the basic quotas is limited not only by the requirements of restructuring plans but also by the objectives of the common organization of the market in sugar, in particular by the aim of protecting the interests of beet and cane producers, and by the general principles of Community law.

8. The fact that a regulation is directly applicable does not prevent the provisions of that regulation from empowering a Community institution or a Member State to take implementing measures. In the latter case the detailed rules for the exercise of that power are governed by the public law of the Member State in question; however, the direct applicability of the measure empowering the Member State to take the national measures in question will mean that the national courts may ascertain whether such national measures are in accordance with the content of the Community regulation.

In Case 230/78

REFERENCE to the Court pursuant to Article 177 of the EEC Treaty by the Third Chamber of the Tribunale Amministrativo Regionale [Regional Administrative Court] of Latium for a preliminary ruling in the proceedings pending before that court between

S.P.A. ERIDANIA-ZUCCHERIFICI NAZIONALI, Genoa, and

S.P.A. SOCIETÀ ITALIANA PER L'INDUSTRIA DEGLI ZUCCHERI, Rome

and

MINISTER OF AGRICULTURE AND FORESTRY,

MINISTER FOR INDUSTRY, TRADE AND CRAFT TRADES, and

S.P.A. ZUCCHERIFICI MERIDIONALI

on the validity and interpretation of Article 2 (2) of Regulation (EEC) No 3331/74 of the Council of 19 December 1974 (Official Journal 1974, L 359, p. 18), on the allocation and alteration of the basic quotas for sugar,

THE COURT

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), P. Pescatore, M. Sørensen, A. O'Keeffe and T. Koopmans, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

(a) Regulations relevant to the case

The basic regulation on the common organization of the market in sugar, Regulation No 3330/74, (Official Journal 1974, L 359, p. 1) divides the quantities of sugar produced by producers into three categories (cf. Article 23 *et seq.*). Each Member State is required to fix for each of its sugar undertakings an annual basic quota known as "Quota A" within the basic quantity allotted to it by the regulation, established with reference to the production of such undertakings during the 1968/69 to 1972/73 marketing years, and to allocate it to such undertakings.

Article 24 of Regulation No 3330/74 provides that the Member States shall allot a basic quota to each undertaking which used its basic quota during the 1974/75 marketing year; the article lays down the method for establishing such basic quotas and adds in paragraph (3) that the Council, acting by a qualified majority on a proposal from the Commission, shall adopt "the general rules for the application of this article and any derogations therefrom". Those quota arrangements are applicable from 1 July 1975 to 30 June 1980.

On the basis of the said Article 24 (3) the Council adopted Regulation No 3331/74 (Official Journal 1974, L 359, p. 18) which in Article 2 (1) permits the Member States to reduce the basic quotas of the producer undertakings; such reduction may not exceed, for the whole period from 1 July 1975 to 30 June 1980 5 % of the "original" basic quota.

Article 2 (2) provides:

"Notwithstanding the first, second and third subparagraphs of Article 24 (2) of Regulation (EEC) No 3330/74 and the preceding paragraph, the Republic of Italy may alter the basic quotas of undertakings within its territory in so far as is necessary for the implementation of restructuring plans for the beet and sugar sectors. These plans shall be submitted to the Commission for its opinion before 1 July 1978."

(b) Facts

The decree of 28 February 1976 (Gazzetta ufficiale No 74 of 20 March 1976), amending two prior decrees, allocated to the sugar undertakings operating in Italy basic quotas for sugar pursuant to Article 24 of the basic Regulation No 3330/74. Article 2 of the decree altered the quotas with effect from the 1976/77 marketing year pursuant to the derogation referred to in Article 2 (1) of Regulation No 3331/74.

On 20 February 1976 S.p.A. Zuccherifici Meridionali (hereinafter referred to as "Zuccherifici Meridionali") submitted a restructuring plan for the development of beet processing and sugar producing. That plan was approved by a joint Ministerial Decree of 13 December 1976. It forms part of the general tendency discernible in Italy to transfer beet production to the south. The plan formed the subject-matter of correspondence between the Government of the Republic of Italy and the Commission of the European Communities.

Subsequently, a joint Ministerial Decree dated 7 December 1977 (Gazzetta Ufficiale No 341 of 15 December 1977), enacted in implementation of Article 2 (2) of Regulation No 3331/74, increased the production quota allocated to Zuccherifici Meridionali by 60 000 quintals. The decree reduced with effect from the 1978/79 marketing year the basic quotas allocated to four other sugar undertakings situated in the north of Italy.

Thus the quota of S.p.A. Eridania-Zuccherifici nazionali (hereinafter referred to as "Eridania") was reduced by 31 049 quintals and that of the Società Italiana per l'Industria degli Zuccheri (hereinafter referred to as "Società Italiana") by 18 550 quintals.

In fact the Decree of 7 December 1977, which constituted the sole exercise of the power conferred on Italy by Article 2 (2) of Regulation No 3331/74, increased by 27% the production quota allocated to Zuccherifici Meridionale by way of a series of reductions, which in no instance exceeded 1%, in the quantity previously allocated to the four other undertakings.

Eridania and Società Italiana have requested the annulment of the Ministerial Decree of 7 December 1977 altering the basic quotas of the sugar referred to in the Ministerial Decree of 28 February 1976 in implementation of Article 2 (2) of Regulation No 3331/74.

The Third Chamber of the Tribunale Amministrativo Regionale of Latium, by an order of 3 July 1978, stayed the proceedings before it and requested the Court of Justice to deliver a preliminary ruling on the *validity* and, in the alternative, on *the interpretation* of Article 2 (2) of Regulation No 3331/74 in relation to the following questions:

With regard to *validity:*

(1) In the procedure followed for approving the provision in question was the prior consultation of the

Assembly prescribed in the third subparagraph of Article 43 (2) of the Treaty improperly omitted?

(2) Has the duty contained in Article 190 of the Treaty requiring reasons to be stated, and indeed sufficiently stated, been fulfilled?

(3) Does the application of the power in question to the Italian processing industry constitute an infringement of the prohibition of discrimination between producers within the Community laid down with regard to common organizations of the market in Article 40 (3) of the Treaty?

(4) Can it be considered that the exercise of a discretionary power of substantial scope, both as regards its preconditions and its effect on the quotas themselves, constitutes an infringement of the right of undertakings to produce the so-called basic quotas which is inherent in the economic activity of individuals? Accordingly, does the existence of any guarantee that economic activities can be carried on, since they are included in the category of fundamental rights which it is the purpose of the Community system to protect, affect the validity of the provision in question?

With regard to *interpretation:*

(5) Does Regulation No 3331/74 or the Community system contain discernible and specific criteria by which the agencies of the Italian State must be guided in appraising whether the "restructuring plans" which they intend to adopt or assist are in accordance with those set out in the regulation (defined briefly without specific details in Article 2 (2))?

(6) Are the limits to the power to alter the "basic quotas" of processing undertakings in the present case restricted to those limits arising from the necessity to implement the above-mentioned plans or can other limits be discerned (for example, limits deriving from the protection of the right of undertakings to carry on their operations or from the inviolability of quotas which have been entirely exhausted in the previous marketing year, perhaps on the view that the power to reduce quotas applies only to the part of basic quotas which has not been covered by the production of individual undertakings, etc.)?

(7) Is the direct applicability of the regulation within the Italian legal system (second paragraph of Article 189 of the Treaty) compatible with provisions intended to govern its implementation?

The order making the reference was received at the Court Registry on 16 October 1978.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged by Eridania, represented by Mauro De André and Antonio Sorrentino, by the Società Italiana, represented by Antonio and Frederico Sorrentino, by the Government of the Republic of Italy, represented by Adolfo Maresca, its Ambassador, acting as Agent, assisted by Ivo Maria Braguglia, Avvocato Generale dello Stato [State Advocate General], by Zuccherifici Meridionali, represented by Vincenzo Marone, Pietro Cattaneo, Giorgio Pinotti and Giuseppe Guarino, by the Council of the European Communities, represented by Daniel Vignes, a Director with the Legal Department of the Council, acting as Agent, and by the Commission of the European

Communities, represented by Cesare Maestripieri, a Legal Adviser, acting as Agent, assisted by Jacques Delmoly, a member of its Legal Department.

The Court, having heard the report of the Judge-Rapporteur and the views of the Advocate General, decided to open the oral procedure without any preparatory inquiry. Nevertheless, it requested the Council and the Commission to reply in writing to certain questions.

II — Summary of the written observations submitted to the Court

(a) Observations of the plaintiffs in the main action

With regard to the *first* question *Eridania* and *Società Italiana* observe that Regulation No 3331/74 was adopted on the basis of the provisions of Article 24 (3) of basic Regulation No 3330/74.

Article 2 of Regulation No 3331/74 nevertheless authorizes Italy not only to reduce by 5% the quotas to which the various undertakings are entitled but also to apply unlimited reductions to such quotas. A provision of this nature affects the definition as such of the common organization of the markets; there is no doubt that it is accordingly necessary in connexion with that provision to follow the procedure laid down in the third subparagraph of Article 43 (2) of the Treaty which prescribes a proposal from the Commission, consultation with the Assembly and action by the Council acting on a qualified majority.

Article 24 (3) of Regulation No 3330/74, in implementation of which the provision in question was enacted, indeed does not make express provision for consulting the Assembly, but the necessity for such consultation follows directly from the provision in Article 43 of the Treaty which, because it is a formally superior rule and, as to substance, is of general scope, undoubtedly applies to the present case.

Any other point of view entails the unlawfulness of Article 24 (3) of Regulation No 3330/74 which is incapable of derogating from the provision of the Treaty or of prescribing fundamental derogations from the basic regulation which are not adopted in accordance with the procedure laid down, in a general way, for the adoption of basic regulations.

In so far as the European Parliament appears to have been consulted such consultation took place only with regard to Article 2 (1) of Regulation No 3331/74. In this connexion the Parliament asked for a reduction in the discretion which the initial proposal of the Commission left to the Member States by authorizing them to reduce the quotas by maximum of 10%. The Council complied with that request, reducing that maximum level from 10% to 5% in the final version of the regulation; nevertheless, the Council inserted the second paragraph into Article 2 which conferred upon the Italian administration an appreciably wider discretion.

Having regard to the substantive nature of paragraph (2) it would not only have been judicious in political terms but was also necessary from a legal point of view to submit it for fresh consultation with the Assembly.

With regard to the *second* question Eridania and Società Italiana, the plaintiffs in the main action, maintain that the statement of the reasons for Regulation No 3331/74 (second part of the third recital) constitutes a statement

of reasons for the provision in question which is at the very least tautological.

Not only is there a failure to indicate the reasons justifying so significant a departure from the system of quotas, but nothing is said concerning the characteristics of the restructuring plans, either as to the criteria on the basis of which the Commission must draw up its opinion, or as to the limits within which such plans are to achieve a reduction in the quotas allocated to the various undertakings.

The *third* question must be answered in the affirmative. The plaintiffs in the main action claim that, comparing the system of quotas established in a general way by Article 24 (1) and (2) (first and second subparagraphs) of Regulation No 3330/74 and by Article 2 (1) of Regulation No 3331/74, on the one hand, and the provisions of the third subparagraph of Article 24 (2) of Regulation No 3330/74 and of Article 2 (2) of Regulation No 3331/74, on the other, Italian producers are subject to powers of reduction very much wider than those applicable to producers in other countries. The provisions in question accordingly infringe the prohibition on discrimination set out in Article 40 (3) and in Article 7 of the Treaty.

With regard to the *fourth* question, Eridania and Società Italiana consider that Article 2 (2) of Regulation No 3331/74 is unlawful because it infringes fundamental rights, in particular the right of individuals freely to engage in economic activities. Naturally, it must be conceded that, particularly in the sphere of rights of an economic nature, the guarantee accorded by fundamental rights is not absolute because it must be reconciled with the public interest which may restrict the scope of such guarantee. Nevertheless, in granting Member States extremely wide powers to reduce the basic quotas of sugar undertakings without laying down limits, conditions and criteria for the exercise of such powers the balance to be struck between the public interest and the rights of individuals was not attained at the outset by a rule of law but instead is left exclusively to the arbitrary discretion of the administration.

With regard to the *fifth, sixth and seventh questions,* Eridania and Società Italiana consider that the provisions in question do not make it possible to discern criteria or limits circumscribing the power to reduce the quotas which has been conferred upon the Italian Republic.

The question whether the Italian administration may act directly in this sphere or whether such action must be preceded by domestic legislation remains a question of the interpretation of the provisions of Italian constitutional law.

(b) Observations of the Government of the Italian Republic

With regard to the *first* question the Government of the Italian Republic observes that the Commission, in its proposal for the regulation, made provision for a "room for manoeuvre" of 10%. According to that proposal the quotas were to be altered only if "the structure of the sugar economy of the regions concerned is thereby improved".

In fact the possibility of reducing the quotas in order to have regard for the need to restructure the sugar economy in a specified region was already contained in the proposal submitted for the opinion

of the Parliament. Whilst conceding the principle itself of "room for manoeuvre" the Parliament expressed doubts concerning the figure of 10%. The Council, in reducing that amount of 5%, furthermore approved, with regard to Italy, the above-mentioned condition referred to in the proposal of the Commission. The legal basis for the adoption of the provision in dispute was Article 24 (3) of Regulation No 3330/74, which does not provide that the Parliament must be consulted. Nor, furthermore, was such consultation requested when the Council adopted, on the legal basis of the said Article 24 (3), Regulation No 298/78 of 13 February 1978 (Official Journal 1978, L 45) whereby it authorizes the Republic of France to reduce the quotas notwithstanding the provisions of Article 24 (2) of Regulation No 3330/74 and of Article 2 (1) of Regulation No 3331/74.

Consequently no doubt exists that the provision in question, with regard to the procedure for its approval, is valid.

With regard to the *second* question the Italian Government considers that the additional power granted to Italy by Article 2 (2) of Regulation No 3331/74 has been furnished with an adequate statement of reasons "in view of its special situation in this sector" (third recital). The details concerning that particular situation are in fact contained in the 14th recital of the preamble to Regulation No 3330/74. That recital is such as to supplement the statement of reasons contained in the third recital of the preamble to Regulation No 3331/74.

With regard to *third* question the judgments of the Court make clear that different treatment is justified where the situations which must be regulated show certain objective differences. Considering that principle as it is applied to the Italian sugar industry in comparison with the sugar industry in the other Member States, it must be concluded that the doubt expressed in the question raised is entirely unfounded. In fact the Italian sugar industry received at the time of the establishment of the common organization of the market a special body of rules in the Community framework by way of measures appropriate to overcoming duly-established climatic and structural difficulties. Such differences in treatment are not an end in themselves but constitute a means intended to bring the Italian sugar industry up to the Community level.

The *fourth* question requires, according to the Italian Government, a negative reply.

First of all it is clear from the case-law of the Court (judgment of 14 May 1974 in Case 4/73 *Nold* v *Commission* [1974] ECR 491) that fundamental rights must be viewed in the light of the social function of the property and activities protected so that rights of this nature may be subject to certain limitations in accordance with the public interest and the objectives of general interest pursued by the Community.

With further reference to the observations summarized above the Italian Government considers that power to modify the quotas is fully compatible with the fundamental right of free enterprise claimed by the sugar undertakings.

Finally, the system of production quotas is essentially intended to protect the Community sugar industry (cf. 11th recital of the preamble to Regulation No 3330/74). In those circumstances it appears very much open to debate whether a reduction in the protection granted by the allocation of quotas to each undertaking may be considered as a form of infringement of the right of free enterprise. Furthermore, even with regard to production in excess of the basic quota, that right is in no way rendered nugatory; the only effect is that the marketing of that excess production is subject to different conditions.

The *fifth* question is concerned to establish whether there is a Community definition of the words "restructuring plans" employed in Article 2 (2) of Regulation No 3331/74.

Restructuring plans are a technical concept applicable on the same terms in both Community law and in the domestic law of the Member States. The above-mentioned plans are characterized by the fact that they must take account of both the agricultural and the industrial aspects of structural problems.

With regard to the *sixth* question the Italian Government considers that there is no doubt concerning the provision in question, in that the only limit to the power conferred on Italy is of a quantitative nature (" .... in so far as is necessary ...."). Furthermore, the purpose of Article 2 (2) of Regulation No 3331/74 is to permit restructuring which, by the application of modern production methods, will assist in lowering the costs of producing sugar. Any limitation consisting in the inviolability of quotas which have been entirely used up in the course of preceding marketing years it thus contrary to that purpose.

With regard to the *last* question it must be observed that the Community provision certainly requires national implementing legislation for the practical exercise of the power conferred by it.

The question whether the said implementing provisions must be enacted by law or by administrative measures is a point of internal law and does not concern Community law.

(c) Observations of Zuccherifici Meridionali

Zuccherifici Meridionali observes that the questions concerning validity serve no purpose. With regard to the *first* question it maintains that Article 43 is not applicable because it refers only to proposals which the Commission had to put forward within a period of two years following the entry into force of the Treaty

If it is considered that Article 43 is applicable it follows from Article 149 of the Treaty that amendments made by the Council to proposals from the Commission — of whatever scope — need not be "returned" to the Assembly for its consideration.

In fact the draft regulation submitted by the Commission appears to be fully in accordance with the rules which were subsequently laid down by the Council.

The doubts expressed by the national court in the *second* question concerning the statement of the reasons for Regulation No 3331/74 are not well founded.

Zuccherifici Meridionali refers to the third recital of the preamble to Regulation No 3331/74 and to the 14th recital of the preamble to Regulation No 3330/74. In view of those recitals it

cannot be held that the Council failed to state the factors characterizing the situation in Italy.

It is in the context of the further function of the implementation at national level of the regulatory provisions with which the national authorities are charged that the obligation to state reasons must be complied with in full. This is also the context of the clarifications requested in the *fifth* and *sixth* questions submitted.

With regard to the *third* question Zuccherifici Meridionali observes that the very distinctive nature of the situation in Italy itself justifies the different legislative treatment applied to Italy.

In broaching the *fourth* question Zuccherifici Meridionali maintains that the common organization of the market does not place a restriction on private economic initiative but on the contrary protects it.

Furthermore, the production quotas do not constitute a rigid and inviolable limit to the free exercise of economic activity and their scope is limited exclusively to relations between the Member States.

The *seventh* and last question falls outside the purview of the Community legal order. Consequently, it must be considered inadmissible.

(d) Observations of the Council

With regard to the *first* question the Council observes that Regulation No 3331/74 is a "second generation" regulation, that is to say a measure which does not require consultations with the Parliament. The basis for its adoption was not Article 43 of the Treaty but Article 24 (3) of Regulation No 3330/74. The latter article does not refer to consultations with the Parliament.

In reply to a question put by the Court of Justice the Council emphasizes that all the provisions of Regulation No 3331/74 are undoubtedly in the nature of implementing legislation. The provision in Article 2 (2) of the said regulation falls entirely within the scope of Article 24 (2) of Regulation No 3330/74 which is concerned to reduce the quotas of undertakings which did not exhaust their quotas between 1968 and 1975.

Likewise, the complaint concerning the circumstance that the Parliament was not consulted is in fact unfounded. The Council considered the proposal of the Commission on three occasions, on 21 and 22 October 1974, on 18 and 20 November and on 10 December, before adopting it on 19 December. On 21 and 22 October it discussed in particular the provision which was to become Article 2 of the future Regulation No 3331/74 and gave special consideration to the Italian problem.

As for Parliament, it debated the proposal of the Commission on two occasions, on 14 November and 9 December.

In the preamble to the Resolution of 9 December (Official Journal 1974, C 155, p. 45) it is stated that the Parliament "feels it necessary, however, in view of the grave anxieties at present being felt in agriculture, *to consider the new Council decisions which have come to its attention, within the framework of the Commission's proposals* . . . ".

The "decisions" referred to above by the Parliament consist precisely in the guidelines set out on 21 and 22 October by the Council and in particular those to the effect that the Italian Republic might adjust the basic quotas of its sugar undertakings provided that it did so within the framework of a restructuring of its sugar industry.

With regard to the *second* question the Council claims that the general nature of a law prevents the legislature from providing all the details for the enactment of the law in its statement of reasons and furthermore that it is for the particular implementing decision to set out in detail the reasons for such a decision.

The provision in question is situated within a three-fold framework. First, it was necessary to maintain the system of quotas. Secondly, it was necessary to provide for an adjustment to the quotas in order to keep the system from becoming too rigid and excluding all freedom of competition, which is the reason for the adoption of Article 2 (1) of Regulation No 3331/74. Thirdly, it appeared necessary to lay down more flexible rules for Italy. The Italian sugar industry has derived considerable benefit from the system of quotas. Nevertheless it does not appear to be economically justified to conserve the *status quo* in that industry as that could ensure an entrenched advantage for existing sugar undertakings, of which certain are run down, and would perpetuate beet growing in unsuitable regions at the expense of regions more suited to sugar production. It is thus necessary to restructure the industry by modernizing undertakings and by removing beet growing to regions better suited to that purpose. Accordingly, a reduction in quotas in excess of the usual reduction (5%) had to be made available for Italy, which is the reason for the provision in Article 2 (2) of Regulation No 3331/74.

This three-fold framework of provisions is found successively in the statements of reasons for Regulations Nos 3330/74 and 3331/74 (11th recital of the preamble to Regulation No 3330/74 and third recital of that to Regulation No 3331/74).

The Commission also refers to the 14th recital of the preamble to Regulation No 3330/74 which must be read in conjunction with the third recital of the preamble to Regulation No 3331/74. The settled case-law of the Court of Justice confirms that the reasons for a provision which forms part of a group of provisions must be appraised in the context of that group.

With regard to the *third* question the Council considers that the power to reduce quotas at the expense only of certain sugar undertakings situated in Italy is justified on *objective* grounds, that is to say the objective need to restructure the sugar industry in Italy. Whilst the other Member States entirely exhausted their basic quotas in the course of the years 1968 to 1975 the Italian sugar undertakings used, on average, less than 90% of theirs. That is the reason for the provision in question. It was nevertheless impossible to reduce the quotas of Italian undertakings which did not attain their quotas solely on the basis of their performance. The Council preferred to relate such reduction to the restructuring of the Italian sugar-beet sector and the Italian sugar industry, on the view that this was the sole means of reaching an objective solution.

Finally, the reduction in the quotas is subject to the supervision of the Community which precludes any risk of arbitrariness in the taking of decisions. In the first place, the power enjoyed by the Italian Republic is limited in the present case by the condition that the measures

must be strictly necessary for the implementation of restructuring plans. That power is also limited as to time. After 1 July 1978 it was no longer possible to have prior consultation with the Commission and consequently further reductions were impossible.

Furthermore, the Commission may submit observations or suggest modifications.

In addition the Commission may, pursuant to Article 37 of Regulation No 3330/74, bring up the question in the Management Committee.

Finally, although Article 8 of Regulation No 3331/74, which lays down a more detailed procedure for the supervision of reductions which the Member States may effect pursuant to Article 2 (1) of that regulation, does not expressly apply to the reductions to be made pursuant to Article 2 (2), nevertheless the general procedure for supervision of the implementation of secondary legislation by the Member States, as laid down by the Treaty (Article 169), is always applicable.

The *fourth* question is intended to establish whether, by providing that an *unlimited* reduction in the quota of sugar undertakings may be effected, the provision in question is in breach of a fundamental right.

According to the Council such an unlimited discretion does not in fact exist (cf. reply to the third question).

Furthermore, a reduction in the basic quota of an undertaking does not mean that it is prohibited from producing the quantity of sugar corresponding to such reduction. On the contrary, the result of such a reduction is to transfer that part of the basic quota to Quota B, which all sugar undertakings may obtain under Article 25 of Regulation No 3330/74.

With regard to the *fifth* and *sixth* questions the Council remarks that any reduction in the basic quota pursuant to Article 2 (2) of Regulation No 3331/74 must always have regard for the general rules of the Treaty, in particular the relevant provisions concerning agriculture.

With regard to reply to the *seventh* question it is necessary to distinguish between two legal concepts, namely that of direct applicability and that of direct effect which may, but need not, occur simultaneously (Case 51/76, [1977] ECR 127, paragraph 21).

It is thus perfectly permissible that a regulation should contain in addition to provisions having direct effect, provisions which still require implementing measures before they can have such effect.

(e) Observations of the Commission

With regard to the *first* question the Commission observes that Regulation No 3331/74 has as its legal basis Article 24 (3) of Regulation No 3330/74. Consequently, consultation with the Assembly is no longer required.

With regard to the *second* question the Commission maintains that the statement of reasons for Article 2 (2) of Regulation No 3331/74 is embodied in the second sentence of the third recital of the preamble to that regulation. That statement must be interpreted within the framework of the third recital, taken as a whole.

In broaching the *third* question the Commission claims that the principle of non-discrimination is applied in the

agricultural sector within a particular context. This is true, according to the Commission, of the comparability of the situations in question and of the requirements of agricultural policy contained in Article 39 of the Treaty, which may justify arrangements which appear discriminatory.

Article 2 (2) of Regulation No 3331/74 is intended to permit Italy to restructure its beet-growing sector and sugar industry by moving them from the north to the south of the country. Such operations form part of a policy of regional development and industrial redeployment even at national level. That policy renders it lawful for Italy to modify the basic quotas of the sugar undertakings to a greater degree than in the other Member States.

According to the Commission the *fourth* question, as it has been worded, presupposes that there was an actual vested right to produce, throughout the entire period when the quota arrangements applied, that is to say from the 1975/76 to the 1979/80 sugar marketing years inclusive, an unchangeable quantity of sugar covered by the absolute guarantee of the intervention price. On the contrary, the Community legislature did not intend to fetter itself so rigidly for five years.

It thus follows from Article 2 (2) of Regulation No 3331/74 that in the case of Italy it was necessary to adapt the allocation of quotas to the requirements of economic policy found to be justified.

With regard to the *fifth* and *sixth* questions the Commission states first of all that the Member States must observe the interests of beet or cane growers (cf. fifth recital of the preamble to Regulation No 3331/74) in settling all the various cases of alteration envisaged by Regulation No 3331/74.

A second criterion, based on Community law, consists in the observance of the principle of proportionality which is embodied in the first sentence of the provision in question ("... in so far as is necessary for the implementation [of restructuring plans]").

In its reply to a question put by the Court of Justice the Commission states that the provisions contained in Articles 7 and 8 of Regulation No 3331/74 for the implementation of Article 2 (1) of the said regulation do not refer by analogy to the application of the other paragraphs of the latter article.

With regard to Article 2 of Regulation No 3331/74 the Commission discerns substantive differences between the arrangements provided for in paragraph (1) and those provided for in paragraphs (2) and (3).[1]

In the opinion of the Commission the exception provided for in paragraph (1) is applicable in the Community as a whole. It conforms to specific and stringent criteria and it is implemented by a procedure which permits the intervention of the Commission on which binding powers are conferred, as is shown by Article 8 (3) of the regulation in question.

The Commission considers that the exceptions provided for in paragraphs (2) and (3), on the other hand, have a geographical scope which is limited to two particular regions of the Community.

The Council wished to take account of the particular features of those two regions and it expressly authorized the Member States to adopt restructuring

1 — Paragraph (3) added by Regulation No 298/78, abovementioned (Official Journal 1978, L 45).

plans to which the procedure prescribed in Article 8 of Regulation No 3331/74 did not apply.

The Commission concludes from this that Regulation No 3331/74 contains specific arrangements both for the case provided for in Article 2 (1) and for the cases provided for in Article 2 (2) and (3). It thus considers that it is impossible to proceed by analogy in the present case.

With regard to the *seventh* question the Commission observes that Article 2 (2) of Regulation No 3331/74 makes express provision for national implementing measures. The direct applicability of that provision cannot consequently be thwarted by a national measure whose sole effect is to give practical form to that provision.

III — Oral procedure

At the hearing on 6 June 1979 Eridania, represented by Antonio Sorrentino and Mauro De Andre, Advocates, Società Italiana, represented by Antonio and Frederico Sorrentino, Advocates, the Government of the Italian Republic, represented by Ivo Maria Braguglia, Avvocato dello Stato, Zuccherifici Meridionali, represented by Giuseppe Guarino, Advocate, the Council of the European Communities, represented by Daniel Vignes, assisted by Miss Cristina Giorgi, and the Commission of the European Communities, represented by Cesare Maestripieri, presented oral argument.

The Advocate General delivered his opinion at the sitting on 28 June 1979.

Decision

1 By an order of 3 July 1978 which was received at the Court of Justice on 16 October 1978, the Tribunale Amministrativo Regionale of Latium referred a number of questions to the Court under Article 177 of the EEC Treaty concerning the validity and interpretation of Regulation No 3331/74 of the Council of 19 December 1974 on the allocation and alteration of the basic quotas for sugar (Official Journal 1974, L 359, p. 18).

2 These questions were raised in the course of proceedings instituted by the undertaking "Eridania Zuccherifici Nazionali" for the annulment of a decree issued jointly by the Italian Minister of Agriculture and Forestry and the Minister for Industry, Trade and Craft Trades altering the basic sugar quotas pursuant to Article 2 (2) of the said Regulation No 3331/74.

3 In support of its action Eridania argued that the contested decree was unlawful for various reasons, among which it cited the unlawfulness of Article 2 (2) of Regulation No 3331/74, which constitutes the basis in law of the contested decree, and the misapplication of that provision by the Italian ministers.

4 In order to resolve the problems of Community law which were thus raised the Tribunale Amministrativo submitted seven questions to the Court. Four of those questions concern the validity of Regulation No 3331/74, and in particular Article 2 (2) therof, whilst the others relate to the interpretation of that provision.

Validity

Question 1 (Consultation with the European Parliament)

5 In the first question the Tribunale asks whether the prior consultation with the Assembly prescribed in Article 43 (2) of the Treaty was improperly omitted in the procedure followed for the adoption of Article 2 (2) of Regulation No 3331/74.

6 The allocation to undertakings of basic quotas for the 1975/76 to 1979/80 sugar marketing years forms the subject-matter of the provisions of Article 24 of Regulation (EEC) No 3330/74 of the Council of 19 December 1974, on the common organization of the market in sugar (Official Journal 1974, L 359, p. 1). Those provisions require the Member States to effect that allocation within the framework of a basic quantity fixed for each Member State and in accordance with certain criteria which are based in particular on the "reference output" of the undertakings in question, that is to say, their average annual sugar output for the 1968/69 to 1972/73 marketing years multiplied by a certain coefficient; however, the provisions in question specify certain cases in which different criteria may be applied. Furthermore, Article 24 (3) provides that "That Council, acting by a qualified majority on a proposal from the Commission, shall adopt the general rules for the application of this article and any derogations therefrom". It should be noted that in the course of drawing up basic Regulation No 3330/74 the views of the Assembly were heard on the draft of those provisions.

7 Regulation No 3331/74 was adopted in pursuance of Article 24 (3) of the basic regulation and in accordance with the procedure prescribed therein; that procedure differs from the procedure prescribed in Article 43 of the Treaty. However, as the Court has already held in its judgment of 17 December 1970 (Case 25/70 *Köster*, [1970] ECR 1161) it cannot be a requirement that all the details of the regulations concerning the common agricultural policy be drawn up by the Council according to the procedure laid down in Article 43; it is sufficient for the purposes of that provision that the basic elements of the matter to be dealt with have been adopted in accordance with that procedure; on the other hand, the provisions implementing basic regulations may be adopted by the Council according to a procedure different from that under Article 43.

8 Consequently it was lawful for the Council to enact an implementing regulation in accordance with the procedure referred to in Article 24 (3) of Regulation No 3330/74 which constitutes the basic regulation for the market in sugar. That outcome is not affected by the sole fact that Article 24 (3) empowers the Council not only to enact implementing measures but also to determine any "derogations" from the provisions of the basic regulation, which word must be understood in this context as necessarily referring to derogations which relate to the general system for the allocation of quotas provided for by the basic regulation and which do not jeopardize the essential elements embodied in that regulation.

9 The first question submitted by the national court thus amounts to asking whether in the present case the provisions of Regulation No 3331/74 and in particular Article 2 (2) thereof which were enacted on the basis of the above-mentioned Article 24 (3) do not go beyond the limits of the implementation of the principles of the basic regulation.

10 The doubts set out in this connexion by the Tribunale Amministrativo stem in particular from the derogations contained in Article 2 of Regulation No 3331/74. According to Article 2 (1) Member States may reduce the basic quotas fixed in accordance with Article 24 of Regulation No 3330/74 by an amount not exceeding 5%; paragraph (2) provides that the Italian Republic may "alter" the same quotas "in so far as is necessary for the implementation of restructuring plans for the beet and sugar sectors".

11 Although the power of the Italian Republic to alter those quotas pursuant to Article 2 (2) is not subject to specific quantitative limits its exercise is nevertheless subject to the existence of restructuring plans — which, as the last sentence of the provision states, must be submitted to the Commission for its opinion before 1 July 1978 — and such exercise may not exceed what is necessary for the implementation of such plans. The exercise of that power is thus subject to clearly specified limitations.

12 It should be remarked in this connexion that the power in question corresponds to a concern which was already expressed in the basic regulation. The latter makes provision for the temporary granting by Italy of adaptation aid to beet and cane producers and the statement of reasons for such exceptional arrangements refers to the particular situation of Italy where the production of such products is adversely affected owing to climatic reasons and, more particularly as regards beet production, by difficulties arising from the application of modern production techniques.

13 The power referred to in Article 2 (2) of Regulation No 3331/74 thus comes within the scope of an objective laid down by the basic regulation; it is limited by the requirements entailed by that objective which were to be set out in detail by the Italian Republic in the restructuring plans submitted to the Commission. In those circumstances the power in question does not go beyond the limits of the implementation of the principles of the basic regulation.

Question 2 (Lack of a statement of reasons)

14 In its second question the Tribunale Amministrativo asks the Court whether, in adopting Regulation No 3331/74, the Council fulfilled the duty contained in Article 190 of the Treaty requiring reasons to be stated, and indeed sufficiently stated.

15 In the statement of reasons for Regulation No 3331/74 the Council merely referred to the possibility given to the Italian Republic of altering the basic quotas on the basis of restructuring plans "in view of its special situation in this sector". The question of the respect in which that situation is special is

not answered in the statement of reasons set out in that regulation but in that contained in the basic regulation to which reference has already been made.

16 In view of the close connexion which exists between the basic regulation and the regulation adopted in implementation thereof such a means of stating the reasons for the detailed rules specifically pertaining to the common organization of the market in sugar in Italy must be permitted. It makes sufficiently clear to the competent authorities and to the relevant undertakings the concern which prompted the Council to enact those detailed rules and the objectives which must be pursued in the restructuring plans.

Question 3 (Discrimination)

17 The third question is based on the view that, apart from the possibility of a reduction of 5% in the basic quotas prescribed for the undertakings of all the Member States, only Italian producers are liable to be affected under Article 2 (2) of Regulation No 3331/74 by an additional limitation of their activity. The Tribunale Amministrativo asks whether the fact that the Italian industry alone is exposed to the risk of such a reduction does not constitute an infringement of the prohibition of discrimination between producers within the Community laid down in Article 40 (3) of the Treaty.

18 Discrimination within the meaning of Article 40 of the Treaty cannot occur if inequality in the treatment of undertakings corresponds to an inequality in the situations of such undertakings. It is commonly accepted that the situation in the beet and sugar sectors in Italy differs appreciably from that in the other Member States. The special situation of Italy referred to in the preambles to Regulations Nos 3330/74 and 3331/74 has occasioned special measures intended to improve the structure of the economy in the beet and sugar sectors in Italy as a whole. In certain respects the Italian undertakings enjoy more favourable arrangements than undertakings in the other Member States, for example with regard to the system of aids; in other respects certain Italian undertakings suffer the disadvantages of the special situation of Italy, for example in the case of the reduction in their basic quotas in

favour of an increase in the basic quotas of other undertakings on the basis of the restructuring plans.

19 Such differences in treatment are thus based on objective differences arising from the underlying economic situations; they cannot be considered discriminatory.

Question 4 (Fundamental rights)

20 The fourth question is based on the view that the carrying on of economic activities must be guaranteed because it forms part of the fundamental rights which Community law is also concerned to uphold. That guarantee is said to extend to the right of undertakings to produce the quantities of sugar corresponding to their basic quotas since that right is inherent in the carrying on of economic activity. This is the view which prompted the Tribunale Amministrativo to raise the question whether power to alter the basic quotas in the circumstances set out in Article 2 (2) of Regulation No 3331/74 does not jeopardize the carrying on of economic activity by the undertakings concerned and thereby infringe their fundamental rights.

21 The reply to that question must be given on the basis of an examination of the nature of the basic quotas laid down by the Community rules. The quotas specify the quantities of sugar in respect of which the undertakings enjoy the guarantees as to price and marketing provided for producers in the context of the common organization of the market. They do not restrict the economic activity of the undertakings in question but fix the quantities of production which may be marketed in accordance with the special arrangements established by the common organization of the market in sugar to protect and assist the production of sugar in the Community. It is an essential feature of that organization of the market that it is variable in terms of the economic factors which affect the development of the market and in terms of the general direction of the common agricultural policy.

22 It follows that an undertaking cannot claim a vested right to the maintenance of an advantage which it obtained from the establishment of the common organization of the market and which it enjoyed at a given time. In those circumstances a reduction in such an advantage cannot be considered as constituting an infringement of a fundamental right.

23 With regard to the first four questions the reply must be that consideration of those questions has disclosed no factor of such a kind as to affect the validity of Regulation No 3331/74, and in particular Article 2 (2) thereof.

Interpretation

Question 5 (Restructuring plans)

24 The Tribunale Amministrativo asks in the fifth question whether Regulation No 3331/74 or Community law in general lay down specific criteria for the appraisal of concept of "restructuring plans".

25 It should be noted first of all that the restructuring plans form part of the common organization of the market in sugar and that they are accordingly an element of the common agricultural policy as a whole, the objectives of which are fixed by Article 39 (1) of the Treaty. Article 39 (2) states that in working out the common agricultural policy and the special methods for its application account shall be taken of the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions and the need to effect the appropriate adjustments by degrees. The practice of the Community institutions, with regard for example to the application of Articles 92 and 93 of the Treaty, shows that restructuring plans constitute a usual and adequate method for effecting the above-mentioned adjustments by degrees. Having regard to the widely-accepted extent of the disparities between the various agricultural regions in Italy those considerations must form the background to the examination of the concept of "restructuring plans" which is employed in Regulation No 3331/74.

26 Secondly, it is clear from the provisions as a whole Regulations Nos 3330/74 and 3331/74 concerning the system of quotas that, on the one hand, a restructuring plan has as its objective the adaptation of the sugar and beet sectors in Italy to the requirements of the common organization of the market in such a way that special arrangements for that sector in Italy will no longer be necessary in future and that, on the other, a restructuring plan must be of such a kind as to permit the competent Italian authorities and the

Commission to assess what alterations to the basic quotas of the sugar undertakings are necessary in order to attain that objective.

27 Those factors as a whole show that the concept of "restructuring plans" may refer both to a comprehensive plan for adjusting the sugar market as a whole and to a plan for adjustments whose effects are purely regional even if, in the context of a gradual adjustment of beet production in a certain region, that plan initially concerns a single sugar undertaking alone.

28 The reply to the fifth question must accordingly be that the concept of "restructuring plans" within the meaning of Article 2 (2) of Regulation No 3331/74 is to be defined by its objectives, which are to redress the imbalance between different agricultural regions and to adapt the sugar and beet sectors in Italy to the requirements of the common organization of the market, and also by its effect, which is to allow the competent authorities to undertake a redistribution of the basic quotas between several undertakings.

Question 6 (Discretionary power)

29 In the sixth question the Tribunale Amministrativo asks whether the limits to the power to alter the basic quotas of the undertakings derive exclusively from the necessity to implement the restructuring plans or whether other limits can be discerned.

30 It should be noted first of all that the system of quotas forms an integral part of the common organization of the market in sugar which, according to the basic regulation, is intended to ensure that the necessary guarantees in respect of employment and standards of living are maintained for Community growers of sugar beet and sugar cane. Various provisions of Regulation No 3331/74, such as Article 3 and Article 4 (2), are also prompted by the wish to protect the interest of such producers. The statement of reasons for that regulation refers to the need to prevent alterations in the basic quotas from jeopardizing those interests.

31 The authorities which have power to alter the basic quotas must, in order to observe the general principles of Community law which are binding on all authorities entrusted with the implementation of Community provisions, renconcile protection of the interests of beet and cane producers with other lawful interests which may be affected. In fact Article 39 of the Treaty, which fixes the objectives of the common agricultural policy, expresses the desire not only to ensure a fair standard of living for the agricultural community but also to increase agricultural productivity, stabilize markets, assure the availability of supplies and ensure that supplies reach consumers at reasonable prices.

32 The reply to the sixth question must accordingly be that the power conferred by Article 2 (2) of Regulation No 3331/74 to alter the basic quotas is limited not only by the requirements of restructuring plans but also by the objectives of the common organization of the market in sugar, in particular by the aim of protecting the interests of beet and cane producers, and by the general principles of Community law.

Question 7 (Direct applicability)

33 The seventh question raises the problem of whether the direct applicability of Regulation No 3331/74 within the Italian legal order pursuant to Article 189 of the Treaty is compatible with the provisions enacted by the Italian authorities intended to govern the implementation of that regulation.

34 The fact that a regulation is directly applicable does not prevent the provisions of that regulation from empowering a Community institution or a Member State to take implementing measures. In the latter case the detailed rules for the exercise of that power are governed by the public law of the Member State in question; however, the direct applicability of the measure empowering the Member State to take the national measures in question will mean that the national courts may ascertain whether such national measures are in accordance with the content of the Community regulation.

35 The reply to the seventh question must accordingly be that there is no incompatibility between the direct applicability of a Community regulation and the exercise of the power conferred on a Member State to take implementing measures on the basis of that regulation.

Costs

36 The costs incurred by the Council and the Commission and by the Government of the Italian Republic, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Third Chamber of the Tribunale Amministrativo Regionale, Latium, by an order of 3 July 1978, hereby rules:

(1) Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Regulation No 3331/74, and in particular Article 2 (2) thereof.

(2) The concept of "restructuring plans" within the meaning of Article 2 (2) of Regulation No 3331/74 is to be defined by its objectives, which are to redress the imbalance between different agricultural regions and to adapt the sugar and beet sectors in Italy to the requirements of the common organization of the market, and also by its effect, which is to allow the competent authorities to undertake a redistribution of the basic quotas between several undertakings.

(3) The power conferred by Article 2 (2) of Regulation No 3331/74 to alter the basic quotas is limited not only by the requirements of restructuring plans but also by the objectives of the common organization of the market in sugar, in particular by the aim of protecting the interests of beet and cane producers, and by the general principles of Community law.

(4) There is no incompatibility between the direct applicability of a Community regulation and the exercise of the power conferred on a Member State to take implementing measures on the basis of that regulation.

Kutscher Mertens de Wilmars Mackenzie Stuart

Pescatore Sørensen O'Keeffe Koopmans

Delivered in open court in Luxembourg on 27 September 1979.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President of the First Chamber,
acting as President

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 28 JUNE 1979

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