

JUDGMENT OF THE COURT
11 JULY 1968

**Zuckerfabrik Watenstedt GmbH
v Council of the European [Union]**

Case 6/68

Summary

Measures adopted by an institution - Regulation - Concept ([Article 288 TFEU])

In Case 6/68

ZUCKERFABRIK WATENSTEDT GMBH, having its registered office at Watenstedt über Schöningen, Kreis Helmstedt, represented by its managers Rudolf Modrow and Alfred Steinmeier, assisted by Konrad Redeker, Advocate of the Bonn Bar, with an address for service in Luxembourg at the Chambers of Georges Reuter, avocat-avoue, 7 avenue de l'Arsenal,

applicant,

COUNCIL OF THE EUROPEAN [UNION], represented by its Legal Adviser, Hans Jurgen Lambers, acting as Agent, with an address for service in Luxembourg at the Chambers of Emile Reuter, Centre Europeen, Luxembourg-Kirchberg,

defendant,

Application relating at the present stage of the procedure to the *admissibility* of the application for the annulment of paragraph (3) of Article 9 of Regulation No 1009/67/EEC of the Council of 18 December 1967 on the common organization of the market in sugar,

which provides that the intervention system prescribed by paragraphs (1) and (2) of the said Article 9 shall only apply to raw beet sugar until 31 December 1969;

THE COURT

composed of: R. Lecourt, President, A. M. Donner, President of Chamber, A. Trabucchi, J. Mertens de Wilmars (Rapporteur) and P. Pescatore, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Rutte

gives the following

JUDGMENT

Grounds of judgment

The application seeks the annulment of Article 9(3) of Regulation No 1009/67 of the Council of 18 December 1967 on the common organization of the market in sugar. By virtue of the contested provision the obligation, laid down by Article 9(1), on the part of the intervention agencies designated by the Member States to buy in, subject to certain conditions, at the intervention price the quantities of raw or white beet or cane sugar offered to them, terminates on 31 December 1969.

The defendant has raised an objection of inadmissibility under Article 91 of the Rules of Procedure, arguing that there is at issue no decision which is of direct and individual concern to the applicant.

In order to determine whether the application is admissible, it is necessary to examine whether the contested measure is a regulation or a decision within the meaning of [Articles 263 and 288 TFEU]. By virtue of the second paragraph of [Article 288 TFEU] the criterion for distinguishing between a regulation and a decision is whether the

measure at issue is of 'general application' or not. The nature of the contested provision must therefore be studied and in particular the legal effects which it is intended to or does actually produce.

Having observed that this provision is addressed to various classes of persons, namely, the intervention agencies, the other buyers and the sellers, including those producers who manufacture exclusively raw beet sugar, the applicant says that in the present case, in order to decide whether the measure at issue is in the nature of a regulation or an individual decision, it is necessary to examine specifically what significance the measure has for the applicant or for the class of persons to which it belongs. According to the applicant the effects of the contested measure are of direct and individual concern to 'a specific class of persons: the producers of raw beet sugar' because the contested measure produces for them specific effects which are different from and more burdensome than those which it produces on the other persons to which it applies.

The common organization of the market in sugar, established by Regulation No 1009/67, is essentially governed by means of price. In order to ensure that the necessary guarantees in respect of employment and standards of living are maintained for [Union] growers of sugar beet and sugar cane this regulation makes provision for measures to stabilize the sugar market by providing for the fixing of a target price and an intervention price for white sugar, as well as derived intervention prices which take account both of differences between regional prices and of the stage of processing of the products. The obligation on the part of the intervention agencies to buy in the quantities offered to them is an essential condition for maintaining a level of prices corresponding to the intervention prices. Thus, by requiring these agencies to buy in raw sugar beet until 31 December 1969, Article 9(3) of Regulation No 1009/67 in fact stipulates that measures relating to the common organization of the market in sugar shall only apply to raw beet sugar until the said date.

This provision therefore regulates the prices of a product and, as a result, the rights and duties of buyers and sellers, including producers. Such a measure is of general application within the meaning of [Article 288 TFEU], for it is applicable to objectively determined situations and involves legal consequences for categories of persons viewed in a general and abstract manner. It affects the applicant solely by virtue of its

capacity as a seller of raw beet sugar, and not by reason of any more narrowly defined characteristic. Furthermore, a provision which, like Article 9(3), abrogates a provision of general application or places a time-limit on its applicability, partakes of the general nature of the latter provision.

Moreover, a measure does not lose its character as a regulation simply because it may be possible to ascertain with a greater or lesser degree of accuracy the number or even the identity of the persons to which it applies at any given time as long as there is no doubt that the measure is applicable as the result of an objective situation of law or of fact which it specifies and which is in harmony with its ultimate objective. Furthermore, the fact that a legal provision may have different practical effects on the different persons to whom it applies in no way contradicts its nature as a regulation provided that the situation to which it refers is objectively determined.

The defendant has not contravened these requirements in not regulating the system of prices for one product in the same way as for other products. If one were to refuse to recognize a measure regulating prices as being in the nature of a regulation simply because it concerns a particular product and affects the producers thereof by reason of circumstances in which they are differentiated from all other persons, the concept of a decision would thereby be expanded to such an extent as to imperil the system of the Treaty which only allows individuals to bring applications for annulment against individual decisions addressed to them or against measures which affect them in a similar manner.

The application must therefore be dismissed as inadmissible.

Costs

Under Article 69(2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs. In the present case, as the applicant has failed in its action it must bear the costs.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge- Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to [Articles 263 and 288 TFEU];
Having regard to the Protocol on the Statute of the Court of Justice of the [Union];
Having regard to the Rules of Procedure of the Court of Justice of the European [Union];

THE COURT

hereby:

1. Dismisses the application as inadmissible;
2. Orders the applicant to pay the costs.

Lecourt

Donner

Trabucchi

Mertens de Wilmars

Pescatore

Delivered in open court in Luxembourg on 11 July 1968.

A. Van Routte
Registrar

R. Lecourt
President