Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

6 June 2013*

(Agriculture — Exceptional measures concerning the release of out-of-quota sugar on the Union market and opening a tariff quota — Action for annulment — Regulatory act entailing implementing measures — Lack of individual concern — Inadmissibility — Action for damages)

In Case T-279/11,

T&L Sugars Ltd, established in London (United Kingdom),

Sidul Açúcares, Unipessoal L[da], established in Santa Iria de Azóia (Portugal),

represented by D. Waelbroeck, lawyer, and D. Slater, Solicitor,

applicants,

v

European Commission, represented initially by P. Rossi and A. Demeneix, subsequently by P. Rossi, A. Demeneix and N. Donnelly, and lastly by P. Rossi and P. Ondrůšek, acting as Agents,

defendant,

supported by

Council of the European Union, represented by E. Sitbon and A. Westerhof Löfflerová, acting as Agents,

and

French Republic, represented by G. de Bergues and C. Candat, acting as Agents,

interveners,

APPLICATION for the annulment of Commission Regulation (EU) No 222/2011 laying down exceptional measures as regards the release of out-of-quota sugar and isoglucose on the Union market at reduced surplus levy during marketing year 2010/2011 (OJ 2011 L 60, p. 6), Commission Implementing Regulation (EU) No 293/2011 of 23 March 2011 fixing allocation coefficient, rejecting further applications and closing the period for submitting applications for available quantities of out-of-quota sugar to be sold on the Union market at reduced surplus levy (OJ 2011 L 79, p. 8), Commission Implementing Regulation No 302/2011 of 28 March 2011 opening an exceptional import tariff quota for certain quantities of sugar in the 2010/11 marketing year (OJ 2011 L 81, p. 8), and Commission Implementing Regulation (EU) No 393/2011 of 19 April 2011 fixing the allocation

* Language of the case: English.

coefficient for the issuing of import licences applied for from 1 to 7 April 2011 for sugar products under certain tariff quotas and suspending submission of applications for such licences (OJ 2011 L 104, p. 39), and claim for compensation for the damage suffered,

THE GENERAL COURT (Fifth Chamber),

composed of S. Papasavvas, President, V. Vadapalas (Rapporteur) and K. O'Higgins, Judges,

Registrar: S. Spyropoulos, Administrator,

having regard to the written procedure and further to the hearing on 17 January 2013,

gives the following

Judgment

Background to the dispute

1 The applicants, T&L Sugars Ltd and Sidul Açúcares, Unipessoal Lda, are cane sugar refiners established in the European Union. Their combined production capacity accounts for around half the traditional supply needs of the European Union cane sugar refining industry.

2 The supply of sugar on the European Union market includes sugar produced, first, by the processing of sugar beet grown within the European Union and, second, by the refining of raw cane sugar imported from non-member countries, the final product being chemically identical in each case. Raw cane sugar grown in the European Union, namely in the French Overseas Departments and in the Azores, represents less than 2% of European Union sugar production.

3 Between 3 March and 19 April 2011, the European Commission adopted certain measures designed to increase the supply of sugar on the European Union market, which was experiencing a shortage.

4 The purpose of those measures was, firstly, to permit European Union producers to market a limited quantity of sugar and isoglucose in excess of the domestic production quota and, secondly, to introduce a tariff quota allowing any economic operator concerned to import a limited quantity of sugar with import duties suspended.

5 Those measures were adopted in the following acts ('the contested regulations'):

— Commission Regulation (EU) No 222/2011 of 3 March 2011 laying down exceptional measures as regards the release of out-of-quota sugar and isoglucose on the Union market at reduced surplus levy during marketing year 2010/2011 (OJ 2011 L 60, p. 6);

— Commission Implementing Regulation (EU) No 293/2011 of 23 March 2011 fixing allocation coefficient, rejecting further applications and closing the period for submitting applications for available quantities of out-of-quota sugar to be sold on the Union market at reduced surplus levy (OJ 2011 L 79, p. 8);

— Commission Implementing Regulation (EU) No 302/2011 of 28 March 2011 opening an exceptional import tariff quota for certain quantities of sugar in the 2010/11 marketing year (OJ 2011 L 81, p. 8);

— Commission Implementing Regulation (EU) No 393/2011 of 19 April 2011 fixing the allocation coefficient for the issuing of import licences applied for from 1 to 7 April 2011 for sugar products under certain tariff quotas and suspending submission of applications for such licences (OJ 2011 L 104, p. 39).

Procedure and forms of order sought

6 By application lodged at the General Court Registry on 30 May 2011, the applicants brought the present action.

7 By order of the President of the Fifth Chamber of the General Court of 20 October 2011, the Council of the European Union and the French Republic were granted leave to intervene in the proceedings in support of the form of order sought by the Commission. The communication of the procedural documents to the interveners was limited to the non-confidential versions because the applicants had requested confidential treatment with regard to the interveners.

8 On 26 October 2011 the Commission lodged, by a separate document, a plea of inadmissibility.

9 The companies RAR – Refinerias de açúcar reunidas S.A., DAI – Sociedade de desenvolvimento agro-industrial S.A., Gruppo SFIR SpA and SFIR Raffineria de Brindisi SpA, on the one hand, and the Comité Européen des Fabricants de Sucre (CEFS), on the other, submitted applications for leave to intervene in support of the forms of order sought, respectively, by the applicants and the Commission. The decision on those applications was postponed until the Court had ruled on the plea of inadmissibility.

10 The applicants submitted their observations on the plea of inadmissibility on 13 January 2012. The Council and the French Republic lodged their statements in intervention limited to the question of the admissibility of the action, on 10 and 16 April 2012 respectively. The Commission and the applicants submitted their observations on the statements in intervention on 22 May and 18 June 2012, respectively.

11 On hearing the report of the Judge-Rapporteur, the General Court decided to open the oral procedure and, by way of measures of organisation of procedure pursuant to Article 64 of its Rules of Procedure of the General Court, put written questions to the parties. They replied to those questions within the periods prescribed.

12 The parties presented oral argument and replied to the questions put by the Court at the hearing on 17 January 2013.

13 The applicants claim that the Court should:

— annul the contested regulations;

— in the alternative, declare that the provisions of Article 186(a) and Article 187 of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1) are illegal, and annul the contested regulations in so far as they are directly or indirectly based on those provisions;

— order the European Union, represented by the Commission, to repair the damage suffered by the applicants as a result of the Commission's breach of its legal obligations and set the amount of the compensation for the period from 1 October 2009 to 31 March 2011 at the sum of

EUR 35 485 746, plus any ongoing losses suffered by the applicants after that date, or set any other amount reflecting the damage suffered in relation to changes in that damage as further established by the applicants in the course of the proceedings;

— order that interest, at the rate set at the time by the European Central bank for main refinancing operations, plus two percentage points, or any other appropriate rate, be paid on the amount payable as from the date of the Court's judgment until actual payment;

— order the Commission to pay the costs.

14 Moreover, it is apparent from paragraphs 174 to 180 of the application that the applicants also, but 'only as a precaution', raise a plea of illegality against Regulation No 222/2011 and Implementing Regulation No 302/2011, in case the action brought against those acts is not considered admissible.

15 In their observations on the plea of inadmissibility the applicants claim that the Court should:

— as regards the action for annulment:

  — treat the procedural document lodged by the Commission, entitled 'Plea of inadmissibility', as a defence and draw the procedural consequences from that reclassification;

  — in the alternative, reject that procedural document as inadmissible for infringement of Article 114(1) of the Rules of Procedure of the General Court;

  — in any event, reject the plea of inadmissibility as unfounded;

  — declare the application admissible and well-founded;

  — in the alternative, uphold the plea of illegality against Articles 186(a) and 187 of Regulation 1234/2007 and annul the contested regulations inasmuch as they are directly or indirectly based on those provisions;

  — order the Commission to pay the costs;

— as regards the action for damages:

  — give judgment by default;

  — in the alternative, reject the plea of inadmissibility as unfounded;

  — uphold the action for damages including the application for the sum claimed principally to include interest;

  — order the Commission to pay the costs.

16 The Commission, supported by the Council and the French Republic, contends in the plea of inadmissibility that the Court should:

— dismiss the action as inadmissible;

— order the applicants to pay the costs.

Law

17 Under Article 114(1) and (4) of the Rules of Procedure, if a party submits a separate document seeking a ruling from the Court on admissibility, the Court may then rule on the application or reserve its decision for the final judgment.

18 In the present case, the Court has decided to rule on the plea of inadmissibility submitted by the Commission without going to the substance of the case.

19 The Court considers it appropriate to rule on the applicants' claims that it should reject the Commission's plea of inadmissibility as being itself inadmissible and grant judgment by default.

Admissibility of the plea of inadmissibility

20 The applicants dispute the admissibility of the Commission's application pursuant to Article 114 of the Rules of Procedure by claiming, firstly, that that application is, in actual fact, a defence and, secondly, that it is inadmissible in that it infringes Article 114(1) of the Rules of Procedure.

21 Under Article 114 of the Rules of Procedure, a party applying to the Court for a decision on admissibility without going into the substance of the case must make the application by a separate document. The application must contain the pleas of fact and law relied on and the form of order sought by the applicant; any supporting documents must be annexed to it.

22 The application submitted by the Commission in the present case is contained in a separate document containing the form of order sought by the defendant and the pleas relied on in support of it. That application is moreover entitled 'Plea of inadmissibility' and clearly invokes Article 114 of the Rules of Procedure.

23 Although some of the Commission's arguments may relate to the substance of the dispute, as the applicants claim, that does not affect the adequacy of the pleas relied on in support of the form of order relating to the inadmissibility of the action.

24 Consequently, the plea of inadmissibility satisfies the requirements of Article 114(1) of the Rules of Procedure and is therefore admissible.

The application for judgment by default

25 The applicants maintain that the plea of inadmissibility submitted by the Commission relates solely to the action for annulment and not to the action for damages. They submit that the Commission has not responded to the application as regards their claims for damages and requests the Court to give judgment by default on the latter.

26 In that regard, Article 122(1) of the Rules of Procedure provides that, if a defendant fails to lodge a defence to the application in the proper form within the time prescribed, the applicant may apply to the General Court for judgment by default.

27 In the present case, the applicants lodged a single application containing claims for annulment and claims for damages.

28 In its application pursuant to Article 114(1) of the Rules of Procedure, which was lodged in the proper form within the time prescribed, the Commission contends that the action is inadmissible in its entirety.

29 In those circumstances, there may be further steps in the proceedings, in accordance with Article 114(4) of the Rules of Procedure, only if the Court refuses the Commission's application or reserves its decision.

30 Even if, as the applicants claim, the Commission does not put forward any relevant argument as regards the inadmissibility of the claims for damages, that consideration goes to the merits of the application and does not mean that there has been a failure to lodge a defence to the application in the proper form.

31 Consequently, as the conditions referred to in Article 122(1) of the Rules of Procedure are not satisfied in the present case, judgment by default on the claims for damages is not appropriate.

Admissibility of the action for annulment

32 The fourth paragraph of Article 263 TFEU provides that '[a]ny natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures'.

33 In the present case, the applicants argue that they have standing to bring proceedings against the contested regulations on the basis that the latter are regulatory acts which are of direct concern to them and do not entail implementing measures or, in the alternative, that they are of direct and individual concern to them.

34 The Commission, supported by the Council and the French Republic, submits that the contested regulations, although they are regulatory acts, are not of individual or direct concern to the applicants and moreover that they entail implementing measures.

35 The Court considers that it should examine, firstly, the plea of inadmissibility relating to whether the contested regulations entail implementing measures and, secondly, that based on a lack of individual concern.

The plea of inadmissibility relating to whether the contested regulations entail implementing measures

36 The contested regulations are regulatory acts for the purpose of the fourth paragraph of Article 263 TFEU, given that they are acts of general application which have not been adopted according to the ordinary legislative procedure or according to a special legislative procedure within the meaning of Article 289(1) to (3) TFEU (see, to that effect, Case T-262/10 *Microban International and Microban (Europe)* v *Commission* [2011] ECR II-7697, paragraph 21). The parties do not, moreover, dispute that point.

37 As to whether the contested regulations entail implementing measures within the meaning of the fourth paragraph of Article 263 TFEU, the purpose of the acts in question is, firstly, to permit European Union producers to market a limited quantity of sugar and isoglucose in excess of the quota and, secondly, to introduce a tariff quota allowing any economic operator concerned to import a limited quantity of sugar which is subject to a suspension of import duties.

38 In the first place, as regards the release of out-of-quota sugar on the market, Regulation No 222/2011 permits the marketing of 500 000 tonnes of sugar in white sugar equivalent and of 26 000 tonnes of isoglucose, in excess of the quotas and with a zero levy, instead of the levy of EUR 500/tonne normally applicable to surplus sugar.

39 Article 2(4) of Regulation 222/2011 provides that, in order to benefit from that exceptional quantity, producers must apply for certificates to the competent national authorities in the Member State in which they are approved. Under Article 4 of that regulation, those authorities are to decide on the admissibility of applications in the light of the criteria set out in the same regulation and then notify the admissible applications to the Commission.

40 Articles 5 and 6 of Regulation No 222/2011 have the effect that, once the quantity provided for in respect of out-of-quota sugar has been exceeded, the Commission fixes an allocation coefficient in order to apportion the available quantity in a uniform manner, to reject applications not yet notified and to close the period for submitting the applications. Every week, the national authorities issue certificates granting a reduction of the levy in respect of the applications notified to the Commission the preceding week, according to the template of the certificate annexed to the regulation.

41 Under Article 1 of Implementing Regulation No 293/2011, the Commission defined the allocation coefficient, amounting to 67.106224%, to be applied by the national authorities to applications submitted between 14 and 18 March 2011 and notified to the Commission. Furthermore, it rejected subsequent applications and closed the period for submitting applications.

42 Secondly, as regards the exceptional import tariff quota, Implementing Regulation No 302/2011 provides that the import duties are to be suspended between 1 April 2011 and 30 September 2011, for a quantity of 300 000 tonnes of sugar.

43 As for the administration of that quota, Implementing Regulation No 302/2011 refers to Commission Regulation (EC) No 891/2009 of 25 September 2009 opening and providing for the administration of certain Community tariff quotas in the sugar sector (OJ 2009 L 254, p. 82), which in turn refers to Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences (OJ 2006 L 238, p. 13), and to Commission Regulation (EC) No 376/2008 of 23 April 2008 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products (Codified version) (OJ 2008 L 114, p. 3).

44 Under Articles 5 and 6 of Regulation No 1301/2006 and Article 12 of Regulation No 376/2008, in the course of administering the quotas, the national authorities receive the applications for import licences and ensure that the conditions for admissibility are satisfied. Thereafter, under Articles 7 and 11 of Regulation No 1301/2006 and Articles 8 and 9 of Regulation No 891/2009, they notify the Commission of the applications received, issue the import licences to the operators and inform the Commission of the quantities allocated.

45 Implementing Regulation No 393/2011 defines the allocation coefficient, amounting to 1.8053%, for applications for import licences lodged from 1 to 7 April 2011, for which the available quantity has been exceeded, and suspends the submission of further applications until the end of the marketing year 2010/11.

46 In the light of those observations, it must be noted that interested economic operators must first submit an application to the national authorities in order to be granted the right to market or import sugar under the exceptional schemes provided for by the contested regulations.

47 Furthermore, the certificates for the reduction of the levy and the import licences are issued by the national authorities, which apply the relevant allocation coefficients established by Implementing Regulations Nos 293/2011 and 393/2011.

48 It follows that the contested regulations relating to the marketing of out-of-quota sugar and also those relating to the tariff quota cannot produce their legal effects vis-à-vis the operators concerned without the intermediary step of measures first being taken by the national authorities.

49 Moreover, it is apparent from the contested regulations that the measures taken at national level constitute decisions, given that the national authorities are entitled, under Article 2(4) of Regulation No 222/2011, to impose certain formal conditions on applicants; under Article 4(1) of Regulation No 222/2011 and Article 6 of Regulation No 1301/2006, to decide on the admissibility of applications, and, under Article 6 of Regulation No 222/2011 and Article 7 of Regulation No 1301/2006, to issue certificates granting entitlement to a reduction of the levy and import licences.

50 The contested regulations are thus based on individual decisions taken at national level, in default of which they cannot affect the legal position of the natural and legal persons concerned.

51 Consequently, those regulations cannot be categorised as acts that do not entail implementing measures within the meaning of the fourth paragraph of Article 263 TFEU.

52 That finding cannot be called in question by the applicants' argument invoking the objective of the fourth paragraph of Article 263 TFEU and emphasising the fact that the national authorities have no discretion when implementing the contested regulations, their role being 'purely mechanical', namely, that of 'a mere "mail box"'.

53 The case-law of the General Court establishes that the question of whether or not the contested regulatory act allows a degree of discretion to the authorities responsible for the implementing measures is irrelevant in ascertaining whether it entails implementing measures within the meaning of the fourth paragraph of Article 263 TFEU (order of 4 June 2012 in Case T-379/11 *Hüttenwerke Krupp Mannesmann and Others* v *Commission*, not published in the ECR, paragraph 51 and order in Case T-381/11 *Eurofer* v *Commission* [2012] ECR, paragraph 59).

54 Relying on *Microban International and Microban (Europe)* v *Commission*, the applicants contend that the implementing measures at issue are not 'genuine', but merely 'ancillary'. However, the circumstances referred to by the judgment relied on are different from those at issue in the present case.

55 In *Microban International and Microban (Europe)* v *Commission* (paragraph 29), the Court stated that the prohibition on marketing the chemical substance concerned was automatic and mandatory as of a specific date, even although the Member States had the option of adopting implementing measures during a transitional period. Consequently, as the transitional period laid down by the contested act was ancillary to the prohibition, the legality of which was the subject-matter of the dispute, the implementing measures in the course of that period were not taken into account in examining the question of standing to bring proceedings against the said prohibition.

56 By contrast, in the present case, the contested regulations, inasmuch as they provide for the right to market or import sugar under particularly favourable conditions, are not automatic, but require the adoption of national measures to produce legal effects vis-à-vis individuals.

57 Consequently, the approach in *Microban International and Microban (Europe)* v *Commission* (paragraph 29) cannot be applied to the circumstances of the present case.

58 Moreover, as regards the objective of the fourth paragraph of Article 263 TFEU, it is intended, in particular, to enable natural and legal persons to bring an action against regulatory acts which are of direct and individual concern to them and which do not entail implementing measures, therefore avoiding a situation in which such a person would have to break the law in order to have access to justice (see, to that effect, order in *Eurofer*, paragraph 60).

59 That provision thus implements the right to an effective remedy guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union (OJ 2010 C 83, p. 389).

60 In the present case, the applicants do not claim that they have to break the law in order to have access to justice. Nonetheless they point out that the possibility of bringing an action against the national measures adopted in the course of the implementation of the contested regulations still remains, for them, at least uncertain.

61 They submit that, under Portuguese law, 'mere implementing acts' such as the decisions of the national authority relating to the issue of certificates cannot be challenged unless they are tainted by an illegality other than one relating to the basic act. According to the applicants, Portuguese law does not, therefore, make it possible to claim that a European Union act is unlawful by challenging the certificate issued by the national authorities.

62 Furthermore, the applicants submit that they cannot challenge at national level the measures adopted in implementation of Regulations Nos 222/2011 and 293/2011, which are addressed solely to European Union sugar producers. Certificates issued to third parties which are not published and which contain confidential information are involved and therefore the applicants are not in a position to learn of their existence or to become aware of their content and, thus, to challenge them.

63 The Commission, questioned on that point by the Court, although it is unable to give a definitive answer, takes the view that the applicants would probably not have standing to challenge the implementing measures adopted at Member State level giving effect to Regulation Nos 222/2011 and 293/2011, in so far as they are neither concerned nor affected by the measures in question and could probably not therefore establish a sufficient interest in bringing proceedings. It adds, however, that the question whether or not a court of a Member State refuses standing to a person on the ground that he or she lacks a sufficient interest is not relevant in assessing the admissibility of an action with regard to the conditions in the fourth paragraph of Article 263 TFEU.

64 The French Republic states, in that regard, that, for the French administrative courts, the measures adopted by the national authorities pursuant to the contested regulations are in the nature of decisions and therefore constitute acts open to challenge. It also states, as regards the legal interest in bringing proceedings of persons other than the addressee of a decision, that potential applicants' legal interest in bringing proceedings is widely accepted by the French administrative courts, for example, when an economic operator challenges a decision which benefits a competitor.

65 With regard to that question, it cannot in the present case be determined with certainty that the applicants have a legal remedy which allows them to challenge the measures taken by the national authorities in implementing the contested regulations.

66 Firstly, by contrast with certain other fields, like that of customs legislation (see, to that effect, judgment of 9 July 2008 in Case T-429/04 *Trubowest Handel and Makarov* v *Council and Commission*, not published in the ECR, paragraph 43), the European Union secondary legislation does not expressly prescribe such a legal remedy at national level.

67 Secondly, in respect of the legal remedies provided for by national law, the observations of the parties tend to indicate that the laws of the Member States diverge regarding the possibility of bringing an action to challenge the contested regulations.

68 In that regard, the second subparagraph of Article 19(1) TEU provides that Member States are to provide remedies sufficient to ensure effective legal protection in the fields covered by European Union law.

69 However, the application by the Court of the condition relating to the non-existence of implementing measures, as set out in the fourth paragraph of Article 263 TFEU, cannot be made conditional on the existence, within the legal systems of the Member States, of an effective legal remedy which makes it possible to call in question the legality of the contested European Union act.

70 Such an interpretation would require the Courts of the European Union, in each individual case, to examine and interpret national procedural law. That would go beyond their jurisdiction when reviewing the legality of European Union measures (see to that effect, Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677, paragraph 43, and Case C-263/02 P *Commission* v *Jégo-Quéré* [2004] ECR I-3425, paragraph 33).

71 Moreover, that finding cannot be called into question by the applicants' arguments invoking the right to effective legal protection and claiming that a legal remedy at national level would be manifestly ineffective given that the courts of the Member States do not have jurisdiction to rule that a European Union act is unlawful.

72 The Courts of the European Union may not, without exceeding their jurisdiction, interpret the conditions under which a person can bring an action challenging a regulation, in a way which has the effect of setting aside the conditions in question, which are expressly laid down in the Treaty, even in the light of the principle of effective judicial protection (see, to that effect, *Unión de Pequeños Agricultores* v *Council*, paragraph 44, and *Commission* v *Jégo-Quéré*, paragraph 36).

73 In view of all those considerations, the plea of inadmissibility based on the fact that the contested regulations do not constitute regulatory acts not entailing implementing measures within the meaning of the fourth paragraph of Article 263 TFEU must succeed.

The plea of inadmissibility alleging a lack of individual concern

74 The Commission submits that the contested regulations are acts of general application which are not of individual concern to the applicants.

75 The applicants maintain that they are individually concerned 'at the very least' by Implementing Regulation No 393/2011 fixing the allocation coefficient as regards the tariff quota for zero duty sugar imports.

76 It is settled case-law that in order for an act of general application to be of individual concern to natural or legal persons, the act must affect those persons by reason of certain attributes peculiar to them or by reason of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as an addressee (see, to that effect, Case 25/62 *Plaumann* v *Commission* [1963] ECR 96, 107, and *Unión de Pequeños Agricultores* v *Council*, paragraph 36).

77 In the present case, the contested regulations produce legal effects with regard to certain categories of persons envisaged in a general and abstract way, given that they apply to all sugar producers in the European Union and to all sugar importers respectively, without distinguishing the applicants individually in any way whatsoever.

78 The applicants do not put forward any argument to show that Regulations Nos 222/2011, 293/2011 and 302/2011 affect them individually.

79 As regards Implementing Regulation No 393/2011, they submit that it affects a closed class of operators since it establishes an allocation coefficient to permit the distribution of the tariff quota solely between the importers who submitted their applications between 1 and 7 April 2011. The number of persons concerned was thus fixed at the time of its adoption.

80 Implementing Regulation No 393/2011, adopted on 19 April 2011, fixes the allocation coefficient applicable solely to applications for licences submitted between 1 and 7 April 2011.

81 That regulation therefore concerns a number of economic operators which was determined at the time of its adoption and which may not be increased. It is, moreover, common ground that the applicants submitted their applications between those two dates and form part of the group of operators concerned.

82 In that regard, where a contested measure affects a group of persons who were identified or identifiable when that measure was adopted by reason of criteria specific to the members of the group, those persons may be individually concerned by that measure inasmuch as they form part of a limited class of traders (Joined Cases C-182/03 and C-217/03 *Belgium and Forum 187* v *Commission* [2006] ECR I-5479, paragraph 60; see, to that effect, Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477, paragraph 11).

83 Nevertheless, the mere possibility of determining, at the time of adoption of the contested measure, more or less precisely the number or even the identity of the persons to whom a measure applies by no means implies that it must be regarded as being of individual concern to them, provided that it is established that such application takes effect by virtue of an objective legal or factual situation defined by the measure in question (order in Case C-276/93 *Chiquita Banana and Others* v *Council* [1993] ECR I-3345, paragraph 8, and order in Case C-352/99 P *Eridania and Others* v *Council* [2001] ECR I-5037, paragraph 59).

84 In particular, where the limited class results from the very nature of the system established by the contested legislation, the person concerned cannot be distinguished individually by belonging to that class (see, to that effect, Case T-482/93 *Weber* v *Commission* [1996] ECR II-609, paragraphs 65 and 66, and Case T-298/94 *Roquette Frères* v *Council* [1996] ECR II-1531, paragraphs 41 and 43).

85 In the present case, Article 7(2) of Regulation No 1301/2006 provides for an allocation coefficient to be fixed if the quantities covered by licence applications exceed the quantities available for the tariff quota. It is apparent from the method of calculation provided for by that provision that the coefficient depends on the available quantity and the requested quantity and does not take into account the content of individual applications or the specific situation of applicants.

86 Implementing Regulation No 393/2011 thus fixes a single allocation coefficient in order to distribute the limited quantity provided for by the tariff quota between all the operators who have submitted an import licence application.

87 Consequently, that regulation affects the applicants' legal position as a result of an objectively determined legal or factual situation.

88 Furthermore, it would not have been possible to adopt a single coefficient to distribute the available quantity without knowing the total number of applications which had been properly submitted. Consequently, the submission of applications was bound to be suspended before the adoption of the contested regulation and the creation of the limited class therefore results from the very nature of the system established by Regulation No 302/2011.

89 It follows that each of the applicants is affected by the contested regulation because of its objective position, as a producer which has submitted an application for a licence, and in the same way as all the other producers who did so before the suspension. Accordingly, membership of a limited class, which results moreover from the very nature of the legislation at issue, cannot distinguish the applicants individually.

90 Furthermore, although the applicants submit that their situation is different because of the Commission's obligation to take their situation into account when adopting the contested regulation, the existence of such an obligation has not been established.

91 Firstly, the argument that the applicants seek to derive from the provisions of Article 26(2) of Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector (OJ 2006 L 58, p. 1) is irrelevant as that regulation was repealed by Regulation No 1234/2007 and was thus no longer in force at the time of the facts.

92 Secondly, although the applicants also refer to Article 186(a) and Article 187 of Regulation No 1234/2007, which provide respectively and in particular that '[t]he Commission may take the necessary measures … with regard to the products of the sugar … sectors, where the prices on the Community market for any of those products rise or fall significantly' and that it 'may in particular suspend import duties in whole or in part for certain quantities', the terms of those provisions did not in any way require the Commission to take into account the situation of cane sugar refiners or, *a fortiori*, that of the applicants at the time of adopting Implementing Regulation No 393/2011.

93 Lastly, contrary to what the applicants claim, Regulation No 393/2011 cannot be considered to constitute a set of individual decisions, given that it concerns a group of operators defined in a general way by disregarding the content of individual applications and the specific situation of each of the applicants.

94 Consequently, neither the contested regulations, nor Implementing Regulation No 393/2011 in particular, are of individual concern to the applicants.

95 In view of all of the foregoing, given that the contested regulations entail implementing measures and are not of individual concern to the applicants, the action for annulment of those acts must be declared inadmissible without its being necessary to examine the plea of inadmissibility alleging lack of direct concern.

96 As regards the plea of illegality put forward by the applicants in the alternative, against Article 186(a) and Article 187 of Regulation No 1234/2007 and against Regulation Nos 222/2011 and 302/2011, the possibility of pleading the inapplicability of a measure of general application under Article 277 TFEU does not constitute an independent right of action and recourse may not be had to it in the absence of an independent right of action (see order in Case T-194/95 *Area Cova and Others* v *Council* [1999] ECR II-2271, paragraph 78 and the case-law cited).

97 Consequently, as the action for annulment is inadmissible, it follows that the plea of illegality raised in relation to that action must also be rejected.

Admissibility of the action for damages

98 It is apparent from the plea of inadmissibility that the Commission contends that the action is inadmissible in its entirety.

99 It also submits, referring to the damage alleged by the applicants, that 'those grounds are not actionable under Article 263(4) TFEU because the Application is not admissible'.

100 Furthermore, at the hearing, the Commission stated that it was contending that the claims for damages were inadmissible in the light of the fact that they were inextricably linked with the application for annulment of the contested regulations and were not therefore autonomous.

101 The applicants state that the action for damages constitutes an independent form of action and the dismissal of the application for annulment as inadmissible cannot therefore affect what happens to it.

102 It should be borne in mind that the action for damages was introduced as an independent form of action, to fulfil a particular function within the system of actions and subject to conditions on its use dictated by its specific purpose (Case 5/71 *Zuckerfabrik Schöppenstedt* v *Council* [1971] ECR 975, paragraph 3), and hence a declaration of inadmissibility of the application for annulment does not automatically render the action for damages inadmissible (Case 175/84 *Krohn Import-Export* v *Commission* [1986] ECR 753, paragraph 32).

103 That principle is limited by the prohibition of abuse of the proceedings. An applicant may not, by means of an action for damages, attempt to secure an outcome similar to that of the annulment of the act where the action for annulment of that act is inadmissible (Case 59/65 *Schreckenberg* v *Commission* [1966] ECR 543, 550).

104 An action for damages may therefore be declared inadmissible when it concerns the same instance of illegality and has the same financial end in view as the action for annulment which the applicant has failed to bring in good time (see, to that effect, *Krohn Import-Export* v *Commission*, paragraph 33, and Case C-310/97 P *Commission* v *AssiDomän Kraft Products and Others* [1999] ECR I-5363, paragraph 59).

105 That exceptional situation does not arise in this case, because the applicants did not fail to bring the action for annulment and, in any event, their claims for damages do not concern the same instance of illegality and do not have the same financial end in view as the claims for annulment.

106 Firstly, in their claims for annulment, the applicants invoke not only the illegality of the contested regulations, but also infringement of the principles of legal certainty, of the protection of legitimate expectations, of non-discrimination and of proportionality and of the Commission's duty of diligence and of good administration.

107 Secondly, in their application for damages they seek damages for a loss suffered and a loss of earnings resulting both from the inability of the refineries to satisfy their supply needs and from the payment of import duties. The compensation for that damage does not have the same purpose as the application for annulment of the contested regulations.

108 In those circumstances, the inadmissibility of the claims for annulment cannot automatically result in the inadmissibility of the claims for damages.

109 Furthermore, with regard to the claims for damages, the Commission does not advance any independent plea of inadmissibility.

110 In so far as the Council submits, in its statement in intervention, that the inadmissibility of the claims for annulment renders the claims for damages manifestly unfounded, the Commission has not contended that the claims for damages should be rejected as unfounded. The separate head of claim to that effect, put forward by the Council as an intervener, is therefore inadmissible.

111 It follows that the plea of inadmissibility must be rejected in so far as it relates to the claims for damages.

112 In this regard, in the case of two independent forms of action, it is possible, in ruling on a plea of inadmissibility, to declare the action for annulment inadmissible and, at the same time, the application for damages admissible (see, to that effect, order in Case C-257/93 *Van Parijs and Others* v *Council and Commission* [1993] ECR I-3335, paragraphs 14 and 15).

113 In the present case, the action seeking compensation for damage suffered remains.

Costs

114 As the action continues in so far as it seeks compensation for the damage suffered, the costs must be reserved.

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby:

1. **Dismisses the action as inadmissible in so far as it seeks the annulment of Commission Regulation (EU) No 222/2011 laying down exceptional measures as regards the release of out-of-quota sugar and isoglucose on the Union market at reduced surplus levy during marketing year 2010/2011, Commission Implementing Regulation (EU) No 293/2011 of 23 March 2011 fixing allocation coefficient, rejecting further applications and closing the period for submitting applications for available quantities of out-of-quota sugar to be sold on the Union market at reduced surplus levy, Commission Implementing Regulation No 302/2011 of 28 March 2011 opening an exceptional import tariff quota for certain quantities of sugar in the 2010/11 marketing year, and Commission Implementing Regulation (EU) No 393/2011 of 19 April 2011 fixing the allocation coefficient for the issuing of import licences applied for from 1 to 7 April 2011 for sugar products under certain tariff quotas and suspending submission of applications for such licences;**

2. **Dismisses the plea of inadmissibility as regards the claim for compensation for the damage suffered;**

3. **Reserves the costs.**

Papasavvas Vadapalas O'Higgins

Delivered in open court in Luxembourg on 6 June 2013.

[Signatures]