

EUROPEAN PARLIAMENT

Working Documents

1980 - 1981

13 January 1981

DOCUMENT 1-792/80

REPORT

drawn up on behalf of the Committee on Agriculture

on the proposals from the Commission of the
European Communities to the Council (Doc. 1-700/80)

for

- I. / a regulation amending Regulation (EEC) No. 1111/77
laying down common provisions for isoglucose
- II. a regulation amending Regulation (EEC) No. 1592/80
on the application of the system of production quotas
in the sugar and isoglucose sectors during the period
1 July 1980 to 30 June 1981

Rapporteur: Mr Ch. DELATTE

By letter of 9 December 1980 the Council of the European Communities consulted the European Parliament, pursuant to Article 43 of the EEC Treaty, on two proposals from the Commission of the European Communities to the Council for

- a regulation amending Regulation (EEC) No. 1111/77 laying down common provisions for isoglucose
- a regulation amending Regulation (EEC) No. 1592/80 on the application of the system of production quotas in the sugar and isoglucose sectors during the period 1 July 1980 to 30 June 1981

and requested urgent procedure pursuant to Rule 14 of the Rules of Procedure.

At its sitting of 17 December 1980 the European Parliament rejected the request for urgent procedure.

The President of the European Parliament referred these proposals to the Committee on Agriculture.

At its meeting of 12 January 1981 the Committee on Agriculture appointed Mr Delatte rapporteur.

At the same meeting the proposals for regulations were approved by 17 votes to 5 with 8 abstentions.

Present: Sir Henry Plumb, chairman; Mr Fröh, vice-chairman; Mr Delatte, rapporteur; Miss Barbarella, Mr Blaney (deputizing for Mr Skovmand), Mr Bocklet, Miss Brookes (deputizing for Mr Hord), Mrs Castle, Mr Clinton, Mr Colleselli, Mrs Cresson, Mr Curry, Mr Davern, Mr De Keersmaeker (deputizing for Mr d'Ormesson), Mr Diana, Mr Fanton, Mr Gautier, Mr Helms, Mrs Herklotz, Mr Josselin (deputizing for Mr Lynge), Mr Louwes (deputizing for Mr Jürgens), Mr McCartin (deputizing for Mr Dalsass), Mr Maffre-Baugé, Mr Maher, Mr Provan, Mr Sutra, Mr Vergès (deputizing for Mr Pranchère), Mr Vernimmen, Mr Vitale and Mr Woltjer.

The Committee on Agriculture hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposals from the Commission of the European Communities to the Council for:

- a regulation amending Regulation (EEC) No. 1111/77 laying down common provisions for isoglucose,
- a regulation amending Regulation (EEC) No. 1592/80 on the application of the system of production quotas in the sugar and isoglucose sectors during the period 1 July 1980 to 30 June 1981

The European Parliament,

- having regard to the proposals from the Commission of the European Communities to the Council (COM (80) 811 final),
 - having been consulted by the Council pursuant to Article 43 of the Treaty establishing the European Economic Community (Doc. 1-700/80),
 - having regard to the report of the Committee on Agriculture (Doc. 1-792/80),
 - having regard to the judgments of the Court of Justice of 29 October 1980 in the joined cases 138/79 and 139/79, in which, in particular, it annulled Regulation (EEC) No. 1293/79, which the Council had adopted without having received the European Parliament's opinion,
 - noting that the Court of Justice raised no objections to the substance of the above regulation and recognized that it complied with Community law,
 - noting that the regulation was annulled because it infringed essential procedural requirements,
1. Approves the Commission's proposals, which are designed to fill the legal gap created in the isoglucose sector when Regulation (EEC) No. 1293/79 was annulled;
 2. Emphasizes that the final adoption of these proposals is a matter of urgency;
 3. Declares that it will decide on the substance of the matter when it considers the proposal from the Commission of the European Communities to the Council for a regulation on the common organization of the market in sugar which should enter into force at the latest on 1 July 1981 (Doc. 1-471/80).

EXPLANATORY STATEMENT

1. In its judgments in joined cases 138 and 139/79 of 29 October 1980, the Court of Justice of the European Communities annulled Regulation (EEC) No. 1293/79¹ amending Regulation (EEC) No. 1111/77 laying down common provisions for isoglucose, which the Council had adopted on 25 June 1979, because Parliament had not delivered the opinion required by Article 43 of the EEC Treaty.

I. FACTS OF THE CASE

2. The procedure is based on the following facts:

By judgment of 25 October 1978, the Court of Justice declared Regulation (EEC) No. 1111/77 invalid because of the unequal treatment of manufacturers of sugar and isoglucose. The Commission therefore submitted to the Council a proposal amending this regulation. By letter of 19 March 1979 the Council requested Parliament for its opinion, pursuant to Article 43(2) of the EEC Treaty, and pointed out that the regulation was due to enter into force on 1 July 1979.

The President of Parliament immediately referred the matter to the Committee on Agriculture, which submitted its report to Parliament on 10 May 1979.

At its sitting of 11 May 1979, Parliament rejected the motion for a resolution and referred it back to the committee for further consideration².

On 25 June 1979, the Council adopted Regulation (EEC) No. 1293/79 amending Regulation No. 1111/77, without having received Parliament's opinion.

3. On 31 August and 5 September 1979, two manufacturers of isoglucose (Maizena GmbH and Roquette Frères SA) brought a case seeking to invalidate the Council regulation because of the production quotas it imposed on them.

In its resolution of 14 December 1979 the European Parliament decided, on the basis of the Ferri report³ and pursuant to Article 37 of the Statute of the Court of Justice, to intervene in the proceedings in order to support the application based on the infringement of essential procedural requirements.

Parliament considers a consultation as a procedure involving a series of different stages which is not complete until a resolution has been adopted

¹ OJ No. L 162, 30.6.1979, p.10

² See Debates of the European Parliament, Volume 243, p. 268 and OJ No. C140, 5.6.1979, p.109

³ OJ No. C4, 7.1.1980, p.53

and forwarded. The Council contested the admissibility of this intervention and maintained that Parliament was merely using it in an attempt to arrogate to itself the right to bring proceedings in order to obtain a declaration of invalidity. The Council also felt that Parliament had made no effort to deliver its opinion within a reasonable period of time and could not therefore invoke a failure to respect an essential procedural requirement.

II. ANNULMENT OF REGULATION (EEC) No. 1293/79 IN VIEW OF INFRINGEMENT OF ESSENTIAL PROCEDURAL REQUIREMENTS

4. The Court of Justice accepted the admissibility of the intervention, a right to which Parliament and all the other institutions are entitled under Article 37 of the Court's Statute. Moreover, if an attempt was made to curtail the exercise of this right, the institutional position of the Community body as laid down in Article 4 of the EEC Treaty would be impaired.
5. With regard to the infringement of essential procedural requirements, the Court of Justice found that the consultation stipulated in Article 43(2) of the EEC Treaty and in other Treaty provisions enables Parliament to participate effectively in the Community's legislative process. This right is essential to the institutional balance laid down in the Treaty. In the Court's view this right reflects at Community level - if only on a limited scale - a fundamental democratic principle whereby the peoples participate through an assembly of their representatives in the exercise of sovereign authority. Proper consultation of Parliament is thus an essential procedural requirement and action taken without respecting that requirement is invalid.

In the Court's view, consultation is complete only when Parliament actually delivers its opinion and not merely when the Council requests the opinion.

6. As to the Council's claim that Parliament forfeited its right to be consulted, the Court states that when the Council issued its regulation, it had not exhausted all the possibilities for obtaining a prior opinion. It could have requested either the application of urgent procedure or and extraordinary sitting of Parliament under Article 139 of the EEC Treaty, as pointed out by the Bureau of Parliament on 1 March and 10 May 1979.

The Court of Justice therefore declared Council Regulation (EEC) No. 1293/79 to be void.

III. THE COURT'S COMMENTS ON THE SUBSTANCE

7. Regulation (EEC) No. 1293/79 introduced a system of production quotas for isoglucose which added to the basic 'A' quota a 'B' quota equal to 27.5% of the basic quota, provided that the sum of the 'A' and 'B' quotas was neither less than 65% nor more than 85% of the technical annual production capacity of the undertaking in question.

In addition, 'B' quota isoglucose became subject to a production levy. Undertakings could also produce more isoglucose than the quantity allowed for in the 'A' and 'B' quotas ('C' isoglucose), provided it was sold on foreign markets without the export refund provided for in Article 4 of Regulation (EEC) No. 1111/77.

The new Commission proposal contains the same provisions.

8. At the time, the plaintiffs, viz. the firms Roquette Frères and Maizena GmbH, brought proceedings before the Court of Justice requesting the annulment of Regulation (EEC) No. 1293/79, since they felt that the system it introduced violated the principles of the law of competition, the principle of proportionality and the principle of equality of treatment, and created a discrimination between sugar producers and isoglucose producers and between isoglucose producers themselves.

(A) violation of the principles of the law of competition:

9. The Court stated that the establishment of a system of undistorted competition was not the only objective laid down in Article 3 of the EEC Treaty, which also provides, in particular, for the establishment of a common agricultural policy. The authors of the Treaty, realizing that the simultaneous pursuit of these two objectives could, at certain times and in certain circumstances, be difficult, had provided that the Treaty provisions relating to the rules of competition were applicable to the production of and trade in agricultural products only to the extent determined by the Council having regard to the objectives laid down in Article 39 of the EEC Treaty. The Court concluded that these considerations indicated at one and the same time the primacy of the agricultural policy over the objectives in the Treaty relating to competition and the power of the Council to decide to what extent the rules of competition should apply in the agricultural sector. The Court added that in exercising this power as in implementing the whole of the agricultural policy, the Council retained a large measure of discretion, and that in establishing the regime for isoglucose in the present case the Council had not exceeded this discretionary power.

(B) the breach of the proportionality principle:

10. The Court rejected this complaint. It took the view that the plaintiffs' argument that the Council had obstructed the rational use of their production capacities was not well-founded, since their actual production did not even reach their allotted maximum quotas; that the plaintiffs ought not to expect the Council to take account of the motivations of, and commercial options open to, each individual undertaking when it adopted measures of general interest with a view to avoiding a situation in which the uncontrolled production of isoglucose could put the Community's sugar policy at risk; and, finally, that it was incorrect to maintain that no restrictive steps had been taken against the sugar industry and that, in any case, the scope for action in respect of that industry was limited because the Council had to have regard to the maintenance of a fair standard of living for those engaged in agriculture.

(C) the breach of the principle of equality of treatment

11. The Court rejected this complaint. It held that - taking account of the fact that isoglucose production had contributed to an increase in sugar surpluses and that it was permissible to apply restrictive measures to such production - it was open to the Council to adopt whatever measures it judged appropriate having regard to the similarity between the two markets and to their interdependence as well as to the specific nature of the market in isoglucose; and, finally, that it was a question of the Council being faced with the delicate situation for the Community's sugar policy created by the production of isoglucose and having to introduce as quickly as possible a transitional regulation.

(D) the discrimination between sugar producers and isoglucose producers and between isoglucose producers:

12. The Court rejected these complaints also. It considered that the differences, referred to by the plaintiffs, between the provisions were accounted for by the differences between the two industries from which the Council, in exercising its power of discretion, had drawn the inferences. The Court added that, after its first judgment on 25 October 1978, the isoglucose-producing enterprises had reacted differently but the Council was not to be blamed for not having taken into account the commercial options and internal policies of each individual undertaking when adopting measures of general interest with a view to avoiding a situation in which the uncontrolled production of isoglucose could put the Community's sugar policy at risk.

In rejecting all these complaints the Court established that Regulation (EEC) No. 1293/79 is in basic conformity with Community law.

IV. NEW COMMISSION PROPOSALS

13. The Commission proposes that the Council should reinstate retroactively from 1 July 1979 the provisions contained in the annulled regulation, whose basic conformity with Community law was acknowledged by the Court.

It is both urgent and essential to do this in view of the situation created by the Court's annulment, in respect of the period 1 July 1979 to 30 June 1980.

14. In addition, the Commission considers it necessary to submit a second proposal to the Council concerning the provisions with regard to isoglucose contained in Council Regulation (EEC) No. 1592/80¹.

Article 2 of that regulation states: 'Article 9 of Regulation (EEC, No. 1111/77 shall apply during the period 1 July 1980 to 30 June 1981' and: 'The basic quota of each isoglucose-producing enterprise for the period 1 July 1980 to 30 June 1981 shall be applicable during the period 1 July 1979 to 30 June 1980'.

The effect of Article 2 of Regulation (EEC) No. 1592/80 is to apply during a supplementary period of twelve months the isoglucose production quotas laid down in Regulation (EEC) No. 1293/79, which was annulled by the Court.

15. The Commission feels that, in order to remove any juridical doubt concerning this provision of Regulation (EEC) No. 1592/80, the Council should confirm Article 2 and, to avoid all ambiguity, state that the text so confirmed will henceforth refer to the new Article 9 of the regulation which will replace Regulation (EEC) No. 1293/79.

V. CONCLUSIONS

16. In the light of the foregoing and of the judgments delivered by the Court of Justice on the substance, the Committee on Agriculture considers that the Commission proposals can be approved. However, it reserves the right to propose to the European Parliament any necessary modifications to the quota system both for sugar and isoglucose when it considers the Commission proposal on the new common organization of the market in sugar (Doc. 1-471/80), which is due to enter into force at the latest on 1 July 1981.

¹ OJ No. L 160, 26.6.1980, p.12



