JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)

2 October 2009 *

In Case T-324/05,

Republic of Estonia, represented by L. Uibo, acting as Agent,

applicant,

supported by

Republic of Latvia, represented initially by E. Balode-Buraka, and subsequently by L. Ostrovska and K. Drēviņa, acting as Agents,

intervener,

* Language of the case: Estonian.

Commission of the European Communities, represented initially by L. Visaggio and E. Randvere, and subsequently by T. van Rijn, H. Tserepa-Lacombe and E. Randvere, acting as Agents,

defendant,

APPLICATION for annulment of Commission Regulation (EC) No 832/2005 of 31 May 2005 on the determination of surplus quantities of sugar, isoglucose and fructose for the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2005 L 138, p. 3),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (First Chamber),

composed of V. Tiili (Rapporteur), President, F. Dehousse and I. Wiszniewska-Białecka, Judges,

Registrar: C. Kantza, Administrator,

having regard to the written procedure and further to the hearing on 22 April 2009,

gives the following

Judgment

Legal context

I — *The common organisation of the markets in sugar*

1 At the time of the facts that gave rise to the present case the common organisation of the markets in the sugar sector (the 'CMO in sugar') was governed by 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).

2 The second recital in the preamble to that regulation states that the aim of the CMO in sugar is to stabilise the market in that product in order to maintain the necessary guarantees in respect of employment and standards of living for Community growers of sugar beet and sugar cane. To that end, it regulates sugar production and imports and provides for market stabilisation mechanisms with the aim of ensuring the disposal of Community production.

3 Under Articles 10 and 11 of Regulation No 1260/2001, Community sugar production is based on a quota system, which entails setting the quantities to be produced in each producing region of the Community, with the Member States being responsible for apportioning the quantities among the various producer undertakings on their territory in the form of production quotas — A quotas and B quotas. These quantities correspond to a marketing year commencing on 1 July of one year and ending on 30 June of the following year. The sugar produced by an undertaking within the A and B

quotas is termed 'A sugar' and 'B sugar' respectively. Any quantity of sugar produced in excess of the A and B quotas is termed 'C sugar'.

4 The disposal guarantees provided in the context of the CMO in sugar consist, first, in a price support system based, under Articles 6 to 9 of Regulation No 1260/2001, on an intervention system designed to guarantee the prices of the products and their disposal, the prices applied by the intervention agencies being set by the Council of the European Union, and, secondly, in a system of export refunds under Articles 27 to 30 of Regulation No 1260/2001, aimed at facilitating the marketing of Community output in the world market — if that proves necessary to stabilise the Community sugar market — by covering the difference between prices within the Community and prices on the world market.

5 A sugar and B sugar may be marketed freely in the common market and benefit from these disposal guarantees, with B sugar attracting a lower price guarantee than A sugar. C sugar, by contrast, is not eligible for either the price support mechanism or the export refunds mechanism. Under Article 13 of Regulation No 1260/2001, it must as a matter of principle be exported from the Community for sale on the world market.

6 Pursuant to Article 15(1)(a), (b) and (c) of Regulation No 1260/2001, before the end of each marketing year forecasts are recorded for the quantity of A and B sugar produced during that year, the quantity of sugar disposed of for consumption within the Community during that year and the exportable surplus, obtained by subtracting the second of these two quantities from the first. This exportable surplus is, theoretically, the surplus for which export refunds are paid.

7 Under Articles 15 and 16 of Regulation No 1260/2001, the CMO in sugar provides for the cost of disposing of surplus sugar to be financed entirely by the manufacturers themselves by means of production levies and additional levies. This self-financing

regime forms a counterpart to the guarantees for the disposal of Community output by making manufacturers ultimately responsible for meeting the cost of ensuring disposal of the quantities placed on the market in a given marketing year. The amount of the levies is set after the end of each marketing year on the basis of a balance sheet of the operation of the Community market drawn up by the Commission of the European Communities on the basis of data provided by the Member States. The payment of export refunds is one of the measures financed by manufacturers on the basis of their production quota.

II — *The Treaty of Accession and the Act of Accession*

8 Pursuant to Article 2(3) of the Treaty between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, the Slovak Republic, concerning the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union (OJ 2003 L 236, p. 17; 'the Treaty of Accession'), signed in Athens on 16 April 2003:

'Notwithstanding paragraph 2, the institutions of the Union may adopt before accession the measures referred to in Articles 6(2) second subparagraph,... [and Article] 41... of the Act [concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the

European Union is founded]…. These measures shall enter into force only subject to and on the date of the entry into force of this Treaty.'

9 Under the first paragraph of Article 41 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33; 'the Act of Accession'), annexed to the Treaty of Accession:

'If transitional measures are necessary to facilitate the transition from the existing regime in [the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic] to that resulting from the application of the common agricultural policy under the conditions set out in this Act, such measures shall be adopted by the Commission in accordance with the procedure referred to in Article 42(2) of... Regulation... No 1260/2001..., or as appropriate, in the corresponding Articles of the other Regulations on the common organisation of agricultural markets or the relevant committee procedure as determined in the applicable legislation. The transitional measures referred to in this Article may be taken during a period of three years following the date of accession and their application shall be limited to that period….'

10 Pursuant to point 4(2) of Annex IV to the Act of Accession:

'Any stock of product, private as well as public, in free circulation at the date of accession within the territory of the new Member States exceeding the quantity which could be regarded as constituting a normal carryover of stock must be eliminated at the expense of the new Member States.

The concept of normal carryover stock shall be defined for each product on the basis of criteria and objectives specific to each common market organisation.'

Background to the dispute

I — *Regulation (EC) No 60/2004*

11 On 14 January 2004, the Commission adopted, on the basis of Article 2(3) of the Treaty of Accession and the first paragraph of Article 41 of the Act of Accession, Regulation (EC) No 60/2004 laying down transitional measures in the sugar sector by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2004 L 9, p. 8).

12 Essentially, Regulation No 60/2004 establishes, by temporary derogation from the applicable Community rules, a system under which the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic ('the new Member States') eliminate from the market the surplus stocks of sugar, isoglucose and fructose existing in those States.

13 Accordingly, Article 6(1) of Regulation No 60/2004 provides that the Commission is to determine by 31 October 2004 at the latest, for each new Member State, in accordance with the procedure referred to in Article 42(2) of Regulation No 1260/2001, the quantity of sugar as such or in processed products, isoglucose and fructose exceeding the quantity considered as being normal carryover stock at 1 May 2004 ('the surplus') and which has to be eliminated from the market at the expense of the new Member

States. Article 6(1) of Regulation No 60/2004 also specifies the manner in which the Commission is to determine the surplus. In that regard, the Commission must take account of the development during the year preceding accession, as compared with the previous years, of imported and exported quantities of sugar as such or in processed products, isoglucose and fructose, production, consumption and stocks of such products and the circumstances in which stocks were built up.

14 Article 6(2) of Regulation No 60/2004 provides that each new Member State is to ensure the elimination from the market of a quantity of sugar or isoglucose, without Community intervention, equal to the surplus quantity attributed to it by the Commission under the procedure referred to in Article 6(1). The surplus may be eliminated by export without refund from the Community, by use in the sector of combustibles or by denaturation without aid for animal feed in accordance with Titles III and IV of Regulation (EEC) No 100/72 of the Commission of 14 January 1972 laying down detailed rules on the denaturing of sugar for animal feed (English Special Edition 1972(I) p. 21). In any event, elimination must be completed by 30 April 2005 at the latest.

15 Under Article 6(3) of Regulation No 60/2004, for the application of Article 6(2), each new Member State is to dispose on 1 May 2004 of a system for the identification of traded or produced surplus quantities of sugar as such or in processed products, isoglucose or fructose, at the level of the main operators concerned. The new Member State is to use that system to compel the operators concerned to eliminate from the market at their own expense an equivalent quantity of sugar or isoglucose of their determined individual surplus quantity. The operators concerned are to provide the proof that products were eliminated from the market by 30 April 2005 at the latest. If such proof is not provided, the new Member State is to charge an amount equal to the quantity in question multiplied by the highest import charges applicable to the product concerned during the period from 1 May 2004 to 30 April 2005, increased by EUR 1.21/100 kg in white sugar or dry matter equivalent, and assign that amount to its national budget.

16 Article 6(4) of Regulation No 60/2004 provides that, if the surplus stocks are eliminated by means of export, the operators concerned have until 31 July 2005 to provide proof of this.

17 Article 7(1) of Regulation No 60/2004 provides that by 31 July 2005 at the latest the new Member States are to provide proof to the Commission that the surplus quantity assigned to them in accordance with the method referred to in Article 6(1) of that regulation has been eliminated. If such proof is not provided for a part or for the totality of the surplus quantity within the time-limit, Article 7(2) provides that the new Member State concerned is to pay an amount equal to the quantity not eliminated, multiplied by the highest export refunds applicable to white sugar falling within CN code 1701 99 10 during the period from 1 May 2004 to 30 April 2005. This amount is to be assigned to the Community budget by 30 November 2005 at the latest and taken into account for the calculation of the production levies for the marketing year 2004/2005.

18 Regulation No 60/2004 entered into force on 1 May 2004, in accordance with Article 9 of that regulation.

II — *Regulation (EC) No 651/2005*

19 On 28 April 2005, the Commission adopted Regulation (EC) No 651/2005 amending Regulation No 60/2004 (OJ 2005 L 108, p. 3) on the basis of the first paragraph of Article 41 of the Act of Accession.

20 The amendments to Regulation No 60/2004 introduced by means of Regulation No 651/2005 affect only the dates and deadlines set in the earlier regulation.

21 Thus, the dates referred to in the first subparagraph of Article 6(1) and in Article 6(2) of Regulation No 60/2004 — respectively, 31 October 2004 and 30 April 2005 — become 31 May 2005 and 30 November 2005. The date referred to in the second and third subparagraphs of Article 6(3) — 30 April 2005 — becomes 30 November 2005. Similarly, the date given in the introductory sentence of Article 6(4) of Regulation No 60/2004 — 31 July 2005 — becomes 28 February 2006 and that mentioned in the fourth subparagraph of that provision — 1 May 2005 — becomes 30 November 2005. The date given in Article 7(1) of Regulation No 60/2004 — 31 July 2005 — becomes 31 March 2006 and the period given in Article 7(2) — from 1 May 2004 to 30 April 2005 — now extends from 1 May 2004 to 30 November 2005. Lastly, the date for payment of the amount owed to the Community budget is also amended, 30 November 2005 becoming 31 December of the years from 2006 to 2009.

22 Regulation No 651/2005 entered into force on 29 April 2005, in accordance with Article 2 of that regulation.

III — *The contested regulation*

23 On 31 May 2005, the Commission adopted Regulation (EC) No 832/2005 on the determination of surplus quantities of sugar, isoglucose and fructose for the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2005 L 138, p. 3; 'the contested regulation'). Article 1 of that regulation sets the surplus amount that must be eliminated from the Community market by each of the five new Member States for which it was finally determined that a surplus existed, namely the Republic of Cyprus, the Republic of Latvia, the Republic of Malta, the Slovak Republic and the Republic of Estonia. The surplus for the Republic of Estonia was set at 91 464 tonnes.

Procedure and forms of order sought

24 By application lodged at the Registry of the Court of First Instance on 25 August 2005, the Republic of Estonia brought an action under Article 230 EC for annulment of the contested regulation.

25 By document lodged at the Registry of the Court of First Instance on 12 December 2005, the Republic of Latvia sought leave to intervene in the present proceedings in support of the forms of order sought by the Republic of Estonia. Leave was granted by order of the President of the Third Chamber of the Court of First Instance on 10 February 2006.

26 On 27 March 2006, the Republic of Latvia lodged a statement in intervention.

27 As the composition of the Chambers of the Court of First Instance had been altered, the Judge-Rapporteur was assigned to the First Chamber, to which the present proceedings were consequently allocated.

28 On 12 February 2009, the Court of First Instance put written questions to the Commission, which complied with this request within the prescribed time-limit.

29 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (First Chamber) decided to open the oral procedure.

30 At the hearing on 22 April 2009, the parties submitted oral argument and answered questions put by the Court.

31 The Republic of Estonia, supported by the Republic of Latvia as regards its first head of claim, claims that the Court should:

— annul the contested regulation;

— order the Commission to pay the costs.

32 The Commission contends that the Court should:

— dismiss the action;

— order the Republic of Estonia to pay the costs.

Law

33 The Republic of Estonia claims that only 48 733 tonnes of the surplus ascribed to it by the Commission under the contested regulation were held by economic agents, the remaining 42 731 tonnes consisting of stocks held by Estonian households for their consumption ('household reserves'), as is evident from the Commission's final calculations based on uncontested figures which it provided.

34 In this context, the Republic of Estonia claims solely that household reserves should not have been included in the surplus and seeks annulment of the contested regulation in that they were so included.

35 In that regard, it relies on eight pleas, supported in some of them by the Republic of Latvia: (i) breach of the principle of collegiality; (ii) infringement of Regulation No 60/2004; (iii) breach of the obligation to state reasons; (iv) breach of the principle of sound administration; (v) breach of the duty to act in good faith; (vi) breach of the principle of non-discrimination; (vii) infringement of the right to property; and (viii) breach of the principle of proportionality.

36 Moreover, the Republic of Latvia raised an additional plea in its statement in intervention, alleging infringement of the rights of the defence.

37 Lastly, the Republic of Estonia asks the Court, as a preliminary matter, to require the Commission to provide it with certain documents and to explain the differences between those documents and a set of documents that the Republic of Estonia placed in

the case-file. The Commission, for its part, asks the Court to remove the latter documents from the case-file. These two requests must be examined first.

I — *The requests made as a preliminary matter by the Republic of Estonia and by the Commission*

A — *The preliminary request made by the Republic of Estonia*

1. Arguments of the parties

38 The Republic of Estonia states that documents in its possession which it claims were presented to the Commission at its meeting of 20 April 2005 ('Annex 18'), during which the Commission authorised three of its members to adopt the contested regulation, show that for the Commission the question of whether household reserves constituted part of the Estonia surplus was purely political.

39 In order to determine the authenticity of Annex 18, the Republic of Estonia claims that it asked the Commission, on 27 June 2005, for a copy of the documents presented at its meeting of 20 April 2005. It asserts that in reply it received certain documents on 25 August 2005, including a communication sent to the Commission by one of its members, who is responsible for agriculture and rural development, Mrs Fischer Boel (the 'communication from Mrs Fischer Boel'). According to the Republic of Estonia, Annex 18 contains an incomplete version of that communication. The Republic of Estonia maintains that the communication from Mrs Fischer Boel contains facts proving that the Commission did not intend to take account of the specific situation of the Republic of Estonia, as well as a draft regulation, which was absent from the documents forwarded by the Commission. For that reason, the Republic of Estonia asks the Court — in order to ensure consistency with the principle of equality of arms — to

require the Commission to release to it all the documents submitted to the Commission at its meeting of 20 April 2005 and to explain the differences between Annex 18 and the documents forwarded on 25 August 2005.

40 The Commission replies that it has already met that request. It states that Annex 18 is a collection of preliminary documents forming part of the discussions between its departments prior to the meeting of 20 April 2005, and that they differ from the documents finally submitted.

2. Findings of the Court

41 It should be noted that the Republic of Estonia ultimately does not dispute that on 25 August 2005 the Commission provided it with all the documents submitted to the college of the members of the Commission ('the College') at its meeting of 20 April 2005. In fact, these documents are already in the file and were placed there by the Republic of Estonia, which has not claimed that other documents, which the Commission had failed to provide, had been submitted to the College at that meeting. Accordingly, the Republic of Estonia's request for the production of documents must be considered devoid of purpose and its arguments are to be interpreted solely in the sense that, since the documents forwarded to it by the Commission on 25 August 2005 contain significant differences by comparison with those in Annex 18 (to which it had had access in a manner which it does not elucidate), it is asking the Court to order the Commission to explain the reasons for those differences.

42 It should be pointed out that the Commission has already furnished the clarifications requested.

43 The Commission explained that Annex 18 is a collection of preliminary documents prepared for its meeting of 20 April 2005. It also explained that these documents differ

from the ones finally submitted to the college at that meeting precisely because of their preliminary nature.

44 The explanation provided by the Commission is comprehensible and plausible. It is quite normal for a member of the Commission submitting documents to that body in preparation for the adoption of a measure to have several versions of the documents in question and to choose from these the one that seems the most appropriate to be submitted to the college for the purposes of the adoption of the measure in question. It follows that the explanation provided by the Commission renders it superfluous to continue to examine the request from the Republic of Estonia.

B — *The Commission's preliminary request*

1. Arguments of the parties

45 The Commission states that Annex 18 is a collection of internal preliminary documents forming part of the discussions between its departments and asks the Court to remove it from the case-file.

46 It points out that the frankness and transparency with which internal debate should take place could be seriously impaired if internal and preliminary documents drawn up in preparation for the College's deliberations were made available to parties disputing the outcome of such deliberations before the Community Courts, particularly as they disclose points of view expressed by the Commission's legal department, which deserve particular protection, and as they were obtained unlawfully.

47 Moreover, according to the Commission, review by the Community Court is based on the final document and not on drafts or preparatory documents, which reflect only provisional viewpoints.

48 Lastly, according to the Commission, the Republic of Estonia had never requested access to Annex 18. Its request of 27 June 2005 for access to the documents, which had in fact been met, related only to the documents submitted to the College at its meeting on 20 April 2005 and those regarding the method for determining the surpluses.

49 The Republic of Estonia disputes the Commission's arguments.

2. Findings of the Court

50 Since, in response to a question from the Court, the Commission expressly admitted at the hearing that Annex 18 does not contain opinions from its legal department, as in fact is clear from the file, it must be concluded that its request to remove that annex from the file rests on three grounds: (i) the internal and preliminary nature of the documents; (ii) the fact that the documents may have been obtained unlawfully; and (iii) the irrelevance of those documents to the present case.

51 As regards the first and second grounds, it should be observed that neither the fact that the documents in question may be confidential nor the fact that they may have been obtained unlawfully precludes their remaining in the file (see, to that effect, Case T-48/05 *Franchet and Byk* v *Commission* [2008] ECR II-1585, paragraph 74).

52 First, there is no provision that expressly prohibits evidence obtained unlawfully from being taken into account (*Franchet and Byk* v *Commission*, paragraph 51 above, paragraph 75).

53 Furthermore, the Court of First Instance has on occasion agreed to take account of documents which had not been shown to have been obtained by proper means (*Franchet and Byk* v *Commission*, paragraph 51 above, paragraph 78).

54 Thus, in certain situations, it has not been necessary for the applicant to show that it had obtained by lawful means the confidential document relied on in support of its argument. The Court has held, on the balance of the interests to be protected, that it was necessary to consider whether particular circumstances, such as the decisive nature of the production of the document for the purposes of reviewing the lawfulness of the procedure leading to the adoption of the contested measure (see, to that effect, Case T-192/99 *Dunnett and Others* v *EIB* [2001] ECR II-813, paragraphs 33 and 34) or of establishing the existence of a misuse of powers (see, to that effect, Case T-280/94 *Lopes* v *Court of Justice* [1996] ECR-SC I-A-77 and II-239, paragraph 59), constituted grounds for not withdrawing that document (*Franchet and Byk* v *Commission*, paragraph 51 above, paragraph 79).

55 Furthermore, the Court of Justice has not ruled out the possibility that even internal documents may, in certain cases, be lawfully placed in a case-file (Orders of 19 March 1985 in Case 232/84 *Tordeur and Others* (not published in the ECR), paragraph 8, and of 15 October 1986 in Case 31/86 *LAISA* v *Council* (not published in the ECR), paragraph 5).

56 It should be held that the circumstances which permit these internal documents to remain in the file are, in particular, those that may be taken into account for keeping in the case-file documents that may have been obtained unlawfully and which are referred to in paragraph 54 above (see, to that effect, *Dunnett and Others* v *EIB*, paragraph 54 above, paragraph 33).

57 In the light of the foregoing, it must be found that the specific context of the present application makes it possible to consider that the documents that constitute Annex 18 must remain in the file. They have been relied upon specifically in order to establish the existence of a number of irregularities in the procedure leading to the adoption of the contested regulation and the existence of a misuse of powers, which justifies not withdrawing them, in accordance with the case-law cited in paragraph 54 above.

58 Lastly, with regard to the third ground on which the Commission asks the Court to remove Annex 18 from the file, namely that the documents contained in that annex are not relevant to the resolution of the dispute, it must be found that the irrelevance of a document to the handling of a case is not in itself sufficient to justify its removal from the file.

59 Consequently, the Commission's preliminary request must be refused.

II — *The first plea: breach of the principle of collegiality*

A — *Arguments of the parties*

60 The Republic of Estonia claims that the Court of Justice has ruled that the College cannot merely express its desire to act in a certain manner without participating in the drafting of the measure embodying that desire and in the drawing up of the final version. In the view of the Republic of Estonia, that reasoning is all the more applicable in the present case, as the contested regulation has serious consequences for many people and for the budget of the Member States concerned. It points out that the Court of Justice has also ruled that measures affecting the legal situation of the addressee must be examined and adopted by the College. The Republic of Estonia deduces from this that Article 13 of the Rules of Procedure of the Commission — under which the latter may authorise its members to adopt the definitive text of an instrument, the substance of which has already been determined in discussion — must be interpreted as meaning

that any amendment to the wording of a regulation, and especially to its enacting terms, is prohibited after the decision has been taken by the College.

61 According to the Republic of Estonia, the adoption of the contested regulation breached the principle of collegiality in that, at the meeting of the Commission on 20 April 2005, first it was decided to instruct Mrs Fischer Boel to pursue contacts with the new Member States with a view to carrying out a final check of their surpluses, in particular by taking account of the latest available data and the extent to which domestic reserves should be included in the calculation of the surpluses. Secondly, it was decided to submit to the Management Committee for Sugar a draft regulation fixing the surplus for each new Member State. Thirdly, it was decided to authorise Mrs Fischer Boel to adopt, subject to the agreement of the President of the Commission and a third member of the Commission, that draft in the absence of a negative opinion from the committee or, if justified by the development of the situation, to adopt it herself using the oral procedure. Accordingly, in the opinion of the Republic of Estonia, the fact that Mrs Fischer Boel was authorised to adopt the contested decision without the College having approved a final version was contrary to the principle of collegiality.

62 Even if the decision of the College was necessary solely as regards the content of the contested regulation and not as regards its precise wording, it was clear, according to the Republic of Estonia, that Mrs Fischer Boel was instructed to decide whether household reserves should be included in the surpluses. The scope of her discretion emerges clearly if the surpluses finally determined in the contested regulation are compared with those initially set in the draft of 20 April 2005: for the Republic of Estonia 91 464 tonnes instead of 91 466 tonnes; for the Republic of Cyprus 40 213 tonnes instead of 40 249 tonnes; for the Republic of Latvia 10 589 tonnes instead of 20 080 tonnes; for the Republic of Malta 2 452 tonnes instead of 13 210 tonnes, and lastly for the Slovak Republic 10 225 tonnes instead of 17 419 tonnes. Lastly, the communication from Mrs Fischer Boel and the attached methodological note, which, according to the Republic of Estonia, was the basis of the decision of the College and encapsulates Mrs Fischer Boel's mandate, contains only vague guidelines, lays down that some flexibility is acceptable with regard to what is considered a normal carryover of stocks and does not explain the specific circumstances that justify the reduction in the surpluses.

63 According to the Republic of Estonia, the Commission itself was aware of this situation, as in its statement of defence it states, first, that it had approved a guideline and not a decision and, secondly, that on 19 May 2005 the Republic of Estonia still had the option of presenting additional arguments. Lastly, the Republic of Estonia claims that a letter from the Commission dated 22 August 2005 shows that the surpluses of each Member State were not set until the meeting of experts of 19 May 2005, as the Commission confirms in its statement of defence. Thus, according to the Republic of Estonia, the Commission could not have adopted the contested regulation on 20 April 2005.

64 The Commission disputes the arguments of the Republic of Estonia.

B — *Findings of the Court*

65 It should be borne in mind that the functioning of the Commission is governed by the principle of collegiate responsibility (Case C-137/92 P *Commission* v *BASF and Others* [1994] ECR I-2555, paragraph 62). That principle is expressly mentioned in the first paragraph of Article 217 EC, as amended by the Treaty of Nice, pursuant to which the Commission is to work under the political guidance of its President, who is to decide on its internal organisation in order to ensure that it acts consistently, efficiently and on the basis of collegiality.

66 According to established case-law, that principle stems from Article 219 EC, under which the Commission is to act by a majority of the number of Members provided for in Article 213 EC and a meeting of the Commission is to be valid only if the number of Members laid down in its Rules of Procedure is present. It is based on the equal participation of the Commissioners in the adoption of decisions, from which it follows in particular that decisions should be the subject of collective deliberation and that all the Members of the College should bear collective responsibility at political level for all decisions adopted (Case 5/85 *AKZO Chemie* v *Commission* [1986] ECR 2585, paragraph 30, and *Commission* v *BASF and Others*, paragraph 65 above, paragraph 63).

67 Nevertheless, recourse to the delegation procedure for the adoption of measures of management or administration is compatible with the principle of collegiality.

68 Indeed, limited to specific categories of measures of management or administration, and thus excluding by definition decisions of principle, such a system of delegation of authority appears necessary, given the considerable increase in the number of decisions which the Commission is required to adopt, in order to enable it to perform its duties (*AKZO Chemie* v *Commission*, paragraph 66 above, paragraph 37, and Case T-442/93 *AAC and Others* v *Commission* [1995] ECR II-1329, paragraph 84).

69 It is therefore necessary to examine whether the contested regulation must be considered a measure of management or administration or a decision of principle.

70 In that regard, it is important to note that, despite its legislative nature, the sole purpose of the contested regulation is to determine the surpluses of certain new Member States in accordance with the relevant procedure laid down in Regulation No 60/2004, of which it is an implementing measure. To carry out such a calculation cannot be considered to constitute a decision of principle.

71 As is evident from paragraphs 13 to 17 above, it is Article 6(1) of Regulation No 60/2004, as amended by Regulation No 651/2005, that defines the surplus and the method the Commission must use to determine it. It is Article 6(2) of Regulation No 60/2004, not any measure of the contested regulation, that lays down that the surplus so calculated must be eliminated by precise means. Lastly, it is Article 7(2) of Regulation No 60/2004 that indicates the consequences that the new Member States must bear if they fail to meet their obligations.

72 All the relevant questions of principle were therefore settled in Regulation No 60/2004, as amended. The contested regulation was subordinate to that regulation and merely performs an accounting exercise, even if that exercise is of some complexity.

73 It must be added that, at its meeting on 20 April 2005, the College authorised three of its Members to carry out such an accounting exercise without at the same time granting them the power to adopt new decisions of principle or to re-examine the appropriateness of applying those contained in Regulation No 60/2004, as is evident from the minutes of the 1 698th meeting of the Commission on 20 April 2005.

74 In fact, at that meeting, the College first approved the communication from Mrs Fischer Boel. The methodology annexed to that communication and approved, together with the latter, by the College, far from authorising the members empowered to adopt the contested regulation to deviate from the matters of principle set out in Regulation No 60/2004, further circumscribes their discretion in reaching a decision. In particular, it elaborates the criteria for determining the surpluses described in Regulation No 60/2004 and establishes a clear rule, on the basis of which the surpluses are to be the result of the variation in production plus the variation in imports and minus the variation in exports during the period from May 2003 to April 2004, as compared with the result of those calculations for the corresponding period in the three preceding years.

75 It is true that the methodology in question falls under Article 6(1)(c) of Regulation No 60/2004, pursuant to which the Commission must take account of the circumstances in which stocks were built up when determining them. Accordingly, the third subparagraph of paragraph 2(3)(b) of the methodology annexed to the communication from Mrs Fischer Boel indicates that some flexibility is acceptable with regard to what must be considered a normal carryover stock. However, this does not in any way authorise the empowered members of the Commission to calculate the surpluses of certain Member States in a manner other than that provided for in Regulation No 60/2004. They are authorised solely to evaluate the accounting data provided by the States in question with a degree of flexibility, making it possible to assess existing stocks in context in order to exclude from the calculation of the surpluses those stocks that can be explained by factors not associated with speculation

in connection with the accession of these States to the European Union and not giving rise to the risk of disruption of the market.

76 The communication from Mrs Fischer Boel also provides a detailed response to the arguments that the Republic of Estonia had put forward to demonstrate that the household reserves had been built up in circumstances that warranted a re-evaluation of the quantities concerned under Article 6(1)(c) of Regulation No 60/2004. While it is true that the empowered members of the Commission could, under the terms of their delegated powers, entertain further contacts with the new Member States in order to review their arguments in this regard, it is equally true that, since that communication had been clearly approved by the College, the Members in question could not deviate from the guideline defined therein and, in consequence, could only exclude household reserves from the calculation of the surpluses on the basis of factors not touched upon in the communication, which they did not do.

77 Furthermore, while it is true that the empowered members of the Commission could, under the terms of their delegated powers, entertain further contacts with the new Member States in order to review their arguments in this regard, it is equally true that the college reserved the right to adopt the final decision itself if the situation demanded, which can only be interpreted as referring to a situation in which an approach diverging from that described in the communication from Mrs Fischer Boel had to be followed. In any event, such a change in approach did not take place.

78 Lastly, it should be pointed out, in any case, that the Commission must, while complying with the principle of collegiality, be granted the power to entrust to some of its members the task of carrying out an accounting exercise, no matter how complex, in order to determine the quantities of a given agricultural product existing on the territory of certain Member States, so as not seriously to compromise its ability to manage effectively the common agricultural policy, a field requiring simultaneous and rapid management of information on production, reserves and other variables resulting from calculation exercises such as those carried out in the context of the contested regulation.

79 It follows that this plea must be rejected.

III — *The second plea: infringement of Regulation No 60/2004*

80 The Republic of Estonia claims that the contested regulation was adopted in breach of Regulation No 60/2004. In that regard, it raises two arguments that may be presented in the form of two separate parts of the plea. First, it alleges that Regulation No 60/2004 does not permit household reserves to be included in the calculation of the surpluses. Secondly, it asserts that the Commission failed, in breach of Article 6(1)(c) of Regulation No 60/2004, to take account of the specific circumstances of Estonia when determining its surplus.

81 However, *in limine*, the parties disagree on the binding nature of Regulation No 60/2004 in relation to the contested regulation. As the question whether the present plea is valid hinges on this point, it must be addressed before examining the two parts referred to in the preceding paragraph.

A — *The binding nature of Regulation No 60/2004 in relation to the contested regulation*

1. Arguments of the parties

82 The Republic of Estonia claims that, since Regulation No 60/2004 is the legal basis for the contested regulation, infringement of the former should lead to annulment of the

latter, even if they have been adopted by the same institution (Case 38/70 *Deutsche Tradax* v *Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1971] ECR 145, and Case 118/77 *ISO* v *Council* [1979] ECR 1277), without it being of importance in this regard whether they were adopted by means of the same procedure.

83 The Commission admits that the contested regulation is based on Regulation No 60/2004, but argues that it can lawfully derogate from the latter's provisions, as these two regulations were adopted by the same institution by means of the same procedure, unlike the acts which gave rise to the case-law relied upon by the Republic of Estonia. Lastly, according to the Commission, it can even be argued that the contested regulation directly applies the Act of Accession, even though it is based on Article 6 of Regulation No 60/2004, since the choice of that legal basis had no influence on the applicable procedure (Case C-491/01 *British American Tobacco (Investments) and Imperial Tobacco* [2002] ECR I-11453, paragraphs 93 to 98).

2. Findings of the Court

84 It should be observed that, in adopting the contested regulation, the Commission was not carrying out a theoretical exercise in accounting but was implementing Article 6(1) of Regulation No 60/2004, pursuant to which it had to determine the surplus of each new Member State. Regulation No 60/2004 also specifies the means of eliminating the quantities so determined and the consequences for the new Member States if they fail to eliminate them, solely to the extent that these quantities have been set in accordance with its provisions. Regulation No 60/2004 is cited as one of the legal bases for the contested regulation and is referred to in recitals 1 to 3 in its preamble. In these circumstances, it must be concluded that the contested regulation is a measure implementing Regulation No 60/2004. As the Republic of Estonia maintains, the Court concluded in *Deutsche Tradax*, paragraph 82 above (paragraph 10), that it cannot be accepted that an implementing regulation adopted on the basis of an enabling provision in the basic regulation to which it is subordinate may derogate from the provisions of the basic regulation.

85 Admittedly, as the Commission notes, in *Deutsche Tradax* the Court was ruling on two regulations adopted by the Council by means of two different procedures, the first after

consulting the Assembly of the European Communities and the second without doing so. Nevertheless, the rule established in that judgment is entirely applicable to the present case.

86 First, it should be pointed out that the Court made no reference whatsoever to the existence of the two adoption procedures in order to reach the conclusion referred to above.

87 Secondly, that conclusion was cited in subsequent case-law without the Court enquiring whether the procedures for adopting the measures at issue were different or identical (see, to that effect, *ISO* v *Council*, paragraph 82 above, paragraph 46; Case C-179/97 *Spain* v *Commission* [1999] ECR I-1251, paragraph 20; and Case T-46/90 *Devillez and Others* v *Parliament* [1993] ECR II-699, paragraph 25).

88 Thirdly, the Court has already annulled a regulation adopted by the institution that had adopted the basic regulation for reasons which refute the Commission's argument.

89 In *ISO* v *Council*, paragraph 82 above, the Court annulled a Council regulation imposing a definitive anti-dumping duty on certain products imported from Japan, in particular rejecting the Council's argument that the regulation in question was a measure *sui generis* based directly on Article 113 of the EC Treaty (now, after amendment, Article 133 EC), and not subject to the provisions of the basic regulation, that is to say, Regulation (EEC) No 459/68 of the Council of 5 April 1968 on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Economic Community (OJ English Special Edition 1968(I), p. 80). The Court found that such an argument disregarded the fact that the entire procedure leading to the adoption of the anti-dumping regulation in question had been carried out in the manner laid down in the basic regulation and concluded that the Council, having adopted a general regulation with a view to implementing one of the objectives laid down in Article 113 of the EC Treaty, could not derogate from the rules thus laid down in applying those rules to specific cases (*ISO* v *Council*, paragraph 46).

90 The procedure laid down in Article 133 of the EC Treaty for the adoption of trade measures, including those to be taken in the event of dumping, is that referred to in Article 133(4), under which the Council is to act by a qualified majority. Moreover, it is apparent from paragraphs 1 and 2(a) of Article 17 of Regulation No 459/68 that, where the facts as finally established and the investigation carried out in accordance with the other provisions of that regulation show that there is dumping and injury, and the interests of the Community call for Community intervention, the Commission, after hearing the opinions expressed within the relevant committee, is to submit a proposal to the Council and, where appropriate, the anti-dumping regulation in question is to be adopted by the Council by a qualified majority.

91 It follows that the Council had adopted the anti-dumping regulation in question by a qualified majority, even though that regulation had been preceded by other procedural measures, exactly as it would have had to do in order to amend Regulation No 459/68. This means that the Commission's argument is not well founded.

92 That finding is not invalidated by the fact that, in *ISO* v *Council*, paragraph 82 above, the Court concluded that, in a specific case, the Council had disregarded the application of the general rules, even if it were legitimate to suppose that the contested regulation applies the general rules laid down in Regulation No 60/2004 not to a specific case but to all situations to which those rules may apply.

93 In *ISO* v *Council*, paragraph 82 above, the Court ruled that, where the Council has adopted a general regulation with a view to implementing one of the objectives laid down in Article 113 of the EC Treaty, it could not derogate from the rules thus laid down in applying those rules to specific cases, on two grounds, namely that to permit such a derogation would interfere with the legislative system of the Community and that it would destroy the equality before the law of those to whom that law applies. Although the second ground presupposes that it is possible to apply the implementing regulation over time to numerous addressees, that is not the case with regard to the first ground, which may perfectly well be put forward in the present case.

94 In any event, it should be observed that, even if the Commission's argument were correct and the concept of 'stocks' referred to in Regulation No 60/2004 could be amended when adopting the contested regulation, the Commission should have stated why such an amendment was necessary. However, the Commission has not even attempted to claim that it had provided such a statement of reasons, although it refers repeatedly to the fact that the purpose of the contested regulation was to apply Regulation No 60/2004.

95 Furthermore, the Commission's argument that the contested regulation could be considered to apply the Act of Accession directly must be rejected as unfounded. The Commission itself acknowledges that the contested regulation is explicitly based on Article 6 of Regulation No 60/2004, as is shown by the fact that that provision is cited in the recitals of the contested regulation. Since the Commission chose the legal basis which it considered to be the most appropriate in the circumstances, namely Article 6 of Regulation No 60/2004, it is also in the light of that provision in particular that the lawfulness of the contested regulation must be examined (see, by analogy, Case T-348/04 *SIDE* v *Commission* [2008] ECR II-625, paragraph 69).

96 Lastly, it should be noted that *British American Tobacco (Investments) and Imperial Tobacco*, paragraph 83 above, which the Commission relies upon in support of its argument, does not work in favour of the Commission's point of view. In fact, that judgment relates to a measure which had been adopted on two legal bases. The Court merely concluded that, despite the fact that one of those two legal bases was incorrect, the other legal basis cited made it possible to adopt the measure in question, and for that reason it considered the measure to be valid. That reasoning is not applicable in the present case, however.

97 It must therefore be concluded that the lawfulness of the contested regulation depends, in particular, on whether that regulation complies with Regulation No 60/2004, on the basis of which it was adopted. It is in the light of that conclusion that the two parts of the present plea must be analysed.

B — *The first part*

98 The Republic of Estonia claims that Article 6 of Regulation No 60/2004 merely establishes an obligation to eliminate the surplus calculated on the basis of the sugar held by commercial operators and not household reserves. In order to substantiate that argument, which the Commission disputes, the Republic of Estonia divides the first part of its second plea into five sub-divisions, which must be examined separately.

1. The meaning of the term 'stocks'

(a) Arguments of the parties

99 The Republic of Estonia claims that the wording of Article 6(1) of Regulation No 60/2004 excludes household reserves from the calculation of the surplus.

100 According to the Republic of Estonia, the very definition of the term 'stocks' — namely 'accumulated provision or reserve; especially food products held in the warehouse of a vendor or manufacturer' — relates solely to quantities held by operators. Similarly, the Concepts and Definitions Database of Eurostat (the Statistical Office of the European Communities) does not include retail transactions and households.

101 Moreover, the Republic of Estonia claims that the use of the term 'stocks' in the regulations relating to the CMO in sugar excludes household reserves, as demonstrated by Article 1(2) of Commission Regulation (EEC) No 1998/78 of 18 August 1978 laying down detailed rules for the offsetting of storage costs for sugar (OJ 1978 L 231, p. 5); Article 1 of Commission Regulation (EEC) No 189/77 of 28 January 1977 laying down detailed rules for the application of the system of minimum stocks in the sugar sector (OJ 1977 L 25, p. 27); Articles 8 and 12 of Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector (OJ 1999 L 252, p. 1); and point IX(1)(b) of Annex III to Regulation No 1260/2001 or

Article 10(4) of that regulation. That definition, it is claimed, is also evident from paragraph 7 of the Commission working document of 16 February 2006 entitled 'Forecast balance sheet 2006/2007 of the Sugar Management Committee'.

102 In the view of the Republic of Estonia, in accordance with the principle of systematic interpretation and barring any indication to the contrary, the same term should be interpreted in the same manner and, in any event, point 4(2) of Annex IV to the Act of Accession provides that the normal carryover stock is to be determined on the basis of the criteria for each common organisation of markets.

103 According to the Republic of Estonia, it should also be pointed out that a particular concept may, in the context of Community law, have a particular meaning (Case 283/81 *CILFIT and Others* [1982] ECR 3415, paragraph 19) and that in one and the same legal sphere the Court interprets in an identical manner a concept which appears in different provisions (Case 53/81 *Levin* v *Staatssecretaris van Justitie* [1982] ECR 1035, paragraph 6 et seq.).

104 Lastly, the Republic of Estonia maintains that an interpretation contrary to its argument would mean that the term 'stocks' could include the sugar which normally falls within the concept of 'consumption', that is to say, the sugar sold to households for their use. However, Article 6(1) of Regulation No 60/2004 contains in the same paragraph the terms 'consumption' and 'stocks' and it is unlikely that the Commission used those two terms if the second included the first, as that would render superfluous the concept of 'consumption', which in any case is synonymous with purchase and not with ingestion of the sugar by the consumer.

105 The Commission contests the arguments put forward by the Republic of Estonia.

(b) Findings of the Court

106 It is important to state, at the outset, that the principle of eliminating surpluses that Regulation No 60/2004 is designed to implement is established by a rule of primary law — point 4(2) of Annex IV to the Act of Accession — to which the seventh recital in the preamble to that regulation refers and in which the term 'stocks' occupies a central place. It must therefore be considered that the concept of 'stocks', as referred to in Regulation No 60/2004, derives from that referred to in point 4(2) of Annex IV to the Act of Accession.

107 The Republic of Estonia argues that the term 'stocks', circumscribed in that manner, must be interpreted narrowly, as describing only the reserves built up by commercial operators, whereas the Commission advocates a broad interpretation that also includes household reserves.

108 However, neither the Commission nor the Republic of Estonia is able to produce any document to demonstrate that the intention of the authors of the Act of Accession, or the intention of the Commission at the time of drafting Regulation No 60/2004, was to give the term 'stocks' the meanings on which they respectively rely.

109 In the absence of working documents clearly expressing the intention of the draftsmen of a provision, the Community Court can base itself only on the scope of the wording as it is and give it a meaning based on a literal and logical interpretation (see, to that effect, Case 15/60 *Simon* v *Court of Justice* [1961] English Special Edition p. 115, p. 125). It is therefore necessary to examine the commonly accepted meaning of the term in order to determine whether it corresponds to that proposed by the Commission or to that proposed by the Republic of Estonia.

110 For the purposes of a literal interpretation of a provision, it should be borne in mind that Community legislation is drafted in various languages and that the different language

versions are all equally authentic. An interpretation of a provision of Community law thus involves a comparison of the different language versions (*CILFIT and Others*, paragraph 103 above, paragraph 18, and Joined Cases T-22/02 and T-23/02 *Sumitomo Chemical and Sumika Fine Chemicals* v *Commission* [2005] ECR II-4065, paragraph 42).

111 In that regard, it should be observed that the term 'stocks' does not have an unequivocal meaning in the various language versions of the legal documents in question.

112 For example, the term 'stocks' was used in the French and English versions of the Act of Accession and in Regulation No 60/2004. In the Spanish, Italian, Polish and Estonian versions the terms used were respectively 'existencias', 'scorta', 'zapas' and 'varu'.

113 An examination of the usual meaning of each of these terms reveals that, in Italian, Polish and Estonian, the word 'stock' may be used without distinction for the reserves built up by commercial operators and for those set aside by households. In English, French and Spanish, the word is rather more a business term, but may also relate to reserves built up by households.

114 Accordingly, while the views both of the Commission and of the Republic of Estonia are to some extent supported by analysis of the different language versions of the Act of Accession and Regulation No 60/2004, it is the view of the Commission that is the more plausible.

115 Furthermore, it should be observed that, in interpreting a provision of Community law, it is necessary to consider not only its wording but also the context in which it occurs

and the objectives of the rules of which it is part (Case 292/82 *Merck* v *Hauptzollamt Hamburg-Jonas* [1983] ECR 3781, paragraph 12), as well as the provisions of Community law as a whole (*CILFIT and Others*, paragraph 103 above, paragraph 20, and *Sumitomo Chemical and Sumika Fine Chemicals* v *Commission*, paragraph 110 above, paragraph 47).

116 In particular, it should be noted that even where in the different language versions there are elements which seem to support a given interpretation, if a text when read as a whole remains ambiguous, the function of the words in question must be examined in the light of the intention and purpose of the legislation in question (see, to that effect, Case 803/79 *Roudolff* [1980] ECR 2015, paragraph 7).

117 As a consequence, since the use of the term 'stocks' is to some extent ambiguous, it must be interpreted in the light of the intention and purpose of Regulation No 60/2004, which, as far as the elimination of surpluses is concerned, cannot be other than the intention and purpose of point 4(2) of Annex IV to the Act of Accession.

118 As regards point 4(2) of Annex IV to the Act of Accession, it should be pointed out that, in Case C-179/00 *Weidacher* [2002] ECR I-501, the Court ruled on the obligation incumbent upon the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (the 'new Member States of 1995') at the time of their accession to the European Union in 1995 (the 'accession of 1995') to eliminate at their own expense the stocks of agricultural products in free circulation on their territory in excess of the quantity which could be regarded as constituting a normal carryover of stock under Article 145(2) of the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 9), as amended (the 'Act of Accession of 1994'), the wording of which is very similar to that of point 4(2) of Annex IV to the Act of Accession. The Court concluded that the authors of the Act of Accession of 1994 had considered that the existence on 1 January 1995 in the new Member States of 1995 of abnormal stocks of products covered by a common organisation of the agricultural markets was liable to disrupt the proper functioning of the mechanisms provided for under that common organisation, particularly through their impact on price formation (*Weidacher*, paragraphs 20 and 21).

119 It follows that the purpose of point 4(2) of Annex IV to the Act of Accession is primarily, so far as sugar is concerned, to prevent any disruption to the proper functioning of the mechanisms provided for by the CMO in sugar and, in particular, disruption affecting price formation and arising as a result of the accumulation of abnormal quantities of sugar in the new Member States before their accession to the European Union.

120 It is therefore necessary to examine whether, as the Commission contends, the build-up of substantial household reserves in the new Member States before accession is a potential source of disruption of the mechanisms of the CMO in sugar.

121 In that regard, it should be noted that the CMO in sugar is based essentially, as is evident from paragraphs 1 to 6 above, on a system for the allocation to each Member State of quotas which the Member State must in turn distribute among the manufacturers on its territory.

122 These quotas are calculated primarily from a forecast of domestic demand, a figure obtained by summing foreseeable consumption in each Member State on the basis of historical data. The existence of abnormally large household reserves in one or more of the States would be likely to lead to a large discrepancy between the quotas and the quantity finally consumed. In their normal consumption, households in these Member States would substitute the quantities placed in reserve for quantities which they would otherwise buy at the Community market price and which would be drawn from the quantities which the Commission has authorised to be produced in the form of A and B quotas, the price of which is guaranteed within the framework of the CMO in sugar.

123 The only way of guaranteeing the intervention price for the quantities not purchased in the market would be to trigger the Community intervention mechanisms by purchasing those quantities at the guaranteed price or exporting them with the aid of export refund mechanisms.

124 With regard to purchase at the guaranteed price, it should be observed that, under Article 7(1) of Regulation No 1260/2001, throughout the marketing year, and subject to conditions to be determined in accordance with Article 7(5) of that regulation, the intervention agency designated by each sugar-producing Member State is required to buy in any white and raw sugar produced under quota offered to it which has been manufactured from beet and cane harvested in the Community, provided that a storage contract has first been concluded between the seller and the intervention agency for the sugar concerned.

125 The 36th recital in the preamble to Regulation No 1260/2001 states that the expenses incurred by the Member States in meeting obligations arising from the application of that regulation are to be borne by the Community, in accordance with Article 2 of Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103), which was applicable until the entry into force of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1) on 1 January 2007, hence applicable to the facts in the case. Under that provision, in particular, intervention intended to stabilise the agricultural markets within the framework of the common organisation of agricultural markets is to be financed by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF). In consequence, the purchase of quantities of sugar by the intervention agencies has a detrimental effect on the Community budget.

126 As regards exports assisted by the applicable refunds, from Article 15(1)(a) and (b) of Regulation No 1260/2001 it can be concluded that, as was stated in paragraph 6 above, the difference between the forecast quantity of A and B sugar produced during the current marketing year and the forecast quantity of sugar disposed of for consumption within the Community during that year is, as a matter of principle, exported before the end of the marketing year in question.

127 It follows that any quantity of sugar produced under the A and B quotas and not sold because of non-eliminated surpluses in the new Member States must, as a matter of principle, be exported from the Community. The operators carrying out such exports could claim the export refunds referred to in Articles 27 to 30 of Regulation No 1260/2001, which are borne by the manufacturers under Articles 15 and 16 of that regulation. The manufacturers must bear losses due to exports through production

levies, in accordance with Article 15(3) to (5) of Regulation No 1260/2001, and, if the levies are insufficient, by means of an additional levy in accordance with Article 16 of that regulation.

128 The economic harm suffered by the manufacturers is, moreover, contrary to one of the objectives of the CMO in sugar since, under the terms of the second recital in the preamble to Regulation No 1260/2001, the measures to stabilise the market in sugar should be aimed, in particular, at ensuring that Community growers of sugar beet and sugar cane continue to benefit from the necessary guarantees in respect of employment and standards of living, it being necessary to fix the intervention price at a level which will ensure them a fair income while taking account of the interests of consumers.

129 It is evident from the foregoing that the possible substitution, after the accession of the new Member States to the European Union, of household reserves in the Member States where they exist for quantities that would have been purchased by households on the Community market would have detrimental effects on the stability and financing of the CMO in sugar and would seriously disrupt it.

130 The seriousness of such disruption must not be underestimated. If household reserves were to be excluded from the concept of 'stocks' within the meaning of Regulation No 60/2004, the citizens of the new Member States where the price of sugar is significantly below the Community price would have an interest in building up as large a reserve as possible in order to delay the price consequences of the application of the CMO in sugar in their country of residence. To the extent that, in the new Member States as a whole, the price of sugar was below or well below the Community price, the interpretation proposed by the Republic of Estonia would create an environment conducive to the build-up of massive household reserves, which would cause sugar consumption in those States to decrease significantly or even, in some cases, to dry up completely during the period immediately after their accession to the European Union.

131 It is important to note in this regard that it would not be possible to prevent the discrepancy between the authorised quotas and Community consumption after accession by restricting the quotas granted to Community manufacturers in order to take account of the abnormally reduced consumption which could be expected in the Member States that built up or could build up large household reserves.

132 In accordance with the logic of Regulation No 1260/2001, production quotas are calculated only once for the entire period of application of that regulation, pursuant to Article 11(2) thereof, and this is done on the date of adoption of the regulation, in other words, well before accession. Accordingly, since the quotas for existing Member States have already been allocated, the only way of adapting Community production to foreseeable demand would be to grant the new Member States smaller quotas than they would have received if consumption in those States, during the period immediately following accession, could be regarded as normal in relation to recent marketing years.

133 The production quotas awarded to the new Member States were set in point 32(c) and (d) of Annex II to the Act of Accession, that is to say, at a date when it was not yet possible to know the scale of household reserves built up in the new Member States, since such reserves could be accumulated until the date of their accession to the European Union.

134 Moreover, calculating the Community quotas on the basis of abnormally reduced demand would, in essence, only delay the full application of the CMO in sugar in the new Member States to the detriment of manufacturers, whereas, in the clear terms of the second recital of Regulation No 1260/2001, the CMO in sugar is intended to maintain their employment and standard of living. It follows from Articles 2 and 10 of the Act of Accession that that measure is based on the principle that the provisions of Community law apply *ab initio* and *in toto* to new Member States, derogations being allowed only in so far as they are expressly laid down by transitional provisions (see, by analogy, Case 258/81 *Metallurgiki Halyps* v *Commission* [1982] ECR 4261, paragraph 8, and Case C-233/97 *KappAhl* [1998] ECR I-8069, paragraph 15).

135 Lastly, it should be stated, for the sake of completeness, that in the documents submitted by the Republic of Estonia to the Commission in English during the period before the adoption of the contested regulation, the Republic of Estonia itself referred several times to household reserves as 'stocks'.

136 It must therefore be concluded that the term 'stocks', as used in Regulation No 60/2004 and point 4(2) of Annex IV to the Act of Accession, must not be construed as excluding household reserves as a matter of principle, contrary to the claim of the Republic of Estonia.

137 That conclusion is not invalidated by any of the assertions made by the Republic of Estonia.

138 As regards first the assertion that a concept that appears in different provisions relating to one and the same legal area is interpreted by the Court in the same way and that the regulations on the CMO in sugar do not allow household reserves to be considered a component of stocks, it is important to observe, without there being any need to investigate whether the term 'stocks' is always used in those regulations to denote reserves built up by commercial operators, that the interpretation of a term occurring in a provision in a manner consistent with its usage in the rules relating to the same legal field cannot bestow upon it a meaning that does not correspond to the objectives of the provision in which it appears, which would deprive the latter of part of its effectiveness.

139 Moreover, the Community Courts have never ruled on whether the term 'stocks', as used in the various regulations on the CMO in sugar, is applicable only to the reserves built up by operators.

140 Lastly, the provisions relied upon by the Republic of Estonia are not such as to corroborate its view.

141 For example, the first of those provisions — Article 1(2) of Regulation No 1998/78 — provides as follows:

> '2. For the purposes of this Regulation:
>
> (a) a "manufacturer of powdered, lump or candy sugar" means a person:
>
> — who is engaged in making from sugar in the unaltered state only those sugars which fall within heading No 17.01 or 17.02 of the Common Customs Tariff and which have different physical characteristics from the sugar used in the process, and,
>
> — whose stocks during a sugar marketing year, recorded at the end of each month in approved warehouses, are on average not less than 200 tonnes;
>
> (b) a "specialised sugar trader" means a person:
>
> — one of whose main activities consists of wholesale dealing in sugar and who purchases in each sugar marketing year not less than 10 000 tonnes of sugar

made up of Community sugar or preferential sugar, or both, for resale in an unaltered state,

— who does not carry on a retail business in sugar, and

— whose stocks during a sugar marketing year, recorded at the end of each month in his approved warehouses, are on average not less than 500 tonnes.'

142 It cannot be concluded that that provision limits the concept of 'stocks' exclusively to the reserves built up by commercial operators. As Regulation No 1998/78 makes provision, inter alia, for a system to offset the storage costs of certain persons, it is understandable that it defines the persons falling within the categories concerned by the offsetting system in question. However, it does not follow that only the persons so defined may hold stocks.

143 The second provision relied upon by the Republic of Estonia — Article 1 of Regulation No 189/77 — provides:

'1. Minimum stocks:

— shall be held at all times throughout each month concerned,

— shall not include sugar which has been carried forward in accordance with Article 31 of Regulation (EEC) No 3330/74 as long as the storage costs for such sugar are not reimbursed....

2. Sugar production for the purpose of Article 1(a) of Regulation (EEC) No 1488/76 and the minimum stocks referred to in paragraph 1 shall be established in accordance with Article 1 of Regulation (EEC) No 700/73.'

144 It cannot be concluded that that provision limits the concept of 'stocks' exclusively to the reserves built up by commercial operators. Furthermore, Regulation No 189/77 refers to Article 18 of Regulation (EEC) No 3330/74 of the Council of 19 December 1974 on the common organisation of the market in sugar (OJ 1974 L 359, p. 1), which required sugar producers, but not all operators, to hold minimum stocks based primarily on their production quotas. The Republic of Estonia does not explain why it should be deduced from the fact that a rule of Community law requires the manufacturers of a product to hold stocks that only the operators referred to may do so.

145 The third and fourth provisions upon which the Republic of Estonia relies — Articles 8 and 12 of Regulation No 2038/1999 — provide:

'*Article 8*

1. A compensation system for storage costs, comprising flat-rate reimbursement to be financed by means of a levy, shall be provided for under the conditions set out in this Article.

2. Storage costs in respect of:

— white sugar,

— raw sugar,

— syrups obtained prior to the crystallising stage,

— syrups obtained by dissolving crystallised sugar,

manufactured from beet or cane harvested in the Community shall be reimbursed at a flat rate by the Member States.

The Member States shall impose a levy on each sugar manufacturer, as appropriate:

— per unit of weight of sugar produced,

— per unit of weight of the syrups referred to in the first subparagraph which are produced prior to the crystallising stage and marketed in their natural state.

The amount of the reimbursement shall be the same for the whole Community. This rule of uniformity shall also apply in respect of the levy.

3. Paragraph 2 shall not apply to flavoured or coloured sugars falling within CN code No 1701 or to flavoured or coloured syrups falling within subheading 2106 90 59 of the CN code.

4. The Council, acting by a qualified majority on a proposal from the Commission, shall:

(a) adopt the general rules for the application of this Article;

(b) fix the reimbursement amount simultaneously with the derived intervention prices.

5. The amount of the levy shall be fixed each year in accordance with the procedure laid down in Article 48. The other detailed rules for the application of this Article shall be adopted according to the same procedure.

…

Article 12

1. In order to ensure normal supplies to the Community as a whole or to one of its areas, there shall be a standing obligation to maintain, in the European territory of the Community, minimum stocks:

(a) of beet sugar produced in the Community;

(b) of cane sugar produced in the French overseas departments and of the preferential sugar referred to in Article 40.

This minimum stock of the sugar referred to in (a) above shall, on a fixed date, be equal to a percentage of the A quota of each sugar-producing undertaking or to the same percentage of its production of A sugar where this is less than its A quota.

The percentage fixed may be reduced.

The minimum stock of the sugar referred to in the first subparagraph under (b) shall be equal to a percentage of the quantity of sugar in question refined by an undertaking over a fixed period.

2. The Council, acting by a qualified majority on a proposal from the Commission, shall adopt general rules for the application of this Article and, in particular, shall fix the date and the percentage referred to in the second subparagraph of paragraph 1 and the percentage and the period referred to in the fourth subparagraph of paragraph 1.

In accordance with the same procedure, an obligation equivalent to the obligation to maintain a minimum stock may be laid down for the products referred to in Article 1(1)(f) and (h).

3. Detailed rules for the application of this Article and, in particular, the reduction of the percentage referred to in the third subparagraph of paragraph 1 shall be adopted in accordance with the procedure laid down in Article 48.'

146 Thus, those provisions relate to a requirement for sugar producers, but not for all operators in the sector, to hold minimum stocks on the basis, primarily, of their production quotas and the quantities actually refined. As has been pointed out in paragraph 144 above, the Republic of Estonia does not explain why it should be deduced from the fact that a rule of Community law requires the manufacturers of a product to hold stocks that only the operators referred to may do so.

147 The fifth provision on which the Republic of Estonia relies — point IX(1) of Annex III to Regulation No 1260/2001 — provides:

'Contracts shall provide for an additional price to be paid to the seller where:

(a) there is an increase in the price for beet at the changeover from one marketing year to the next, and

(b) the increase in the intervention price for sugar resulting from the increase in the price for beet is not made subject to a levy for stocks held at the time of the changeover.

…'

148 That provision does not define the concept of 'stocks', whether expressly or implicitly; nor does it limit its possible use to the stocks built up by operators.

149 The sixth provision on which the Republic of Estonia relies — Article 10(4) of Regulation No 1260/2001 — provides:

'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 in accordance with the procedure referred to in Article 42(2). This difference shall be split between sugar, isoglucose and insulin syrup according to the percentage represented by the sum of each product's A and B quotas for the entire Community. It shall then be further broken down by Member State and by product by applying the relevant coefficient as set out in the table below:

…'

150 It must be observed that that provision, too, does not define the concept of 'stocks', whether expressly or implicitly; nor does it limit its use solely to reserves built up by operators.

151 Lastly, the Republic of Estonia does not explain how its argument is justified by point 7 of the Commission working document of 16 February 2006 entitled 'Forecast balance sheet 2006/2007 of the Sugar Management Committee', which mentions the word 'stocks' but contains only one number.

152 Secondly, as regards the assertion of the Republic of Estonia that Article 6(1) of Regulation No 60/2004 contains the terms 'consumption' and 'stocks' within the same subparagraph and that it is unlikely that the Commission would use those two terms if the second included the first, it must be observed that this assertion is erroneous.

153 It should be stated at the outset that Article 6(1) of Regulation No 60/2004, the purpose of which is to define the concept of 'abnormal stocks', provides that the Commission must take account, inter alia, of the production, consumption and stocks of sugar and isoglucose. Accordingly, it is evident from that provision that the level of stocks is one aspect to be taken into consideration when determining whether abnormal stocks exist, the term 'stocks' thus being an element both in the concept to be defined and in the definition itself. Regardless of the fact that this may be evidence of a rather imprecise legislative technique, it suggests that the presence of the concept of 'consumption' both in the concept to be defined and in the definition of the term 'stocks' would be possible according to the logic of Regulation No 60/2004.

154 In any event, the use of the term 'consumption' in that provision must be understood in a macroeconomic sense, in so far as the primary objective of Regulation No 60/2004 is to prevent disruption in the CMO in sugar as a whole.

155 The essential point for distinguishing, from a macroeconomic standpoint, the quantities to be treated as consumed from the quantities to be treated as stockpiled, for the purposes of Regulation No 60/2004, is whether the sugar purchased is used in such a way that the purchaser would have to procure additional quantities of sugar in order to cover possible future needs. If purchases of sugar are so large that future requirements of the product will be covered by the sugar purchased, the quantities so purchased have the same effect on future consumption as the stocks built up by operators and must therefore be treated in the same manner.

156 In view of the foregoing, the first subdivision of the first part must be rejected.

2. The systematic reading of Regulation No 60/2004

(a) Arguments of the parties

157 The Republic of Estonia maintains that a systematic reading of Regulation No 60/2004 confirms the argument that household reserves cannot be taken into account when calculating Estonia's surplus. For example, the fifth, sixth and eighth recitals in the preamble to that regulation, like the first recital of the contested regulation, refer only to the need to prevent speculation, which, like any market disruption, necessarily results from the resale of stockpiled sugar and not that of sugar held by households. That is why the price of sugar in Estonia rose after accession from EUR 0.35 per kg to around EUR 1.10 per kg and then remained stable, whereas if there had been speculation it would have fluctuated.

158 The Republic of Estonia points out that, under Article 6(2) of Regulation No 60/2004, the entire surplus must be eliminated from the market by one of the methods prescribed. However, none of those methods could be applied by households to

eliminate their reserves, which had already been eliminated from the market. Consequently, according to the Republic of Estonia, the obligation to eliminate household reserves could not be complied with by paying the amount referred to in Article 7(2) of Regulation No 60/2004. That payment could constitute a fine or compensation, but would not make it possible to eliminate sugar or to prevent disruption of the market. Likewise, in the view of the Republic of Estonia, that provision would apply only if operators had not been able to comply with the disposal obligation, and as Article 1 of the contested regulation expressly required elimination of the surplus in accordance with Article 6(2) of Regulation No 60/2004, it would not be possible to comply with that obligation by paying the amount in question.

159 Furthermore, the Republic of Estonia claims that Article 6(3) of Regulation No 60/2004, which lays down the mechanism for complying with the obligation under Article 6(2) of that regulation, shows that the latter provision does not provide for household reserves to be included in the surpluses, because Article 6(3) requires the new Member States to adopt a system for identifying the surplus quantities with a view to complying with the disposal obligation applying only to commercial operators. The second subparagraph of Article 6(3) of Regulation No 60/2004 requires the new Member States to compel only operators to eliminate from the market a quantity of sugar or isoglucose equivalent to their determined individual surplus quantity.

160 Lastly, the Republic of Estonia maintains that it would be an error to conclude that either the Act of Accession or Regulation No 60/2004 gives rise to an obligation to prevent households from buying quantities of sugar. In fact, according to the Republic of Estonia, that does not follow from those measures and, moreover, as the Act of Accession and Regulation No 60/2004 entered into force on 1 May 2004, they could not impose obligations on the new Member States before their accession to the European Union.

161 The Commission disputes the arguments of the Republic of Estonia.

(b) Findings of the Court

162 First, it should be noted that the obligation to eliminate surpluses which Regulation No 60/2004 is designed to implement is laid down in point 4(2) of Annex IV to the Act of Accession, the purpose of that obligation being to prevent any disruption to the proper functioning of the mechanisms provided for by the CMO in sugar and, in particular, disruption caused by factors affecting price formation and arising as a result of the accumulation of abnormal quantities of sugar in the new Member States before their accession (see paragraph 119 above).

163 Consequently, it must be held that, contrary to the assertions made by the Republic of Estonia, the purpose of Regulation No 60/2004 is not solely to combat speculation linked to trade but also to prevent disruption to the mechanisms provided for by the CMO in sugar and to remedy any harmful effects on the stability of the latter owing to the existence of abnormal quantities of sugar accumulated in the new Member States before their accession.

164 As was found in paragraphs 121 to 129 above, the existence of considerable household reserves constitutes a serious threat of disruption of the CMO in sugar.

165 In addition, as the Commission indicates, the objective of eliminating from the market the quantities of sugar stocks in excess of normal carryover stocks at the expense of the new Member States is clearly stated in the seventh recital in the preamble to Regulation No 60/2004. Moreover, it is made clear in the eighth recital of that regulation that it is in the interest both of the Community and of the new Member States to prevent the accumulation of surplus stocks and in any case to be able to identify those operators or individuals involved in major speculative trade movements. As the Commission rightly points out, this confirms that the objective of Regulation No 60/2004 is not solely to prevent speculation linked to trade but more generally to ensure that the sugar surpluses ascertained in the new Member States are eliminated.

166 Lastly, it is an error to maintain that analysis of the Estonian market in sugar during the period following accession confirms the absence of risks of disruption. The fact that, after accession, the price of sugar in that market rose from EUR 0.35 per kg to around EUR 1.10 per kg and then remained stable is only a logical consequence of the application of the CMO in sugar in Estonia. The CMO sets a minimum price for sugar below which no operator has an interest in selling sugar produced under the quota allocated to it and below which it cannot sell sugar produced outside that quota, since the operator concerned is required to export such sugar without refund from the Community. In those circumstances, it is perfectly understandable that the price of sugar in Estonia rose after accession and then remained stable, but it is not necessary to draw the conclusion that there was no risk of market disruption.

167 Furthermore, the disruption to the market in sugar that may be caused by the existence of abnormal household reserves does not stem from the sale of sugar for less than the price guaranteed by the CMO in sugar but, as has been stated in paragraphs 121 to 129 above, from the possible fall in consumption in the Member States in which such reserves were accumulated, which would lead to a discrepancy between the quotas granted in the framework of the CMO in sugar and Community consumption, to the detriment of manufacturers and possibly to the detriment of the Community budget.

168 Secondly, it is important to note that the conclusions that the Republic of Estonia draws concerning the impossibility in practice of eliminating household reserves through the methods referred to in Article 6(2) of Regulation No 60/2004 are the result of an erroneous interpretation of that regulation.

169 The view of the Republic of Estonia is based, essentially, on the premiss that, pursuant to Article 6 of Regulation No 60/2004, the surplus quantities existing in a new Member State, as recorded by the Commission, must be precisely those that the Member State will eliminate, at its expense and by the methods referred to in that provision. That presupposes identity between the sugar considered to be surplus and the sugar that must be eliminated.

170 Such a premiss is mistaken, however.

171 Article 6(2) of Regulation No 60/2004 provides that the new Member State concerned is to ensure the elimination from the market of a quantity of sugar or isoglucose, without Community intervention, equal to the surplus determined by the Commission. Accordingly, the Member State is not required to eliminate the sugar considered surplus at 1 May 2004, but a quantity of sugar — even sugar bought or produced before that date — equal to the quantity considered surplus by the Commission.

172 This interpretation is confirmed by the fact that, pursuant to Article 6(1) of the version of Regulation No 60/2004 that applied before the amendment resulting from the adoption of Regulation No 651/2005, the Commission is to determine by 31 October 2004 at the latest, for each new Member State, the quantity of sugar as such, or in processed products, isoglucose and fructose, exceeding the quantity considered as being normal carryover stock at 1 May 2004 and which has to be eliminated from the market at the expense of the new Member States. Pursuant to Article 6(2) of that version of Regulation No 60/2004, the new Member State concerned is to ensure the elimination from the market of a quantity of sugar or isoglucose, without Community intervention, equal to the surplus quantity referred to in Article 6(1), by 30 April 2005 at the latest. A reading of those two provisions together shows that the Commission has a period of six months from 1 May 2004 to determine the surplus existing at that date and that the Member State concerned has a further six months to eliminate a quantity equal to that surplus.

173 It is therefore perfectly possible that the surplus quantities existing on the territory of the Member State concerned in May 2004 were disposed of before the end of October 2004, hence before the end of April 2005.

174 It is true that, under the first subparagraph of Article 6(3) of Regulation No 60/2004, for the application of Article 6(2) the competent authorities of the new Member State are to dispose on 1 May 2004 of a system for the identification of traded or produced surplus quantities of sugar, as such or in processed products, isoglucose or fructose, at the level

of the main operators concerned. However, that does not guarantee that the surplus products held by those operators do not pass out of their control and are not exported out of their territory or even from the territory of the Member State concerned. Moreover, the provision in question concerns only the main operators, leaving surplus quantities of sugar held by smaller operators outside the identification system. Those latter quantities, taken in isolation, would necessarily make up a smaller proportion of the total recorded surplus, but in aggregate they could represent a not inconsiderable, even substantial, part of that surplus.

175 In addition, under the second, third and fourth subparagraphs of Article 6(3) of Regulation No 60/2004, the new Member State is to use that system to compel the operators concerned to eliminate from the market at their own expense a quantity of sugar or isoglucose equivalent to their determined individual surplus quantity, and the operators concerned must provide proof that they have done so. In the absence of proof, they will be charged by the new Member State a certain amount to be assigned to the national budget, calculated on the basis of the quantity that must be eliminated. However, this obligation concerns only the main operators.

176 Lastly, Article 7(1) of Regulation No 60/2004, under which the Member States are to provide proof to the Commission that the surplus quantity referred to in Article 6(1) was eliminated from the market in accordance with Article 6(2) and specify for each method the quantity eliminated, does not make reference to the quantities eliminated by the main operators under Article 6(3) but to a quantity which necessarily includes those amounts but which may be higher, that is to say, the quantity equal to the surplus ascertained for the Member State in question.

177 It follows that the elimination obligation on the new Member States for which the Commission ascertained surpluses does not relate to the surplus sugar accumulated at 1 May 2004 but simply to a quantity equal to it.

178 As a consequence, even if part of the surplus ascertained for the Republic of Estonia or for another new Member State were stockpiled in the form of abnormal household reserves and, as the Republic of Estonia claims, if those reserves could not be eliminated by the methods referred to in Article 6(2) of Regulation No 60/2004, the Member State concerned could still meet its obligation to eliminate the product by acquiring a quantity of sugar equal to that of its household reserves in order to eliminate it by those methods and then to provide the Commission with proof of elimination. That quantity could be acquired, if necessary, at the Community market price from commercial operators in the Member State concerned or from other Community operators. In so doing, the Member State concerned would generate an increase in Community demand equal to the artificial reduction caused by its household reserves and would offset the adverse effect of their existence on the stability of the CMO in sugar.

179 If the Member State in question fails to fulfil its obligation to eliminate the surplus ascertained by the Commission, it will be required, in accordance with Article 7(2) of Regulation No 60/2004, to pay to the Community budget a precise amount calculated on the basis of the quantity not eliminated.

180 As the Commission points out, that provision implements a system aimed at ensuring that the necessary additional cost of dealing with any disruption to the sugar market caused by surpluses that have not been eliminated does not fall on the budget or on Community manufacturers but on the Member States concerned, in compliance with point 4(2) of Annex IV of the Act of Accession, under which the elimination of the surpluses must be at the expense of the States in question, the logical consequence of the latter provision being that the expenses associated with the non-elimination of the surpluses in question must also be borne by the Member States that should have eliminated them.

181 Lastly, the argument of the Republic of Estonia that the household reserves have already been eliminated from the market in that they have been sold to consumers must be rejected. The means of elimination authorised by Regulation No 60/2004 are solely those laid down in Article 6(2) thereof, as the Republic of Estonia itself points out, and the mere sale of the sugar within the Member State concerned is not one of them.

3. The concept of 'stocks' adopted at the time of previous accessions

(a) Preliminary observations

182 Articles 86 and 254 of the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (OJ 1985 L 302, p. 23; 'the Act of Accession of 1985'), provides that, as regards the accession of those two States (the 'new Member States of 1986') to the European Community (the 'accession of 1986'), any stock of products in free circulation in Spanish and Portuguese territory on 1 March 1986 which in quantity exceeds what may be considered representative of a normal carryover stock must be eliminated by and at the expense of the States concerned. Article 145(2) of the Act of Accession of 1994 and Article 7 of Council Regulation (EEC) No 3577/90 of 4 December 1990 on the transitional measures and adjustments required in the agricultural sector as a result of German unification (OJ 1990 L 353, p. 23) make the same provision, *mutatis mutandis*, as regards stocks existing respectively on the territory of the new Member States of 1995 at the time of their accession to the European Union in 1995 and on the territory of the former German Democratic Republic at the time of German reunification. Those four provisions and point 4(2) of Annex IV to the Act of Accession are similar.

183 There are important differences, however, between, on the one hand, the provisions laying down the actual content of the obligation to eliminate the surpluses in the context of the accessions of 1986 and 1995 and at the time of German reunification on the other, and, the corresponding provisions in the context of the accession of the new Member States in 2004.

184 Article 3(2) of Council Regulation (EEC) No 3770/85 of 20 December 1985 on stocks of agricultural products in Spain (OJ 1985 L 362, p. 18) provides that, with the exception of very small quantities, any quantity of products belonging to or held by the Kingdom of Spain or by any natural or legal person is to be considered as stocks of products. Article 3(2) of Council Regulation (EEC) No 3771/85 of 20 December 1985 on stocks of agricultural products in Portugal (OJ 1985 L 362, p. 21) is identical, *mutatis mutandis*, to Article 3(2) of Regulation No 3770/85 as regards the Portuguese Republic. Thus, those two provisions introduced a *de minimis* rule in relation to the concept of 'stocks'

held at the time of the accession of 1986, based on the size of the quantity placed in reserve and not on the nature of the holder.

185 None of the provisions of the regulations relating to the accession of 1995 or to German reunification sets an identical *de minimis* rule for sugar. Such a rule is to be found, however, in Article 6 of Commission Regulation (EC) No 3300/94 of 21 December 1994 laying down transitional measures in the sugar sector following the accession of Austria, Finland and Sweden (OJ 1994 L 341, p. 39) and in the first paragraph of Article 2 of Commission Regulation (EEC) No 2761/90 of 27 September 1990 on stocks of agricultural products held in the territory of the former German Democratic Republic (OJ 1990 L 267, p. 1), as will be analysed below.

186 By contrast, Regulation No 60/2004 contains no *de minimis* rule which expressly makes it possible to exclude very small amounts.

187 A second important difference between the systems for eliminating sugar surpluses established, on the one hand, at the time of the accessions of 1986 and 1995 and German reunification and, on the other, at the time of the accession of 2004 relates to the method for determining the surpluses.

188 For the accession of 1986, pursuant to Article 5(1) of Regulation No 3770/85 and of Regulation No 3771/85, except where special provisions regarding certain products are adopted, the operating stocks necessary for the requirements of the relevant market for a period to be determined are to be considered as normal carryover stocks, those requirements being assessed in particular on the basis of consumption, processing and traditional exports, account being taken of the criteria and objectives particular to each common organisation of the markets.

189 Under Article 8(1) and (2)(a) of Regulation No 3770/85 and of Regulation No 3771/85, the detailed rules for the application of the regulations in question relate in particular to the determination of stocks as referred to in Articles 86 and 254 of the Act of Accession of 1985 in the case of products the quantities of which exceed normal carryover stocks. For that reason, Article 2 of Commission Regulation (EEC) No 579/86 of 28 February 1986 laying down detailed rules relating to stocks of products in the sugar sector in Spain and Portugal on 1 March 1986 (OJ 1986 L 57, p. 21), which implements Regulations Nos 3770/85 and 3771/85 in that sector, does not set the surpluses allocated by the Commission to the Kingdom of Spain and the Portuguese Republic, but the normal carryover stock for those Member States at the date of their accession to the Community. It is then those Member States which must calculate their surpluses, pursuant to the combined provisions of Articles 3 and 4 of Regulation No 579/86. In order to do so, they must undertake a survey of stocks in free circulation in their respective territories on the date of the accession of 1986 on the basis of declarations which the holders of quantities of sugar or isoglucose of at least 3 tonnes must make to the competent authorities before 13 March 1986. The Member States in question must then ensure that a quantity equal to the difference between the quantity recorded and the normal carryover stock set by the Commission is exported from the Community before 1 January 1987.

190 Accordingly, in so far as the survey covers only quantities of more than 3 tonnes, in practice the elimination requirement relates only to a quantity equal to the difference between the sum of individual reserves of more than 3 tonnes in the Member State concerned and the normal carryover stock determined by the Commission, as laid down in the *de minimis* rule established in Article 3(2) of Regulation No 3770/85 and Regulation No 3371/85.

191 The system established by the relevant provisions on the accession of 1995 is essentially identical to that provided for in Regulation No 579/86. Thus, for the accession of 1995, Articles 5, 6 and 7 of Regulation No 3300/94 are respectively equivalent, *mutatis mutandis*, to Articles 2, 3 and 4 of Regulation No 579/86. Articles 6 and 7 of Regulation No 3300/94 apply a *de minimis* rule equivalent to that introduced by Articles 3 and 4 of Regulation No 579/86.

192 There are also a number of similarities between the system put in place under the relevant provisions for German reunification and that provided for in Regulation No 579/86. Nevertheless, there are two fundamental differences.

193 First, under Article 2 of Regulation No 2761/90, the Federal Republic of Germany must conduct stock-taking checks and establish an inventory of the private stocks of certain products, including sugar, except for trivial amounts, held in the territory of the former German Democratic Republic on the date of German unification. However, the second paragraph of Article 2 of that regulation provides that the Federal Republic of Germany may also use statistical methods for the purposes of the first paragraph. That option was not offered to the new Member States of 1986 and 1995 at the time of accession.

194 Secondly, Regulation No 2761/90 did not require the Federal Republic of Germany to eliminate the quantities recorded or calculated statistically that were in excess of a normal carryover stock, a requirement that was nevertheless referred to in Article 7 of Regulation No 3577/90.

195 In any event, all of the systems described have one fundamental difference by comparison with the system created by Regulation No 60/2004. Regulation No 60/2004 does not provide that the Commission is to set the normal carryover stocks of each new Member State and then require it to carry out a stock-taking check of quantities in excess of 3 tonnes on its territory and to calculate its surplus by comparing the figure so obtained with the figure corresponding to the normal carryover stocks determined by the Commission (the system used for the accessions of 1986 and 1995). Nor is it up to the new Member State concerned to carry out a survey of its stocks consisting of non-trivial amounts (the system used for German reunification). On the contrary, under Article 6(1) of Regulation No 60/2004, the Commission directly and unilaterally determines the surplus of each new Member State.

196 Moreover, pursuant to that provision, the Commission is not to calculate the surpluses on the basis of a survey of the main holders of stocks in each Member State but by taking account in particular of the development, during the year preceding accession as compared with the previous years, of imported and exported quantities of sugar, as such or in processed products, such as isoglucose and fructose; the production, consumption and stocks of sugar and isoglucose; and the circumstances in which stocks were built up.

197 That means that the Commission is to calculate the surplus of each new Member State by using the macroeconomic statistics available and not by directly observing the actual situation of stocks at the microeconomic level. For that reason, the ninth recital in the preamble to Regulation No 60/2004 states that, for the determination of stocks and the elimination of identified surplus stocks, the new Member States should provide the Commission with the most recent statistics on trade, production and consumption of the products considered, but not conduct a survey as a basis for making the calculation.

198 Nevertheless, a degree of flexibility was introduced into this system in so far as, under Article 6(1)(c) of Regulation No 60/2004, the results of the macroeconomic analyses may be modified in view of the circumstances in which stocks were built up.

199 It is in the light of all of those considerations that the arguments of the parties must be rehearsed and then examined.

(b) Arguments of the parties

200 The Republic of Estonia claims that excluding household reserves from the concept of 'stocks' is consistent with point 4(2) of Annex IV to the Act of Accession, in particular in so far as that provision is almost identical to those adopted at the time of the accessions of 1986 and 1995, pursuant to which the new Member States of 1986 and 1995 were subject to requirements to eliminate their surpluses which are compatible with the requirement imposed on the new Member States, since the latter provisions manifestly exclude household reserves from the concept of 'stocks that must be eliminated', only stocks of more than 3 tonnes having been taken into account when determining the surpluses of the new Member States of 1986 and 1995.

201 In the view of the applicant, this proves that the concept of 'private stocks' mentioned in point 4(2) of Annex IV to the Act of Accession relates not to households but to commercial operators, as household reserves in Estonia average 72 kg per household.

202 In particular, the accessions of 1995 and 2004 cannot, according to the Republic of Estonia, be regarded as different as far as household reserves are concerned, because, at the time of the 2004 accession, the risks were greater in view of the size of the markets of the new Member States. That view would be valid, according to the Republic of Estonia, only if the household reserves of the new Member States posed a serious threat to the functioning of the market. In fact, in its view, the 43 000 tonnes of household reserves in Estonia are negligible as compared with the 13 420 682 tonnes of the A and B quotas in the European Union.

203 Lastly, according to the Republic of Estonia, if the Commission intended to act differently, it should have expressly indicated that fact, in particular when it stated that in dealing with the question of agricultural stocks it wished to take account of the experience acquired in previous accessions, as demonstrated by the Commission document of 30 January 2002 regarding stocks (the 'SIP') and confirmed by a letter of 20 August 2003 addressed to the Ambassador of the Republic of Estonia.

204 The Commission disputes the arguments of the Republic of Estonia.

(c) Findings of the Court

205 In essence, the Republic of Estonia maintains that, in so far as the provisions adopted at the time of the accessions of 1986 and 1995 and German reunification established a system for eliminating the surpluses under which trivial amounts were in practice excluded, the concept of 'stocks' to which the elimination requirements relate and which is identical in substance to that referred to in point 4(2) of Annex IV to the Act of Accession cannot cover trivial amounts such as household reserves.

206 That argument cannot be accepted.

207 The protocols and annexes to an act of accession constitute provisions of primary law which, save where that measure provides otherwise, may not be suspended, amended or repealed otherwise than in accordance with the procedures established for review of the original Treaties (Case C-445/00 *Austria* v *Council* [2003] ECR I-8549, paragraph 62).

208 As a matter of principle, the scope of a provision of primary law cannot be interpreted in the light of provisions of secondary law that the institutions may have adopted for its implementation. On the contrary, when it is necessary to interpret a provision of secondary law, it is the secondary law which must be interpreted, as far as possible, in a manner which renders it consistent with the provisions of primary law (see, to that effect, Joined Cases 201/85 and 202/85 *Klensch and Others* [1986] ECR 3477, paragraph 21).

209 In that regard, it should be pointed out that neither the provisions referred to in paragraph 182 above laying down an obligation to eliminate the surpluses in the context of the accessions of 1986 and 1995 and at the time of German reunification nor point 4(2) of Annex IV to the Act of Accession limit the concept of 'stocks' to quantities of a certain size.

210 Moreover, where a provision of Community law is open to several interpretations, preference must be given to the interpretation which ensures that the provision retains its effectiveness (Case C-434/97 *Commission* v *France* [2000] ECR I-1129, paragraph 21). Accordingly, if there were any doubt as to the minimum quantities to which the concept of 'stocks' material to those obligations related, it would have to be removed by opting for the interpretation that could ensure the effectiveness of those obligations.

211 As was explained in paragraph 119 above, the purpose of the obligations in question, so far as sugar is concerned, is primarily to prevent any disruption to the proper functioning of the mechanisms provided for by the CMO in sugar and, in particular, disruption affecting price formation and arising as a result of the accumulation of abnormal quantities of sugar in the new Member States before accession. Thus, the effectiveness of the obligations in question would be undermined if trivial amounts were automatically excluded from the concept of 'stocks', since disruption of the market could occur if the trivial amounts stockpiled were so numerous that, taken together, they constituted a substantial part of the market in question.

212 That does not prevent the Commission from deciding — as part of the measures it adopts to implement a system of elimination aimed at safeguarding the effectiveness of the obligations mentioned in paragraphs 182 and 209 above — to limit the obligations under that system to stockpiled quantities of a particular size for reasons of administrative simplification and proportionality, if it considers that, by so doing, it does not compromise the overriding objective of preventing market disruption. The Commission's decision in that regard is bound to depend on the risks which, in its view, each accession poses for the stability of the market.

213 It is solely from that perspective that account must be taken of the wide differences between, on the one hand, the provisions defining the actual content of the obligation to eliminate the surpluses in the context of the accessions of 1986 and 1995 and at the time of German reunification and, on the other, the corresponding provisions in the context of the accession of 2004.

214 As to the argument of the Republic of Estonia that the Commission should have explained why it had decided to act differently as compared with previous accessions, in reality that is a complaint based on breach of the obligation to state reasons and, accordingly, it will be examined in the context of the third plea.

215 The third subdivision of the first part must therefore be dismissed.

4. The interpretation of Article 32 EC

(a) Arguments of the parties

216 The Republic of Estonia states that Article 32(1) EC excludes households from the common agricultural policy. Household reserves cannot, therefore, be subject to the rules governing that policy, including Regulation No 60/2004. Furthermore, according to the Republic of Estonia, households cannot abuse the mechanisms of the CMO in sugar by selling those reserves at a higher price or by exporting them with a refund from the Community. The reason for the purchase of 1 000 000 tonnes of sugar by the intervention agencies following accession was not the existence of 43 000 tonnes of household reserves in Estonia, but lower than expected export refunds and, above all, an increase in sugar production per hectare, which reached a yield of 9.10 tonnes per hectare in the 2004/2005 marketing year, as compared with a forecast yield of

8.17 tonnes per hectare, as confirmed by the Commission's declassification of around 1 900 000 tonnes for the 2005/2006 marketing year.

217 The Commission disputes the arguments of the Republic of Estonia.

(b) Findings of the Court

218 Although it is true that, as the Republic of Estonia states, Article 32(1) EC provides that '[t]he common market shall extend to agriculture and trade in agricultural products', it is nevertheless also a fact that Article 32(4) EC provides that '[t]he operation and development of the common market for agricultural products must be accompanied by the establishment of a common agricultural policy'.

219 It should be borne in mind in that regard that the scope of Community powers in agricultural matters must be interpreted in the light of Article 33 EC, which sets out the objectives of the common agricultural policy, and Article 34 EC, which provides inter alia that, in order to attain the objectives set out in Article 33 EC, a common organisation of agricultural markets is to be established and that that organisation may include all measures required to attain those objectives (see, to that effect, Case 138/78 *Stölting* v *Hauptzollamt Hamburg-Jonas* [1979] ECR 713 and Case 68/86 *United Kingdom* v *Council* [1988] ECR 855, paragraph 9).

220 The objectives of the agricultural policy set out in Article 33 EC are, inter alia, to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture, and to stabilise markets.

221 It follows that the objectives of the common agricultural policy must be designed in such a way as to enable the Community institutions to fulfil their responsibilities by taking account of the necessary mechanisms, to prevent disruption of the markets and to ensure that individual earnings are as considered appropriate for those working in the sector.

222 Under Article 34(2) EC, the common organisation in one of the forms laid down in Article 34(1) EC may include all measures required to attain the objectives set out in Article 33 EC: in particular, regulation of prices; aid for the production and marketing of the various products; storage and carryover arrangements; and common mechanisms for stabilising imports or exports.

223 As is apparent from the conclusions reached above, control of the abnormal quantities of sugar added to reserves in the new Member States before their accession to the European Union, including household reserves, is an essential condition for preventing any disruption of the CMO in sugar owing in particular to the foreseeable artificial fall in demand caused by the substitution of those reserves for the quantities that would have been bought in the market, to the detriment of the earnings of Community manufacturers and the Community budget.

224 It follows that the taking into account of household reserves for the purposes of calculating the total surpluses in the new Member States, which is necessary to prevent the problems referred to above, is one of the measures to be adopted under the common agricultural policy. The argument of the Republic of Estonia must therefore be rejected.

5. The concept of 'holders of surplus stock' as interpreted by the Court of Justice

(a) Arguments of the parties

225 According to the Republic of Estonia, the Court of Justice has restricted the concept of 'holders of surplus stock' to commercial operators (*Weidacher*, paragraph 118 above, paragraph 42). It maintains that that interpretation was made in a regulatory context identical to that in the present case. In particular, according to the Republic of Estonia, the Court refers to Article 4(2) of Commission Regulation (EC) No 3108/94 of 19 December 1994 on transitional measures to be adopted on account of the accession of Austria, Finland and Sweden in respect of trade in agricultural products (OJ 1994 L 328, p. 42), the content of which, as regards the concept of 'surplus stock', is essentially identical to that of Regulation No 60/2004.

226 The Commission disputes the arguments of the Republic of Estonia.

(b) Findings of the Court

227 It is true that, as the Republic of Estonia observes, in *Weidacher*, paragraph 118 above, the Court of Justice adopted a definition of the concept of 'holder of surplus stock', as used in Regulation No 3108/94, that covered only commercial operators. It concluded that that concept, as used in Article 4 of that regulation, referred to a person who has authority to place the stored products on the market and thereby realise a profit (*Weidacher*, paragraph 45).

228 However, the Republic of Estonia's interpretation of *Weidacher* is incorrect, even though Article 145(2) of the Act of Accession of 1994, which provides that the new Member States of 1995 are to eliminate the surpluses at their expense, and point 4(2) of Annex IV to the Act of Accession are very similar and the purpose of Regulation No 60/2004 is to implement the latter.

229 On that point, it should be stated first that in *Weidacher*, paragraph 118 above, the Court of Justice did not define the concept of 'holders of surplus stock' as referred to in Article 145(2) of the Act of Accession of 1994, nor even as referred to in one of the provisions implementing that measure. Article 4 of Regulation No 3108/94 does not impose an obligation to eliminate any quantity of agricultural products, but merely requires the ascertained surplus stock to be taxed. For that reason, the Court simply stated that the provision in question made it possible to reduce the burden of the obligation, imposed on the new Member States of 1995 by Article 145(2) of the Act of Accession, to eliminate such stocks at their own cost, without establishing that it could constitute an implementing rule.

230 In that regard, it should be noted that the fact that holders of surplus stock are taxed for owning such stocks only if they are commercial operators does not necessarily mean that the concept of 'surplus stock that must be eliminated' can cover only stock in the possession of commercial operators.

231 Moreover, there is a fundamental difference between levying a tax on the possession of surplus stock — which, in practice, can apply only to persons holding a trivial amount — and the taking into account of the surplus quantities existing in a Member State, which may include trivial amounts if, as in the case in point, it is based on the observation of certain macroeconomic variables.

232 Consequently, the fact that the Court of Justice stated that the holders of stock to be charged tax under Regulation No 3108/94 were commercial operators does not necessarily mean that quantities which are not held by such operators cannot be counted as surplus in the context of the adoption of the contested regulation.

233 Secondly, it should be noted that in *Weidacher*, paragraph 118 above, the Court was not addressing the question whether the concept of 'holders of surplus stock' as referred to in Article 4 of Regulation No 3108/94 covered only operators holding abnormal quantities of a product or also households that had built up abnormal reserves. The Court intended only to determine whether, as the Austrian Government maintained in the case that gave rise to the judgment in question, only the person with authority to dispose of the goods can be regarded as their holder for the purposes of Article 4 of Regulation No 3108/94 or, as the Commission contended, the term 'holder' for the purposes of that provision refers to the person who has actual control over the stocks or has actual and physical possession of them, which would include a pledgee or a carrier, who is not necessarily vested with authority to dispose of them freely (*Weidacher*, paragraphs 40, 41 and 43). It is solely in that context that the Court established that the term 'holders' as used in Article 4 of Regulation No 3108/94 referred to persons who, on 1 January 1995, had the authority to place the stored products on the market with a view to realising a profit which the taxation in question was specifically designed to neutralise (*Weidacher*, paragraph 42). Accordingly, a broad interpretation of that conclusion is not appropriate.

234 Thirdly, it should be observed that the definition of 'holders of surplus stock' adopted by the Court in *Weidacher*, paragraph 118 above, does not exclude only persons other than commercial operators but also commercial operators who could not derive an abnormal profit from the sale of the stored products. Thus, the Court concluded that the term 'holders' for the purposes of Article 4 of Regulation No 3108/94 must be construed as referring to persons who, on 1 January 1995, had the authority to place the stored products on the market with a view to realising a profit which the taxation at issue in the main proceedings was specifically designed to neutralise (*Weidacher*, paragraph 42), that is to say, a profit linked to the economic advantages which would have accrued to operators who actually built up surplus stocks at low prices (*Weidacher*, paragraph 22). However, Article 145(2) of the Act of Accession of 1994 required the new Member States of 1995 to eliminate the surpluses existing within their territory, and not just those yielding an abnormal profit to their holders. It was for that reason, for

example, that Articles 5 to 7 of Regulation No 3300/94 required the Republic of Austria to eliminate a quantity of sugar, calculated on the basis of stocks of more than 3 tonnes, that exceeded the reference quantity of 294 177 tonnes, even though the price of sugar before 1995 was, according to the Commission, higher than the Community price.

235 Fourthly, when assessing the Court's interpretation in *Weidacher*, paragraph 118 above, it should be borne in mind that it was arrived at in a very different legislative context to that of the present case. The combined provisions of Articles 5 to 7 of Regulation No 3300/94 had in practice limited the obligation to eliminate surplus stocks to the quantities calculated solely on the basis of individual stocks of more than 3 tonnes and exceeding the normal carryover stocks determined by the Commission for each of the new Member States of 1995. It would thus be inappropriate to consider that the concept of 'holder' for the purposes of Article 4 of Regulation No 3108/94 as interpreted by the Court referred to persons other than commercial operators, since the Commission subsequently in practice limited the obligation to eliminate surpluses to quantities of more than 3 tonnes.

236 In the light of the foregoing, it must be concluded that the definition in question adopted by the Court of Justice in *Weidacher*, paragraph 118 above, does not mean that household reserves must be excluded from the calculation of the surpluses of a new Member State, for the purposes of Regulation No 60/2004. The Republic of Estonia's submission, hence the first part of its second plea, must therefore be rejected.

C — *The second part*

237 The Republic of Estonia claims that, by including household reserves in the surplus ascribed to Estonia, the contested regulation infringed Article 6(1)(c) of Regulation

No 60/2004, under which the Commission, when calculating the surpluses, must take into account the specific circumstances in which stocks were built up. The Commission disputes that argument.

238 The Republic of Estonia observes that the Commission was obliged to take into account three specific circumstances relating to Estonia's situation: (i) the special place of sugar in the economy and culture of Estonia; (ii) the change in the method for determining surpluses; and (iii) the contribution of the Community to the accumulation of those surpluses.

239 Lastly, the Republic of Latvia asserts that the Commission did not pay sufficient heed to the development of the economies of the new Member States.

240 It is necessary to examine independently first the arguments adduced by the Republic of Estonia alleging that the Commission failed to take account of each of those three circumstances and, secondly, the argument put forward by the Republic of Latvia. At the outset, it is necessary to determine the scope of Article 6(1)(c) of Regulation No 60/2004.

1. Preliminary observations on the scope of Article 6(1)(c) of Regulation No 60/2004

241 It should be pointed out that, under Article 6(1) of Regulation No 60/2004, in order to determine the surpluses of the new Member States, the Commission is to take account in particular of the development during the year preceding accession, as compared with the previous years, of imported and exported quantities of sugar, as such or in processed products, isoglucose and fructose; production, consumption and stocks of sugar and isoglucose; and, lastly, the circumstances in which stocks were built up (see paragraph 13 above).

242 The regulations laying down the legislative framework for the elimination of the sugar surpluses at the time of the accessions of 1986 and 1995 — that is to say, Regulation No 579/86 and Regulation No 3300/94 respectively — do not contain a provision similar to Article 6(1)(c) of Regulation No 60/2004. Indeed, under those two regulations, all the quantities resulting from the addition of stocks of more than 3 tonnes that exceed the normal carryover stocks calculated by the Commission are automatically to be considered to be surpluses.

243 The system established by Regulation No 60/2004 therefore provides for real flexibility by comparison with the systems put in place at the time of the earlier accessions, in so far as it allows certain sugar stocks not to be counted as surplus, depending on the circumstances in which they were built up.

244 Nevertheless, it should be pointed out that Regulation No 60/2004 does not explain which specific circumstances in the build-up of stocks the Commission must take into account, nor the part they must play in the Commission's assessment.

245 Accordingly, it should be observed that, as was mentioned in paragraph 115 above, in interpreting a provision of Community law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives of the rules of which it is part and the provisions of Community law as a whole. The concept of 'circumstances in which stocks were built up' must therefore be construed, in particular, in the light of the objective of Regulation No 60/2004.

246 In that regard, it should be pointed out that the purpose of the measures put in place by Regulation No 60/2004 is, inter alia, to prevent disruption of the Community market in sugar, to the detriment of the Community budget and producers (see paragraph 163 above). It must therefore be concluded that the taking into account of the circumstances in which stocks were built up in accordance with Article 6(1)(c) of Regulation No 60/2004 cannot be permitted to create a risk of market disruption.

247 It must therefore be concluded that Article 6(1)(c) of Regulation No 60/2004 makes it possible to exclude from the calculation of the surpluses only certain stocks, which would have to be taken into account for the purposes of the surpluses in accordance with the other criteria mentioned in Article 6(1) of that regulation but which do not pose a risk of market disruption, given the particular circumstances. This applies, for example, to the build-up of stocks in anticipation of a very large rise in consumption or the fact that, for exceptional reasons, the level of stocks during the period immediately before accession was abnormally low.

248 However, it is not apparent from the wording of Article 6(1)(c) of Regulation No 60/2004 that the circumstances in question must be specific solely to the situation of a particular Member State.

249 It is in the light of those considerations that the present part must be examined.

2. The importance of the consumption of sugar in Estonia

(a) Arguments of the parties

250 The Republic of Estonia observes that the situation in Estonia with regard to the consumption of sugar differs from that in the other Member States. First, it maintains that Estonians have a far lower average income than nationals of the old Member States and that the percentage they spend on food, beverages and tobacco is twice that of the latter. Secondly, 96% of jams, 92% of fruit compotes and 54% of fruit juices are produced at home in Estonia, where sugar consumption per person is 20% higher than in the old Member States. Thirdly, Estonia does not produce sugar, and before accession it levied no customs duty on sugar, the Estonian price being one-third of the Community price.

As a result of this combination of factors and the supply shortages Estonia experienced following its independence from the Soviet Union, Estonians were very sensitive to the price of sugar. Consequently, as they were convinced that the price of sugar would increase after the accession of the Republic of Estonia to the European Union, they purchased quantities of sugar averaging 30 kg per inhabitant and 72 kg per household, with total imports rising from 65 478 tonnes in 2002/2003 to 160 023 tonnes en 2003/2004. By contrast, in Malta and Cyprus, the only other non-sugar-producing States among the new Member States, the Republic of Estonia maintains that there was no traditional production of jams and income per head was higher. For that reason, the increase in the price of sugar was not, it claims, a comparable burden for the nationals of those two new Member States, which therefore did not lay in reserves of sugar.

251 The Commission disputes the arguments of the Republic of Estonia.

(b) Findings of the Court

252 The argument of the Republic of Estonia is essentially that the Commission should have taken account of the fact that Estonian consumers had a clear and even fundamental interest in building up substantial household reserves in anticipation of the expected rise in the price of sugar in Estonia following accession.

253 In this regard, it should be noted that it is undoubtedly true that during the period immediately before accession Estonian consumers had a strong interest in building up reserves of sugar in order to delay as far as possible the impact that the forecast 300% increase in the price of this product following accession would have on their budgets.

254 However, if such a circumstance were taken into account in order to exclude such reserves from the concept of 'surplus', attainment of the objective referred to in Regulation No 60/2004, namely to prevent disruptions in the sugar market linked to the build-up of surpluses (see paragraph 163 above), would be impeded.

255 Consequently, the existence of objective reasons making the build-up of household reserves attractive cannot be considered to be a circumstance in which stocks were built up pursuant to Article 6(1)(c) of Regulation No 60/2004.

256 As to the argument that sugar usage is far higher in Estonia than in the other Member States, it should be observed that, even if that proves to be true, it does not in any way mean that the surpluses built up in the form of household reserves were not likely to create the risk of disruption of the Community market in sugar following accession.

257 Moreover, it is not clearly evident from the documents in the case-file that the importance of sugar in Estonian consumption and culture played such a fundamental role in the build-up of household reserves as the Republic of Estonia claims. Indeed, according to the Republic of Estonia itself, per capita consumption of sugar on its territory is only 20% higher than the Community average.

258 Lastly, the measures enacted by the Commission under Regulation No 60/2004 do not prevent the Republic of Estonia from allowing its nationals to have a high consumption of sugar but only from allowing them to build up abnormally large reserves which, in practice, delay the full application of the CMO in sugar on its territory to the detriment, in particular, of Community manufacturers and the Community budget.

259 If the Republic of Estonia considered it essential to ensure a temporary supply of sugar for its citizens at a price below that resulting from the application of the CMO in sugar on its territory — the direct consequence of its decision to join the European Union — it should, in its negotiations with the European Union on accession, have requested the option of subsidising the purchase of a given quantity of sugar by its nationals during a given period, as the Republic of Malta did, for example, as is evident from point 4(a) of Annex XI to the Act of Accession.

260 It must therefore be held that the Republic of Estonia has failed to demonstrate that the Commission infringed Article 6(1)(c) of Regulation No 60/2004 by not taking into account the role of sugar and its consumption on its territory.

3. The amendment by the Commission of the criteria applied at the time of previous accessions

(a) Arguments of the parties

261 The Republic of Estonia argues that, at the time of previous accessions, the Commission did not include household reserves in the calculation of surpluses but only quantities of more than 3 tonnes. In its view, the method applied in the present case thus constitutes a fundamental change which did not become clearly apparent until after the accession of the new Member States to the European Union, the date from which the surpluses were determined. The Republic of Estonia claims that this made it impossible for it to prevent the accumulation of household reserves. Moreover, the Commission allegedly encouraged the legitimate expectation that such reserves would not be counted as part of the surpluses by referring repeatedly to the previous accessions. In the view of the Republic of Estonia, this is clear from the fact that, in the SIP, the Commission indicated that only operators were to be prevented from building up stocks and that the obligation to eliminate surplus stocks applied only to them. These references were not contradicted by the Act of Accession, the wording of which, as far as surpluses are concerned, is almost identical to the equivalent provisions adopted at the time of the previous accessions.

262 The Commission disputes the arguments of the Republic of Estonia.

(b) Findings of the Court

263 In this argument, the Republic of Estonia essentially raises two different issues.

264 First, it claims that the fact that at the time of the previous accessions the surpluses of the new Member States of 1986 and 1995 had been calculated solely on the basis of quantities of more than 3 tonnes on their territory is one of the circumstances in which the stocks were built up, for the purposes of Article 6(1)(c) of Regulation No 60/2004.

265 Secondly, the Republic of Estonia claims that the Commission had given it legitimate grounds to expect that household reserves would not be counted towards the surpluses.

266 As regards the first issue, it should be noted that the Republic of Estonia does not indicate clearly the inference it claims to draw from it. The most plausible interpretation of its arguments is that it considers that the fact that at the time of the previous accessions the surpluses of the new Member States of 1986 and 1995 were calculated solely on the basis of amounts of more than 3 tonnes means that the Commission should have acted in the same way when determining the surpluses in the context of the adoption of the contested regulation.

267 However, it should be stated at the outset that the methods used for calculating surpluses at the time of the previous accessions cannot be considered to be circumstances in which the stocks were built up for the purposes of Article 6(1)(c) of Regulation No 60/2004.

268 Moreover, in view of the observations set out in paragraphs 245 to 248 above, taking the circumstances in which stocks were built up into consideration cannot be permitted to create a risk of disrupting the mechanisms provided for by the CMO in sugar. If, for that reason, all quantities of sugar of less than 3 tonnes were to be excluded from the calculation of a new Member State's surpluses, the total quantity of sugar on the territory of that State on the day of accession could be very large, which would jeopardise the objective of Regulation No 60/2004, which consists in preventing any disruption of those mechanisms.

269 Accordingly, it must be held that the fact that, in the provisions implementing the obligations to eliminate surpluses laid down in the Acts of Accession of 1985 and 1994, the Commission limited the scope of those obligations to quantities of more than 3 tonnes shows only that it considered that the existence of surpluses calculated on the basis of smaller quantities posed no threat to the stability of the Community market in sugar, given the particular circumstances at the time of those accessions. However, such an approach cannot influence the assessment as to whether the existence of surpluses calculated on the basis of quantities of less than 3 tonnes is likely to create a risk of disturbance to the mechanisms of the CMO in sugar in the context of the accession under consideration.

270 As regards the second issue, it should be borne in mind that the principle of the protection of legitimate expectations may be invoked as against Community rules only to the extent that the Community itself has previously created a situation which could give rise to a legitimate expectation (see *Weidacher*, paragraph 118 above, paragraph 31 and the case-law cited). That principle, which is one of the fundamental principles of the Community, applies where the Community institution in question has given those concerned specific assurances giving rise on their part to reasonable expectations (Joined Cases T-222/99, T-327/99 and T-329/99 *Martinez and Others* v *Parliament* [2001] ECR II-2823, paragraph 183).

271 It has to be observed that, in the present case, the Commission had not previously created a situation which could give rise to a legitimate expectation on the part of the Republic of Estonia or of Estonian operators that household reserves would not be taken into account when calculating the Estonian surplus.

272 Although it is indicated in point 8(1)(2) of the SIP that, in dealing with the question of the surpluses, account was to be taken of the experience gained at the time of the accessions of 1986 and 1995 and German reunification, that does not mean that the measures adopted for the accession of 2004 had to be identical to those adopted for the previous accessions.

273 Moreover, the applicable provisions for the accessions of 1986 and 1995, which are mentioned in point 8(1)(2) of the SIP for information purposes, are those laid down in the Acts of Accession of 1985 and 1994. The obligation to eliminate the surpluses for which they provide is not subject to a *de minimis* rule, in contrast to their implementing regulations, which introduced such a rule.

274 Thus, the Republic of Estonia has failed to present any documentary evidence of specific assurances from the Commission that household reserves would not be taken into account for the purposes of calculating the Estonian surplus. Nor has it provided evidence of specific assurances from the Commission that the measures implementing the elimination requirement set out in point 4(2) of Annex IV to the Act of Accession would be identical to the measures adopted in implementation of the equivalent provisions of the Acts of Accession of 1985 and 1994.

275 Accordingly, the Republic of Estonia could not have been unaware of the very open wording of point 4(2) of Annex IV to the Act of Accession, under which the new Member States were required to eliminate any surplus within their territory at their own expense.

276 It must therefore be concluded that the fact that household reserves were not included in the calculation of surpluses at the time of previous accessions cannot be considered to be one of the circumstances in which stocks were built up at the time of the accession of 2004, for the purposes of Article 6(1)(c) of Regulation No 60/2004.

4. The Commission's contribution to the build-up of household reserves in Estonia

(a) Arguments of the parties

277 The Republic of Estonia claims that, in the year preceding accession, 87% of Estonian sugar imports came from the European Union and were encouraged by Community subsidies which were held to be unlawful by the Appellate Body of the World Trade Organisation (WTO) and which were contrary to the duty to act in good faith. It alleges that the Commission even prevented the Republic of Estonia from curbing Community imports by means of safeguard measures, which would have prevented the build-up of surpluses, as such imports could not have been replaced in such a short period of time.

278 The Commission rejects the arguments of the Republic of Estonia.

(b) Findings of the Court

279 The argument of the Republic of Estonia is based essentially on the premiss that the existence of household reserves and the Estonian surplus in general came about specifically because of the fact that the European Union subsidised exports of sugar to its territory. It infers from this that the Commission is obliged, pursuant to Article

6(1)(c) of Regulation No 60/2004, to take account of that circumstance in order to exclude household reserves from the calculation of its surplus.

280 That argument cannot be accepted.

281 Even supposing that a causal relationship between the build-up of household reserves in Estonia and subsidised Community exports to the Republic of Estonia could be established, that would not make the existence of the reserves in question any less of a threat to the stability of the CMO in sugar. They would be likely to cause disruption of the Community market in sugar, for the reasons stated in paragraphs 121 to 134 above, irrespective of the reasons for which they were built up.

282 Consequently, in view of the considerations set out in paragraphs 245 to 248 above, it must be concluded that the existence of subsidised Community exports to the Republic of Estonia must not be taken into account as one of the circumstances in which the stocks were built up, for the purposes of Article 6(1)(c) of Regulation No 60/2004.

283 Furthermore, the premiss on which the argument of the Republic of Estonia is based is, in any event, mistaken.

284 It is common ground that the world market price of sugar before accession was less than one-third of the Community price. Hence, even if the Commission had had the means to eliminate all possibility of the Republic of Estonia obtaining supplies of sugar from Community operators, Estonian importers would in any case still have had a clear interest in turning to non-Community sugar producers in order to build up stocks,

either in order to sell them in the enlarged Community at great profit or in order to supply Estonian nationals with the quantities they demanded to build up household reserves.

285 The Republic of Estonia argues that such a change in sources of supply would not have been possible, in that Estonian importers would have had difficulty replacing, from one day to the next, their traditional Community suppliers with suppliers established outside the Community.

286 That argument cannot be accepted. The Republic of Estonia advances no reason why it is obvious that, in a market such as that in sugar, an experienced operator would not have been able to buy substantial quantities of sugar on the world market in the period of three and a half months between the date of publication of Regulation No 60/2004 in the *Official Journal of the European Union* and the date of accession of the new Member States, particularly as Estonian operators could have paid double the market price for non-Community sugar and still have retained a wide profit margin.

287 Moreover, it should be observed that there is nothing to suggest that Estonian operators could not have built up surpluses before the date of publication of Regulation No 60/2004 with a view to their sale in the enlarged Community or on the domestic market. In that case, the Commission's adoption of measures under that regulation to discourage Community exports to Estonia would not have been sufficient to ensure the elimination of the surpluses in question.

288 All of the arguments of the Republic of Estonia must therefore be rejected.

5. The Commission's failure to take sufficient account of the economic development of the new Member States.

(a) Arguments of the parties

289 The Republic of Latvia argues in intervention that the Commission did not take sufficient account, under Article 6(1)(c) of Regulation No 60/2004, of the economic development of the new Member States and of the objective speed of the increase in resource requirements linked to the rapid rise in purchasing power of their inhabitants and to the development of the tourism sector. For example, it maintains that the bulk of the surplus in Latvia was due to an increase in production capacity and consumption, which was not taken into account in the Commission's rigid formulae. In addition, according to the intervener, the Commission should have determined not only the surplus of each new Member State but also its normal carryover stock at 1 May 2004, which would have better ensured that the circumstances in which the stocks had been built up were analysed appropriately. In acting as it did, the Commission also acted in breach of the principle of the protection of legitimate expectations.

290 The Commission disputes the arguments of the Republic of Latvia.

(b) Findings of the Court

291 Under the second subparagraph of Article 115(2) of the Rules of Procedure of the Court of First Instance, the admissibility of an application to intervene is subject to compliance with, inter alia, the condition laid down in Article 44(1)(c) of those Rules, under which the application must contain, among other things, a summary of the pleas in law on which it is based. It must accordingly specify the nature of the grounds on which the action is based, which means that a mere abstract statement of the grounds does not satisfy the requirements of the Statute of the Court of Justice or the Rules of Procedure (Case T-102/92 *VIHO* v *Commission* [1995] ECR II-17, paragraph 68, and the judgment of 10 September 2008 in Case T-181/06 *Italy* v *Commission*, not published in the ECR, paragraph 139).

292 In the light of those considerations, it must be found that the arguments relied upon by the Republic of Latvia in support of its claim are too vague to be examined. It is impossible to determine, on the basis of those arguments, the way in which, according to the Republic of Latvia, the Commission should have taken account of the economic development of the new Member States in order to modify its calculation of the surpluses on the basis of supposedly higher consumption.

293 Furthermore, most of the arguments of the Republic of Latvia relate, in essence, to its own economic development. Even assuming them to be well founded, they have no bearing on the question whether, when calculating the surplus attributable to the Republic of Estonia, the Commission paid sufficient regard to the circumstances in which stocks were built up on Estonia's territory.

294 In view of the foregoing, it must be found that the complaint of the Republic of Latvia must be rejected, as must the present plea in its entirety.

IV — *The third plea: breach of the obligation to state reasons*

A — *Arguments of the parties*

295 The Republic of Estonia argues that, in the contested regulation, the Commission failed to explain why household reserves were included in the surplus in question, which is all the more serious in the light of the circumstances of the case.

296 In that regard, first, it claims that, when a measure relates to a specific case, the requirement to state reasons is stricter (Joined Cases 292/81 and 293/81 *Lion and Others* v *FIRS* [1982] ECR 3887, paragraph 18 et seq., and Joined Cases 311/81 and 30/82 *Klöckner-Werke* v *Commission* [1983] ECR 1549, paragraph 30 et seq.). It

maintains that the contested regulation concerns only five new Member States and relates to a unique situation that is unlikely to recur, namely the transition from the regime in force in those States to the CMO in sugar. In its opinion, where the number of persons is determinate and there is no possibility of its application in the future, a regulation constitutes rather a bundle of decisions.

297 Secondly, the Republic of Estonia argues that a decision must be justified in detail, particularly if it produces serious and important effects. As the sum to be paid by the Republic of Estonia — if it does not eliminate its surpluses — is EUR 45.7 million, equal to 1.35% of its budget, the Commission was under a greater obligation to state reasons.

298 Thirdly, the Republic of Estonia states that, by comparison with previous accessions, the Commission changed its practice regarding the calculation of the surpluses and that it introduced a method that is atypical in the context of the common agricultural policy, where a detailed statement of reasons is also required to explain a change in practice.

299 Fourthly and lastly, the Republic of Estonia claims that the contested regulation contains no explanation of the manner in which the specific circumstances referred to in Article 6(1)(c) of Regulation No 60/2004 were taken into account, apart from an incontrovertible indication in the third recital in the preamble. In its view, that would prevent any review of the lawfulness of the contested regulation, whereas the level of justification required in this situation is higher, since Article 6(1)(c) of Regulation No 60/2004 allows the Commission wide discretion.

300 In that regard, the Republic of Estonia states that it was not notified of the reasons for which household reserves were included in the calculation of the surpluses in question,

even in the Sugar Management Committee or at the meeting of 19 May 2005, and calls on the Commission to forward to the Court the documents presented at that meeting.

301 The Commission disputes the arguments of the Republic of Estonia.

B — *Findings of the Court*

302 It should be noted that the contested regulation is not the legislative measure which provided that household reserves were to be taken into account for the purpose of the surpluses.

303 In fact, the only legislative measure which provided that they were to be taken into account is Regulation No 60/2004. That regulation instituted a system for calculating surpluses that is very different from those established under Regulations Nos 579/86 and 3300/94 for the accessions of 1986 and 1995, which had been based in particular on the organisation of a survey by the national authorities of quantities of more than 3 tonnes existing within their territory in order to compare them with a quantity set by the Commission as the normal carryover stock and thus eliminate any surplus (see paragraphs 195 and 196 above).

304 It should be observed in that regard that the seventh recital in the preamble to Regulation No 60/2004 states clearly that determination of the surplus stocks should be carried out by the Commission on the basis of trade developments and production and consumption trends in the new Member States during the period of 1 May 2000 to 30 April 2004. The ninth recital of that regulation indicates that, for the determination of surplus stocks, new Member States should provide the Commission with the most recent statistics on trade, production and consumption of the products considered (see paragraph 197 above).

305 Article 6 of Regulation No 60/2004 thus provides that, in order to determine the surpluses, account is in particular to be taken of the development during the year preceding accession, as compared with the previous years, of imported and exported quantities of sugar, as such or in processed products, isoglucose and fructose; production, consumption and stocks of sugar and isoglucose; and, lastly, the circumstances in which stocks were built up.

306 It is therefore evident that, as was explained above, the method laid down in Regulation No 60/2004 for determining the surpluses hinges on the observation of macroeconomic trends, and not on that of the quantities actually stockpiled in a particular Member State. That regulation also includes a final flexibility clause permitting the outcome of the investigation to be amended in the light of specific circumstances that justify the exclusion of certain quantities of sugar where they do not threaten to disrupt the mechanisms of the CMO in sugar, as is apparent from the interpretation of Article 6(1)(c) of Regulation No 60/2004 given in paragraphs 245 to 248 above. In Annex 1 to the communication from Mrs Fischer Boel, the Commission itself states that the purpose of that annex is to lay down methods for determining the surpluses of the new Member States at the macroeconomic level, as required by Article 6 of Regulation No 60/2004, which contains no provision excluding trivial amounts from the calculation of the surpluses.

307 The third recital in the preamble to the contested regulation mentions the macroeconomic variables which in practice the Commission took into account when calculating the surpluses. Thus it explains that, in general, the Commission considers that surplus quantities of sugar are the result of an increase in production, plus imports and minus exports, for the period from 1 May 2003 to 30 April 2004, as compared with the average of the same quantities for the same period of the three previous years.

308 It is also self-evident that such a method for determining the surpluses necessarily means taking into account household reserves in the same way as those built up by

operators. In the case of the Republic of Estonia, a non-sugar-producing State, the surplus calculated for the 2003/2004 marketing year must necessarily be the result of the difference between the imports made during that year and the average of the imports made during the three previous years, less the difference between exports during that year and the average of exports during the three previous years. Such a method, which as a matter of principle aims to take account only of imports and exports, does not make it possible to exclude household reserves from the quantity so obtained, unless it is considered that the existence of such reserves is one of the circumstances in which the stocks were built up, for the purposes of Article 6(1)(c) of Regulation No 60/2004.

309 The fact that this method was in fact applied is apparent not only from the recitals in the preamble to the contested regulation but also, and very clearly, from the documents submitted on a number of occasions to the Republic of Estonia in the Sugar Management Committee and, lastly, at the meeting of the group of experts on 19 May 2005; these documents were produced before the adoption of the regulation in question and were known to the Republic of Estonia.

310 Accordingly, it must be found, first, that the contested regulation contains an adequate statement of reasons as to why household reserves were not excluded from the calculation of the Estonian surplus and, secondly, that the statement of reasons in that regulation did not necessarily have to contain the reasons why the Commission had departed from the practice adopted at the time of previous accessions, since such a change is a logical and necessary consequence of Regulation No 60/2004, the lawfulness of which has not been questioned by the Republic of Estonia in the present action.

V — *The fourth plea: breach of the principle of sound administration*

A — *Arguments of the parties*

311 The Republic of Estonia claims that the Commission breached the principle of sound administration by adopting the contested regulation, which consists of a bundle of five decisions relating to the new Member States concerned, since it was required to prepare its decision carefully and impartially. According to the Republic of Estonia, the Commission failed to take into account the specific circumstances of the situation in Estonia, of which it had been informed. Mrs Fischer Boel took that decision, it claims, on the basis of considerations that had nothing to do with the case, thus committing a misuse of powers. The Republic of Estonia claims that Mrs Fischer Boel tried, on the one hand, to avert the risk that other new Member States would challenge the basis of calculation for other products or would rely on specific circumstances and, on the other, to avoid creating precedents for future accessions.

312 Moreover, according to the Republic of Estonia, the Commission should have assessed the impact of its conduct on the situation created, in particular since it had stated that it would use the same method of calculation as at the time of previous accessions.

313 Lastly, in accordance with the principle of sound administration, the College should, in the opinion of the Republic of Estonia, acquaint itself with the essential facts before reaching any decision. By contrast, it ruled on the inclusion of household reserves in the Estonian surplus even though the final version of Mrs Fischer Boel's communication did not contain the arguments of the Republic of Estonia regarding, among other things, the serious consequences of that decision on its budget; or Mrs Fischer Boel's considerations in the matter; or the actual figures; or a comparison with the Republic of Malta and the Republic of Cyprus.

314 The Commission contends that this plea should be rejected.

B — *Findings of the Court*

315 It should be observed that, by means of this plea, while relying on the principle of sound administration, the Republic of Estonia first essentially repeats the reasons why it considers that the Commission infringed Article 6(1)(c) of Regulation No 60/2004 by adopting the contested regulation without taking into account the specific circumstances of its situation. Those arguments have been examined and rejected in connection with the second part of the second plea. Secondly, the Republic of Estonia repeats the reasons why it considers that the principle of collegiality was breached in the present case. These arguments have been examined and rejected in connection with the first plea.

316 The present plea must therefore be rejected in its entirety.

VI — *The fifth plea; breach of the duty to act in good faith*

A — *Arguments of the parties*

317 The Republic of Estonia claims that the duty to act in good faith prohibits the signatories to an international agreement from adopting measures that would vitiate the objective and purpose of that agreement. Accordingly, after the signature of the Act of Accession, the Commission should have abstained from any measure likely to encourage any disruption of the market or speculation. The Republic of Estonia claims that the Commission failed to take measures against the increase in Community exports and prevented the Republic of Estonia from doing so. In its opinion, this was all the more serious in that the Commission had indicated that it would take into account the effects on stocks caused by the liberalisation of trade between the candidate States and the European Union and that it would apply the same principles as at the time of previous accessions.

318 The Commission disputes the arguments of the Republic of Estonia.

B — *Findings of the Court*

319 By the present plea, the Republic of Estonia essentially puts forward the same arguments as those adduced in connection with its second and fourth pleas. These arguments must therefore be rejected for the same reasons as those pleas.

VII — *The sixth plea: breach of the principle of non-discrimination*

320 The Republic of Estonia claims that the contested regulation breaches the principle of non-discrimination in three ways, which must be examined separately.

A — *Discrimination by comparison with the Republic of Malta and the Republic of Cyprus*

1. Arguments of the parties

321 The Republic of Estonia considers that it was treated in a discriminatory manner by comparison with the Republic of Malta and the Republic of Cyprus, as these two new Member States were treated in the same way as the Republic of Estonia, whereas half of the Estonian surplus consisted of household reserves while the Maltese and Cypriot surpluses were held only by operators. That discrimination also emerges clearly,

according to the Republic of Estonia, from Annex 18 and is all the more serious in that specific circumstances were in fact taken into account for the Republic of Malta, as demonstrated by the change in the calculation of the Maltese surplus between the draft regulation (13 210 tonnes) and the contested regulation (2 452 tonnes).

322 The Commission disputes the arguments of the Republic of Estonia.

2. Findings of the Court

323 In essence, the Republic of Estonia maintains that the Estonian surplus was calculated in the same way as the Cypriot and Maltese surpluses, whereas specific circumstances relating to its situation should have led the Commission to treat it differently. However, the reasons for which the Republic of Estonia considers it should benefit from such treatment do not support its claim.

324 Those reasons are, in essence, those relied upon to claim that the Commission should have taken account of the special role of sugar consumption in the Republic of Estonia, which were set out in connection with the second part of the second plea. As the Court has ruled that those reasons could not lead the Commission to exclude the household reserves of the Republic of Estonia from the calculation of its surplus, as was stated in paragraphs 252 to 260 above, it cannot be considered that, by not taking those reasons into account, the Commission treated the Republic of Estonia in a discriminatory way.

325 Furthermore, in so far as the argument of the Republic of Estonia may be construed as meaning that the Commission reduced the Maltese surplus by taking into account a

specific circumstance relating to the situation in Malta whereas it did not do the same in the case of the Republic of Estonia, it must be observed that the existence of such a specific condition, which is not mentioned in the contested regulation, cannot affect the lawfulness of the calculation of the Estonian surplus or prove discrimination against the Republic of Estonia.

326 The Republic of Estonia does not indicate whether the reduction to which the Republic of Malta was entitled should have been granted to it as well because its situation and that of the Republic of Malta, which enabled the latter to obtain the reduction in question, stem from the same specific circumstance.

327 Moreover, if the argument of the Republic of Estonia were to be construed as meaning that the total surplus of the Republic of Malta was wrongly reduced, it would have to be stated that that error on the part of the Commission, even if proven, cannot call into question the validity of the contested regulation in relation to the Republic of Estonia. That Member State cannot seek to have a method of calculating its surplus applied that is different from the method applicable to it and, at any event, the error committed can affect the validity of the contested regulation only in so far as it concerns the Republic of Malta (see, to that effect, Case C-340/98 *Italy* v *Council* [2002] ECR I-2663, paragraphs 90 and 91).

328 It must therefore be found that the Republic of Estonia has failed to show that, by adopting the contested regulation, the Commission treated it in a discriminatory way by comparison with the Republic of Malta and the Republic of Cyprus.

B — *Discrimination as compared with certain Member States which had previously joined the Community*

1. Arguments of the parties

329 The Republic of Estonia argues that it was treated in a discriminatory way by comparison with the Member States which had previously joined the Community and later, the European Union, because in identical situations of fact and law their household reserves were not taken into account for the purposes of determining their surpluses. The Commission disputes that assertion.

2. Findings of the Court

330 It should be observed that the transitional measures to be adopted regarding agricultural matters at the time of each enlargement must be adapted to the actual risk of disruption of the agricultural markets that that enlargement may cause. Accordingly, the institutions are not required to apply identical transitional measures in connection with two successive enlargements.

331 In particular, the Commission was entitled to take into account, among the differences between the enlargements of 1995 and 2004, the fact that the objective of preventing disruption of the Community market in sugar owing to the build-up of surpluses was more difficult to achieve in 2004 because of the much larger size of the markets of the new Member States and their very much greater production capacity, as well as the fact that some new Member States, such as the Republic of Estonia, levied no import duty on sugar, which could simply be purchased on the world market; the Commission alludes to these facts in its statements without being challenged by the Republic of Estonia. In addition, the price differences between the Community and the new Member States were also larger. The combination of these two factors greatly increased

the risk of destabilisation of the sugar market and consequently justified the adoption of stricter transitional measures.

332 It must therefore be found that the Republic of Estonia has failed to prove that the Commission treated it in a discriminatory way by comparison with the Member States which joined the Community and, later, the European Union, at the time of previous accessions.

C — *Discrimination as compared with all the old Member States*

1. Arguments of the parties

333 The Republic of Estonia argues that it was treated in a discriminatory way by comparison with all the old Member States. It alleges that, under the contested regulation, it was obliged to compel its operators to eliminate a quantity of sugar greater than their surplus quantity in order to fulfil its elimination obligation, given that it is impossible to eliminate household reserves. As a consequence, its operators are in a less favourable situation than those in the old Member States. Lastly, if Regulation No 60/2004 has to be interpreted in such a way that the Republic of Estonia must bear the consequences of the existence of such reserves by paying the amount referred to in Article 7(2) of Regulation No 60/2004, it is the subject of discrimination as compared with the old Member States, which previously never had to bear such a charge.

334 The Commission maintains that the arguments of the Republic of Estonia are directed against Regulation No 60/2004 and not against the contested regulation and are thus inadmissible and, in the alternative, it disputes those arguments.

2. Findings of the Court

335 Without it being necessary to rule on the admissibility of the arguments put forward by the Republic of Estonia, it should be pointed out that Estonian operators are not required, under Regulation No 60/2004, to eliminate a quantity of sugar larger than their individual surplus. It is for the Republic of Estonia itself to ensure the elimination of a quantity of sugar equal to the surplus determined by the Commission (see paragraph 171 above).

336 As regards the alleged discrimination against the Republic of Estonia as compared with the old Member States, in so far as it would have to pay the amount referred to in Article 7(2) of Regulation No 60/2004 if it failed to eliminate a quantity of sugar equal to its surplus, it should be observed that the agricultural situation in the new Member States was radically different from that in the old Member States (Case C-273/04 *Poland* v *Council* [2007] ECR I-8925, paragraph 87). Accordingly, it must be found that, as regards the existence of surpluses, the situation of the old Member States and that of the Republic of Estonia before the enlargement cannot be regarded as comparable.

337 It is true that operators in the old Member States and those in Estonia were subject to different rules, quotas and production support mechanisms before enlargement. However, whereas the Community institutions could prevent the build-up of surplus stocks within the territory of the old Member States by the measures taken under the CMO in sugar, they could not prevent the build-up of surplus stocks within the territory of the new Member States before their accession to the European Union. For that reason, point 4(1) to (4) of Annex IV to the Act of Accession requires the new Member States to eliminate their surplus stocks at their own expense without laying down a parallel obligation for the old Member States, a situation which the Republic of Estonia accepted by signing the Act of Accession.

338 It must therefore be found that the Republic of Estonia has failed to demonstrate discrimination against it by comparison with the old Member States.

339 The present plea must therefore be rejected in its entirety.

VIII — *The seventh plea: breach of the right to property*

A — *Arguments of the parties*

340 The Republic of Estonia claims that the contested regulation breaches the right to property, which is recognised and protected in the context of the common agricultural market and on which restrictions may not be imposed unless they meet objectives of general interest pursued by the Community and do not constitute a disproportionate interference that would damage the very substance of that right. To require Estonian citizens to eliminate the sugar purchased for their consumption would constitute such interference, since that sugar could not give rise to a risk of speculation or market disruption. Moreover, it would constitute expropriation, in that households, as simple consumers, do not benefit directly from the CMO in sugar. Lastly, if operators are obliged to eliminate a quantity in excess of their individual surplus stock, in the view of the Republic of Estonia, that would also constitute a breach of the right to property.

B — *Findings of the Court*

341 The submission of the Republic of Estonia must be rejected outright.

342 No provision of Regulation No 60/2004 obliges Estonian households to eliminate any quantity of sugar; nor is there any obligation on Estonian operators to eliminate a quantity of sugar greater than their individual surplus. Only the Republic of Estonia is required to ensure the elimination of a quantity of sugar equal to the surplus determined by the Commission or to pay the amount referred to in Article 7(2) of that regulation if it fails to fulfil its obligation.

343 In the light of the foregoing, it must be held that the Republic of Estonia has failed to prove any breach of the right to property as a result of the adoption of the contested regulation.

IX — *The eighth plea: breach of the principle of proportionality*

A — *Arguments of the parties*

344 The Republic of Estonia claims that the contested regulation breaches the principle of proportionality, since the elimination of household reserves is not necessary to prevent speculation and market disruption, objectives pursued by Regulation No 60/2004. First, those reserves would give rise to a risk of disruption only if they could be resold, which would be beyond the capabilities of households, as proved by the fact that the price of sugar in Estonia tripled after accession and then remained stable. Secondly, those reserves would not encourage speculation, as shown by the fact that they have never been taken into account at the time of previous accessions. Lastly, the inclusion of such reserves in the surplus attributed to the Republic of Estonia has the effect of doubling the amount payable in the event of non-compliance with the obligations laid down in Regulation No 60/2004.

345 The Republic of Latvia adds that, given the calculation errors made by the Commission, the contested regulation cannot achieve the objective of Regulation No 60/2004, which is not to punish the budgets of the new Member States but those of undertakings which stockpiled sugar for speculative purposes by exploiting differences in import duties.

B — *Findings of the Court*

346 The considerations set out in paragraphs 121 to 129 and 162 to 167 above mean that the arguments put forward by the Republic of Estonia must of necessity be rejected.

347 As regards the arguments of the Republic of Latvia, it should be observed that they do not make it possible to identify the calculation errors which were allegedly made by the Commission and which would prevent attainment of the objective pursued by the contested regulation and by Regulation No 60/2004. Furthermore, it should be pointed out that, contrary to the assertions of the Republic of Latvia, the objective of those regulations is not to punish the budgets of undertakings that stockpiled sugar for speculative purposes by exploiting differences in import duties rather than those of the new Member States, but to prevent possible disruption of the CMO in sugar linked to the existence of surpluses on the territory of the Member States in question following their accession, in particular by ensuring that those surpluses will be eliminated at the sole expense of those Member States.

348 The present plea must therefore be rejected.

X — *The first additional plea raised by the Republic of Latvia, alleging infringement of the rights of the defence*

A — *Arguments of the parties*

349 The Republic of Latvia states that it has not had an opportunity to make known its views on the contested regulation or to submit its objections regarding the methodology for calculating the surpluses within a reasonable period of time. The Commission disputes that claim.

B — *Findings of the Court*

350 In essence, the Republic of Latvia alleges infringement of its right to a fair hearing. Its arguments are therefore inoperative because, even if found to be admissible and well founded, they could have no effect on the lawfulness of the contested regulation so far as the Republic of Estonia is concerned.

351 The present plea must therefore be rejected.

XI — *The second additional plea raised by the Republic of Latvia, alleging breach of the principle of the protection of legitimate expectations*

A — *Arguments of the parties*

352 The Republic of Latvia claims that the Commission acted in breach of the principle of the protection of legitimate expectations, as it should have determined for each new Member State not just the corresponding surplus but also the normal carryover stock at 1 May 2004. The Commission disputes that argument.

B — *Findings of the Court*

353 It should be pointed out that the fourth paragraph of Article 40 of the Statute of the Court of Justice, which applies to the procedure before the Court of First Instance by virtue of the first paragraph of Article 53 of that statute, and Article 116(4) of the Rules of Procedure give the intervener the right to set out arguments as well as pleas independently, in so far as they support the form of order sought by one of the main parties and are not entirely unconnected with the issues underlying the dispute, as established by the applicant and defendant, as that would otherwise change the subject-matter of the dispute (Case T-171/02 *Regione autonoma della Sardegna* v *Commission* [2005] ECR II-2123, paragraph 152).

354 This additional plea raised by the Republic of Latvia is entirely unconnected with the considerations made in support of the pleas submitted by the Republic of Estonia in the present action and must be dismissed as inadmissible. Although, by the second part of its second plea, the Republic of Estonia put forward an argument that could be interpreted in part as being based on breach of the principle of the protection of legitimate expectations, it did so in relation to the fact that, at the time of previous accessions, quantities of less than 3 tonnes had not been taken into account for

calculating the surpluses, and not in relation to the purported legitimate expectation that it was the normal carryover stock and not the surplus that had to be calculated.

355 For the sake of completeness, it should be observed that, although point 4(2) of Annex IV to the Act of Accession provides that any stock of product in free circulation at the date of accession within the territory of the new Member States exceeding the quantity which could be regarded as constituting a normal carryover of stock must be eliminated at the expense of those Member States, that provision does not oblige the Commission to calculate this surplus quantity in two stages, that is to say, by calculating first the normal carryover stock and then the quantity in excess of that figure that must be eliminated.

356 In that regard, it should be observed that the Commission, when exercising the powers which the Council, or indeed the authors of the Act of Accession, conferred on it for implementation of the common agricultural policy, is entitled to consider it necessary to exercise a broad discretion, and the legality of a measure adopted in that sphere can therefore be affected only if the measure is manifestly inappropriate in relation to the objective which the competent institution is seeking to pursue (see *Weidacher*, paragraph 118 above, paragraph 26 and the case-law cited). Accordingly, it must be concluded that the Commission was free, in exercising that broad discretion, to apply a simplified method of calculation from which the surplus to be eliminated can be ascertained directly. It would be for the Republic of Latvia to show that the method chosen by the Commission is manifestly inappropriate. However, the arguments adduced by the Republic of Latvia in this regard are not such as to call into question the soundness of the method used by the Commission. The Republic of Latvia merely maintains, without in any way substantiating its assertion, first that if the Commission had employed a method which the Republic of Latvia considers adequate it would have been better able to ensure that the circumstances in which stocks were built up were correctly analysed and, secondly, that in failing to do so it breached the principle of the protection of legitimate expectations. In the context of that argument, the Republic of Latvia does not refer to any specific assurance from the Commission that it would proceed in the manner that the Republic of Latvia considers appropriate.

357 It follows that the additional plea raised by the Republic of Latvia must also be rejected as to the substance.

358 In view of the foregoing, the action must be dismissed in its entirety.

Costs

359 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Republic of Estonia has been unsuccessful and the Commission has applied for costs, the Republic of Estonia must be ordered to pay the costs.

360 The Republic of Latvia must bear its own costs, pursuant to the first subparagraph of Article 87(4) of the Rules of Procedure.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders the Republic of Estonia to bear its own costs and to pay the costs incurred by the Commission of the European Communities;**

3. Orders the Republic of Latvia to bear its own costs.

Tiili Dehousse Wiszniewska-Białecka

Delivered in open court in Luxembourg on 2 October 2009.

[Signatures]

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