article which have been adopted or are to be adopted shall be communicated in writing to the Commission before 5 June 1974.'

32 Although the first paragraph of this article requires Italy to make a payment to beet growers, it does not define what is meant by the concepts 'increased value' and 'stocks'.

33 It is therefore necessary to examine whether the context and the Community precedents are such as to give a precise content to this provision.

34 In Regulation (EEC) No 750/68 of the Council of 18 June 1968 laying down general rules for offsetting storage costs for sugar it is explained that although sugar is normally held in store by sugar manufacturers, in some Member States it is also held in store by persons engaged in other businesses.

35 In the recitals to Regulation (EEC) No 748/68 of the Council of 18 June 1968 laying down general rules for postponing part of the sugar production to the following marketing year (OJ No 137, p. 1) it is explained that the manufacturer who carries forward sugar 'can obtain a price equal to the intervention price valid for that marketing year' and 'under Article 37 (2) of Regulation No 1009/67 EEC in the event of an alteration of price levels ... measures may be adopted to offset the price difference in respect of sugar in store on 1 July'.

36 It follows that the concept of stocks in regard to sugar covers mainly stocks held by manufacturers.

37 The stocks held by industrial users, just as those of other consumers, do not as a general rule, come under common organization of the markets since, once sugar has arrived at this stage, the production and marketing cycle is finished.

38 Although as a general rule an industrial user of sugar does not stock within the meaning of the agricultural regulations, but holds only those quantities which by reason of the nature and time-schedules of his activity are necessary for a normal production, he may nevertheless be encouraged in certain circumstances to engage in speculative stocking and thus disturb the market.

- 39 Thus although Regulation No 769/68 of the Council exempted the quantities of sugar which these industries require for a normal working period of 4 weeks from the tax established by this regulation, it nevertheless subjected these industries to a tax on the remainder of their stocks.
- 40 In order to avoid disturbances on the market in France, Regulation No 1344/71 of the Commission provided for the levying of a tax on stocks notified on 1 July 1971, but exempted stocks regarded as working stock of users up to a maximum amount of 20 000 metric tons.
- 41 Although the last recital to Regulation No 834/74, in explaining that the measures which Italy is required to take must 'result in the removal of any incentive to excessive stocking' may give the impression that working or normal stocks of industrial users are exempt, it is nevertheless necessary that this should be stated clearly as was done in previous Community regulations.
- 42 The Commission has claimed that Article 6 of Regulation No 834/74, in not making any distinction, was intended to apply to all sugar stocks without distinction, including the working stock of industrial users.
- 43 It says that this argument is confirmed by Regulation No 1495/74 of the Commission which imposes an obligation to declare on 'All holders in Italy at 00.00 hours on 1 July 1974, *on whatever basis, ...*'.
- 44 An obligation to declare of this kind is compatible with exemption of working stocks as it was in the previous Community regulations.
- 45 Article 6 of Regulation No 834/74, either taken alone or in conjunction with Regulation No 1495/74 or in the light of previous Community regulations, cannot be interpreted as defining the classes of traders subject to the tax.
- 46 It must be concluded from this that the Commission, having defined the aim of the measures which the Italian authorities were required to take, should have determined in respect of each class of business, having regard to the size of the undertakings, what was to be understood by 'excessive stocking'.

- 47 Moreover, since the concept of 'increased value' is a new term in agricultural regulations, as the Commission explained in the course of the proceedings, the method of calculating this increased value requires precise rules.
- 48 In addition, by not specifying the bases of the calculation of the tax in the provision in question and leaving Italy to choose them, the Commission discharged itself of its own responsibility to adopt the basic rules and to submit them by way of the Management Committee procedure to the approval if need be of the Council.
- 49 Therefore the answer to the first two questions from the national court must be that Article 6 of Regulation No 834/74 is invalid.

Question nine

- 50 The ninth question asks whether the Community legal system recognizes principles which enable a legislative measure of a Member State to be declared illegal in so far as it conflicts with Community law when that measure is adopted for the purpose of implementing invalid measures of Community institutions.
- 51 It is first of all for the national authorities to draw the consequences in their legal system of the declaration of such invalidity made under Article 177 of the EEC Treaty.

The other questions

- 52 The other questions of the national court relate to the validity of the provision of Article 6 of Regulation No 834/74 in other respects, so that, in view of the answer to the first two questions, they serve no purpose.

Costs

- 53/54 The costs incurred by the Commission of the European Communities and by the Italian Republic, which have presented observations to the Court, are not recoverable and as these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Pretura di Abbiategrasso by order of that court dated 30 January 1975,

hereby rules:

Article 6 of Regulation No 834/74/EEC of the Commission is invalid.

Lecourt	Monaco	Kutscher	Donner	Mertens de Wilmars
Pescatore	Sørensen	Mackenzie Stuart	O'Keeffe	

Delivered in open court in Luxembourg on 30 October 1975.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL MAYRAS
DELIVERED ON 1 OCTOBER 1975 ¹

*Mr President,
Members of the Court,*

Introduction

The present request for a preliminary ruling from the Pretura di Abbiategrasso has its origin in the combination of Community decisions relating to the sugar market in Italy and the measures

taken by the Decree-law of the Italian Government for the purpose of giving effect to the provisions adopted by the Commission in Article 6 of Regulation No 834/74.

The objective of these provisions was to prevent disturbances on the market resulting, according to the Commission, from the increase on 1 July 1974, that is

¹ — Translated from the French.