ORDER OF THE COURT (Third Chamber)
18 December 1997 *

In Case C-409/96 P,

Sveriges Betodlares Centralförening, an association established under Swedish law, having its registered office in Malmö (Sweden), and

Sven Åke Henrikson, residing in Lund (Sweden),

represented by Otfried Lieberknecht, Rechtsanwalt, Düsseldorf, Michael Schütte, Rechtsanwalt, Berlin, and Vanessa Turner, Solicitor, with an address for service in Luxembourg at the Chambers of Bonn & Schmitt, 62 Avenue Guillaume,

appellants,

APPEAL against the order of the Court of First Instance of the European Communities (First Chamber) of 4 October 1996 in Case T-197/95 *Sveriges Betodlares Centralförening and Henrikson* v *Commission* [1996] ECR II-1283, seeking to have that order set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by James Macdonald Flett, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

* Language of the case: English.

THE COURT (Third Chamber),

composed of: C. Gulmann, President of the Chamber, J. C. Moitinho de Almeida and J.-P. Puissochet (Rapporteur), Judges,

Advocate General: M. B. Elmer,
Registrar: R. Grass,

after hearing the views of the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 23 December 1996, Sveriges Betodlares Centralförening and Mr Henrikson appealed against the order of the Court of First Instance of the European Communities of 4 October 1996 in Case T-197/95 *Sveriges Betodlares Centralförening and Henrikson* v *Commission* [1996] ECR II-1283 ('the contested order'), which dismissed as inadmissible their action seeking annulment of Commission Regulation (EC) No 1734/95 of 14 July 1995 fixing, for the 1994/95 marketing year, the specific agricultural conversion rate applicable to the minimum sugar beet prices and the production levy and additional levy in the sugar sector (OJ 1995 L 165, p. 12, hereinafter 'the contested regulation').

2 The background to the dispute and the facts underlying the action were set out as follows in the contested order:

'1. Under the second indent of Article 137(2) of the Act concerning the conditions of accession and the adjustments to the Treaties on which the European Union is

founded (OJ 1994 C 241, p. 21, hereinafter "the Act of Accession"), the common agricultural policy is applicable in full in the new Member States, namely the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, from 1 January 1995, the date of their accession, except where the Act of Accession provides otherwise. Article 149 of the Act of Accession provides that if transitional measures are necessary, in the sugar sector, to facilitate the transition from the existing regime in the new Member States to that resulting from application of the common organization of the markets, such measures are to be adopted in accordance with the procedure laid down in Article 41 of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector (OJ 1981 L 177, p. 4, hereinafter "Regulation No 1785/81").

2. On 21 December 1994, the Commission adopted Regulation (EC) No 3300/94 laying down transitional measures in the sugar sector following the accession of Austria, Finland and Sweden (OJ 1994 L 341, p. 39, hereinafter "Regulation No 3300/94"). The Commission noted, in the third recital in the preamble thereto, that, for the 1994/95 marketing year, the entire sugar output of Austria, Finland and Sweden had been produced under national arrangements and that a very large amount of that sugar had been disposed of prior to accession, and that retroactive action on sugar beet delivery contracts concluded in respect of that production between producers and sugar manufacturers had for that reason to be ruled out. Under Article 1 of Regulation No 3300/94, the provisions on the self-financing of the sector set out in Articles 28 and 28a of Regulation No 1785/81 do not apply to the quantities of sugar produced in the new Member States prior to accession. Furthermore, under Article 5(1) of Regulation No 3300/94, a normal carry-over stock for sugar at 1 January 1995 was fixed for each of the new Member States. However, Regulation No 3300/94 does not contain any express rule concerning the application of minimum prices to beet, such as those referred to in Article 5 of Regulation No 1785/81, for beet production in the new Member States prior to their accession.

3. Article 1(1) of Commission Regulation (EEC) No 1713/93 of 30 June 1993 establishing special detailed rules for applying the agricultural conversion rate in the sugar sector (OJ 1993 L 159, p. 94) provides that the minimum sugar beet prices referred to in Article 5 of Regulation No 1785/81 and the production and additional levies referred to in Articles 28 and 28a of that regulation respectively are to be converted into national currency using a specific agricultural conversion

rate equal to the average, calculated *pro rata temporis*, of the agricultural conversion rates applicable during the marketing year in question. Article 1(3) provides that this specific agricultural conversion rate is to be fixed by the Commission during the month following the end of the marketing year in question.

4. With regard to the marketing year from 1 July 1994 to 30 June 1995, the Commission adopted Regulation (EC) No 1734/95 of 14 July 1995 fixing, for the 1994/95 marketing year, the specific agricultural conversion rate applicable to the minimum sugar beet prices and the production levy and additional levy in the sugar sector (OJ 1995 L 165, p. 12, hereinafter "the contested regulation"). The specific agricultural conversion rate to be used to convert the minimum sugar beet prices referred to in Article 5 and the levies referred to in Articles 28 and 28a of Regulation No 1785/81 was determined for the currencies of the Member States other than the three new Member States, including Sweden. According to the third recital in the preamble to the contested regulation, the Commission considered that it was not appropriate to lay down specific agricultural conversion rates for the three new Member States on the ground that, for the marketing year in question, the entire sugar output of Austria, Finland and Sweden had been produced under national arrangements in force prior to accession and that it had been provided that Articles 28 and 28a would not apply to the quantities of sugar produced in those countries during the 1994/95 marketing year.

5. The first applicant, Sveriges Betodlares Centralförening, is a Swedish association which claims to represent all sugar beet growers in negotiations with the only sugar manufacturer in Sweden. According to Article 4 of its Statutes, it consists of local associations of sugar beet growers. The second applicant, Mr Henrikson, is the President of the applicant association and is also a sugar beet grower.'

3 On 16 October 1995, the applicants brought an action before the Court of First Instance seeking annulment of the contested regulation in so far as it did not fix any specific agricultural conversion rate for Sweden.

4 On 5 January 1996, the Commission raised an objection of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance.

5 On 29 March 1996, the Kingdom of Sweden applied for leave to intervene in support of the forms of order sought by the Commission.

The contested order

6 In the contested order, the Court of First Instance dismissed the action pursuant to Article 114 of its Rules of Procedure, under which it may, where a party so requests, rule on whether an action is inadmissible as a preliminary issue and, where appropriate, without any oral procedure.

7 The Court of First Instance first considered that, in the absence of any request prompting the adoption of the contested regulation, the case could not be treated as analogous to the situation in Joined Cases 41/70, 42/70, 43/70 and 44/70 *International Fruit Company and Others* v *Commission* [1971] ECR 411, on which the applicants relied and in which the Court held that the provision there contested was not general in its scope but constituted a bundle of individual decisions, each affecting the legal position of those who had applied for licences (paragraphs 25 and 26).

8 In contrast, the Court of First Instance took the view that, since it applied by reason of an objective situation and produced legal effects *vis-à-vis* categories of persons considered in a general and abstract manner, the contested regulation was of general application. It pointed out in this regard that the fact that no specific agricultural conversion rate had been fixed for sales of sugar beet during the marketing

year in question by growers established in the three new Member States was justified in the contested regulation in an objective and uniform manner for those three countries, without taking account of the specific situation of certain growers in those countries (paragraph 27).

9 Furthermore, according to the Court of First Instance, the fact that the number and identity of the traders concerned might in theory have been known to the Commission and that the monetary situation had been more unstable in Sweden than in Austria and Finland was not sufficient to call in question the legislative nature of the contested measure, so long as it took effect by virtue of an objectively defined situation (paragraphs 28 and 29).

10 Second, the Court of First Instance pointed out that, according to the case-law of the Court of Justice (Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501 and Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853), even if the regulation proves to be a general and abstract measure, its legislative nature does not prevent it from being of individual concern to certain of the traders concerned, in particular where the Commission is under a duty to take account of the consequences of a measure which it envisages adopting for the situation of certain individuals (paragraph 31).

11 The Court of First Instance found, however, that the parties had not referred to any obligation of that kind incumbent on the Commission in regard to the second applicant, Mr Henrikson, and that an analysis of the applicable rules did not reveal any such obligation either (paragraph 32).

12 The Court of First Instance concluded that Mr Henrikson could not be regarded as being affected in his legal position by reason of circumstances in which he was differentiated from all other persons and that he was concerned only in his objective capacity as a grower within the sugar sector in the same way as any other grower in that sector (paragraph 34).

13 Third, in regard to the action brought by Sveriges Betodlares Centralförening, the Court of First Instance pointed out that the defence of common interests was not enough to establish the admissibility of an action for annulment brought by an association, which was not entitled to bring such an action where its members could not do so individually (paragraph 35).

14 In this case, the Court of First Instance formed the view that it had not been established that any members of the applicant association were individually concerned by the contested regulation, since the only grower mentioned in the documents was Mr Henrikson (paragraph 36).

15 The Court of First Instance concluded that the action brought by the applicant association also had to be regarded as inadmissible (paragraph 37).

16 In those circumstances, the Court of First Instance dismissed the application as inadmissible in its entirety and declared that there was no further need to rule on the application by the Kingdom of Sweden for leave to intervene in support of the forms of order sought by the Commission (paragraphs 39 and 40).

Pleas in law of the parties

17 In support of their claims to have the contested order set aside, the appellants put forward five pleas in law.

18 In the first place, they criticize the Court of First Instance for having taken the view that, contrary to the situation in *International Fruit Company and Others*

v *Commission*, cited above, the contested regulation did not constitute a bundle of individual decisions. In the appellants' view, the fixing of an agricultural conversion rate for Swedish beet growers should have been automatic, without any need to request it, since the Commission was aware of growers' expectations in that regard and the object of the contested regulation was precisely to fix the rates on a country-by-country basis, each decision to be taken being capable of affecting only a limited group of traders and the Commission having been informed, moreover, of the particular currency position in Sweden.

19 Second, the appellants criticize the Court of First Instance for having incorrectly applied the case-law according to which the fact that a measure is a regulation does not rule out the possibility that it may be of individual concern to certain interested traders. In their view, the specific effect of the currency devaluations in Sweden sufficed to distinguish their situation from that of traders in the other Member States.

20 Third, the appellants, referring in particular to Article 137 of the Act of Accession and various provisions of the Community system governing the sugar market, take issue with the conclusion of the Court of First Instance that the Commission was not in this case under a duty to take account of the consequences of the measure which it envisaged adopting for the situation of certain individuals, namely Swedish sugar beet growers.

21 Fourth, the appellants take the view that, contrary to its previous case-law, the Court of First Instance was wrong to rule that the action was inadmissible in so far as it was brought by the first appellant in its capacity as a trade association. In their view, the admissibility of that association's action follows both from the fact that it represents all Swedish beet growers and negotiates on their behalf with the processor of sugar beet in Sweden.

22 Finally, the appellants submit that, in concluding that their application was inadmissible, the Court of First Instance effectively denied them all rights of legal recourse against the contested regulation, since preliminary ruling proceedings under Article 177 of the EC Treaty are not conceivable in this case. Such a situation, they argue, is contrary to the fundamental principles of Community law, according to which acts of the Commission are subject to judicial review by the Court of Justice or Court of First Instance.

23 In its response, the Commission submits that the appeal should be dismissed as being clearly inadmissible and unfounded, within the meaning of Article 119 of the Court's Rules of Procedure, and that the appellants should be ordered to pay the costs.

24 The Commission first of all challenges the admissibility of the appeal, inasmuch as it is based on certain documents submitted after the time-limit for filing the appeal had passed, as well as on new facts and arguments not presented to the Court of First Instance. The Commission also submits that, contrary to the requirements of Article 51 of the EC Statute of the Court of Justice, this appeal is not limited to points of law.

25 With regard to the merits, the Commission supports in full the grounds of the contested order.

26 Addressing the first plea in law, the Commission submits in particular that the appellants' argument is vitiated by a fundamental error in failing to appreciate that the contested regulation could not, in any event, envisage a specific agricultural conversion rate for contracts concluded and executed prior to the accession of the new Member States.

27 In regard to the second plea, the Commission submits that the contested regulation does not have any consequences for Swedish beet growers and that the effects of which the appellants complain have their origin in the apparently defective nature of the contracts concluded before accession or in the failure of national law to provide for an attractive exchange rate.

28 As regards the third plea, the Commission takes the view that none of the provisions cited by the appellants supports the contention that it was under a special obligation towards Swedish sugar beet growers.

29 As for the fourth plea in law, the Commission considers that, once the application by Mr Henrikson was found to be inadmissible, the Court of First Instance could only conclude that the application by the applicant association was also inadmissible.

30 Finally, the Commission points out that the concluding arguments on the right of action do not constitute a ground of appeal within the meaning of the EC Statute of the Court of Justice and that they are also not presented as such. In the Commission's view, those arguments are in any event unfounded inasmuch as the possibility of judicial review exists in the case of a national dispute through the preliminary reference procedure under Article 177 of the Treaty, at the request of the Member States and the Community institutions under Articles 173 and 175 of the EC Treaty, or also at the request of any person who has suffered damage under Article 215 thereof.

Findings of the Court

31 Under Article 119 of its Rules of Procedure, where an appeal is clearly inadmissible or clearly unfounded, the Court may dismiss it at any time by reasoned order.

The first plea in law

32 With regard to the appellants' plea based on the refusal in this case to apply the solution accepted by the Court in *International Fruit Company and Others* v *Commission*, cited above, it must first be stated that the Court of First Instance correctly pointed out, in paragraph 25 of the contested order, that the provision criticized in that case had been adopted in regard to a total quantity of applications, the number of which was known, and that it affected the legal position of each person who had applied. That was the reason why the Court there took the view that that provision was not general in scope but constituted a bundle of individual decisions.

33 Since, in the present case, the Commission did not receive any request prompting adoption of the contested regulation, the Court of First Instance was correct in law to exclude, in paragraph 26 of the contested order, treatment of the present case as analogous to *International Fruit* and accordingly to conclude that the contested regulation constituted a bundle of individual decisions.

34 The Court of First Instance was also correct in law to take the view, in paragraph 27 of the contested order, that the contested regulation was of general application and that the non-fixing of a specific agricultural conversion rate applicable to sales of sugar beet during the period in question by growers established in Austria, Finland and Sweden was justified in an objective and uniform manner for those three countries, without taking account of the specific situation of certain growers in those countries.

35 It is clear from the third recital in the preamble to the contested regulation that no specific agricultural conversion rate was laid down for the three Member States in question because, for the marketing period under consideration, sugar production in those three Member States had been effected entirely under the national arrangements in force prior to their accession.

36 Furthermore, as the third recital also points out, Regulation No 3300/94, which lays down transitional measures in the sugar sector following those accessions, also excluded, for the same reasons, the application of different provisions of Regulation No 1785/81 to the quantities of sugar produced in Austria, Finland and Sweden prior to 1 July 1995.

37 Finally, the Court of First Instance correctly referred, in paragraphs 28 and 29 of the contested order, to the settled case-law under which neither the possibility of defining more or less precisely the number or identity of those to whom a legal measure applies nor the fact that that measure may have different specific effects for those to whom it applies are sufficient to call into question its legislative nature, as long as it is established that such application takes effect by virtue of an objectively determined situation. The factors adduced by the appellants with a view to demonstrating that the Swedish beet growers were in a special position do not suffice to establish that the non-fixing of a specific agricultural conversion rate in the three Member States concerned was not general in scope and applied to them individually.

38 The first plea in law must therefore be rejected.

The second and third pleas in law

39 These two pleas in law allege that the Court of First Instance misapplied the case-law according to which the fact that a measure is a regulation does not rule out the possibility that it may be of individual concern to certain interested traders, in particular where the Commission is under an obligation to take account of the consequences of the measure which it envisages adopting for the situation of certain individuals. They may for that reason be considered together.

40 It should first be noted that the Court of First Instance, in paragraph 31 of the contested order, correctly set out the case-law relied on by the appellants.

41 The Court of First Instance then went on, in paragraph 32 of the contested order, to examine whether the Commission had in this case an obligation to take account of the consequences which the measure in question might have for the situation of Mr Henrikson and whether the latter therefore had specific rights which the contested regulation had adversely affected. As expressly pointed out in paragraph 32 of the order, the Court has already had an opportunity to state that the aforementioned case-law could not usefully be relied on where the contested measure did not adversely affect the appellants' specific rights.

42 The Court of First Instance also found in paragraph 32 that no such obligation on the part of the Commission towards the appellants was apparent either from the parties' observations or from the analysis of the applicable rules, and it concluded, in paragraph 33 of the contested order, that the contested regulation could not be regarded as being of individual concern to certain of the traders concerned.

43 The Court of First Instance was thus correct in law in finally taking the view, in paragraph 34 of the contested order, that, under the case-law of the Court of Justice, the second appellant could not be regarded as being affected in his legal position by reason of circumstances in which he was differentiated from all other persons and distinguished individually, just like an addressee. As the Court of First Instance pointed out, Mr Henrikson is concerned by the contested regulation only in his objective capacity as a grower within the sugar sector in the same way as any other grower within that sector.

44 It follows that the second and third pleas in law must be dismissed.

The fourth plea in law

45 With regard to the fourth plea, claiming that the Court of First Instance was wrong to declare as inadmissible the application brought by Sveriges Betodlares Centralförening in its capacity as a trade association, it must be noted first that, in paragraph 35 of the contested order, the Court of First Instance referred to the case-law according to which the defence of common interests is not enough to establish the admissibility of an action for annulment brought by an association. According to that case-law, in the absence of special circumstances such as the role which it could have played in the procedure leading to the adoption of the measure in question, such an association is not entitled, as the Court of First Instance also pointed out in that paragraph, to bring an action for annulment where its members may not do so individually.

46 The Court of First Instance then went on to find, in paragraph 36, that it had not been established that any of the growers belonging to the appellant association were individually concerned by the contested regulation and that no reference had been made in the documents to individual growers other than Mr Henrikson, who was not himself individually concerned by that regulation.

47 In those circumstances, the Court of First Instance could not but conclude, as it did in paragraph 37 of the contested order, that the action also had to be regarded as being inadmissible in so far as it was brought by the appellant association.

48 Although the appellant association claims, as the Court of First Instance, moreover, pointed out in paragraph 5, to represent all growers concerned in negotiations with the only sugar manufacturer in Sweden, that statement of fact is not such as to invalidate the finding referred to in paragraph 46 of the present order. Nor does it show that that association played a special role in the procedure which led to the adoption of the contested regulation.

49 It follows that the fourth plea in law must also be dismissed.

The fifth plea in law

50 In their final argument, the appellants submit essentially that the finding that their action for annulment is inadmissible, which in effect deprives them of any right of recourse against the Commission, is contrary to the fundamental principles of Community law, according to which acts of the Community institutions must be subject to judicial review.

51 That argument is groundless and must therefore be rejected, without its even being necessary to examine the questions raised by the Commission regarding its possible admissibility.

52 Contrary to the appellants' contention, it does not appear that they are deprived of all right of recourse against the possible consequences of a Commission measure such as the contested regulation. In the first place, it has not been established that the validity of such a measure cannot be challenged in domestic proceedings in which a reference for a preliminary ruling, as provided for under Article 177 of the Treaty, may be made. Second, if they consider themselves to have suffered damage flowing directly from that measure, the persons concerned may challenge that measure in proceedings for non-contractual liability under Articles 178 and 215 of the EC Treaty.

53 It follows from all of the foregoing that, without its being necessary to examine the other questions of admissibility raised by the Commission, the appeal must be dismissed as being clearly unfounded, pursuant to Article 119 of the Rules of Procedure.

Costs

54 Under Article 69(2) of the Rules of Procedure, applicable to appeals pursuant to Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the appellants have been unsuccessful in their pleas, they must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby orders:

1. The appeal in dismissed.

2. The appellants are ordered to pay the costs.

Luxembourg, 18 December 1997.

R. Grass

Registrar

C. Gulmann

President of the Third Chamber