



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

14 November 2013*

(Request for a preliminary ruling — Regulation (EC) No 320/2006 — Regulation (EC) No 968/2006 — Agriculture — Temporary scheme for the restructuring of the sugar industry — Conditions for granting restructuring aid — Concepts of ‘production facilities’ and ‘full dismantling’)

In Joined Cases C-187/12 to C-189/12,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Italy), made by decision of 23 March 2012, received at the Court on 23 April 2012, in the proceedings

SFIR – Società Fondiaria Industriale Romagnola SpA

v

AGEA – Agenzia per le Erogazioni in Agricoltura,

Ministero delle Politiche agricole, alimentari e forestali (Case C-187/12),

Italia Zuccheri SpA,

Co.Pro.B. – Cooperativa Produttori Bieticoli Soc. coop. agricola

v

AGEA – Agenzia per le Erogazioni in Agricoltura,

Ministero delle Politiche agricole, alimentari e forestali,

intervening parties:

Finbieticola Bondeno srl,

Finbieticola Casei Gerola srl,

Terrae SpA (Case C-188/12),

and

Eridania Sadam SpA

v

* Language of the case: Italian.

AGEA – Agenzia per le Erogazioni in Agricoltura,
Ministero delle Politiche agricole, alimentari e forestali,

intervening parties:

Federazione Lavoratori Agro-Industria (CGIL),
Federazione Agricola Alimentare Ambientale Industriale (CISL),
Unione Italiana Lavoratori Agroalimentari (UIL) (Case C-189/12),

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, K. Lenaerts, Vice-President of the Court, acting as Judge of the First Chamber, A. Borg Barthet, G. Arestis, and M. Berger (Rapporteur), Judges,

Advocate General: M. Wathelet,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 13 March 2013,

after considering the observations submitted on behalf of:

- SFIR – Società Fondiaria Industriale Romagnol SpA, by V. Cerulli Irelli, avvocato,
- Italia Zuccheri SpA and Co.Pro.B. – Cooperativa Produttori Bieticoli Soc. coop. agricola, by A. Mozzati, G. Fontana, M. De Vita, S.M. Specchio and P. Galli, avvocati,
- Eridania Sadam SpA, by G.M. Roberti, I. Vigliotti, A. Mozzati, I. Perego and M. Serpone, avvocati,
- Federazione Lavoratori Agro-Industria (CGIL), Federazione Agricola Alimentare Ambiente Industriale (CISL) and Unione Italiana Lavoratori Agroalimentari (UIL), by F. Cardarelli and F. Lattanzi, avvocati,
- the Italian Government, by G. Palmieri, acting as Agent, and by F. Bucalo, avvocato dello Stato,
- the French Government, by G. de Bergues and C. Candat, acting as Agents,
- the Hungarian Government, by M.Z. Fehér, K. Szíjjártó and A. Szilágyi, acting as Agents,
- the Slovenian Government, by T. Mihelič Žitko and V. Klemenc, acting as Agents,
- the Council of the European Union, by E. Sitbon, S. Barbagallo and P. Mahnič Bruni, acting as Agents,
- the European Commission, by D. Triantafyllou and P. Rossi, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 These requests for a preliminary ruling concern the interpretation and validity of Articles 3 and 4 of Council Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy (OJ 2006 L 58, p. 42 ; ‘the Basic Regulation’) and Article 4 of Commission Regulation (EC) No 968/2006 of 27 June 2006 laying down detailed rules for the implementation of Regulation No 320/2006 (OJ 2006 L 176, p. 32; ‘the Implementing Regulation’).
- 2 The requests have been made in proceedings between, respectively, SFIR – Società Fondiaria Industriale Romagnola SpA (‘SFIR’), Italia Zuccheri SpA and Co.Pro.B. – Cooperativa Produttori Bieticoli Soc. coop. agricola (‘Italia Zuccheri/Co.Pro.B.’) and Eridania Sadam SpA (‘Eridania Sadam’), on the one hand, and the Agenzia per le Erogazioni in Agricoltura (AGEA) as well as the Ministero delle Politiche agricole, alimentari e forestali (Ministry for Agriculture, Food and Forestry; ‘the Ministero’), on the other hand, concerning the granting of restructuring aid under Article 3 of the Basic Regulation.

Legal context

The Basic Regulation

- 3 Recital 5 in the preamble to the Basic Regulation is worded as follows:

‘An important economic incentive for sugar undertakings with the lowest productivity to give up their quota production in the form of an adequate restructuring aid should be introduced. To this effect, a restructuring aid should be set up that creates an incentive to abandon sugar quota production and renounce the quotas concerned, at the same time allowing to take into due account the respect of social and environmental commitments linked to the abandoning of production. The aid should be available during four marketing years with the aim to reduce production to the extent necessary to reach a balanced market situation in the Community.’

- 4 Article 3 of the Basic Regulation, entitled ‘Restructuring aid’, provides:

‘1. Any undertaking producing sugar, isoglucose or inulin syrup to which a quota has been allocated by 1 July 2006 shall be entitled to a restructuring aid per tonne of quota renounced, provided that during one of the marketing years 2006/2007, 2007/2008, 2008/2009 and 2009/2010 it:

- (a) renounces the quota assigned by it to one or more of its factories and fully dismantles the production facilities of the factories concerned;

or

- (b) renounces the quota assigned by it to one or more of its factories, partially dismantles the production facilities of the factories concerned and does not use the remaining production facilities of the factories concerned for the production of products covered by the common market organisation for sugar,

...

3. Full dismantling of production facilities shall require:

- (a) the definitive and total cessation of the production of sugar, isoglucose and inulin syrup by the production facilities concerned;
- (b) the closure of the factory or the factories and the dismantling of the production facilities thereof ...

...

4. Partial dismantling of production facilities shall require:

- (a) the definitive and total cessation of the production of sugar, isoglucose and inulin syrup by the production facilities concerned;
- (b) the dismantling of the production facilities that will not be used for the new production and were destined and used for the production of the products mentioned under (a) ...

...

5. The amount of restructuring aid per tonne of renounced quota shall be:

- (a) in the case referred to in point (a) of paragraph 1:

— EUR 730,00 for the marketing year 2006/2007,

...

- (b) in the case referred to in point (b) of paragraph 1:

— EUR 547,50 for the marketing year 2006/2007,

...'

- 5 Article 4 of the Basic Regulation, entitled 'Application for restructuring aid', provides at paragraph 2 thereof:

'Applications for restructuring aid shall include:

- (a) a restructuring plan;

...

- (c) a commitment to renounce the relevant quota in the marketing year concerned;

- (d) in the case referred to in Article 3(1)(a), a commitment to fully dismantle the production facilities within the period to be determined by the Member State concerned;

- (e) in the case referred to in Article 3(1)(b), a commitment to partially dismantle the production facilities within the period to be determined by the Member State concerned and not to use the production site and the remaining production facilities for the production of products covered by the common market organisation for sugar;

...'

The Implementing Regulation

- 6 Recital 4 in the preamble to the Implementing Regulation is worded as follows:

‘In relation to the renunciation of quotas, Article 3 of [the Basic Regulation] sets out the options of full or partial dismantling of the production facilities, which give rise to different amounts of restructuring aid. While the conditions applicable to those two options should take into account that a higher amount of restructuring aid is granted to full dismantling, because of the higher costs involved, it is considered appropriate to allow for the possibility to keep parts of the factory which are not part of the production line, if they can be used for other purposes foreseen in the restructuring plan, especially when such use creates employment. On the other hand, installations not directly linked to sugar production should be dismantled if there is no alternative use for them within a reasonable period of time and maintaining them would be harmful to the environment.’

- 7 Article 4 of the Implementing Regulation, entitled ‘Dismantling of production facilities’, provides:

‘1. In the case of full dismantling referred to in Article 3(1)(a) of [the Basic Regulation], the requirement to dismantle the production facilities shall concern:

- (a) all facilities which are necessary to produce sugar, isoglucose or inulin syrup, as for example: facilities to store, analyse, wash and cut sugar beet, cane, cereals or chicory; all facilities which are necessary to extract and process or concentrate sugar from sugar beet or cane, starch from cereals, glucose from starch or inulin from chicory;
- (b) the part of the facilities other than those referred to in point (a) which are directly related to the production of sugar, isoglucose or inulin syrup and necessary to deal with production under the quota renounced, even if it could be used in relation with the production of other products, such as: facilities for heating or processing water, or for producing energy; facilities to deal with sugar beet pulp or molasses; facilities for internal transport;
- (c) all other facilities, such as packaging facilities, left unused and to be dismantled and removed for environmental reasons.

2. In the case of partial dismantling referred to in Article 3(1)(b) of [the Basic Regulation], the requirement to dismantle the production facilities shall concern the facilities referred to in paragraph 1 of this Article that are not intended to be used for other production or other use of the factory site in accordance with the restructuring plan.’

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

Case C-187/12

- 8 SFIR is a sugar refinery undertaking. It joined, in the course of 2006, the temporary restructuring scheme for the sugary industry put in place by the Basic Regulation (‘the Restructuring Scheme’), submitting to the Ministero an application seeking the full amount of aid, accompanied by the restructuring plan as envisaged by Article 4(2)(a) of that regulation (‘the Restructuring Plan’). That plan provided for the dismantling of production facilities and, inter alia, the retention of a number of silos. Initially, the Ministero declared that the request for aid was admissible and did not put forward any objections to the Restructuring Plan, a copy of which the Ministero sent to the European Commission.

- 9 By Memorandum No 2095 of 15 March 2011 ('the 2011 Memorandum'), the Ministero, however, informed SFIR that, following inspections carried out in 2010, the Commission, having found that there were silos near a number of dismantled installations, had put forward objections according to which the retention of those silos meant that the conditions set out in the Basic Regulation and the Implementing Regulation for entitlement to the full amount of aid had not been satisfied. According to the Commission, the silos at issue had to be considered as 'directly related to sugar production', within the meaning of Article 4(1)(b) of the Implementing Regulation.
- 10 As a result, AGEA subsequently directed SFIR to dismantle fully the facilities by demolishing the silos before 31 March 2012. AGEA also informed SFIR that the security provided by SFIR to guarantee the commitments entered into in the context of its participation in the Restructuring Scheme, could not be released. SFIR brought an action against that decision and several other related measures before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio).
- 11 By judgment No 9481 of 1 December 2011, SFIR's action was upheld only in so far as it sought the release of the part of the security relating to the restructuring aid allotted for partial dismantling. All the other claims were rejected. The pleas by which the applicant claimed that the 'complete dismantling' of the production facilities – which would result in 25% more aid being granted than the aid granted for 'partial dismantling' – did not require the demolition of the silos in question, was rejected. The Tribunale amministrativo regionale per il Lazio found that, since the production facilities included those which were used during the storage and packing phases immediately following production, retaining those facilities was permissible only where those facilities were intended to be used for the production of other products or for other functions of the industrial site.
- 12 SFIR brought an appeal against that judgment before the Consiglio di Stato (Council of State), which decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Must the full dismantling of the production facilities for sugar, isoglucose and inulin syrup, pursuant to Article 3 of [the Basic Regulation], the detailed rules for the implementation of which are set out in [the Implementing Regulation], be interpreted as meaning that the facilities to be dismantled are only those necessary for production, as specifically laid down in the abovementioned Article 3 of [the Basic Regulation], in accordance with which [the Implementing Regulation] must itself be interpreted, failing which the latter regulation will be invalid? Consequently, pursuant to Article 3 of [the Basic Regulation] and Article 4 of [the Implementing Regulation], do the facilities to be dismantled include only those intended for the production of sugar, isoglucose and inulin syrup, and the other facilities referred to in Article 4(1)(c) of [the Implementing Regulation], including packaging facilities, that have been left unused and must be dismantled and removed for environmental reasons? Consequently, may those facilities not linked to the production of sugar, isoglucose and inulin syrup, and not left unused but used for other activities such as, in this case, packaging, and not subject to the obligation of removal for environmental reasons be retained, because they are not subject to the dismantling obligation under the above Community regulations?'

Case C-188/12

- 13 Italia Zuccheri/Co.Pro.B. is also a sugar refinery undertaking which joined, in the course of 2006, the Restructuring Scheme, submitting to the Ministero an application seeking the full amount of aid. The Restructuring Plan, declared admissible by the Ministero, provided for the retention, inter alia, of a number of long-term storage silos and packaging and marketing facilities.

- 14 By the 2011 Memorandum, Italia Zuccheri/Co.Pro.B. was, like SFIR, informed of the Commission's observations concerning the retention of the storage silos. Consequently, AGEA directed Italia Zuccheri/Co.Pro.B. to dismantle those facilities before 31 March 2012 and informed Italia Zuccheri/Co.Pro.B. that the security provided by Italia Zuccheri/Co.Pro.B. could not be released.
- 15 Italia Zuccheri/Co.Pro.B. brought an action against that decision and several other related measures before the Tribunale amministrativo regionale per il Lazio which, by judgment of 1 December 2011, upheld that action only in so far as it sought the release of the part of the security relating to the restructuring aid allotted for partial dismantling. All the other claims were rejected.
- 16 Italia Zuccheri/Co.Pro.B. brought an appeal against that decision before the Consiglio di Stato, which decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:
- ‘1. Are Articles 3 and 4 of [the Basic Regulation] and Article 4 of [the Implementing Regulation] to be interpreted as meaning that the phrase “production facilities” does not include facilities used by sugar companies for storing, packing or packaging sugar for the purposes of marketing it and that, therefore, in the case of facilities such as silos, it is necessary to carry out a case-by-case analysis in order to establish whether those facilities are connected with the “production line” or whether they are connected with other activities, different from production?
 2. In particular, is Article 4 of [the Implementing Regulation] to be interpreted as meaning that facilities, such as silos, which are used by sugar companies for storing, packing or packaging sugar purely for the purposes of marketing it, being independent from the production cycle, are part of the facilities referred to in Article 4(1)(c), rather than Article 4(1)(a) or (b), in accordance with the wording and objectives of [the Basic Regulation] and [the Implementing Regulation], in particular Recital [4] in the preamble to the latter?
 3. In the alternative, with regard to Articles 3 and 4 of [the Basic Regulation] and with regard to the higher rules and principles of EU primary law, is Article 4 of [the Implementing Regulation] invalid if interpreted as also including among the facilities referred to in Article 4(1)(a) and (b) of [the Implementing Regulation] those facilities used by sugar companies for storing, packing or packaging sugar for the purposes of marketing it, given that it is clear that the objective of [the Basic Regulation] is to reduce the sugar companies' production capacity and not to prevent those companies from being able to operate in the sector of the mere marketing of the product, using sugar obtained under the production quotas belonging to other facilities or companies?
 4. In the further alternative, in any event, are Articles 3 and 4 of [the Basic Regulation] and Article 4 of [the Implementing Regulation] valid, by the yardstick of the higher rules and principles of EU primary law, if interpreted as including in the concept of “production facilities” or facilities “directly related to ... production” those facilities used by sugar companies for storing, packing or packaging sugar for the purposes of marketing it?’

Case C-189/12

- 17 Eridania Sadam is also a sugar refinery undertaking. It joined, in the course of 2006, the Restructuring Scheme, submitting to the Ministero an application seeking the full amount of aid. The Restructuring Plan, declared admissible by the Ministero, provided for the retention, inter alia, of a number of long-term storage silos and packaging facilities.

- 18 By the 2011 Memorandum, Eridania Sadam was, like SFIR and Italia Zuccheri/Co.Pro.B, informed of the Commission's observations concerning the retention of the storage silos. Consequently, AGEA directed Eridania Sadam to dismantle those facilities before 31 March 2012 and informed Eridania Sadam that the security provided by Eridania Sadam could not be released.
- 19 Eridania Sadam brought an action against that decision and several other related measures before the Tribunale amministrativo regionale per il Lazio which, by judgment of 1 December 2011, upheld that action only in so far as it sought the release of the part of the security relating to the restructuring aid allotted for partial dismantling. All the other claims were rejected.
- 20 Eridania Sadam brought an appeal against that decision before the Consiglio di Stato, which decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:
- ‘1. Are Articles 3 and 4 of [the Basic Regulation] and Article 4 of [the Implementing Regulation] to be interpreted as meaning that the phrase “production facilities” does not include facilities used by sugar companies for packaging sugar for the purposes of marketing it and that, therefore, in the case of facilities such as silos, it is necessary to complete a case-by-case analysis in order to establish whether those facilities are connected with the “production line” or whether they are connected with other activities, different from production, such as packaging?
 2. In the alternative, with regard to Articles 3 and 4 of [the Basic Regulation] and with regard to the higher rules and principles of EU primary law, is Article 4 of [the Implementing Regulation] invalid if interpreted as also including among the facilities referred to in Article 4(1)(a) and (b) of [the Implementing Regulation] those facilities used by sugar companies for packaging sugar for the purposes of marketing it, given that it is clear that the objective of [the Basic Regulation] is to reduce the sugar companies' production capacity and not to prevent those companies from being able to operate in the sector of the mere marketing of the product, using sugar obtained relying on production quotas belonging to other facilities or companies?
 3. In the further alternative, in any event, are Articles 3 and 4 of [the Basic Regulation] and Article 4 of [the Implementing Regulation] valid, by the yardstick of the higher rules and principles of EU primary law, if interpreted as including in the concept of “production facilities” or facilities “directly related to ... production” those facilities used by sugar companies for packaging sugar for the purposes of marketing it?’
- 21 By order of the President of the Court of 11 May 2012, Cases C-187/12 to C-189/12 were joined for the purposes of the written and oral procedure and the judgment.

The questions referred for a preliminary ruling

The single question in Case C-187/12, the first and second questions in Case C-188/12 and the first question in Case C-189/12

- 22 By these questions, which it is appropriate to examine together, the referring court seeks to ascertain, in essence, whether Articles 3 and 4 of the Basic Regulation and Article 4 of the Implementing Regulation must be interpreted as meaning that the concept of ‘production facilities’ includes facilities, such as silos, which are used for storing, packing or packaging sugar for the purposes of marketing it and, if so, whether it is necessary to carry out a case-by-case analysis in order to establish if the facilities concerned are actually connected to the production line or if they are connected with other activities different from production.

- 23 In that regard, it should be stated first of all that neither the Basic regulation nor the Implementing Regulation contains a definition of that concept.
- 24 Next, it must be recalled that, in the absence of such a definition, the scope of that concept, contained in Article 3 of the Basic Regulation and which includes, by reason of Article 4(1)(a) and (b) of the Implementing Regulation, both ‘facilities which are necessary to produce sugar’ and ‘facilities which are directly related to the production of sugar’, must be determined, in accordance with the Court’s settled case-law, by reference to the general context in which it is used and its usual meaning in everyday language (see, to that effect, Case C-431/04 *Massachusetts Institute of Technology* [2006] ECR I-4089, paragraph 17 and the case-law cited, and Case C-395/11 *BLV Wohn- und Gewerbebau* [2012] ECR, paragraph 25). Finally, when construing a provision of EU law, it is necessary to consider the objectives pursued by the legislation of which is part (see, to that effect, Case C-19/08 *Petrosian* [2009] ECR I-495, paragraph 34 and the case-law cited).
- 25 In the cases in the main proceedings, it should be noted, first, that a number of the interested parties which have submitted observations advocate an interpretation according to which the silos would not generally be included within the scope of production facilities, on the ground that they are intended for storage of the finished product and not for production in the strict sense, thereby supporting a very narrow definition of the concept of ‘production’ consisting of a physical or chemical process, corresponding, in these cases, to the extraction of raw sugar.
- 26 However, the concept of ‘production’ can also encompass other steps in the production of a product upstream or downstream of the chemical or physical transformation process. The storage of sugar which is not packed immediately after its extraction as a raw material may be considered as forming part of the production process, as is the case, by way of example, for the storage of sugar beets before their treatment for the purposes of extracting the residual sugar, which is expressly considered, in Article 4(1)(a) of the Implementing Regulation, as being necessary for production. From that point of view, storage may be considered as being ‘directly linked to sugar production’, within the meaning of Article 4(1)(b) thereof.
- 27 Second, as regards the general context and the objectives of the legislation at issue in the main proceedings, it must be recalled that the Restructuring Scheme sought, according to Recital 5 in the preamble to the Basic Regulation, to ‘reduce production to the extent necessary to reach a balanced market situation in the Community’. From that point of view, any facility whose use may have an influence on the quantity of sugar capable of being produced must be considered a production facility which is required to be dismantled.
- 28 In that regard, first, the installation of a silo on the site of a sugar factory determines the production process in that that process is designed with the availability and proximity of storage capacity in mind. Second, a silo, at least when its storage capacity exceeds, either by itself alone or in combination with the producer’s other silos, the quantity of sugar produced by that producer over the course of the average sugar marketing year, enables that producer to process the entire harvest even where the product resulting from that harvest exceeds the predicted sales for a given financial year. In addition, as a result of the stock accordingly built-up, the same producer may release on the internal market, over future financial years, additional quantities of sugar from its own production.
- 29 Accordingly, such silos are capable of having a direct impact on the quantities of sugar which may be produced and on the production process, which are dependent on the proximity of a storage facility. In particular, the silos enable the sale of what is produced in a given sugar marketing year to be partially or totally deferred and, accordingly, influence the ‘market situation in the Community’ within the meaning of Recital 5 of the preamble to the Basic Regulation.

- 30 Third, under Article 3(3)(a) and (b) of the Basic Regulation, the grant of the full amount of aid requires, above and beyond the definitive and total cessation of the production of sugar by the production facilities concerned and the dismantling of those facilities, the ‘closure of the factory’. The legislation at issue in the main proceedings clearly therefore starts from the premiss that, as a general rule, the industrial complex concerned must be put out of operation in its entirety, if there is to be an entitlement to the full amount of restructuring aid. The option to refrain from dismantling or even to continue using in the future the facilities other than production facilities, while retaining the right to the full amount of aid, constitutes therefore an exception to that rule which must be interpreted narrowly.
- 31 In the light of all those elements, it is clear that a silo intended to store the aid beneficiary’s sugar must be classified as a production facility, irrespective of whether it is employed for other purposes, as appears to be the case to some extent as regards the disputes in the main proceedings.
- 32 By contrast, where it is shown that there exist grounds, in particular, technical or commercial ones, precluding a silo being used to store sugar produced by the aid beneficiary and that that silo is used only to store sugar, produced under quota, from other producers or bought from those producers, the dismantling obligation is unlikely to apply to that silo.
- 33 Since packing, including packaging, does not form part of sugar production, in the light of the wording of Article 4(1)(c) of the Implementing Regulation, the same may apply in cases where the producer shows that its silo is used exclusively for the packing or the packaging of sugar produced elsewhere under quota.
- 34 Accordingly, it is for the national court to assess, on a case-by-case basis, whether a silo is a production facility or not, in the light of the silo’s technical characteristics or how the silo is actually used.
- 35 Having regard to the foregoing, the answer to the single question in Case C-187/12, to the first and second questions in Case C-188/12 and the first question in Case C-189/12 is that Articles 3 and 4 of the Basic Regulation and Article 4 of the Implementing Regulation must be interpreted as meaning that, for the purposes of those articles, the concept of ‘production facilities’ includes silos intended to store the aid beneficiary’s sugar, irrespective of whether they are employed for other purposes. Silos used only to store sugar, produced under quota, from other producers or bought from those producers, or those silos used only for packing or packaging sugar for the purposes of marketing it are not included within that concept. It is for the national court to carry out such an assessment, on a case-by-case basis, in the light of the technical characteristics of the silos concerned or how they are actually used.

The third and fourth questions in Case C-188/12 and the second and third questions in Case C-189/12

- 36 By these questions, which it is appropriate to examine together, the referring court seeks to ascertain, in essence, whether Articles 3 and 4 of the Basic Regulation and Article 4 of the Implementing Regulation, interpreted as meaning that the concept of ‘production facilities’ includes those facilities used by sugar companies for storing, packing or packaging sugar for the purposes of marketing it, are valid by the yardstick of the higher rules and principles of EU primary law.
- 37 In that regard, it should be stated first of all that packing facilities are not, in and of themselves, production facilities within the meaning of the legislation at issue in the main proceedings, as is clear from Article 4(1)(c) of the Implementing Regulation. As a result, as regards those facilities, which include, inter alia, the ‘packaging’ facilities mentioned by the referring court, the question of the validity of Articles 3 and 4 of the Basic Regulation and Article 4 of the Implementing Regulation does not arise.

- 38 Next, as regards storage facilities which may include those used also for packing, it follows from the answer given to the single question in Case C-187/12, at paragraph 35 above, that those facilities are included within the scope of production facilities as provided for in Article 3(1)(a) of the Basic Regulation, where they are intended, inter alia, to store the aid beneficiary's sugar.
- 39 As regards the last mentioned facilities, it is clear that the referring court has not specified which higher rules and principles of EU primary law could preclude those facilities from being subject to the dismantling obligation, laid down in Articles 3 and 4 of the Basic Regulation and Article 4 of the Implementing Regulation. However, as is apparent, in particular, from the written and oral observations of the interested parties, the validity of those provisions must be assessed in the light of the principles of proportionality and equal treatment.
- 40 As regards, first, the principle of proportionality, it should be noted that, first, a producer (i) which renounces the quota production assigned to one of its factories, (ii) which dismantles the majority of its production facilities with the exception of a silo which is to be considered a production facility, and (iii) which continues to use that silo for storing sugar that it produces in its other production facilities is not entitled, as a matter of course, to reconstruction aid on account of the prohibition, provided for in Article 3(1)(b) of the Basic Regulation, on using non-dismantled production facilities for the production of products covered by the common organisation of the markets in the sugar sector.
- 41 Second, the same producer would be entitled, were full dismantling to be carried out, to the full amount of restructuring aid, even though the additional financial cost would represent only a small part of the overall dismantling costs, as is apparent from the responses given by the interested parties to a question asked by the Court.
- 42 In that regard, it should be recalled that the principle of proportionality, which is one of the general principles of European Union law, requires that acts adopted by European Union institutions do not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by the legislation in question; where there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see, inter alia, Case C-150/10 *Beneo-Orafti* [2011] ECR I-6843, paragraph 75 and the case-law cited).
- 43 Furthermore, according to settled case-law, as regards judicial review of the implementation of that principle, bearing in mind the wide discretion enjoyed by the European Union legislature where the common agricultural policy is concerned, the lawfulness of a measure adopted in that sphere can be affected only if the measure is manifestly inappropriate in terms of the objective which the competent institution is seeking to pursue. What must be ascertained is therefore not whether the measure adopted by the legislature was the only one or the best one possible but whether it was manifestly inappropriate (*Beneo-Orafti*, paragraphs 76 and 77 and the case-law cited).
- 44 In those circumstances, as regards the proportionality of the legislation at issue in the main proceedings, it must be held that the Restructuring Scheme is dependent on the voluntary participation of the producers, since it seeks to introduce '[a]n important economic incentive for sugar undertakings with the lowest productivity to give up their quota production in the form of an adequate restructuring aid'.
- 45 That legislation allows the producer to decide freely whether it would like to take advantage of the aid, choose the factory in relation to which it renounces the corresponding quota and, as the case may be, opt for either the full or partial dismantling of the production facilities. The advantage potentially accruing to that producer depends accordingly, for the most part, on the choices made by that producer.

- 46 From that perspective, the legislation at issue in the main proceedings is not disproportionate.
- 47 Second, as regards the question whether the principle of equal treatment has been complied with, doubts may arise in relation to the fact that the same amount of restructuring aid per tonne of quota renounced is granted, without distinction, both in the situation where a producer has a silo which it must dismantle and in the situation where a producer does not have such silo and that producer does not have to pay the costs of dismantling the silo.
- 48 In that regard, it should be noted that the Court has consistently held that the second subparagraph of Article 40(2) TFEU, which prohibits all discrimination in the context of the common agricultural policy, is merely a specific expression of the general principle of equal treatment, which requires that comparable situations must not be treated differently and different situations must not be treated alike unless such treatment is objectively justified (Case C-33/08 *Agrana Zucker* [2009] ECR I-5035, paragraph 46 and the case-law cited).
- 49 Since the reasoning set out in paragraphs 40 to 46 above leads to the conclusion that the legislation at issue in the main proceedings is not disproportionate, that reasoning may be drawn on to assess whether the principle of equal treatment has been complied with.
- 50 First, it must be recalled that the aid at issue is intended to encourage producers voluntarily to renounce the quota production assigned to a sugar factory. In view of that objective, the situation of a sugar producer which chooses to renounce a quota assigned to a factory that contains a silo and the situation of a producer which must dismantle a factory that does not contain such a silo are entirely comparable where those producers renounce an identical number of tonnes of quota.
- 51 Second, as was noted at paragraph 41 above, the direct costs inherent to the dismantling of a silo represent only a small part of the overall costs of dismantling the production facilities. In those circumstances, it does not appear that the European Union legislature – which enjoys, as is apparent from the case-law cited at paragraph 43 above, a wide discretion where the common agricultural policy is concerned – has adopted, by not providing that the flat-rate amount of the aid granted per tonne of quota renounced should vary depending on whether or not the designated factory contained a silo, a measure which was manifestly inappropriate having regard to the objective pursued, namely reducing the production of sugar for the purposes of re-establishing a balance on the internal market.
- 52 That conclusion is not affected by the fact that the actual cost of the dismantling, as a number of the interested parties have observed during the hearing, is likely, in fact, to be very high in relation to the silos at issue in the main proceedings, on the ground that, where the silos are to be dismantled, the cost of rebuilding those silos would be, for the producers, considerably higher than the cost of dismantling them. Such reconstruction and such use of the silos for the production of sugar would not be reconcilable with the obligation, laid down in Article 3(3)(a) and (4)(a) of the Basic Regulation, to cease definitively and totally the production of sugar in the production facilities concerned.
- 53 In the light of all of the foregoing, the answer to the third and fourth questions in Case C-188/12 and the second and third questions in Case C-189/12 is that consideration of those questions has not raised any factor liable to affect the validity of Articles 3 and 4 of the Basic Regulation and Article 4 of the Implementing Regulation.

Costs

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

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

1. **Articles 3 and 4 of Council Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy and Article 4 of Commission Regulation (EC) No 968/2006 of 27 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy must be interpreted as meaning that, for the purposes of those articles, the concept of ‘production facilities’ includes silos intended to store the aid beneficiary’s sugar, irrespective of whether they are employed for other purposes. Silos used only to store sugar, produced under quota, from other producers or bought from those producers, or those silos used only for packing or packaging sugar for the purposes of marketing it are not included within that concept. It is for the national court to carry out such an assessment, on a case-by-case basis, in the light of the technical characteristics of the silos concerned or how they are actually used.**
2. **Consideration of the third and fourth questions in Case C-188/12 and the second and third questions in Case C-189/12 has not raised any factor liable to affect the validity of Articles 3 and 4 of Regulation No 320/2006 and Article 4 of Regulation No 968/2006.**

[Signatures]