In Case 57/72

Reference to the Court, under Article 177 of the EEC Treaty, by the Hessischer Verwaltungsgerichtshof for a preliminary ruling in the action pending before that court between

WESTZUCKER GMBH, having its registred office at Dortmund,

and

EINFUHR- UND VORRATSSTELLE FÜR ZUCKER, having its head office at Frankfurt-on-Main,

on the validity of Article 1 (1) and Article 2 of Regulation No 354/69 of the Commission of 26 February 1969, altering the premiums for denaturing sugar fixed by Regulation No 840/68, as well as of Article 2 (2), last sentence, of Regulation No 833/68 of the Commission of 28 June 1968, laying down rules concerning the denaturing of sugar for animal feeding stuffs,

THE COURT

composed of: R. Lecourt, President, R. Monaco and P. Pescatore (Rapporteur), Presidents of Chamber, A. M. Donner, J. Mertens de Wilmars, H. Kutscher and C. Ó Dálaigh, Judges,

Advocate-General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

In order 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, Regulation No 1009/67 of the Council of 18 December 1967, on the common organization of the market in sugar (OJ No 308, p. 1), provides in particular, by Article 9 (2) thereof, that intervention agencies designated by sugar-producing Member States may grant denaturing premiums for sugar rendered unfit for human consumption.

In application of Article 9 (7) of Regulation No 1009/67, the Council laid down general rules on the denaturing of

sugar for animal feeding stuffs by Regulation No 768/68 of 18 June 1968 (OJ No L 143, p. 12).

Article 1 (1) of that Regulation provides that the only white or raw sugar intended for animal feeding stuffs which may benefit from a denaturing premium shall be sugar denatured in such a way that it can no longer be used for human consumption and conforming to certain minimum requirements concerning quality and quantity.

Under the terms of Article 2 of the said Regulation, the denaturing premium for white sugar shall be fixed taking account of

(a) the intervention price for white sugar operative in the zone having the greatest surplus in the Community;

(b) the standard amounts for the technical costs of denaturing and the transport charges;

(c) the foreseeable market prices in the important consumer regions of the Community for animal feeding stuffs with which white sugar for denaturing has to compete;

(d) the comparison between the nutritive value of white sugar and the nutritive value of the competing animal feeding stuffs;

(e) the whole of the sugar surplus available for denaturing in the Community, account being taken of the nature and quality of such sugar.

Under the terms of Article 5 (1), the denaturing premium shall, in principle, be granted by the Member State within whose territory the denaturing takes place.

Under the terms of Article 5 (2), a denaturing premium is only granted on presentation of a request before denaturing.

Member States shall on such request issue a certificate for a denaturing premium.

The issue of this certificate shall be subject to the lodging of a deposit by way of guarantee which shall be forfeit in whole or in part if the denaturing is not carried out or is only partially carried out during the period of validity of the authorization.

Regulation No 833/68 of the Commission of 28 June 1968, laying down rules concerning the denaturing of sugar for animal feeding stuffs (OJ No L 151, p. 29), adopted in application of Article 9 (8) of Regulation No 1009/67, provides, by Article 2 thereof, that application for a denaturing premium shall be made in writing.

The application shall state the name and address of the applicant, the nature and the quantity of the sugar to be denatured and the Member State where denaturing will take place.

Article 2 (2), second sentence, of Regulation No 833/68 provides that Member States may require additional information.

Under the terms of Article 4, the grant of the certificate for denaturing constitutes title to payment after denaturing of the denaturing premium indicated in the certificate, and the obligation to denature the sugar in accordance with the conditions laid down in the certificate.

Article 5 of the said Regulation provides that the certificate for the denaturing premium shall be valid from the day of issue until the expiration of the eleventh month following that during which it was issued.

The premium for denaturing white sugar was fixed at 14·03 units of account per 100 kg by Article 1 (1) of Regulation No 840/68 of the Commission, also of 28 June 1968, fixing premiums for denaturing sugar for animal feeding stuffs.

In application of Article 2 (2), second sentence, of Regulation No 833/68, the German Minister of Food, Agriculture and Forestry on 6 August 1968 adopted a regulation concerning the granting of a premium for denaturing sugar for animal feeding stuffs (Bundesanzeiger No 145, VI, p. 11).

Clause 5 of that regulation provides that application for the grant of a premium shall be made on a standard form and lists the information which it must contain.

In particular, in addition to the information required by Regulation No 833/68, the undertaking carrying out the denaturing and the sugarworks doing the supplying must be indicated.

The Commission considered it necessary, by Regulation No 354/69 of 26 February 1969, altering the premiums for denaturing sugar fixed by Regulation No 840/68 (OJ No L 49, p. 14), to take into account the fact that at that time the market for sugar was being reorganized and that either export certificates or premium certificates for denaturing had been issued for surplus quantities.

Consequently, Article 1 of that Regulation fixed the premium for denaturing white sugar at 0 units of account per 100 kg.

Under the terms of Article 2 of the Regulation this provision entered into force on 27 February 1969.

On the same date, Westzucker GmbH, whose registered office is at Dortmund, sent two telex messages applying to the Einfuhr- und Vorratsstelle für Zucker (Sugar Import and Storage Agency) at Frankfurt-on-Main for the grant to it of premium certificates for denaturing a quantity of 14 075 metric tons of white sugar to be imported from France under contracts entered into with French undertakings between 27 February 1968 and 24 February 1969.

The Einfuhr- und Vorratsstelle rejected this application by telex message of 28 February 1969, on the ground that, by Regulation No 354/69, the Commission had fixed the premium for denaturing white sugar at 0 units of account, with effect from 27 February 1969.

Westzucker entered an objection to this decision on 24 March 1969.

The objection was dismissed on 5 May 1969.

On 3 June 1969, Westzucker applied to the Verwaltungsgericht (Administrative Court) of Frankfurt-on-Main.

During the course of the proceedings, the Commission adopted Regulation No 1764/69 of 5 September 1969, altering the denaturing premiums for sugar fixed by Regulation No 840/68 (OJ No L 226, p. 18).

Article 1 of that Regulation fixed the premium for denaturing white sugar at 12·50 units of account per 100 kg.

In application of that Regulation, the Einfuhr- und Vorratsstelle für Zucker granted Westzucker premium certificates for denaturing a quantity of 260 380 kgs of white sugar which had been delivered under a contract entered into with the French firm Sucre-Union on 10 February 1969.

Westzucker pointed out to the Verwaltungsgericht of Frankfurt-on-Main that, despite the fact that it had in the meantime been granted denaturing premiums, it had not obtained satisfaction in the sense that Regulation No 840/68, which was applicable to its application of 27 February 1969, had fixed a denaturing premium higher than that provided for by Regulation No 1764/69 (14·03 and 12·50 units of account per 100 kg respectively).

The Verwaltungsgericht of Frankfurt-on-Main dismissed the appeal as unfounded by judgment of 10 December 1970.

Westzucker appealed against this judgment to the Hessischer Verwaltungsgerichtshof (Administrative Court of Hesse).

The VIth Senate of that court decided, by order dated 21 July 1972, to suspend its decision until the Court of Justice has given a preliminary ruling on the validity of

1. Article 1 (1) of Regulation No 354/69 of the Commission of 26 February 1969, altering the premiums for denaturing sugar fixed by Regulation No 840/68;

2. Article 2 of the said Regulation No 354/69;

3. Article 2 (2), second sentence, of Regulation No 833/68 of the Commission of 28 June 1968, laying down rules concerning denaturing of sugar for animal feeding stuffs.

The order of the Hessischer Verwaltungsgerichtshof was received at the Court Registry on 4 August 1972.

Written observations were lodged on 23 October 1972 by the plaintiff in the main action and on 24 October by the Commission of the European Communities in accordance with the provisions of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC.

After hearing the report of the Judge Rapporteur and the opinion of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

The oral observations of the plaintiff in the main action, represented by Maître Fritz Modest, Advocate of the Hamburg Bar, and the Commission, represented by its Legal Adviser, Peter Kalbe, were made at the hearing on 30 January 1973.

The Advocate-General presented his opinion at the hearing on 20 February 1973.

II — Observations submitted to the Court

The oral and written observations submitted to the Court may be summarized as follows:

1. *As to the validity of Article 1 (1) of Regulation No 354/69 (first question)*

After recalling the structure of the common organization of the market in sugar and the body of Community and national provisions applicable to that market, particularly the measures relating to refunds on exports and denaturing premiums, *Westzucker* submits that the Commission did not have power to suspend the grant of denaturing premiums and that, in so doing, it based its decision on incorrect considerations or grounds other than those indicated in Regulation No 354/69.

It follows from Articles 43 and 155 of the EEC Treaty that, in the context of the common organizations of the agricultural markets, the Commission can only exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter. But in Regulation No 354/69 the Commission exceeded those powers and the discretionary power arising therefrom.

(a) Article 1 of Regulation No 354/69 only ostensibly fixed a denaturing premium; in fact, it suspended the fixing of such premiums and prohibited national intervention agencies from issuing denaturing certificates. The denaturing premium should really only have been fixed at 0 units of account if the market price of maize in the Community had been as high as the intervention price of white sugar, increased by the cost of denaturing and marketing; such had not been the case at that time.

Unlike Article 2 (2) of Regulation No 766/68 of the Council of 18 June 1968, laying down general rules for granting export refunds on sugar (OJ No L 143, p. 6), Regulation No 768/68 of the Council included no authorization for the Commission to suspend the fixing of denaturing premiums. If the Council had intended to confer such a power on the Commission, it would have expressed such intention as clearly and precisely as it did, on the subject of refunds on exports, in Regulation No 766/68 published the same day.

Subparagraph (e) of Article 2 of Regulation No 768/68, under the terms of which the whole of the sugar surplus available for denaturing in the Community must be taken into account when fixing the denaturing premium, cannot be interpreted as enabling the Commission to fix denaturing premiums

in the same way as refunds on exports. Article 2 of that Regulation lists five criteria which must be taken into account cumulatively by the Commission when fixing denaturing premiums. It was not within its rights to take account, as alternatives, of merely one or more of those criteria. However, in Regulation No 354/69 it did not take account of the criteria referred to in subparagraphs (a) to (d); it could not have done so moreover, as it intended to suspend the fixing of denaturing premiums.

Article 1 of Regulation No 354/69 is null and void, as it does not fall within the powers conferred on the Commission by Article 9 (8) of Regulation No 1009/67, in conjunction with Regulation No 768/68.

(b) In order to eliminate surpluses, the Council laid down the order in which the denaturing and exporting of sugar should be resorted to; it gave priority to denaturing.

This priority stems from Article 9 of Regulation No 1009/67, which considers denaturing as one of the essential tasks of intervention agencies, from Regulation No 749/68 of the Council of 18 June 1968, on financing the intervention expenditure on the internal market in sugar during the 1967/1968 season (OJ No L 137, p. 2), which considers it 'advisable to market the largest possible amount of surplus sugar for animal feeding stuffs or for the manufacture of certain products of the chemical industry', and from Regulation No 766/68 which, in the absence of surpluses, provides for the suspension of refunds even though an analogous provision does not appear in Regulation No 768/68 concerning denaturing premiums.

Viewed objectively, the priority given to denaturing is justified by the following considerations: as the market price of maize is determined by the intervention price and the target price, both being higher than the world market price, the cost of denaturing is normally lower than that of the refund granted on exports at the world market price and sound administration therefore demands that priority be given to denaturing; the import requirements of the Community in the sector of animal feeding stuffs is reduced in proportion to the quantity of sugar denatured in the Community and transformed into animal feeding stuffs; the manufacturers of fodder must be able to rely on a regular and sufficient supply of denatured sugar in order to guarantee the required consistency in the composition of their products; the Community should give preference to intra-Community relations as opposed to foreign trade.

Even supposing that surpluses of sugar on the market were eliminated or that their elimination could have been anticipated in the near future and that Article 2 (e) of Regulation No 768/68 can be interpreted as authorizing the Commission to suspend the fixing of denaturing premiums, it would have been bound in the first place to make use of the authorization referred to in Regulation No 766/68 and suspend refunds. But it acted in exactly the opposite manner.

Moreover, it must be remembered that there are not two categories of surpluses, which can be differentiated one from the other, but merely a global quantity which, quite apart from the system which the Commission is bound to observe, must be eliminated either by denaturing or export.

There is a conflict between Article 1 of Regulation No 354/69 and the legal acts by which the Commission, at the time and subsequently, continued to fix refunds. In so doing, the Commission should have allowed the grant of refunds, after 26 February 1969, for new exports on presentation of newly issued certificates, but not certificates issued before that date. It is established therefore that surpluses existed, but the reasoning underlying Regulation No 354/69 is based on the absence of surpluses.

Article 1 of Regulation No 354/69 is null

and void in that it did not observe the proper order of the measures laid down by the Council.

(c) The reasoning underlying Regulation No 354/69 is erroneous. It does not tally with the actual situation on 26 February 1969 as it was known or ought to have been known to both the Management Committee and the Commission.

At that date the market for sugar was not undergoing reorganisation. On the contrary, it appears from the supply statements, the annual reports of the sugar marketing organisation in Bonn, the provisional table of available sugar supplies at 30 January 1969 from the Statistics Office of the Communities as well as the 1968/1969 provisional table of the Statistics Office of available sugar reserves at 18 March 1969, that the total available sugar reserves amounted to about 9 150 000 metric tons and that the provision for sugar requirements and consumption in the Community had been set at 5 935 000 metric tons. The Commission merely eliminated the surpluses on paper when increasing the provision for bridging stocks at 30 June 1969 from 2 029 000 metric tons to 2 172 000 metric tons, an increase of 143 000 metric tons. In so doing, it exceeded the discretionary power conferred on it by the Council. Article 5 of Regulation No 432/68 of the Council of 9 April 1968, fixing, for the 1968/1969 sugar season, the derived intervention prices, the minimum prices of sugar beet, the threshold prices and the quantity guaranteed as well as the production contribution (OJ No L 89, p. 4) obliged the Commission to limit, in the supply statements, bridging stocks to 2 029 000 metric tons. In fact, that provision had fixed the guaranteed quantity referred to in Article 26 (1) of Regulation No 1009/67 at 6 594 000 metric tons for the 1968/1969 sugar season, divided into 13 monthly amounts (including a bridging reserve equal to the monthly amount) of 507 230 metric tons each. In order to ensure a carry over to the start of production in the following sugar season, it was necessary at the end of the 1968/1969 season to provide for stocks of 507 230 metric tons for 4 months at 30 June 1969, amounting to 2 028 920 metric tons, in round figures 2 029 000 metric tons. The quantities available over and above this last figure were to be treated as surpluses.

If the Commission had adhered to the fixing of bridging stocks at 30 June 1969 at 2 029 000 metric tons, the original provision of 426 000 metric tons earmarked for denaturing would also have been maintained. In order to attain this figure of 426 000 metric tons, which moreover did not constitute an absolute limit and was capable of being increased by a corresponding suspension of the fixing of refunds, it would have been possible to issue premium certificates for denaturing for a further 100 000 metric tons.

The Commission was perfectly aware of this. It intentionally increased the provisions for bridging stocks at the expense of the provisions for denaturing and thus, in disregard of the actual situation, eliminated the surpluses on paper. The fact that the market price of sugar in the Community corresponded to the intervention price was evidence of the existence of surpluses; this was not taken into consideration by the Management Committee and the Commission or else was intentionally ignored.

(d) In adopting Regulation No 354/69, the Commission allowed itself to be guided by considerations not germane to the matter in order to facilitate the acquisition by Italy of 75 000 metric tons of white sugar, on the one hand, and to permit an increase in the volume of exports of sugar from the French Antilles, on the other hand.

In application of Regulation No 457/68 of the Commission of 11 April 1968, on the export of the surplus amount of sugar in Italy (OJ No L 91, p. 22) and Regulation No 1788/68 of the Commission of 8 November 1968, amending Regulation No 457/68 on the

final amount of Italian surplus sugar to be exported (OJ No L 273, p. 10), the Italian Republic was under an obligation, before 1 July 1969, to export an amount of 209 669 metric tons of white sugar to third countries without export refunds. For this purpose, Italy was to buy sugar in other Member States; in order to mitigate the difficulties encountered to this end, the Italian representative on the Management Committee requested that the issue of denaturing certificates be suspended. The Management Committee, and then the Commission by Regulation No 354/69, acceded to this request.

Moreover, it was in order to allow France to increase exports of sugar from the French Antilles to third countries over and above the provisions that the Management Committee and the Commission decided to suspend the issue of denaturing certificates.

Even supposing that the Commission ought to have taken account of the particular wishes of Italy and France, it was not necessary for it to act at the expense of denaturing. Article 1 of Regulation No 354/69 is therefore also void because of this, since it is based on considerations not germane to the matter and infringes the principle of proportionality.

The *Commission* considers that in replying to the first question, one should examine, on the one hand, whether it had the power to fix the amount of the denaturing premium at zero and, on the other hand, whether in exercising that power it was guilty of a misuse of power.

(a) As to the power of decision, the Commission is, by Article 9 (8) of Regulation No 1009/67, expressly charged with fixing the amount of denaturing premiums according to the so-called Management Committee procedure. That power included the power to fix, at least temporarily, the amount of the premium at zero and, as a result, provisionally to suspend the grant of the premium.

Regulation No 1009/67 envisages measures of an obligatory nature for the stabilization of the market in sugar, to apply in every case during the whole sugar season, but also measures to be adopted only if necessary, when and for as long as the market situation demands it, taking into account the objectives of the common organization. It follows clearly from the terms of Article 9 (2) of Regulation No 1009/67 that the premium for denaturing sugar for animal feeding stuffs forms part of the measures the benefit of which can be accorded only by decision of the competent authority. This enabling provision was in no way transformed into a mandatory provision by Regulation No 768/68. That Regulation merely deals with methods of calculation and payment and in no way envisages the automatic grant of the premium throughout the season, without regard to the position of supplies. As the terms of Article 2 of Regulation No 768/68 are clear, the grant of a denaturing premium cannot depend solely on the level of the prices of maize, to the exclusion of other considerations and, in particular, of any discretionary power of the Commission.

Moreover, the merely enabling character of Article 9 (2) of Regulation No 1009/67 is in conformity with the objectives of the denaturing premium within the framework of the common organization of the markets. The aim of this premium is to put sugar to a use which, by reason of its price, is not normal and which allows it to compete with feed grain, some types of which also show substantial surpluses. In the general sphere of the organization of the market, the denaturing premium is justified only as an emergency measure with the object of reducing large surpluses, which cannot otherwise be used on the domestic market, but not in the case of a balanced market and supply situation and, less still, in the case of shortage. Therefore it necessarily involves adaptation to the market situation and the grant of the premium must be capable of being suspended

when the market is balanced or in deficit. The Community certainly did not intend by this special measure to give sugar merchants the benefit during the whole season of a general and constant guarantee of disposal and of the premium.

Article 9 (8) of Regulation No 1009/67 charged the Commission with fixing the amount of the premium. To this end, Article 2 of Regulation No 768/68 conferred on it a wide discretionary power to decide whether or not the grant of the premium is justified from the point of view of market policy. When the criteria for the grant of the premium set in particular by subparagraphs (c), (d) and (e) of that provision are not present, the Commission can, from the point of view of legal technique, either purely and simply repeal the previous Regulation fixing the premium or reduce its amount to zero, as it did by Regulation No 354/69.

No provisions concerning the denaturing premium offer the slightest indication that the Council reserved to itself the decision to determine the beginning and the end of the grant of the denaturing premium. As such reservations are the exception, they are always expressed unequivocally in the provision; such is not the case here. Moreover a different interpretation would not reconcile with Article 2 of Regulation No 768/68 as it would deprive of all meaning the discretionary power conferred on the Commission to fix the amount of the premium and its obligation to take account of the precise circumstances on which the grant of the premium depends.

Nor does such a reservation of power to the Council follow from Regulation No 768/68. Article 2 (2) of that Regulation deals exclusively with the suspension of the obligation periodically to fix the refund; for the denaturing premium, such an exceptional arrangement would be pointless, since there was no prior obligation to fix the premium periodically.

As it cannot be contested that the Commission has the power to fix the amount of the denaturing premium at zero, it remains to be seen whether Article 1 of Regulation No 354/69 observed the criteria set by Article 2 of Regulation No 768/68.

As it stated in the recitals in the Preamble to Regulation No 354/69 that 'the market for sugar is at present being reorganized' and that 'either export certificates or premium certificates for denaturing have been issued for surplus quantities', the Commission based its decision essentially on Article 2 (e) of Regulation No 768/68. By this provision it is obliged to examine whether the supplies situation in the Community not only permits but also dictates the disposal on the market for animal feedings stuffs, with the help of the denaturing premium, of surpluses which are too large and which cannot be disposed of elsewhere. The decision to be taken in this connection is a discretionary one based on considerations relating to the policy of the organization of the markets. In the context of proceedings determining validity, Article 1 of Regulation No 354/69 can therefore only be considered to be vitiated by a misuse of power if the reduction of the premium to zero was in no way capable of being justified by objective factors.

This reduction was based on the provisional statement of supplies of 18 February 1969. This statement comprised, according to the statistical data supplied by the Member States, the situation of existing stocks and the indications of future trends in production, imports, exports and consumption and pointed to a balanced position of supplies in that the foreseeable requirements up to the end of the 1968/1969 season for various purposes, including denaturing, appeared capable of being met by existing stocks. The amount of the stocks — about two million metric tons — were barely sufficient to cover the actual requirements up to the carry over to the new season as well as to ensure an

emergency reserve amounting to three months' supply. Further, the prices of sugar in the Community stabilized above the intervention price and showed a tendency to increase; on the domestic market difficulties of buying large enough quantities of sugar for human consumption were also apparent. The market situation had clearly eased therefore and one was able to allow at least provisionally, for the disposal of stocks for human consumption at a sufficiently advantageous price. From the point of view of the organization of the markets, the grant of high subsidies for the use of these stocks for animal feedings stuffs was therefore no longer necessary.

The fact that prices were increasing and were higher than the intervention price, but without having yet reached the level of the target price, in no way established the existence of surpluses nor the necessity to resort to denaturing. It is not correct that supply and demand balance out only at the level of the target price and that in the meantime considerable surpluses putting pressure on prices necessarily exist. The real question was whether the stocks existing at the time should have continued to be put to an artificial use involving considerable expense when their disposal on the market under normal conditions could have been anticipated.

Further, the information available at 26 February 1969 led to the finding that the premium certificates issued up to then for a total of 407 000 metric tons practically exhausted the 426 000 metric tons appearing in the statement. This indicated sufficient stocks to cover the forseeable requirements of human consumption; denaturing could have been continued only at the expense of stocks considered as necessary for that purpose. The situation, which up to then had been one of surplus, was therefore, at least provisionally, becoming sounder.

The fact that all the quantities of sugar for which certificates were issued were not actually denatured during the season then current became known only subsequently. In its provisions of late February 1969, the Commission could not have known the significance of those quantities as the choice of time for carrying out denaturing belongs solely to the recipient of the certificate. Moreover, the figure of 352 000 metric tons of denatured sugar mentioned in the final statement is simply a provisional statistical result from which no significant conclusion can be drawn in this case. The determining factor, from the point of view of actual requirements, is not the quantity denatured as at 30 June 1969, but the estimate of requirements to be satisfied, for human consumption or for other purposes, until sugar from the new harvest and new production is available.

The figure of 352 000 metric tons indicates merely that, of the 407 000 metric tons in respect of which premium certificates were issued up to 26 February 1969, only that quantity had been denatured. One cannot with certainty determine the quantity of additional sugar which would have been denatured if the grant of premiums had not been suspended. In these circumstances, the Commission in its appreciation of the situation could only rely on the sole objective point of reference at the time — the 407 000 metric tons for which the premium was already granted and which could be denatured at any time. The Commission considered it its duty, in order to preserve the proper functioning of the market and to ensure that the population was adequately supplied, to check the artificial and accelerated reduction of stocks by denaturing. Faced with a choice between the reduction of refunds on exports and the restriction of denaturing premiums, it opted for the provisional suspension of denaturing premiums as this, by reason of its effects in the sector of feed grain, had been conceived and could be applied only as an exceptional measure, with no economic justification in a balanced situation of supplies. Moreover, the foreseeable requirements had been more

or less ensured by the premium certificates issued. Further, as the large longer term commitments were normally covered by immediate applications for premium certificates, the Commission was able legitimately to consider that the fixing of the premium at zero, taking account of the long period of validity of the certificates, would not place denaturing undertakings in difficulties and, in any event, would in no way lead to a serious disturbance of trade or the market.

A large reduction in, or suspension of, refunds on exports did not appear to be indicated; the amounts of the refunds had already been fixed at a relatively low level with the object essentially of maintaining traditional trade relations and long term trade commitments.

The common organization of the markets in the sector of sugar and the devices of that organization form a single entity; each mechanism has a specific function, adapted to the particular needs of the market. There is no formal and rigid hierarchy of various measures. In any case, from the viewpoint of their economic objectives, an alteration of the denaturing premium should have had priority rather than the suppression of refunds. From the financial point of view, it also appeared more advantageous to take action against the denaturing premium the amount of which was higher than that of the refund.

A slight reduction of that amount would not have had the desired result; it could have lead to an inflation af applications for certificates. A drastic and prohibitive reduction of the premium would have been difficult to reconcile with Article 2 of Regulation No 768/68. By reducing the premium to zero, the Commission indicated that it was not intending to put an end to the grant completely, but merely that the continuance of the reduction of existing stocks by means of denaturing was not to be recommended in view of the then current situation of supplies.

(c) The export of sugar from the French Antilles to the United States under favourable conditions has no bearing on the measures to be taken in the context of the European market for sugar; such export would, in any event, have been preferable to the payment of high denaturing premiums.

As to the quantity of surplus sugar to be exported from Italy, the Commission had been bound by the Regulations making such export obligatory. If eventually about 29 000 metric tons was disposed of on the Community domestic market, the reason for that is that it is established that in Italy production for 1968/1969 could not reach the basic quota laid down; this was, however, only capable of being established after the publication of Regulation No 354/69.

(d) The Commission considers that it has exercised its discretionary power in a manner which took correct account of the various interests present. Under the conditions existing at 26 February 1969, it would not have been possible for it to come to any other decision. It is certainly not guilty of a misuse of power.

2. *As to the validity of Article 2 of Regulation No 354/69 (second question)*

Westzucker points out that, under Article 191 of the EEC Treaty, regulations shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following their publication. The entry into force of a regulation on the same day as it is published is an exception, particularly when it affects legal situations not previously covered.

(a) The reasoning of Regulation No 354/69 does not indicate why it came into force on the same day as it was published; this fact alone is capable of casting doubt on the validity of Article 2 of the Regulation.

(b) Nor does the object of the Regulation justify such a measure.

A delay of a few days would not have lead to an unforeseeable amount of speculative applications to the intervention agencies for the issue of denaturing certificates, during the transitional period between publication and entry into force of the Regulation. The obligatory lodging of a deposit eliminates or, at least, reduces speculative applications. This risk is also limited by the fact that the denaturing premium is fixed in relation to the intervention price and that the applicant can be forced to obtain supplies at the target price.

(c) The immediate entry into force of Regulation No 354/69 caused heavy losses to undertakings which, relying on the existing system, had bought white sugar for denaturing and had possibly already sold it to a manufacturer of food for animals as sugar intended for animal feeding stuffs at a price agreed upon in relation to the denaturing premium. Protection for these prior contracts should have been assured, as it has been in the framework of other common organizations of the agricultural markets. Nothing prevented the Commission from authorizing the grant of denaturing certificates, at the rate originally fixed by Regulation No 840/68, for applications in respect of contracts entered into before the publication of Regulation No 354/69. Such a measure would not have jeopardized the aim of that Regulation as those applications could only have referred to limited quantities and a precise appreciation of the situation would still have allowed for the grant of denaturing premiums for at least 100 000 metric tons of white sugar, and the obligation for traders to observe the terms of the contracts already concluded would have prevented the quantities of white sugar to which those contracts referred being put back on the market for white sugar intended for human consumption.

(d) Moreover, the Commission should have taken account of the situation created in particular in the Federal Republic of Germany by the requirement of additional conditions for presenting applications for premium certificates; the applicant should have been able to lodge his application only after the purchase of white sugar and the resale of sugar for denaturing to a manufacturer of animal foods. In putting an immediate stop to denaturing, the Commission intervened in already existing legal situations in the Federal Republic of Germany without any objective necessity, thus jeopardizing interests which merited protection.

Article 2 of Regulation No 354/69 therefore infringes the principles of legal certainty and of proportionality.

The *Commission* emphasizes that the right to stipulate the entry into force of a regulation as the day of its publication in the Official Journal of the Communities is no longer capable of being disputed since the judgment of the Court of Justice of 13 December 1967 in Case 17/67, *Firma M. Neumann* v *Hauptzollamt Hof* (Rec. 1967, p. 571).

Control by the judiciary of this freedom of the legislature should be limited to considering whether or not, in the case in question, the Commission was guilty of a misuse of power. This is not so in the present case.

(a) Having become convinced that nothing justified, at least provisionally, the further grant of the denaturing premium, the Commission had to take care that the entry into force of Regulation No 354/69 was fixed in such a way that its effect was not nullified. As any application duly lodged gives a right to the premium certificate which cannot be withdrawn, the Commission had to act in such a way that, between publication and entry into force of the Regulation, there was no further time still to lodge quick applications.

(b) The situation at 26 February 1969 in no way excluded the risk of an excessive flow of premium applications

in the event of granting a period of grace.

The imminent suppression of a system of subsidies would encourage the parties concerned to try to obtain the benefit of the subsidy at its initial level. There were good reasons for expecting such a reaction in the sugar trade after reduction of the premium as the rate of the premium had been relatively favourable and since there was no way of foreseeing the moment when the establishing of surpluses would again justify a premium nor whether it would reach as favourable a level, the traders, considering the fact that the denaturing certificates had a period of validity of eleven months and that they guaranteed the rate of premium indicated in them, had tried to apply for 'reserve' premiums more especially as the costs of lodging a deposit had not been substantial.

The Commission could not have estimated the quantities for which applications would still be lodged; an excessive number of new applications would have treatened to disturb the development of the market. As the quantities applied for have, in any case, to be denatured within one year, the situation, as yet unknown, of supplies of the season to come would have become encumbered and disturbances could have arisen in the sector of feed grain.

(c) As to the statement of reasons, the Court could, as in Case 17/67, find 'in the provisions laid down by it (the Regulation) serious reasons for considering that any delay between publication and entry into force could, in this case, have been prejudicial to the Community'. In fact, it would have been superfluous expressly to state in the wording of the Regulation how the various interests arose with regard to the reduction of the premium to zero and the fact that there were no longer any real surpluses, and the inference that the Commission necessarily drew from this for the entry into force of its decision.

(d) The argument that the immediately applicable measure taken by the Commission produces 'retroactive' results for dealings in hand ignores the fact that, by guaranteeing the amount of the premium applied for during the whole period of validity of the certificate, Regulations Nos 768/68 and 833/68 afford sufficient protection of confidence. The certificates already issued are not affected by the reduction of the premium; confidence in the maintenance of the premium does not need more extensive protection.

The entry into force of a regulation on the third day following the date of its publication has the object merely of ensuring its application on the date specified by all departments concerned. The granting of this period of grace however must not lead to undesirable consequences; in the case in question, it was not necessary as the intervention agencies entrusted with issuing the premium certificate for denaturing were respresented on the Management Committee at the time Regulation No 354/69 was discussed.

(e) The German applicants were not placed in a discriminative position for which an additional period of grace could alone compensate. All Member States have required, in one form or another, at least an indication of the denaturing undertaking before payment of the premium. Furthermore, as the German intervention agency always issued a premium certificate immediately and was content to receive the additional information required in the Federal Republic before payment of the premium, the obligation to include all this information in the application was not a serious handicap for German traders.

3. As to the validity of Article 2 (2), last sentence, of Regulation No 833/68 (third question)

Westzucker states that Regulation No 1009/67 does not authorize Member States, directly or indirectly, to adopt supplementary measures or provisions of

application. On the contrary, the Council reserves the right, by Article 9 (7), to adopt general rules applicable to denaturing; by Article 9 (8), it authorized the Commission merely to adopt conditions for the grant of premiums and their amount. It did not enable the Commission to transfer to the Member States, in whole or in part, the authorization which had been given to it. However by Article 2 (2), last sentence, of Regulation No 833/68, the Commission authorized Member States to call for additional information at the time the application for issue of a premium certificate for denaturing was submitted.

Article 4 of that Regulation gives the premium certificate for denaturing the effect of creating a right, as it constitutes title to payment of that premium. The provisions relating to the obligatory contents of the application therefore also govern the basic conditions on which the issue of the certificate depends. The Commission has thus purported to authorize the Member States to impose additional basic conditions for the issue of premium certificates for denaturing; but such issue cannot be subject to conditions which are not uniform throughout the Community. In its judgments of 1 February 1972 (Cases 49/71 and 50/71, Hagen OHG and Wünsche OHG v Einfuhr- und Vorratsstelle für Getreide und Futtermittel; Recueil 1972, pp. 23 and 53), the Court of Justice held that conditions of intervention must be made uniform whether it is a matter of conditions decided by the Community authorities or supplementary conditions which, in certain cases, the intervention agencies of each Member State are authorized to adopt.

The Commission has tolerated the fact that the German Government requires, as an additional condition for the grant of a premium certificate, an indication of the denaturing undertaking and the sugar-works doing the supplying. Because of this, it was not possible in the Federal Republic to obtain reserve or provisional certificates. Thus in transferring, albeit partially, to the Member States the powers conferred on it for regulating the conditions of issue of a denaturing certificate, the Commission infringed the principle of equality.

The *Commission* is of the opinion that a provision enabling Member States to require the premium application to include information additional to the basic minimum information laid down by the Community Regulations derives from a necessity inherent in the structure of the Community.

In the absence of an administrative infrastructure proper to the Community institutions, the administrative implementation of the various tasks involved in the organization of the markets devolves on the competent agencies of the Member States. On the organizational and procedural level, these require a fairly wide freedom of action according to the nature of the task and adapted to the circumstances of national law.

The supremacy of Community law requires that the additional information which a Member State may call for is compatible with the Community rules in question. However, incompatibility of a supplementary national provision with Community rules in no case admits of the conclusion that the enabling Community rule is void. The validity of derived national law must be considered by reference to Community law, and not the reverse. This is especially true of Article 2 of Regulation No 833/68 which merely enables Member States in general terms to adopt supplementary provisions.

Grounds of judgment

1 By order dated 21 July 1972, received at the Court Registry on 4 August 1972, the Hessischer Verwaltungsgerichtshof, under Article 177 of the EEC Treaty, referred questions relating to the validity of certain provisions of Regulation No 833/68 of the Commission of 28 June 1968, laying down rules concerning the denaturing of sugar for animal feeding stuffs (OJ No L 151, p. 29) and Regulation No 354/69 of the Commission of 26 February 1969, altering the premiums for denaturing sugar (OJ No L 49, p. 14).

On the first question

2 The Court is asked by the first question to rule on the validity of Article 1 (1) of Regulation No 354/69 which fixed the premium for denaturing white sugar at 0 units of account per 100 kgs.

In this respect, the Verwaltungsgerichtshof asks whether the Commission had power to adopt a measure the effect of which was to suspend payment of the premium or whether such a measure could only have been adopted by the Council.

It is also asked whether the legality of that measure was dependent on the existence of surpluses of sugar within the Community and, if so, whether such surpluses existed at the date in question.

3 The plaintiff in the main action, for its part, accuses the Commission of having exceeded ist powers in suspending payment of the premium, of having ignored the priority accorded to the payment of premiums for denaturing as opposed to refunds on exports, of having been influenced by an incorrect appreciation of the state of the market and, lastly, of having shown an improper complacency in regard to certain national interests, to the detriment of the industry carrying out denaturing of sugar.

As to the powers of the Commission

4 The principles of the common organization of the market in sugar were established by Regulation No 1009/67 of the Council of 18 December 1967 (OJ No 308, p. 1), which lays down a body of measures intended to stabilize the market in question and to guarantee the maintenance of prices fixed by the Council.

These measures include the obligation for intervention agencies to purchase, the application of levies on imports and the payment of refunds on exports to third countries, stock-piling arrangements and the grant of denaturing premiums.

Article 9 (2) of Regulation No 1009/67 lays down as to this that intervention agencies may grant denaturing premiums for sugar rendered unfit for human consumption'.

Under the terms of Article 9 (7), the Council reserves the power subsequently to determine 'general rules for the application of the above paragraphs', including the system of denaturing premiums.

Under the terms of Article 9 (8), 'detailed rules for the application of this Article . . .' are adopted in accordance with Article 40, that is by the Commission in accordance with the so-called Management Committee procedure, and '(shall deal) in particular with . . . conditions for granting denaturing premiums and the amount of such premiums'.

5 The general rules on the denaturing of sugar for animal feeding stuffs were laid down by Regulation No 768/68 of the Council of 18 June 1968 (OJ No L 143, p. 12), on the basis of Article 9 (7).

The Commission in turn laid down detailed rules for the denaturing of sugar by Regulation No 833/68, adopted by virtue of Article 9 (8) of the main Regulation, the provisions adopted by the Council in implementing Regulation No 768/68 also having been taken into account.

In execution of these provisions, the Commission first fixed the denaturing premium at 14·03 units of account per 100 kg of white sugar by Regulation No 840/68 of 28 June 1968 (OJ No L 151, p. 50).

By the disputed Regulation No 354/69 the Commission, after having stated in the Preamble 'that the market for sugar is at present being reorganized', reduced the premium to 0 units of account, that is, in practice suspended payment of it.

6 Article 9 (2) of Regulation No 1009/67 expressly gave a discretionary character to the grant of denaturing premiums, in contrast to the permanent and obligatory character of other interventions provided for by the same Regulation.

No obligation exists, therefore, by virtue of the Regulation, permanently to maintain the system of denaturing premiums, with the result that those

premiums may be reduced or even suspended entirely, according to the development of production and market fluctuations.

Therefore, the only question left unanswered on this point by the main Regulation is which authority is enabled to adopt such provisions.

7 That power, which is given by Article 9 (2) of Regulation No 1009/67 to 'intervention agencies', can only be exercised within the framework of conditions to be determined in accordance with Article 9 (7) and (8), that is in conformity, on the one hand, with the general rules laid down by the Council and, on the other hand, with the detailed rules of application laid down by the Commission in accordance with the so-called Management Committee procedure.

As the general rules laid down by Article 9 (7) were fixed by Regulation No 768/68, it follows that it was the Council's intention that the fixing of all other detailed rules of application were to be referred to the Commission.

This interpretation conforms as much with the spirit of Article 155 of the EEC Treaty, which provides that the Commission shall 'exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter' as to the wording of Article 9 (8) of Regulation No 1009/67 the drafting of which shows, by the use of the words 'in particular', that the concept of 'detailed rules for the application . . .' must be given a wide meaning.

Therefore the Commission was enabled, under Article 9 (8) of Regulation No 1009/67, to exercise the powers necessary to ensure the functioning of the system of denaturing premiums, insofar as the Council had not itself provided for it in implementing Regulation No 768/68.

8 It follows that, subject to the general rules laid down by the Council, the Commission has the right to decide on both the grant and the amount of denaturing premiums and that, therefore, it has the power to decide whether they should be suspended.

With this end in view, it also falls to it to determine the appropriate technical method and the measure adopted cannot be criticized because the Commission, rather than announcing the suspension of the premium, chose to fix it at nil, in accordance with a method current in fiscal law and adopted by Community law.

As to the state of the market and the choice of the methods of intervention

9 The plaintiff in the main action points out that the Commission was obliged to recognize the priority which, in the opinion of the former, existed in favour of denaturing premiums as opposed to refunds on exports.

Fan from observing this order of interventions, the Commission continued to grant refunds on exports during the period when denaturing premiums were suspended.

10 Regulation No 1009/67 admits of no intention of the Community legislature to establish any priority between the different forms of intervention on the market for sugar.

The only difference established in this respect by the Regulation is that certain actions, and in particular those with the object of regulating imports and exports, have a permanent, or at least regular, character, while others, including denaturing are essentially discretionary.

The choice of interventions is in effect conditional at one and the same time upon the variable circumstances of the market, the financial charges arising from the implementation of the chosen measures and the difficulties which the disposal of denatured sugar may create on the market for feeding stuffs.

One cannot therefore admit of a priority in favour of denaturing programmes as opposed to the other means of intervention provided for by Regulation No 1009/67.

11 According to the opinion of the plaintiff in the main action, the Commission relied on an incorrect appreciation of the economic situation at the time in question in relation as much to the actual market data as to the provisions for future contingencies, as surpluses existed on the market which required denaturing premiums to be maintained.

Therefore the finding in the Preamble to Regulation No 354/69 that 'the market for sugar is at present being reorganized', did not correspond to the facts at that time.

12 As stated in the recitals in the Preamble to Regulation No 768/68 of the Council, in order to fix the denaturing premium 'objective tests should be adopted, taking account of the most rational use in relation to the situation on the sugar market and the competitive position of sugar with regard to other animal feeding stuffs for which it can be a substitute'.

To this end, Article 2 of the same Regulation laid down a certain number of criteria which the Commission must take into consideration in deciding on the payment of denaturing premiums and fixing their amount, namely the level of the intervention price, the standard amounts for the technical costs of denaturing and transport charges, the foreseeable, market prices for animal feeding stuffs with which denatured sugar has to compete, the comparison between the nutritive value of sugar and the nutritive value of the competing animal feeding stuffs and, lastly, the whole of the sugar surplus available for denaturing in the Community.

13 Although certain of these criteria are capable of being determined relatively precisely, others must be estimated approximately or on a flatrate basis.

Further, over and above the criteria which refer to actual data, Article 2 of Regulation No 768/68 implies taking forecasts into account.

Such is the case, particularly, in estimating 'the whole of the sugar surplus available for denaturing in the Community' under Article 2 (e).

In fact, this datum, can only come from a comparison between, on the one hand, statistical indications of the amount of sugar produced and, on the other hand, estimation of the foreseeable consumption requirements, the balance of imports and exports and, finally, the necessity to maintain bridging stocks with the object of ensuring emergency supplies at all times.

Finally, it also falls to the Commission to fix the timing and spacing of its interventions, taking account of both the development and trends of the market and possible necessary adjustments due to the effect of the measures implemented.

14 Thus the Commission enjoys a significant freedom of evaluation, which must be exercised in the light of the objectives of the economic policy laid down by Regulation No 1009/67 within the framework of the common agricultural policy.

When examining the lawfulness of the exercise of such freedom, the courts cannot substitute their own evaluation of the matter for that of the competent authority but must restrict themselves to examing whether the evaluation of the competent authority contains a patent error or constitutes a misuse of power.

15 The allegations of the plaintiff in the main action have revealed no indication of such an error or such a misuse of power.

In fact the argument of the plaintiff in the main action is reduced essentially to stating that at the time of the measure in dispute, the market in sugar was

not being reorganized and that surpluses of sugar existed in the Community which called for the maintenance of denaturing premiums.

However, although the existence of such surpluses has been proved, the Commission's freedom of evaluation with regard to the means to be applied to eliminate them and the most opportune time for possible action to this end remained unaffected.

16 Finally, the plaintiff in the main action contends that the provision in dispute was vitiated by the fact that during the preparatory discussions of Regulation No 354/69 by the Management Committee, the Commission yielded to improper pressures from the French and Italian Governments to promote certain interests of those States to the detriment of the industry concerned with the denaturing of sugar.

17 One of the aims of the Management Committee procedure is to enable the Commission to prepare its intervention measures in close cooperation with the national authorities charged with the management of the market sectors concerned.

It is consonant with the very idea of the Community that, within the framework of the mechanics of collective discussion set up with a view to the implementation of the common agricultural policy, the Member States should emphasize their interests, whilst it falls to the Commission to arbitrate, through the measures taken by it, between possible conflicts of interest from the point of view of the general interest.

The considerations arising from certain export obligations of the Italian authorities, on the one hand, and from certain commercial interests of the French Antilles, on the other hand, presuming they both existed, were among those which the Commission could legitimately take into account.

The validity of Regulation No/354/69 cannot, therefore, be held to be affected.

On the second question

18 The second question is whether Article 2 of Regulation No 354/69, which specified the entry into force of the Regulation on a date coinciding with that of publication in the *Official Journal* of the Communities, is valid.

It is also asked whether that provision could be considered to be invalid because it was not especially reasoned and whether the Commission should possibly have been obliged to include transitional provisions in the Regulation for purchasing contracts entered into before publication of the Regulation.

19 Under the terms of Article 191 of the EEC Treaty, Regulations shall enter into force 'on the date specified in them or, in the absence thereof, on the twentieth day following their publication'.

By this provision the Treaty reserved to the competent institutions the right to specify the date of entry into force of legislative acts according to the circumstances.

In this case, the immediate entry into force of Regulation No 354/69 is obviously justified by the necessity to prevent, during the time which would otherwise have elapsed between publication of the measure and its entry into force, the deposit of applications for denaturing certificates which, due in particular to their long duration, could have compromised the effect of the measure of economic policy taken by the Commission.

This clause did not have to be especially reasoned as it expressed a requirement of efficiency inherent in the very nature of the measure introduced by the Regulation.

20 The Commission, likewise, was under no obligation to provide for transitional provisions.

In fact, the duration of the validity of denaturing certificates, issued simply on application by the parties concerned, is such that it is possible for the applicants to have them issued at the time of entering into their purchasing contracts and so to obtain the guarantee that, during the period of validity of the certificate, those contracts may be carried out, taking into account the amount of the premium fixed in the certificate.

Unter these circumstances, and presuming that the persons concerned acted with due diligence at the time of concluding their contracts, the entry into force of the Regulation with immediate effect could not have proved injurious to legitimate interests.

It is appropriate to note, moreover, that the objective of the organization of the market introduced by Regulation No 1009/67 is not to confer on the undertakings concerned a guarantee of being able to carry out denaturing under the most advantageous financial conditions but to ensure the normal functioning of the market in sugar on the basis of the price policy defined by the Council.

On the third question

21 Finally it is asked whether Article 2 (2), second sentence, of Regulation No 833/68 of the Commission is valid in that it permits Member States to require

additional information in applications for the grant of denaturing premiums over and above that specified in the first sentence of that provision.

22 The plaintiff in the main action submits that, by making use of that authorization, the German authorities have discriminated against their own nationals in making it more difficult for contracts which could give, rise to the benefit of a denaturing premium to be concluded.

23 After specifying the information which must be contained in every application for the grant of a denaturing premium — the name and address of the applicant, the nature and quantity of the sugar to be denatured and the Member State where denaturing will take place — Article 2 of Regulation No 833/68 states that 'Member States may require additional information'.

The German administration has made use of this option by requiring additional information concerning the supplier of the sugar and the undertaking charged with carrying out denaturing.

24 The provision criticized does not permit national authorities to add new conditions to those specified in the Regulations in question but merely authorizes Member States to ask applicants for fuller information than the extremely summary information required by the Regulation.

Read thus, this provision, which is intended to allow for adaptation of administrative formalities to national needs and therefore to facilitate supervision of the operations, must not lead to differences in treatment in the application of the Regulation in question.

25 The validity of this enabling provision cannot therefore be held in doubt.

Costs

26 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

As these proceedings are, insofar as the parties to the main action are concerned, a step in the action pending before the Hessischer Verwaltungsgerichtshof, the decisions as to costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge Rapporteur;
Upon hearing the oral observations of the plaintiff in the main action and the

Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 40, 43, 155, 177 and 191;
Having regard to Regulation No 1009/67 of the Council of 18 December 1967, on the common organization of the market in sugar, Regulation No 768/68 of the Council of 18 June 1968, laying down general rules on the denaturing of sugar for animal feeding stuffs, Regulation No 833/68 of the Commission of 28 June 1968, laying down rules concerning denaturing of sugar for animal feeding stuffs, Regulation No 840/68 of the Commission of 28 June 1968, fixing premiums for denaturing sugar for animal feeding stuffs and Regulation No 354/69 of the Commission of 26 February 1969, altering the premiums for denaturing sugar fixed by Regulation No 840/68;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

in answer to the questions refered to it by the Hessischer Verwaltungsgerichtshof, by order of that court dated 21 Juli 1972, hereby rules:

Examination of the questions referred does not reveal any element capable of affecting the validity of Article 1 (1) and Article 2 of Regulation No 354/69 of the Commission of 26 February 1969, or of Article 2 (2), second sentence, of Regulation No 833/68 of the Commission of 28 June 1968.

Lecourt Monaco Pescatore

Donner Mertens de Wilmars Kutscher Ó Dálaigh

Delivered in open court in Luxembourg on 14 March 1973.

A. Van Houtte — Registrar

R. Lecourt — President