

of civil aviation. Only such JARs are considered to be Community legislation. JAR-OPS1 is neither included in the above mentioned Annex II nor in a proposal submitted by the Commission to the Council in May 1996 to amend Council Regulation No 3922/91.

Regarding the improvement of the safety of children while travelling in aircraft, the Council has not received any proposal from the Commission.

(¹) OJ L 373, 31.12.1991, p. 4.

(1999/C 96/205)

WRITTEN QUESTION E-2765/98

by Giacomo Santini (PPE) to the Council

(11 September 1998)

Subject: Application of a surcharge ('sovrapprezzo') to imports of Community sugar

In its judgment of 21 May 1980, in Case 73/79, the Court of Justice of the European Communities ruled that Italy had infringed Article 95 of the EC Treaty by imposing a surcharge on imports of Community sugar, a provision introduced by the Interministerial Prices Committee (CIP No 3661 of 22 June 1968). The surcharge was deemed to discriminate between importers and domestic producers thereby entailing an unacceptable distortion of the principle of free competition. The surcharge was ruled illegal in that it constituted a charge which, 'although levied at the same rate on sugar produced in Italy and sugar from other Member States, does not constitute a uniform imposition on those products'.

Will the Council say:

1. whether it still considers the surcharge levied by the Italian state under provision CIP 3661 of 22 June 1968 to be illegal?
2. whether the surcharge paid by Italian importers should be refunded since it was illegally levied and could not be reclaimed?
3. whether the body concerned (the Sugar Equalisation Fund) can, if necessary, ask importers to pay any difference between the surcharge paid and the amount of aid legally granted by the Italian state?
4. whether the state may determine the amount of direct or indirect aid granted to industry independently and without supervision by any other authorities?
5. whether the Sugar Equalisation Fund can, by means of retrospective application of the law, request a refund of the illegally levied tax if this has already been repaid to the importer?
6. whether importers will be subject to the burden of proof requiring them to show that the surcharge has not been passed on to other operators in order to secure the right to reimbursement as provided for in law 429/90?
7. whether the illegal nature of the surcharge can be deemed to be offset by the fact that it has been transferred to the consumer?

Will the Council call on the Italian Government to annul/repeal Article 29(2) and (7) of law 128/90?

Reply

(3 November 1998)

It is not for the Council to comment on action taken by the Italian State following the Judgment of 21 May 1980 by the Court of Justice in Case 73/79. If the Judgment is not being fully respected, it is for the Commission, in accordance with Article 171 of the Treaty, to take the necessary steps to ensure that it is implemented.