Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

11 June 2015*

(Reference for a preliminary ruling — Agriculture — Common organisation of the markets — Sugar — Reimbursement of storage costs — Regulation (EEC) No 1998/78 — Article 14(3) — Regulation (EEC) No 2670/81 — Article 2(2) — Substitute exports of C sugar — Conditions — Actual exchange of C sugar with the replacement sugar — Replacement possible only with sugar produced by another manufacturer established on the territory of the same Member State — Validity in the light of Articles 34 TFEU and 35 TFEU)

In Case C-51/14,

REQUEST for a preliminary ruling under Article 267 TFEU, from the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Germany), made by decision of 17 January 2014, received at the Court on 4 February 2014, in the proceedings

Pfeifer & Langen GmbH & Co. KG

v

Bundesanstalt für Landwirtschaft und Ernährung,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, K. Jürimäe (Rapporteur), J. Malenovský, M. Safjan and A. Prechal, Judges,

Advocate General: M. Wathelet,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 7 January 2015,

after considering the observations submitted on behalf of:

— Pfeifer & Langen GmbH & Co. KG, by D. Ehle, Rechtsanwalt,

— the Bundesanstalt für Landwirtschaft und Ernährung, by W. Wolski and J. Jakubiec, acting as Agents,

— the European Commission, by P. Rossi and G. von Rintelen, acting as Agents,

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

* Language of the case: German.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 14(3) 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), as amended by Commission Regulation (EEC) No 1714/88 of 13 June 1988 (OJ 1988 L 152, p. 23; 'Regulation No 1998/78'), and the interpretation and validity of Article 2(2) of Commission Regulation (EEC) No 2670/81 of 14 September 1981 laying down detailed implementing rules in respect of sugar production in excess of the quota (OJ 1981 L 262, p. 14), as amended by Commission Regulation (EEC) No 3892/88 of 14 December 1988 (OJ 1988 L 346, p. 29; 'Regulation No 2670/81').

2 This reference was made in the course of proceedings between Pfeifer & Langen GmbH & Co. KG ('Pfeifer & Langen') and the Bundesanstalt für Landwirtschaft und Ernährung (Federal Authority for Agriculture and Food; 'the BLE') concerning the reimbursement of storage costs wrongly received by Pfeifer & Langen to the detriment of the financial interests of the European Union.

Legal context

Regulation (EEC) No 1785/81

3 The 3rd, 11th and 15th recitals in the preamble to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector (OJ 1981 L 177, p. 4), as amended by Council Regulation (EEC) No 1069/89 of 18 April 1989 (OJ 1989 L 114, p. 1; 'the basic regulation'), were worded as follows:

'… [T]o ensure that the necessary guarantees in respect of employment and standards of living are maintained for [EU] growers of sugar beet and sugar cane, provision should be made for measures to stabilise the market in sugar …;

…

… [T]he reasons which have hitherto led the [EU] to retain a production quota system for sugar … remain valid; … however, changes should be made in that system to take account of recent developments in production and to provide the [EU] with the instruments necessary to ensure, in a fair yet efficient way, that the manufacturers themselves meet in full the cost of disposing of the surpluses of [EU] production over consumption; …

…

… [S]ince the production quotas allocated to undertakings constitute a means of guaranteeing producers Community prices and an outlet for their production, quota transfers should be made taking into consideration the interests of all the parties concerned and in particular those of sugar beet and sugar cane producers;

…'

4 Article 8(1) and (2) of the basic regulation provided:

'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,

…

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

…’

5 Article 24 of the basic regulation fixed for each marketing year (that is to say, from 1 July of one year until 30 June of the following year) basic quantities for ‘A sugar’ and ‘B sugar’, to be allocated by each Member State to the sugar-producing undertakings established in its territory. An A quota and a B quota were therefore allocated to producers for each marketing year. Any quantity of sugar which is produced in excess of its A and B quotas was termed ‘C sugar’.

6 Article 26 of that regulation provides:

‘1. … C sugar which is not carried forward pursuant to Article 27 … cannot be disposed of on the … internal market and must be exported in the natural state before 1 January following the end of the marketing year in question.

[Article 8 does not apply] to this sugar …

…

3. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 41.

…’

Regulation No 1998/78

7 Regulation No 1998/78 lays down the detailed rules for the application of the compensation system for sugar storage costs instituted by Article 8 of the basic regulation.

8 Article 14(3) of that regulation provides:

‘Where a quantity of C sugar is replaced for export purposes by an equivalent quantity of A or B sugar then, for the purposes of the reimbursement, the first quantity shall be regarded as A sugar with effect from the day on which the customs export formalities were completed.’

Regulation No 2670/81

9 Adopted on the basis of Article 26(3) of the basic regulation, Regulation No 2670/81 specified the circumstances in which exports of C sugar are to be considered to have taken place.

10 The fifth recital in the preamble to Directive 2670/81 read as follows:

‘… [A] manufacturer should be allowed to export sugar … which has not been produced by him; … it is necessary to provide in that case for the payment of a flat-rate amount which may be considered in all cases as compensation for any advantage accruing from such a substitution;

…’

11 Article 2(2) of that regulation provided:

‘Such proof shall be furnished by the production of:

(a) an export licence issued pursuant to Article 3 of Regulation (EEC) No 2630/81 to the manufacturer by the competent agency of the Member State referred to in paragraph 1;

(b) the documents … required for the release of the security;

(c) a statement by the manufacturer to the effect that the C sugar … was produced by him.

For the purpose of export the manufacturer in question may, however, replace C sugar by another sugar coming under [heading 1701 of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1)] or C isoglucose by another isoglucose produced by another manufacturer established on the territory of the same Member State. In that case the manufacturer making the substitution must pay … [EUR] 1.25 per 100 kilograms …

…’

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

12 It is apparent from the order for reference that Pfeifer & Langen, a sugar manufacturer, received reimbursements of storage costs, pursuant to Article 8(2) of the basic regulation, for the warehousing of white sugar as part of the common organisation of the markets in sugar (‘the COM in sugar’) for the marketing years 1987/1988 to 1996/1997.

13 Between 1997 and 2003, Pfeifer & Langen was subject to a fraud inquiry concerning the reimbursement of storage costs of white sugar in respect of the abovementioned marketing years. In that context, it was accused of having declared, during marketing year 1990/1991, as sugar eligible for reimbursement a quantity of sugar produced in excess of the production quotas, classified, in that case, as ‘C sugar’.

14 In that regard, Pfeifer & Langen stated that they had bought, during marketing year 1990/1991, a quantity of sugar under quota classified, in such circumstances, as either ‘A sugar’ or ‘B sugar’, produced in France. That sugar was shipped to one of Pfeifer & Langen’s business premises in Germany and posted as sugar under quota. However, that sugar was not warehoused in the company’s silos but was provided with fresh dispatch documents and transported to the port of Antwerp (Belgium) for export to third countries outside the EU as C sugar. Pfeifer & Langen then declared an equivalent quantity of C sugar which it had produced as excess (‘the C sugar at issue’) as sugar produced under quota in respect of which reimbursement of the storage costs was claimed.

15 By decision of 30 January 2003, the BLE, as the authority competent for reimbursement of storage costs, annulled in part the storage cost reimbursements allocated to Pfeifer & Langen for the months from July 1990 to June 1991 and demanded repayment of the amounts paid. Pfeifer & Langen lodged an objection to that decision.

16 By decision of 4 October 2006, the BLE rejected Pfeifer & Langen’s complaint in so far as it related to the C sugar at issue.

17 On 7 November 2006, Pfeifer & Langen brought an action against that decision of the BLE before the Verwaltungsgericht Köln (Administrative Court, Cologne). In its action, the company submitted, inter alia, that it had properly substituted, by an equivalent quantity of sugar under quota originating in France, the C sugar in question for export, so that that C sugar was eligible for reimbursement for storage costs under Article 14(3) of Regulation No 1998/78.

18 By judgment of 25 November 2009, the Verwaltungsgericht Köln dismissed Pfeifer & Langen's action in so far as it concerned the replacement of sugar carried out by that company. In that regard, that court held that the replacement did not comply with the second subparagraph of Article 2(2) of Regulation No 2670/81, which requires the replacement sugar to come from a manufacturer established in the same Member State.

19 The referring court, to which Pfeifer & Langen have appealed against that judgment, is of the opinion that the resolution of the proceedings pending before it depends on whether the replacement of C sugar for export is possible between manufacturers established in different Member States, which makes it necessary to ascertain which provision, that of Article 14(3) of Regulation No 1998/78 or that of Article 2(2) of Regulation No 2670/81, applies to the facts of the main proceedings. Although those provisions both concern the replacement of C sugar, Article 14(3) of Regulation No 1998/78 does not lay down any particular condition, while Article 2(2) of Regulation No 2670/81 requires the replacement sugar to be produced by a manufacturer established in the same Member State.

20 In addition, the referring court considers that it must be stated whether those provisions require the quantity of initial C sugar and the quantity of replacement sugar to be physically substituted one for the other or whether an accounting substitution of those quantities is sufficient. Finally, if Article 2(2) of Regulation No 2670/81 were to apply to the main proceedings, the referring court asks whether the restriction of substitution to manufacturers established in the same Member State does not constitute a restriction on the free movement of goods inside the EU.

21 In those circumstances, the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Higher Administrative Court for the *Land* of North-Rhineland-Westphalia) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does Article 14(3) of Regulation No 1998/78 contain the definitive provisions governing the replacement of sugar for storage-cost-reimbursement purposes and is it not a precondition under that provision that the replacement sugar must be produced by another manufacturer established on the territory of the same Member State?

(2) If the answer is in the affirmative: Does Article 14(3) of Regulation No 1998/78 make it a condition for claiming reimbursement of storage costs that the replacement C sugar is "physically replaced" at the premises of the sugar manufacturer?

(3) If Article 2(2) of Regulation No 2670/81 is applicable to the replacement of sugar: Does Article 2(2) of Regulation No 2670/81 make it a condition for claiming reimbursement of storage costs that the replacement C sugar is "physically replaced" at the premises of the sugar manufacturer?

(4) In the alternative: Is Article 2(2) of Regulation No 2670/81 invalid in so far as it requires the replacement sugar to have been "produced by another manufacturer established on the territory of the same Member State"?'

Consideration of the questions referred

Preliminary observations

22 Firstly, it is appropriate to bear in mind that, in the context of the COM in sugar, the basic regulation provides for a system of national quotas for the manufacture of sugar in the EU. In accordance with Article 24 of that regulation, each Member State is to allocate, on the basis of the basic quantities allocated to it, an A quota and a B quota to the sugar-producing undertakings established in its territory. The sugar produced under those quotas may be put into circulation in the EU and is eligible for various support measures in favour of production.

23 However, the sugar produced in excess of those quotas allocated to each manufacturer, namely the C sugar, cannot be disposed of on the internal market. Pursuant to Article 26 of the basic regulation, that sugar must, in principle, be exported in the natural state before 1 January following the end of the marketing year in question.

24 As is apparent from Articles 1 and 2 of Regulation No 2670/81, each manufacturer must, in principle, export the C sugar which it has produced. However, as emphasised in the fifth recital in the preamble to that regulation, the EU legislature considered it to be appropriate to provide that manufacturers should, in certain cases, be allowed to export sugar which has not been produced by them.

25 To that end, the second subparagraph of Article 2(2) of that regulation provides for a mechanism enabling a manufacturer to replace the quantity of C sugar for export by another sugar under quota produced by another manufacturer established on the territory of the same Member State. It thus follows from that provision that, by an accounting alteration, the replacement sugar, first falling within the category of C sugar, acquires the status of sugar under quota and may be freely put into circulation in the internal market by the manufacturer, while the replacement sugar, initially produced under quota, is exported as C sugar.

26 Secondly, it must be borne in mind that Article 8(1) and (2) of the basic regulation institutes a compensation system for sugar storage costs, under which the Member States are bound to make flat-rate reimbursement to the manufacturers of the costs which they incur for that storage. In accordance with the second subparagraph of Article 26(1) of that regulation, only the costs incurred for the storage of sugar produced within the A and B quotas can be reimbursed, the storage costs of C sugar being excluded.

27 It is in the light of those considerations that the questions asked by the referring court should be answered.

The first and fourth questions

28 By its first and fourth questions, which it is appropriate to examine together, the referring court asks, in essence, firstly, whether Article 14(3) of Regulation No 1998/78 and the second subparagraph of Article 2(2) of Regulation No 2670/81, read together, must be interpreted as meaning that, in a situation such as that in the main proceedings where a manufacturer wishes to replace a quantity of C sugar for export by an equivalent quantity of sugar under quota produced by another manufacturer, it is appropriate to have regard to the conditions set out in that provision as regards reimbursement of storage costs and, secondly, whether that provision is valid in the light of EU law in so far as it requires that the replacement sugar be produced by another manufacturer established on the territory of the same Member State.

29 First of all, it must be recalled that Article 14(3) of Regulation No 1998/78 provides that, where a quantity of C sugar is replaced for export purposes by an equivalent quantity of A or B sugar then, for the purposes of the reimbursement, the first quantity is regarded as A sugar with effect from the day on which the customs export formalities were completed.

30 In the light of its wording, it must be held that that provision merely establishes the time from which a quantity of C sugar properly replaced by sugar under quota must be regarded, for the purposes of the calculation of the reimbursement of storage costs, as sugar eligible for that reimbursement.

31 With regard to a situation such as that in the main proceedings, where a manufacturer wishes to replace a quantity of C sugar for export by an equivalent quantity of sugar under quota produced by another manufacturer, it is also necessary to have regard to the conditions set out in the second subparagraph of Article 2(2) of Regulation No 2670/81.

32 In that regard, it is apparent from the wording of that provision that three requirements are laid down for that substitution to be proper. Firstly the replacement sugar must come under heading 1701 of the Combined Nomenclature set out in Annex I to Regulation No 2658/87; secondly, that sugar must have been produced by another manufacturer established on the territory of the same Member State and, thirdly, the manufacturer making the substitution must pay the sum of EUR 1.25 per 100 kilograms of replacement sugar.

33 The referring court states none the less that it cannot be deduced with certainty from the wording of the German language version of the second subparagraph of Article 2(2) of Regulation No 2670/81, in its initial version, that that provision requires the replacement sugar to be produced by another manufacturer established on the territory of the same Member State. In that version, since the verb ‘to produce’ is in the singular, a purely literal interpretation would suggest that the requirement that the replacement product must have been produced by a manufacturer established on the territory of the same Member State applies only to the replacement of C isoglucose.

34 In that respect, it suffices to recall that the need for a uniform interpretation of the provisions of EU law makes it impossible, where there are doubts, for the text of a provision to be considered in isolation in one of its language versions, but requires, on the contrary, that it be interpreted and applied in the light of the versions existing in the other official languages (see, inter alia, judgments in *Stauder*, 29/69, EU:C:1969:57, paragraph 3; *Moksel Import und Export*, 55/87, EU:C:1988:377, paragraph 15; *EMU Tabac and Others*, C-296/95, EU:C:1998:152, paragraph 36; and *Profisa*, C-63/06, EU:C:2007:233, paragraph 13).

35 Despite any potential ambiguity in the wording of the second subparagraph of Article 2(2) of Regulation No 2670/81, in its initial German language version, it is clear from the other official language versions, in particular the French, Greek, Italian and Dutch language versions, that the EU legislature laid down, as a requirement for the replacement of C sugar for export, that the replacement sugar must have been produced by another manufacturer established on the territory of the same Member State. What is more, that requirement is clear from the German language version of that regulation applicable *ratione temporis* at the date of the facts in the main proceedings, in particular from the words ‘die von einem anderen auf dem Hoheitsgebiet desselben Mitgliedstaats ansässigen Hersteller erzeugt worden sind’.

36 Finally, since the second subparagraph of Article 2(2) of Regulation No 2670/81 requires the replacement sugar to have been produced by another manufacturer established in the same Member State, the referring court wishes to know whether that provision is valid in the light of EU law and, in particular, the rules of primary law on the free movement of goods, namely Articles 34 TFEU and 35 TFEU.

37 Indeed, in accordance with the settled case-law of the Court, the prohibition of quantitative restrictions and of all measures having equivalent effect, laid down in Articles 34 TFEU and 35 TFEU, applies not only to national measures but also to measures adopted by the EU institutions (see, to that effect, judgments in *Denkavit Nederland*, 15/83, EU:C:1984:183, paragraph 15; *Meyhui*, C-51/93, EU:C:1994:312, paragraph 11; *Kieffer and Thill*, C-114/96, EU:C:1997:316, paragraph 27; and *Alliance for Natural Health and Others*, C-154/04 and C-155/04, EU:C:2005:449, paragraph 47).

38 However, it must be held that the requirement that the replacement sugar must have been produced by a manufacturer established in the same Member State, laid down in the second subparagraph of Article 2(2) of Regulation No 2670/81, even if it constitutes a restriction within the meaning of Articles 34 TFEU and 35 TFEU, is, in any event, justified, since it is a necessary implication of the quota system instituted by the basic regulation.

39 As is apparent from the 3rd, 10th and 14th recitals in the preamble to the basic regulation, the quota system is one of the measures of the COM in sugar with the ultimate aim of stabilising the EU market in sugar and, consequently, ensuring, inter alia, that the necessary guarantees in respect of the employment and standard of living of EU producers are maintained. In that context, national quotas constitute a means of guaranteeing producers Community prices and an outlet for their production (see, to that effect, judgment in *Koninklijke Coöperatie Cosun* v *Commission*, C-68/05 P, EU:C:2006:674, paragraphs 59 and 62, and order in *Isera & Scaldis Sugar and Others*, C-154/12, EU:C:2013:101, paragraph 46).

40 To that end, the EU legislature has provided, as recalled in paragraph 22 of the present judgment, for the division by Member States of the EU sugar production. It is therefore for each Member State to allocate, in the form of an A quota and a B quota, the basic quantities allocated to it to the sugar-producing undertakings established in its territory in order to regulate the production of sugar in its territory.

41 Such a replacement of C sugar for export between manufacturers established in different Member States, forming part of different national quotas, would upset the quota system instituted by the basic regulation. The replacement of C sugar for export, as described in paragraph 25 of this judgment, would entail, on the facts, a transfer of quotas from the manufacturer supplying the replacement sugar to the manufacturer making the substitution. It would mean, in particular, that the quotas held by those two manufacturers would no longer match those initially allocated to them by their respective Member States on the basis of their basic quantities.

42 It follows therefrom that a requirement such as that instituted by the second subparagraph of Article 2(2) of Regulation No 2670/81 does not run counter to the prohibitions laid down in Articles 34 TFEU and 35 TFEU.

43 Having regard to the foregoing conclusions, the answer to the first and fourth questions is that Article 14(3) of Regulation No 1998/78 and the second subparagraph of Article 2(2) of Regulation No 2670/81, read in conjunction, must be interpreted as meaning that, in a situation such as that in the main proceedings where a manufacturer wishes to replace a quantity of C sugar for export by an equivalent quantity of sugar under quota produced by another manufacturer, it is appropriate to have regard to the requirements set out in the latter provision as regards reimbursement of storage costs. Those requirements include, in particular, that the replacement sugar must have been produced by another manufacturer established on the territory of the same Member State. Examination of the questions raised has disclosed no factor such as to affect the validity of that provision.

The second and third questions

44 By its second and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 14(3) of Regulation No 1998/78 and the second subparagraph of Article 2(2) of Regulation No 2670/81 must be interpreted as requiring, as a condition for the proper substitution of C sugar for export, that the initial quantity of C sugar and the quantity of replacement sugar be physically substituted by the manufacturer.

45 First of all, it must be borne in mind that, as has been held in paragraph 30 of this judgment, Article 14(3) of Regulation No 1998/78 merely establishes the time from which a quantity of C sugar properly replaced by sugar under quota must be regarded, for the purposes of the calculation of the reimbursement of storage costs, as sugar eligible for that reimbursement. The requirements for the proper substitution of C sugar for export by sugar under quota produced by another manufacturer are found in the second subparagraph of Article 2(2) of Regulation No 2670/81.

46 With regard to that latter provision, it must be held that the requirement that the initial quantity of C sugar and the quantity of replacement sugar must be physically substituted does not form part of the requirements laid down, on its wording, as referred to in paragraph 32 of this judgment. Accordingly, that provision does not require such physical replacement.

47 That conclusion is corroborated by the fact that, as Pfeifer & Langen and the BLE have stated in their written observations, white sugar is a homogenous product, so that there are no observable differences between the initial C sugar and the replacement sugar.

48 In addition, it is apparent from the fifth recital in the preamble to Regulation No 2670/81 that the mechanism for the substitution of C sugar for export seeks to enable a manufacturer to meet its obligation to export C sugar while exporting a sugar which it did not itself produce. To require the physical substitution of the quantities of sugar would run counter to that objective.

49 Having regard to the foregoing considerations, the answer to the second and third questions is that Article 14(3) of Regulation No 1998/78 and the second subparagraph of Article 2(2) of Regulation No 2670/81 must be interpreted as not requiring, for the proper substitution of sugar for export, that the initial quantity of C sugar and the quantity of replacement sugar be physically substituted by the manufacturer.

Costs

50 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 (Fourth Chamber) hereby rules:

1. **Article 14(3) of Commission Regulation (EEC) No 1998/78 of 18 August 1978 laying down detailed rules for the offsetting of storage costs for sugar, as amended by Commission Regulation (EEC) No 1714/88 of 13 June 1988, and the second subparagraph of Article 2(2) of Commission Regulation (EEC) No 2670/81 of 14 September 1981 laying down detailed implementing rules in respect of sugar production in excess of the quota, as amended by Commission Regulation (EEC) No 3892/88 of 14 December 1988, read in conjunction, must be interpreted as meaning that, in a situation such as that in the main proceedings where a manufacturer wishes to replace a quantity of C sugar for export by an equivalent quantity of sugar under quota produced by another manufacturer, it is appropriate to have regard to the requirements set out in the latter provision as regards reimbursement of storage costs.**

Those requirements include, in particular, that the replacement sugar must have been produced by another manufacturer established on the territory of the same Member State. Examination of the questions raised has disclosed no factor such as to affect the validity of that provision.

2. **Article 14(3) of Regulation No 1998/78 and the second subparagraph of Article 2(2) of Regulation No 2670/81 must be interpreted as not requiring, for the proper substitution of sugar for export, that the initial quantity of C sugar and the quantity of replacement sugar be physically substituted by the manufacturer.**

[Signatures]