Delivered in open court in Luxembourg on 15 November 1972.

A. Van Houtte
Registrar

R. Monaco
(President of Chamber)
For the President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 26 OCTOBER 1972[1]

Mr President,
Members of the Court,

The subject-matter of the proceedings of the national court giving rise to the reference which must be dealt with today is a claim for payment of a denaturing premium for common wheat. In order to understand these proceedings the following preliminary observations are necessary.

In order to provide additional new markets for surplus common wheat, which cannot be sold as bread grains on the market, and in this way to support the market for common wheat, Article 7(3) of Regulation No 120 of 13 June 1967 on the common organization of the market in cereals (OJ, English Special Edition 1967, p. 33) provides that 'the intervention agencies ... may ... grant a denaturing premium for common wheat'. Regulation No 172/67/EEC of the Council of 27 June 1967 (OJ, English Special Edition, 1967, p. 139) contains additional 'general rules governing the denaturing of wheat'. These include Article 3 which I now quote and which reads 'Cereals for denaturing must be of a minimum quality and quantity to be determined'. Article 4(2) of this regulation provides that the premium shall be granted at the request of the interested party if the requirements of Article 3 *inter alia* are observed. Further, Article 7 provides: 'To qualify for the premium, denaturing should be effected in agreement with the intervention agency and under its supervision'. The Commission adopted further implementing provisions, first of all in Regulation No 242 of 30 June 1967 (JO No 137 of 30.6.1967, p. 2963/67), then in Regulation No 956 of 12 July 1968 (JO L 164, p. 9) and also in Regulation No 1403/69 of 18 July 1969 (OJ, English Special Edition, 1969 (II), p. 345) which has special relevance in this case. It is necessary to quote the article of this latter regulation which provides that the denaturing premium shall consist of two components, one allowing for the differences between prices for common wheat and barley, the other allowing for the technical costs of denaturing or the special costs of admixture, fixed at a flat rate. Moreover Article 4(3) provides that 'The granting of a denaturing premium shall be subject to supervision by the intervention agency of the process of denaturing of common wheat, or of its admixture, unaltered, with compound feeding-stuffs falling within heading No 23.07 of the Common Customs Tariff. the duration of the denaturing process shall not exceed one day per 40 tonnes of cereals processed. The duration of the process of admixture, unaltered, with compound feeding-stuffs shall not exceed thirty days per 50 tonnes or one working day of eight hours per 20 tonnes of cereals processed. The inter-

1 — Translated from the German.

vention agency of each Member State shall decide which of these two minimum quantities shall be applied to the processes under their supervision'.

These provisions are also of importance to the Aimer firm, the plaintiff in the main action. This undertaking, which carries on business as a corn merchant, applied on 26 July 1971 to the Einfuhr- und Vorratsstelle für Getreide und Futtermittel, the defendant in the main action, for permission to denature 200 000 kg of common wheat by adding fish oil. The grant of this application was followed by denaturing on three successive days; 74.4 tonnes were denatured on the first day, 71.5 tonnes on the second day and finally 27.5 tonnes on the third day, which add up therefore to less than the amount in respect of which application to denature was made to the Einfuhr- und Vorratsstelle. Subsequently this agency granted the denaturing premium for the quantities denatured on the first two days. It refused, however, to pay the premium on the balance on the ground that the minimum daily quantity of 40 tonnes had not been reached.

Aimer does not consider this refusal to be justified. It takes the view that the requirement that a minimum amount must be denatured each day, which is mentioned in the instructions of the Einfuhr- und Vorratsstelle of 19 May 1972, cannot be deduced from the provisions of Community law and in particular from Article 4 of Regulation No 1403 which I have just quoted. Moreover, it is in its view important to bear in mind that it would have been technically possible for it to distribute the amount of wheat for denaturing in such a way that it could fulfil the requirement of the Einfuhr- und Vorratsstelle as to the daily minimum quantity to be denatured. It therefore objected to the decision of refusal and, when its objection was not sustained, commenced proceedings in the Verwaltungsgericht Frankfurt am Main for payment of the denaturing premium on the said balance (amounting in all to DM 1 507.82). The plaintiff again argued during the proceedings before that court that the denaturing provisions under Community law relating to a minimum quantity are not so clear-cut as the Einfuhr- und Vorratsstelle maintains. It also asked that court to bear in mind that it would have been uneconomic for it to denature less than 70 tonnes on the first two days.

Since the Verwaltungsgericht Frankfurt am Main is also uncertain whether the interpretation by the einfuhr- und Vorratsstelle of Article 4 of Regulation No 1403 is correct, it suspended proceedings by a closely-reasoned order of 3 May 1972 and asked the Court to give a preliminary ruling on the question 'whether the second sentence of Article 4(3) of Regulation (EEC) No 1403/69 of the Commission of 18 July 1969 must be interpreted as meaning that the plaintiff could denature in one day an amount of less than 40 tonnes of cereals, whether or not this amount is the total amount of the cereals to be denatured or the balance thereof, or whether it must be interpreted as meaning that the authors of the regulation intended to determine by means of this provision the minimum amount of cereals to be denatured per day and at the same time the duration of the denaturing process'.

I shall now consider how this question should be answered.

If, in so doing, I confine my examination to the second sentence of Article 4(3) of Regulation No 1403, which, as I have already mentioned, reads 'The duration of the denaturing process shall not exceed one day per 40 tonnes of cereals processed', I have to concede that this sentence can give the impression that it merely prescribes the maximum period of the denaturing process and not, on the other hand, the minimum amount to be processed each day. The court making the reference is undoubtedly justified in saying that compared with other similar provisions of Community law the particular notion might have been expressed more clearly, for example as follows: 'The minimum permissible quantity which can be denatured is 40 tonnes; this quantity must be denatured within one day whether or not it is an opening or final balance'.

However there is no doubt that it is just as wrong to base the authoritative interpretation of the provision in question solely upon such an isolated examination severed from all other considerations. It is, on the

contrary, necessary, when provisions which are not absolutely clear have to be construed, to take into account the whole of the surrounding circumstances, to examine the preamble to the regulation in question and those of the relevant earlier regulations and also to consider the meaning and purpose of the regulations. By proceeding in this way the following picture emerges.

First of all, so far as the provisions of Article 4 of Regulation No 1403 as a whole are concerned, it appears to be essential to note that the opening words of the second paragraph of Article 4(3), which governs denaturing by *admixture*, are exactly the same as the opening words of the previous sentence in which the Verwaltungsgericht is particularly interested. The fact that the next sentence then mentions 'minimum quantities' makes it clear that the wording in question refers in fact to minimum quantities. The preamble to Regulation No 1403, which expressly refers to daily minimum quantities, points to this conclusion. If this is the interpretation to be applied to denaturing by admixture, it is inherently reasonable to assume that the same principles of construction apply to other kinds of denaturing and, indeed, there is no valid reason for any distinction, in particular, if—as I will now demonstrate—attention is focused on the purpose and the function of the regulation. A comparison with the earlier applicable provisions, which Regulation No 1403 replaced, shows that the authors intended this similarity. Thus we find that Article 5(3) of Regulation No 242/67 applies in the same way to denaturing by the addition of fish oil and also by admixture. We find also that it uses wording which corresponds to the wording of the second paragraph of Article 4(3). An examination of the preamble to the next Regulation No 956/68, which expressly describes the quantities mentioned in Regulation No 242 as daily minimum quantities, makes it absolutely clear that in fact the intended meaning of the sentence in question is a daily minimum quantity.

Then, while we are discussing the legislative context, reference must also be made to Article 5 of Regulation No 1403. As you know this reads as follows: 'The denaturing premium shall be paid only if the conditions laid down in Article 4(3) are fulfilled. If, however, as a result of a technical difficulty giving rise to an interruption of the process recorded under the supervision provided for in that paragraph the minimum quantity for the day has not been denatured or admixed, the denaturing premium shall be paid on the quantity actually denatured or admixed during that day'. So far as this provision is concerned, it is important to note at once that it expressly mentions both kinds of denaturing. Since Article 5 follows immediately after Article 4, too much emphasis cannot be placed on this finding. Further, the realization that Article 5 is obviously a provision containing an exception is significant. If it only permits a premium to be paid for denaturing an amount less than the minimum daily quantity when the conditions which it lays down are fulfilled (that is, when production is interrupted by a technical hitch), the only inference which can in fact be drawn is that the right to the premium is conditional on denaturing the said minimum quantities. Any other construction would, in fact, be meaningless.

Finally, attention must be drawn to the evident meaning and purpose of the regulation. There is no doubt that denaturing is a process which is the exception rather than the rule in the common organizations of the market. Since, moreover, important financial factors are involved (premiums have to be paid and administrative checks carried out) it can be said—if the problem is considered in this light—that the implementation of the denaturing operations must be subject to strict requirements. In this connexion it is particularly interesting to note that the preamble to Regulation No 172/67 expressly states that 'moreover, the costs entailed by denaturing and the control thereof can only be justified for a minimum quantity of cereals'. There is the additional factor to be considered that, having regard to the need to supervise denaturing, that is to say, taking into account the administrative requirements, it is imperative in this particular field to limit the class of denaturing undertakings to the most efficient and this can only be done

effectively by requiring a minimum amount to be denatured within a prescribed time. Finally—as the Commission has emphasized—it must not be forgotten that smaller residual balances, which cannot be offered to the intervention agencies and cannot easily be sold on the market are anyhow generally used as fodder and that there is consequently no need at all to provide for the payment of a premium for denaturing them.

After considering all these factors, in my opinion the only possible conclusion is in fact that the second sentence of Regulation No 1403 must be interpreted as meaning that entitlement to the denaturing premium is conditional upon at least 40 tonnes of cereals per day being denatured.

With reference to the particular facts in the main action, it is now indeed necessary to ask the question whether this regulation must be applied unconditionally or whether, when larger amounts are denatured, it can be applied in a different way to any balances of these amounts. In this connexion we must remember that the plaintiff was granted a permit to denature 200 tonnes of common wheat and that he denatured altogether 173 tonnes of this amount in three days. If the plaintiff had limited the amount of cereals to be denatured to a minimum quantity of 40 tonnes per day, the denaturing process could have lasted four days. By choosing to plan the work in the way he did, the plaintiff therefore saved one working day and thereby ensured that supervision costs were reduced. In these circumstances, there appears in fact to be no reason why the plaintiff should not also be granted a denaturing premium on the quantity of cereals denatured on the third day which fell short of 40 tonnes.

Nevertheless, a more careful examination of this apparently plausible conclusion shows that in the final analysis it is not tenable. In my view it cannot stand up to the following serious objection. In practice it cannot be assumed that denaturing undertakings are free to plan their operations in such a way that the duration of the denaturing process is extended so as to comply with the daily minimum quantity.

As mentioned at the beginning of my opinion, according to the Community regulations on denaturing, an application by the undertaking which wishes to embark upon denaturing for permission to denature is necessary and 'the denaturing should be effected in agreement with the intervention agency'. That means that in the case of denaturing a kind of arrangement is reached between the denaturing undertaking and the intervention agency. When considering such an arrangement the intervention agency, in order to ensure that denaturing is effected as economically as possible, which is justifiably a major concern in this field, is anxious that the process is carried out in accordance with the tightest possible programme and in particular requires the denaturing undertakings to utilize their capacity to the full. If I understand the position correctly, this is what happened in the Federal Republic of Germany as a result of the instructions issued by the intervention agency on 19 May 1972, which have already been mentioned. In fact we read in these instructions that advance notice of any intention to undertake denaturing must be given to the Einfuhr- und Vorratsstelle together with particulars showing the date when the process is to begin and how long it is expected to last and that the denaturing process 'must be effected without interruption in accordance with the capacity of the denaturing undertaking'. If, however, the intervention agency has the power to issue such instructions, the argument that the plaintiff was free to spread the denaturing of the quantity which it processed over a period of four days cannot in fact be accepted and there is consequently no justification for refusing to grant the plaintiff the premium on a balance of less than 40 tonnes which was denatured on the third day. In cases like the one which has to be dealt with in the main action the view must also be upheld that, under Article 4 of Regulation No 1403 read together with Article 5 thereof, a claim for payment of a denaturing premium can only succeed if at least 40 tonnes of cereals are processed each day.

Having regard to my conclusions the question referred by the Verwaltungsgericht Frankfurt should be answered as follows:

The second sentence of Article 4 (3) of Regulation No 1403/69 must be interpreted as meaning that this provision was intended to define the duration of the process as well as the minimum quantity of cereals to be denatured each day.