Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

16 June 2016*

(Reference for a preliminary ruling — Agriculture — Sugar — Production levies — Right to reimbursement — Sugar held in stock and not exported — Undue enrichment — Freedom to conduct a business — Method of calculation)

In Case C-96/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal de grande instance de Nanterre (Regional Court, Nanterre, France), made by decision of 22 January 2015, received at the Court on 26 February 2015, in the proceedings

Saint Louis Sucre, formerly Saint Louis Sucre SA,

v

Directeur général des douanes et droits indirects,

THE COURT (Third Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, D. Šváby, J. Malenovský, M. Safjan and M. Vilaras, Judges

Advocate General: E. Sharpston,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 11 November 2015,

after considering the observations submitted on behalf of:

— Saint Louis Sucre, by S. Le Roy, avocat, and H.-J. Prieß and C. Pitschas, Rechtsanwälte,

— the French Government, by D. Colas, A. Daly, J. Bousin and C. Candat, acting as Agents,

— the Belgian Government, by M. Jacobs and J.-C. Halleux, acting as Agents, and B. De Moor and M. Keup, avocats,

— the European Commission, by B. Schima, P. Ondrůšek and A. Lewis, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 January 2016,

gives the following

* Language of the case: French.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 15(2) and (8) of Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178, p. 1) and the validity, with regard to that act, of Commission Regulation (EC) No 164/2007 of 19 February 2007 fixing the production levies in the sugar sector for the 2005/06 marketing year (OJ 2007 L 51, p. 17).

2 The request has been made in proceedings between Saint Louis Sucre, formerly Saint Louis Sucre SA, and the Directeur général des douanes et droits indirects (Director-General of Customs and Indirect Taxation), concerning the production levies paid for the 2005/2006 marketing year in the context of the financing of the common organisation of the markets in the sugar sector.

Legal context

EU law

3 Recitals 9 to 13 and 15 of Regulation No 1260/2001 read as follows:

‘(9) The reasons which have hitherto led the Community to adopt a production quota system for sugar, isoglucose and inulin syrup currently remain valid. However, that system has been adjusted to take account of recent developments in production, to provide the [European] Community with the instruments necessary to ensure, in a fair yet efficient way, that the producers themselves meet in full the cost of disposing of the surpluses of Community production over consumption and to comply with the Community’s obligations under the Agreements resulting from the Uruguay Round of multilateral trade negotiations, hereinafter referred to as “GATT”, approved by [Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1)].

(10) … the quota system should be maintained for the 2001/2002 to 2005/2006 marketing years.

(11) The common organisation of the markets in the sugar sector is based, firstly, on the principle that producers should bear full financial responsibility for the losses incurred each marketing year from disposing of that part of Community production under quota which is surplus to the Community’s internal consumption and, secondly, on a differentiation of price guarantees for disposal reflecting the production quota allocated to each undertaking. A sugar production quota is allocated to each undertaking on the basis of its actual production during a particular reference period.

(12) … The sector’s system of self-financing through production levies and the production quota regime should be maintained.

(13) The producers should thus continue to assume financial responsibility by paying a basic production levy charged on all production of A and B sugar, which is however limited to 2% of the intervention price for white sugar, and a B levy charged on the production of B sugar up to a limit of 37,5% of that price. In certain circumstances, producers of isoglucose and inulin syrup also pay a proportion of those contributions.

…

(15) In any given marketing year, the consumption, production, importation, stock and carryover levels, and the average loss likely to be borne under the self-financing scheme, may be such that the production quotas allocated to each undertaking in the sugar sector result in an export volume exceeding that set in the [WTO Agreement on Agriculture]. The guarantees linked to the quotas should therefore be adjusted each marketing year so that the Community can meet its commitments.'

4 Article 1(2)(e) to (g) of Regulation No 1260/2001 defined 'A sugar' and 'B sugar' as any quantity of sugar production attributed to a specific marketing year under, respectively, the A and B quotas of the undertaking concerned, while 'C sugar' was any quantity of production attributed to a specific marketing year either over and above the sum of the A and B quotas of the undertaking concerned or by an undertaking which had no quota.

5 Chapter 2 of Regulation No 1260/2001, entitled 'Quotas', consisted of Articles 10 to 21 thereof. Article 10 of the regulation stated:

'1. Chapter 2 shall apply to the 2001/2002 to 2005/2006 marketing years.

2. The basic quantities for the production of A and B sugar shall be those fixed in Article 11(2).

3. In order to comply with the commitments entered into by the Community under the [World Trade Organisation Agreement on agriculture] … the guarantees for the disposal of sugar, isoglucose and inulin syrup produced under quota may be reduced for one or more designated marketing years.

4. For the purposes of applying paragraph 3, the guaranteed quantity under quotas shall be fixed before 1 October for each marketing year on the basis of forecasts relating to production, imports, consumption, storage, carryovers, the exportable balance and the average loss likely to be borne by the self-financing scheme within the meaning of Article 15(1)(d). If these forecasts show that the exportable balance for the marketing year in question is greater than the maximum laid down in the Agreement, then the guaranteed quantity shall be reduced by the difference …'

6 Article 11 of Regulation No 1260/2001 fixed the basic A and B production quantities for each Member State and the A and B quotas then had to be allocated between the producers. Article 13 provided that C sugar could not be disposed of on the internal market, but had to be either exported without further processing by 1 January following the end of the marketing year concerned or carried forward in accordance with Article 14.

7 Article 14(1) of Regulation No 1260/2001 provided:

'Each undertaking may decide to carry forward all or part of the sugar it has produced in excess of its quota to the next marketing year to be treated as part of that year's production. That decision shall be irrevocable.

Each undertaking may decide to carry forward all or part of its production of A sugar and B sugar which has become C sugar after application of Article 10(3), (4), (5) and (6) to the next marketing year to be treated as part of that year's production. That decision shall also be irrevocable. …'

8 Article 15 of the same regulation stated:

'1. Before the end of each marketing year, the following shall be recorded:

(a) a forecast of the production of A and B sugar, A and B isoglucose and A and B inulin syrup attributable to the marketing year concerned;

(b) a forecast of the quantities of sugar, isoglucose and inulin syrup disposed of for consumption within the Community during the marketing year concerned;

(c) the exportable surplus obtained by subtracting the quantity referred to in (b) from the quantity referred to in (a);

(d) an estimate of the average loss or revenue per tonne of sugar for export obligations to be fulfilled during the current marketing year.

This average loss or revenue shall be equal to the difference between the total amount of refunds and the total amount of levies on the total tonnage of export obligations in question;

(e) an estimate of overall loss or revenue, obtained by multiplying the surplus referred to in (c) by the average loss or revenue referred to in (d).

2. Before the end of the 2005/2006 marketing year and without prejudice to Article 10(3), (4), (5) and (6), the following shall be recorded cumulatively for the 2001/2002 to 2005/2006 marketing years:

(a) the exportable surplus established on the basis of the definitive production of A and B sugar, A and B isoglucose and A and B inulin syrup and the definitive quantity of sugar, isoglucose and inulin syrup disposed of for consumption within the Community;

(b) the average loss or revenue per tonne of sugar resulting from the total export obligations concerned, calculated using the method described in the second subparagraph of paragraph 1(d) above;

(c) the overall loss or revenue, obtained by multiplying the surplus referred to in (a) by the average loss or revenue referred to in (b);

(d) the sum total of the basic production levies and the B levies charged.

The estimate of overall loss or revenue referred to in paragraph 1(e) shall be adjusted by the difference between the amounts referred to in (c) and (d).

3. Without prejudice to Article 18(1), should the figures recorded under paragraph 1 and adjusted under paragraph 2 result in a foreseeable overall loss, then that loss shall be divided by the estimated production of A and B sugar, A and B isoglucose and A and B inulin syrup attributable to the current marketing year. The resulting amount shall be charged to manufacturers as a basic production levy on their production of A and B sugar, A and B isoglucose and A and B inulin syrup.

…

8. Detailed rules for applying this Article shall be adopted in accordance with the procedure referred to in Article 42(2), and shall cover in particular:

— the amounts of the levies to be collected,

…’

9 Article 6(4) of Commission Regulation (EC) No 314/2002 of 20 February 2002 laying down detailed rules for the application of the quota system in the sugar sector (OJ 2002 L 50, p. 40), as amended by Commission Regulation (EC) No 1140/2003 of 27 June 2003 (OJ 2003 L 160, p. 33), provided:

'The quantities disposed of for consumption in the Community to be recorded under Article 15(1)(b) and (2)(a) of Regulation (EC) No 1260/2001 shall be established by totaling the quantities, expressed as white sugar, of the sugars and syrups indicated in Article 1(1)(a), (b), (c), and (d) and of isoglucose and inulin syrup:

(a) stored at the beginning of the marketing year;

(b) produced under quotas A and B;

(c) imported in the natural state;

(d) contained in imported processed products;

subtracting the quantities referred to in the first subparagraph, expressed as white sugar, of sugar, isoglucose and inulin syrup:

(a) exported in the natural state;

(b) contained in exported processed products;

(c) stored at the end of the marketing year;

(d) for which certificates for production refunds as indicated in Article 7(3) of Regulation No (EC) 1260/2001 have been issued.

Quantities as indicated in points (c) and (d) of the first subparagraph and in points (a) and (b) of the second subparagraph shall be extracted from the Eurostat databases and shall, if the figures for a marketing year are incomplete, cover the most recent 12 months available. ...

...'

10 Regulation No 1260/2001 was repealed and replaced by Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector (OJ 2006 L 58, p. 1), which was repealed and replaced by Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of the agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1), which in turn was repealed and replaced by Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671).

11 Recital 19 of Regulation No 318/2006 stated as follows:

'A production charge should be introduced to contribute to the financing of the expenditure occurring under the common organisation of the markets in the sugar sector.'

12 Article 8 of that regulation, entitled 'Additional sugar quota', provided, in subparagraphs (1) and (3) thereof:

'1. By 30 September 2007 at the latest, any sugar undertaking may request from the Member State where it is established the allocation of an additional sugar quota.

…

3. A one-off amount of EUR 730 shall be levied on the additional quotas that have been allocated to undertakings in accordance with paragraphs 1 and 2. It shall be collected per tonne of additional quota allocated.'

13 Article 16 of that regulation, entitled 'Production charge', provided in subparagraphs (1) and (2) thereof:

'1. As from the marketing year 2007/2008, a production charge shall be levied on the sugar quota, the isoglucose quota and the inulin syrup quota held by undertakings producing sugar, isoglucose or inulin syrup.

2. The production charge shall be set at EUR 12,00 per tonne of the quota sugar and quota inulin syrup. For isoglucose, the production charge shall be set at 50% of the charge applicable to sugar.'

14 Article 32 of Regulation No 318/2006, entitled 'Scope of export refunds', provided in subparagraphs (1) and (2) thereof for the possibility to establish export refunds for sugar, isoglucose and inulin syrup.

15 Article 44 of that regulation, headed 'Transitional measures', provided as follows:

'In accordance with the procedure referred to in Article 39(2), measures may be adopted:

(a) to facilitate the transition from the market situation in the marketing year 2005/2006 to the market situation in the marketing year 2006/2007, in particular by reducing the quantity that may be produced under quota, and the transition from the rules provided for in Regulation (EC) No 1260/2001 to those established by this Regulation,

and

(b) to ensure compliance by the Community with its international obligations with regard to C sugar referred to in Article 13 of Regulation (EC) No 1260/2001 while avoiding any disruption of the sugar market in the Community.'

16 Recital 8 of Commission Regulation (EC) No 493/2006 of 27 March 2006 laying down transitional measures within the framework of the reform of the common organisation of the markets in the sugar sector, and amending Regulations (EC) No 1265/2001 and (EC) No 314/2002 (OJ 2006 L 89, p. 11) provided:

'To carry out the calculation, fixing and collecting of production levies in the 2005/2006 marketing year, certain provisions of Commission Regulation (EC) No 314/2002 of 20 February 2002 laying down detailed rules for the application of the quota system in the sugar sector and of Commission Regulation (EC) No 779/96 of 29 April 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1785/81 as regards communications in the sugar sector [(OJ 1996 L 106, p. 9)] should continue to apply beyond 30 June 2006. The levies are calculated on the basis of statistical data which are regularly updated. As it is the last time that levies are to be fixed for the entire period between the 2001/2002 marketing year and the 2005/2006 marketing year, without a subsequent

possibility, as in previous years, to adjust the calculations on the basis of updated figures, the calculations should be deferred and the levies should be fixed on 15 February 2007 to guarantee the reliability of the calculations and the relevance of the statistical data used.'

17 Under Article 6 of Regulation No 493/2006:

'Regulation [No 314/2002], as amended, was therefore to apply to the fixing and collecting of production levies in the 2005/2006 marketing year, including the corrections relating to the calculation of the levies in the 2001/2002, 2002/2003, 2003/2004 and 2004/2005 marketing years as laid down in Article 15(2) of Regulation [No 1260/2001].'

18 Article 12 of Regulation No 493/2006 provides:

'Regulation [No 314/2006] is amended as follows:

…

(3) In Article 8 is amended as follows:
(a) in paragraph 1, the following subparagraph is added:

"In respect of the 2005/2006 marketing year, the amounts and the coefficients referred to in points (a) and (b) of the first subparagraph shall be fixed before 15 February 2007."

…'

19 The production levies were fixed for the 2005/2006 marketing year by Regulation No 164/2007. Following the judgment of 8 May 2008 in *Zuckerfabrik Jülich and Others* (C-5/06 and C-23/06 to C-36/06, EU:C:2008:260), the Commission adopted Regulation (EC) No 1193/2009 of 3 November 2009 correcting Regulations (EC) No 1762/2003, (EC) No 1775/2004, (EC) No 1686/2005, (EC) No 164/2007 and fixing the production levies in the sugar sector for marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006 (OJ 2009 L 321, p. 1). Since Regulation No 1193/2009 was declared invalid by the Court in its judgment of 27 September 2012 in *Zuckerfabrik Jülich and Others* (C-113/10, C-147/10 and C-234/10, EU:C:2012:591), the Council of the European Union adopted Regulation (EU) No 1360/2013 of 2 December 2013 fixing the production levies in the sugar sector for the 2001/2002, 2002/2003, 2003/2004, 2004/2005 and 2005/2006 marketing years, the coefficient required for calculating the additional levy for the 2001/2002 and 2004/2005 marketing years and the amount to be paid by sugar manufacturers to beet sellers in respect of the difference between the maximum levy and the levy to be charged for the 2002/2003, 2003/2004 and 2005/2006 marketing years (OJ 2013 L 343, p. 2).

20 By Commission Regulation (EC) No 958/2006 of 28 June 2006 on a standing invitation to tender to determine refunds on exports of white sugar for the 2006/2007 marketing year (OJ 2006 L 175, p. 49), such an invitation to tender was opened.

21 A further invitation to tender was opened after the adoption of Commission Regulation (EC) No 900/2007 of 27 July 2007 on a standing invitation to tender to determine refunds on exports of white sugar until the end of the 2007/2008 marketing year (OJ 2007 L 196, p. 26).

22 Under Article 3, second paragraph, of Regulation No 1360/2013, the production levies in the sugar sector for the 2005/2006 marketing year, as laid down in point 1 of the annex to that regulation, were declared to be applicable from 2 February 2007, that is the same day from which, in accordance with Article 2 of Regulation No 164/2007, the levies provided for in the latter regulation were to become applicable.

The dispute in the main proceedings and the questions referred for a preliminary ruling

23 Saint Louis Sucre is a company producing sugar which, at the material time, was subject to the common organisation of the markets in the sugar sector regime put in place by Regulation No 1260/2001 and, on that basis, to the system of production levies instituted by that regulation.

24 Taking the view that it should not have been required to pay production levies for the marketing year 2005/2006 for the financing of export refunds on the basis of the quantities of sugar held in stock which had not been exported at the date when the common organisation of the markets in the sugar sector governing those levies and refunds came to an end, Saint Louis Sucre lodged an objection on 28 December 2008 seeking the refund of EUR 158 982 544.

25 Since that objection was rejected, by decision of 30 September 2009 of the Direction générale des douanes et droits indirects, by application of 19 November 2009, Saint Louis Sucre brought an action before the Tribunal de grande instance de Nanterre (Regional Court, Nanterre, France).

26 On 6 September 2010, the case was withdrawn from the lists of the Tribunal de grande instance de Nanterre at the request of the parties, pending the judgment of the Court of Justice on a question referred for a preliminary ruling relating to the validity of Regulation No 1193/2009. Since that regulation was declared invalid by the Court in its judgment of 27 September 2012 in *Zuckerfabrik Jülich and Others* (C-113/10, C-147/10 and C-234/10, EU:C:2012:591), the Council adopted Regulation No 1360/2013. Following the adoption of the latter regulation, the case was re-entered on the register.

27 According to Saint Louis Sucre, while Regulation No 1360/2013 allows the amount of the refund requested to be calculated, the question remains as to the refund of levies relating to sugar held in stock but not exported when the common organisation of the markets in the sugar sector put in place by Regulation No 1260/2001 expired, since the production levy mechanism was brought to an end by Regulation No 318/2006. The new common organisation of the markets in the sugar sector introduced by the latter regulation no longer provided for production levies intended to self-finance exports, so that part of the levies paid have not served to finance exports but to enrich the European Union. Claiming that the European Union has accumulated a stock of 5 669 000 tonnes of quota sugar by 30 June 2005, entered in the accounts as an exportable surplus but not exported, and no repayment had been made by that date in respect of those quantities, Saint Louis Sucre takes the view that its claim for reimbursement on that basis is justified.

28 Against this background, the Tribunal de grande instance de Nanterre decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Are Article 15(2) and (8) of Regulation No 1260/2001, applied in the light of recitals 9 and 11 thereof and the judgments of 8 May 2008 in *Zuckerfabrik Jülich and Others* (C-5/06 and C-23/06 to C-36/06, EU:C:2008:260) and 27 September 2012 in *Zuckerfabrik Jülich and Others* (C-113/10, C-147/10 and C-234/10, EU:C:2012:591), and the general Community law principles of proportionality, freedom to conduct a business and the prohibition of unjust enrichment to be interpreted as meaning that a sugar manufacturer is entitled to reimbursement of production levies paid on the basis of the quantities of quota sugar still held in stock on 30 June 2006, as the production levy system was not renewed after that date by Regulation No 318/2006?

(2) (a) If the preceding question is answered in the affirmative, must the amount of levies to be reimbursed to manufacturers be based solely on the tonnage of sugar held in stock on 30 June 2006?

(b) If the preceding question is answered in the negative, must the tonnage of sugar to be taken as the basis for reimbursement of the levies be based on variations in Community sugar stock levels between 1 July 2001and 30 June 2006?

(3) May the calculation of the levy to be repaid reasonably be arrived at by multiplying the quantity of sugar deemed to be held in stock in response to Question 2 by the weighted average of the “average losses” established during the [common organisation of the markets in the sugar sector for the 2001/2002 to 2005/2006 marketing years], or must it be calculated differently and, if so, how?

(4) If the foregoing questions are answered in the affirmative, is Regulation No 164/2007 invalid?’

Admissibility of the question referred for a preliminary ruling

29 The French Government submits, as a preliminary point, that the questions referred by the national court are manifestly inadmissible for the following reasons.

30 First, the referring court has not set out the reasons justifying its reference, but merely stated that there is a dispute as to the interpretation of an act of the European Union. In fact, that court simply submitted to the Court of Justice the questions suggested to it by the applicant in the main proceedings.

31 Second, the factual background described by the referring court does not make it possible to determine whether the questions are necessary for the resolution of the dispute in the main proceedings.

32 It is common ground that following the judgment of 8 May 2008 in *Zuckerfabrik Jülich and Others* (C-5/06 and C-23/06 to C-36/06, EU:C:2008:260) and 27 September 2012 in *Zuckerfabrik Jülich and Others* (C-113/10, C-147/10 and C-234/10, EU:C:2012:59) and the order of 6 October 2008 in *SAFBA* (C-175/07 to C-184/07, EU:C:2008:543) which invalidated the Commission regulations on the basis of which the national authorities had charged production levies to sugar producers, the Commission, by the adoption of Regulation No 1193/2009, then the Council, by the adoption of Regulation No 1360/2013, took the measures which consisted in the implementation of those judgments and that order. However, the refunds based on Regulation No 1360/2013 were made to sugar producers only in April 2015, that is, after the present request for a preliminary ruling was lodged on 22 January 2015. As a consequence, the referring court was unable to draw the conclusions resulting from such a refund with respect to the action pending before it and, in particular, to determine whether that refund had the result of rendering that action devoid of purpose.

33 Third, the referring court has not given any explanation of why it has doubts about the validity of Regulation No 164/2007, nor about the connection it makes between that regulation and the dispute in the main proceedings.

34 It must be borne in mind in that regard that, according to the Court’s settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 11 November 2015 in *Pujante Rivera*, C-422/14, EU:C:2015:743, paragraph 20 and the case-law cited).

35 In the present case, it is clear from the request for a preliminary ruling that the referring court asks the Court of Justice for an interpretation of Article 15(2) and (8) of Regulation No 1260/2001 and, if necessary, the validity of Regulation No 164/2007 in order to rule on the validity of the refusal of the

competent national authorities to reimburse Saint Louis Sucre the production levies paid on quantities of sugar under quota which were still in stock on 30 June 2006, since the production levy had not been renewed after that date by Regulation No 318/2006.

36 More specifically, as regards the fourth question referred, which concerns the validity of Regulation No 164/2007, in its written submissions, Saint Louis Sucre relied on the invalidity of that regulation, whereas the Belgian Government took the view that that regulation was valid and the Commission submitted that there was no need to answer that question on the ground that that regulation had been declared invalid by the Court in its judgment of 27 September 2012 in *Zuckerfabrik Jülich and Others* (C-113/10, C-147/10 and C-234/10, EU:C:2012:591). Next, in response to a written question from the Court, the Belgian Government and the Commission took the view that the Court should interpret the fourth question as concerning the validity of Regulation No 1360/2013. The French Government adopted the same position, subject to more general reservations concerning the admissibility of the present request for a preliminary ruling. Saint Louis Sucre also replied to that effect, provided that, if the latter regulation were to be declared invalid, the reimbursements already made to producers thereunder would not be affected.

37 In that connection, it must be recalled, as is clear from paragraph 22 of the present judgment, that Regulation No 1360/2013 was replaced as regards production levies in the sugar sector for the 2005/2006 marketing year by Regulation No 164/2007 with retrospective effect from 23 February 2007.

38 Therefore, the fourth question referred must be understood as concerning the validity of Regulation No 1360/2013.

39 It follows from the foregoing that the request for a preliminary ruling is admissible in its entirety.

Consideration of the questions referred for a preliminary ruling

The first question

40 By its first question, the referring court asks essentially whether Article 15(2) and (8) of Regulation No 1260/2001 must be interpreted as giving a sugar producer the right to reimbursement for production levies paid on quantities of sugar under A and B quotas still stored on 30 June 2006, as the production levy system was not renewed after that date by Regulation No 318/2006.

41 The first question derives from Saint Louis Sucre's request to recalculate its production levies for the 2005/2006 marketing year on the ground that the stocks of sugar under A and B quotas in the Community at the end of that marketing year has not given rise to the costs related to their disposal.

42 In that connection, it must be recalled that Article 15(2)(a) of Regulation No 1260/2001 provided that, before the end of the 2005/06 marketing year, the exportable surplus established on the basis of the definitive production of A and B sugar, A and B isoglucose and A and B inulin syrup, on the one hand, and the definitive quantity of sugar, isoglucose and inulin syrup disposed of for consumption within the Community, on the other, had to be recorded cumulatively for the 2001/2002 to 2005/2006 marketing years.

43 In accordance with Article 6(4) of Regulation No 314/2002, as amended by Regulation No 1140/2003, for the purposes of calculating the exportable surplus, the quantities of sugar, isoglucose and inulin syrup disposed of for consumption in the Community were established on the basis of the total of the quantities of those goods held in stock at the beginning of the marketing year, produced under quotas A and B, imported in the natural state and contained in imported processed products, after subtracting

the quantities exported in the natural state and contained in exported processed products, stored at the end of the marketing year, or in respect of which certificates for the production refunds have been issued.

44 Therefore, in the calculation of the exportable surplus for the 2001/2002 to 2005/2006 marketing years, the exclusion of quantities of sugar, isoglucose and inulin syrup stored at the end of the 2005/2006 marketing year is contrary to both Article 6(4) of Regulation No 314/2002, as amended by Regulation No 1140/2003, which expressly provides that those stocks are to be taken into account, and Article 15(2)(a) of Regulation No 1260/2001, which also refers to the exportable and not the exported surplus, which necessarily includes, as is clear, in particular from recital 15 in the latter regulation, the quantities on the market in the relevant marketing year, and those held in stock.

45 Moreover, as the Advocate General observed, in point 77 of her Opinion, the fact of continuing to refer to a 'foreseeable' overall loss, even after the adjustment provided for in Article 15(2) and (3) of Regulation No 1260/2001, so far as concerns the 2001/2002 to 2005/2006 marketing years, implies that the loss may not yet have been incurred in its entirety. The Court has also held that the method for calculating the estimated total loss is designed, in any event, to establish, in a forward looking and conventional way, the losses caused by disposing of surplus Community production (judgment of 8 May 2008 in *Zuckerfabrik Jülich and Others*, C-5/06 and C-23/06 to C-36/06, EU:C:2008:260, paragraph 43).

46 Furthermore, it must be stated, as the Advocate General noted in point 82 of her Opinion, that the reform of the common organisation of the markets in the sugar sector, far-reaching though it was, did not put an end to the system of export refunds, as is apparent from Article 32(1) and (2) of that regulation.

47 Thus, there was an overlap between the common organisation of the markets in the sugar sector established by Regulation No 1260/2001 for the period from the 2001/2002 marketing year to the 2005/2006 marketing year and the same common organisation of the markets, as amended by Regulation No 318/2006 from the 2006/2007 marketing year.

48 Thus, under Regulation No 958/2006, a standing invitation to tender to determine refunds on exports of white sugar for the 2006/2007 marketing year was opened.

49 Therefore the possibility for producers to export the sugar held in stock, with refunds, did not come to an end on the last day of the 2005/2006 marketing year.

50 Finally, it must be observed that Article 16(1) of Regulation No 318/2006 introduced a production charge only from the 2007/2008 marketing year which, moreover, was intended, in accordance with recital 19 of that regulation, to contribute to the financing of the expenditure occurring under the common organisation of the markets in the sugar sector and, unlike the production levy provided for by Regulation No 1260/2001, not to meet in full the cost of disposing of the surpluses of Community production over consumption.

51 In the present case, it must be recalled that, under Regulation No 900/2007, a standing invitation to tender procedure was opened until the end of the 2007/2008 marketing year in order to determine refunds on exports of white sugar.

52 In those circumstances, given the fact that the European Union legislature enjoys a wide discretionary power in matters concerning agriculture corresponding to the political responsibilities given to it by Articles 40 to 43 TFEU and that, consequently, judicial review must be limited to verifying that the measure in question is not vitiated by any manifest error or misuse of powers and that the authority concerned has not manifestly exceeded the limits of its discretionary power (judgment of 14 March 2013 in *Agrargenossenschaft Neuzelle*, C-545/11, EU:C:2013:169, paragraph 43 and the case-law cited),

it does not appear that the Council committed a manifest error, a misuse of power or exceeded the limits of its discretionary power by providing that, as regards the 2005/2006 marketing year, the exportable surplus existing at the end of that year would be taken into consideration, which necessarily included the quantities of sugar held in stock at the end of that year.

53 As to the argument put forward by Saint Louis Sucre at the hearing, that the export refunds granted in the 2006/2007 marketing year were financed by amounts charged on the additional quotas of sugar allocated to sugar companies in that marketing year, in accordance with Article 8 of Regulation No 318/2006, it must be stated that it is a voluntary allocation of quotas which was made at the request of the companies themselves and that, in any event, nothing in the file indicates that the amounts charged were used not to cover the costs related to those additional quotas, but to meet the cost of those refunds.

54 Taking account of the foregoing, the answer to the first question is that Article 15(2) and (8) of Regulation No 1260/2001 must be interpreted as meaning that it does not confer on a sugar producer the right to be reimbursed for production levies paid on the quantities of sugar under A and B quotas which were still stored on 30 June 2006, as the production levy system was not renewed after that date by Regulation No 318/2006.

The second and third questions

55 In view of the answer given to the first question, there is no need to answer the second and third questions.

The fourth question

56 Having regard to the answer to the first question, no factors have been disclosed capable of affecting the validity of Regulation No 1360/2013.

Costs

57 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **Article 15(2) and (8) of Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector must be interpreted as meaning that it does not confer on a sugar producer the right to be reimbursed for production levies paid on the quantities of sugar under A and B quotas which were still stored on 30 June 2006, as the production levy system was not renewed after that date by Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector.**

2. **No factors have been disclosed capable of affecting the validity of Council Regulation (EU) No 1360/2013 of 2 December 2013 fixing the production levies in the sugar sector for the 2001/2002, 2002/2003, 2003/2004, 2004/2005 and 2005/2006 marketing years, the coefficient required for calculating the additional levy for the 2001/2002 and 2004/2005 marketing years and the amount to be paid by sugar manufacturers to beet sellers in respect of the difference between the maximum levy and the levy to be charged for the 2002/2003, 2003/2004 and 2005/2006 marketing years.**

[Signatures]