

Pleas in law and main arguments

The applicant seeks a declaration of invalidity in respect of Article 2 of Regulation No 1686/2005, which sets the production levies and the coefficient for the additional levy in the sugar sector for the 2004/05 marketing year with a view to covering the outstanding balance of the overall loss, in accordance with Article 16 of Council Regulation (EC) No 1260/2001⁽¹⁾. The disputed article of the regulation sets out different coefficients for the additional levy for, on the one hand, the States constituting the Community prior to 1 May 2004 and, on the other, the 'new' Member States.

In support of its action, the applicant sets out the following heads of complaint:

- lack of competence on the part of the European Commission and breach of Article 16 of Council Regulation (EC) No 1260/2001, which, in the view of the applicant, empowers the European Commission to establish only one coefficient in a set amount for the entire Community, a fact which, according to the applicant, is confirmed by the various unequivocal and, in this regard, concordant language versions of the provisions contained in the regulation. The applicant further submits that the principles of the common organisation of the markets within the sugar sector not only cannot amount to justification for a departure from the textual interpretation of the provisions of Regulation (EC) No 1260/2001 but also rule out any such departure;
- infringement of the principle of immediate and full acceptance of the *acquis communautaire* by the new Member States; according to the applicant, the differential coefficient for the additional levy is in fact a transitional measure which has no basis in the Act of Accession or in the measures adopted pursuant thereto. The applicant refers in this regard to Article 2 of the Act of Accession, which is the basis for the adoption by the Republic of Poland of the full rights and obligations flowing from membership, and which, in the view of the applicant, is also linked to the assumption of entitlement to benefit from overpayments and the obligation to make good losses on the market in sugar which have arisen over the preceding marketing years;
- infringement of the principle of non-discrimination; the applicant criticises the Commission on the ground that the sole criterion for the differentiation in the coefficient in the regulation under challenge is the date on which Member States acceded to the European Union. In the applicant's view, the consequences of accession were exhaustively regulated in the Act of Accession and the measures adopted on the basis of that Act, and the date on which the European Union was enlarged cannot be an objective criterion capable of providing justification for the differentiation thus introduced;
- infringement of the principle of solidarity; according to the applicant, the differentiation in the coefficient vis-à-vis the other Member States amounts to an arbitrary and disproportionate distribution of the costs of financing the sugar market and one which highlights a dearth of solidarity;
- inadequate grounds given for the contested measure by reason of the European Commission's failure to indicate either the circumstances which could justify the differentiation in the coefficient or the objectives which such a differentiation ought to serve;
- breach of an essential procedural requirement, inasmuch as Regulation (EC) No 1686/2005 was adopted in a manner contrary to the requirements of Article 3 of the Rules of Procedure of the Management Committee for Sugar and Article 3 of Council Regulation (EEC) No 1 determining the languages to be used by the European Economic Community⁽²⁾ by reason of the fact that the European Commission, according to the applicant's contentions, did not submit during the 'comitological' procedure, a Polish-language version of the draft version of the contested measure. The applicant submits that this infringement is particularly flagrant in nature inasmuch as it relates to the draft version of a legal measure and reflects a consistent practice of the European Commission within the framework of the Management Committee for Sugar.

⁽¹⁾ Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178 of 30.06.2001, p. 1).

⁽²⁾ OJ, English Special Edition 1952-1958, p. 59, as amended.

Action brought on 9 January 2006 — Denmark v Commission

(Case T-5/06)

(2006/C 74/53)

Language of the case: Danish

Parties

Applicant: Kingdom of Denmark (Copenhagen, Denmark)
(represented by: Jørgen Molde, Agent)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

- annul Commission Decision 2005/717/EC of 13 October 2005 amending for the purposes of adapting to the technical progress the Annex to Directive 2002/95/EC of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment⁽¹⁾, so far as points 1 and 2 of the Annex relating to DecaBDE in polymeric applications are concerned;
- order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

By the contested decision the Commission exempted the material DecaBDE in polymeric applications from the prohibition contained in Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment ⁽¹⁾ ('the basic directive').

The Danish Government submits that the contested decision is defective in law inasmuch as DecaBDE in polymeric applications is exempted from the prohibition in the basic directive, contrary to the conditions laid down therein, on the grounds that

- such an exemption is not necessary in the light of scientific and technical progress;
- the Commission did not exempt a specific application of the material from the prohibition but in practice introduced an across-the-board exemption for all polymeric applications;
- the Commission failed to record that no possibilities for substituting or eliminating DecaBDE in polymeric applications have been found, which the Danish Government submits it ought to have done; and
- the Commission did not carry out an assessment to determine whether the negative burden in terms of environment, health and/or consumer protection which would result from substitution would be greater than the potential advantages in terms of environment, health and/or consumer protection.

The Danish Government also submits that the Commission attached weight to an unlawful criterion, namely a general risk assessment of the exempted material DecaBDE, and that the decision is vitiated by a fundamental formal defect inasmuch as the Commission failed to provide adequate reasons as to why it took the view that the conditions for exempting DecaBDE in polymeric applications from the prohibition in the basic directive had been satisfied.

⁽¹⁾ OJ 2005 L 271, p. 48.

⁽²⁾ OJ 2003 L 37, p. 19.

Action brought on 13 January 2006 — Mopro-Nord GmbH v Commission

(Case T-6/06)

(2006/C 74/54)

Language of the case: German

Parties

Applicant: Mopro-Nord GmbH (Altentreptow, Germany) (represented by: L. Harings and C.H. Schmidt)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

- annul paragraphs 25 to 27 of the defendant's decision on State aid No N 363/2004 of 6 September 2005 (OJ 2005 C 262, p. 5) in so far as they are based on assertions made by the German authorities that expenditure incurred before the Commission approved this individually notifiable aid, relating to the investment premium (investment subsidy), is not eligible for aid;
- in the alternative, annul the defendant's decision on State aid No N 363/2004 of 6 September 2005 (OJ 2005 C 262, p. 5) in its entirety;
- order the defendant to pay the costs.

Pleas in law and main arguments

The applicant contests Commission Decision C(2005) 3310 final of 6 September 2005 relating to State aid No N 363/2005 for the construction of a whey refining plant. The beneficiary of that aid is Mopro-Nord GmbH in Mecklenburg-Vorpommern. In the contested decision, the Commission informed the Federal Republic of Germany that the aid notified by it is EC-compatible. The applicant contests the decision in particular in so far as it is based on assertions made by the German authorities that expenditure incurred before the Commission approved this individually notifiable aid, relating to the investment premium (investment subsidy), is not eligible for aid.

In support of its claim the applicant submits that the defendant's determination of the facts is erroneous. It also complains of a breach of the obligation to give reasons under Article 253 EC and infringement of the principles of legal security and certainty. Moreover, by the contested decision, the Commission has infringed Article 4(3) of Regulation (EC) No 659/1999 ⁽¹⁾ and the principle of sound administration. The contested decision is also in breach of Article 87(3)(c) EC in conjunction with the Community framework for State aid in the agricultural sector ⁽²⁾. Finally, the applicant submits that the Commission's decision infringes the principle of protection of legitimate expectations and the prohibition of discrimination.

⁽¹⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1).

⁽²⁾ OJ 2000 C 28, p. 2, and OJ 2000 C 232, p. 19.

Action brought on 23 January 2006 — Giant (China) v Council

(Case T-17/06)

(2006/C 74/55)

Language of the case: English

Parties

Applicant: Giant (China) Co., Ltd (Kunshan City, China) [represented by: P. De Baere, lawyer]