development of Community law, be decided in accordance with the national law of the intervention agency responsible for the relevant sector of the market.

Community law does not prevent the application of provisions or principles of national law the effect of which may be to restrict the period during which such repayment may be claimed, provided always that that question is settled in accordance with the same rules as those which apply to the performance of similar supervisory duties carried out by the national administrative authorities in the spheres in which they have sole responsibility.

In Joined Cases 119 and 126/79

REFERENCE to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht [Administrative Court] Frankfurt am Main for a preliminary ruling in the proceedings pending before that court between, on the one hand,

LIPPISCHE HAUPTGENOSSENSCHAFT E.G., a co-operative society with registered offices in Lage, Lippe,

and

BUNDESANSTALT FÜR LANDWIRTSCHAFTLICHE MARKTORDNUNG [Federal Bureau for the Organization of Agricultural Markets], Frankfurt am Main,

and on the other hand,

WESTFÄLISCHE CENTRAL-GENOSSENSCHAFT E.G., a co-operative society with registered offices in Münster (Westphalia),

and

BUNDESANSTALT FÜR LANDWIRTSCHAFTLICHE MARKTORDNUNG,

on the determination of the system of time-limits and limitation periods applicable to claims for the repayment of premiums granted under Community rules for the denaturing of common wheat,

THE COURT (Second Chamber)

composed of: A. Touffait, President of Chamber, P. Pescatore and O. Due, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities may be summarized as follows:

I — Facts and written procedure

According to Regulation No 120/67 of the Council of 13 June 1967 on the common organization of the market in cereals (Official Journal, English Special Edition 1967, p. 33) it is necessary that intervention measures may be taken by the intervention agencies of the Member States in order to stabilize markets and to ensure a fair standard of living for the agricultural community concerned. Thus, in order to support the market in cereals of bread-making quality which cannot be disposed of through the normal market outlets, Article 7 (3) of the regulation enables the national intervention agencies themselves to offer for sale common wheat and rye of breadmaking quality which have been rendered unfit for human consumption by denaturing and to grant a denaturing premium for common wheat.

General rules governing the denaturing of wheat and rye of bread-making quality were laid down by Regulation No 172/67 of the Council of 27 June 1967 (Official Journal, English Special Edition 1967, p. 139), amended by Regulation No 644/68 of the Council of 29 May 1968 (Official Journal, English Special Edition 1968 (I), p. 119).

According to Article 2 of Regulation No 172/67 the methods employed for denaturing must ensure that denatured wheat and rye can no longer be used for human consumption; moreover, those methods must be at least as effective as a standard method to be determined.

Since denaturing by kibbling, the method previously used, has the disadvantage of excluding some ways of using denatured

wheat and since, in order to eliminate that disadvantage whilst at the same time providing guarantees equivalent to those afforded by kibbling, a method of denaturing by colouring uniform throughout the Communtiy should be adopted as a standard method, Regulation No 956/68 of the Commission of 12 July 1968 on new detailed rules for the application of the provisions concerning denaturing of common wheat and rye of bread-making quality (Journal Officiel L 164, p. 9) laid down a standard method which, with effect from 1 August 1968, is the only one permitted for denaturing by colouring.

That standard method, laid down successively by Regulation No 956/68, Regulation No 2086/68 of the Commission of 20 December 1968 (Journal Officiel L 307, p. 13), and Regulation No 1403/69 of the Commission of 18 July 1969 (Official Journal, English Special Edition 1969 (II), p. 345), comprises, in its latest form, the following procedures:

1. Dissolve either 30 grams of colouring matter of 85 % concentration or 51 grams of colouring matter of 50 % concentration of Patented Blue V (Schultz No 826, EEC No E 131) in at least 2.5 litres and at most 3 litres of pure water.

2. Colour 100 kilograms of wheat from the quantity to be denatured with the amount of solution prepared in accordance with paragraph 1.

3. Mix 80 kilograms of cereals to be denatured with at least 20 kilograms of grains coloured as indicated in 2, so that they are uniformly dispersed in the total mass.

The Lippische Hauptgenossenschaft e.G., a co-operative society with registered offices in Lage, Lippe, was granted denaturing premiums in respect of common wheat totalling DM 394 402.64 for the period between 28 November 1968 and 8 July 1970 by the Einfuhr- und Vorratsstelle für Getreide und Futtermittel [Import and Storage Agency for Cereals and Feeding-stuffs].

In accounting investigations carried out in September 1976, the Bundesanstalt für landwirtschaftliche Marktordnung, which replaced the Einfuhr- und Vorratsstelle für Getreide und Futtermittel, found that on 61 occasions on which it had carried out denaturing procedures on common wheat the Lippische Hauptgenossenschaft had used only 45 kilograms of colouring matter at 85 % concentration and 228 kilograms of colouring matter at 50 % concentration of Patented Blue V, whereas according to the Community rules it ought to have used 54.140 kilograms of colouring matter at 85 % concentration and 453.013 kilograms of colouring matter at 50 % concentration.

Since the denaturing procedures had not been carried out in the proper manner the Bundesanstalt für landwirtschaftliche Marktordnung issued 61 claims on 20 January 1977 for repayment of the denaturing premium under the first subparagraph of Article 11 (1) of the Verordnung Denaturierungsprämie Getreide [Regulation on denaturing premiums for cereals] of 8 August 1968.

On 26 January 1977 the Lippische Hauptgenossenschaft lodged a complaint with the Bundesanstalt against those claims. On 13 August 1977 it brought an action before the Verwaltungsgericht Frankfurt am Main for the annulment of 56 of the 61 claims for repayment, relating to a total of DM 367 241.35.

In addition, the Westfälische Central-Genossenschaft e.G., a co-operative society with registered offices in Münster (Westphalia), obtained denaturing premiums for common wheat totalling DM 1 316 423.31 from the Einfuhr- und Vorratsstelle für Getreide und Futtermittel for the period from 4 November 1968 to 7 February 1974.

An investigation carried out during October and November 1976 showed that only 1 355 kilograms of colouring matter had been used to denature 19 915 tonnes of common wheat whereas, according to the standard method laid down by the Community rules, 2 053 kilograms of Patented Blue V colouring matter should have been used; moreover, the records concerning the purchase, consumption and daily stocks of denaturing agent were lacking or incomplete. On those grounds the Bundesanstalt für landwirtschaftliche Marktordnung issued 254 claims on 30 July 1976 for repayment by the Westfälische Central-Genossenschaft of the denaturing premiums which should not have been paid, under the first subparagraph of Article 13 (1) of the Verordnung Denaturierungsprämie Getreide of 19 November 1971.

By a decision of 27 September 1978 on the complaint made by the Westfälische Central-Genossenschaft the Bundesanstalt cancelled 65 of the 254 claims for repayment. No decision was made concerning the other claims.

On 12 August 1977 the Westfälische Central-Genossenschaft brought an action before the Verwaltungsgericht Frankfurt am Main for the annulment of the remaining claims in respect of a total of DM 991 730.81.

In both cases the First Chamber of the Verwaltungsgericht Frankfurt am Main decided by orders dated 12 July 1979 to suspend judgment until the Court of Justice had delivered a preliminary ruling under Article 177 of the EEC Treaty on the following questions:

(a) Is the question within what period claims for repayment in connexion with the grant of denaturing premiums which have been paid on the basis of Regulation (EEC) No 956/68 of 12 July 1968, Regulation (EEC) No 2086/68 of 20 December 1968 and Regulation (EEC) No 1403/69 of 18 July 1969 may be made to be decided in accordance with the law of the European Communities?

(b) If Question (a) must be answered in the affirmative: Are such claims for repayment subject to a limitation period at all and, if so, what period of limitation must be taken as the basis in this instance?

(c) Does European law recognize the principle according to which claims for repayment of these denaturing premiums made after the expiry of the period prescribed by national law for which the records relating to the denaturing processes must be preserved (seven years in this case) can no longer be founded on the ground that it is clear from the records or other documents still existing that the denaturing processes were not carried out properly?

The order made by the Verwaltungsgericht Frankfurt am Main in respect of the Lippische Hauptgenossenschaft (registered under No 119/79) was lodged at the Registry of the Court on 30 July 1979, and that in respect of the Westfälische Central-Genossenschaft (registered under No 126/79) on 7 August 1979.

Written observations were submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC as follows:

— In Case 119/79, on 10 October 1979 by the Commission of the European Communities, represented by its Legal Adviser, Peter Karpenstein, acting as Agent, assisted by Albrecht Stockburger, Advocate of Frankfurt am Main, on 22 October by the Lippische Hauptgenossenschaft e.G., represented by Jürgen Gündisch,

Advocate of Hamburg, and on 24 October by the Bundesanstalt für landwirtschaftliche Marktordnung, represented by Erdmann Schaller, Head of the Legal Division, acting as Agent;

— In Case 126/79, on 10 October 1979 by the Commission of the European Communities, on 26 October by the Westfälische Central-Genossenschaft e.G. and on 5 November 1979 by the Bundesanstalt für landwirtschaftliche Marktordnung.

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

On 30 January 1980 the Court made an order under Article 43 of the Rules of Procedure to the effect that because of the similarity of their subject-matter Cases 119/79 and 126/79 should be joined for the purposes of the oral procedure and judgment.

The Court made a further order on 30 January 1980 under Article 95 (1) and (2) of the Rules of Procedure assigning the case to the Second Chamber.

II — Written observations submitted to the Court

The *Lippische Hauptgenossenschaft e.G.* and the *Westfälische Central-Genossenschaft e.G.*, the plaintiffs in the main proceedings, restated certain facts and points of law concerning the cases pending before the Verwaltungsgericht Frankfurt am Main and then submitted the observations summarized below in response to the questions put to the Court.

First question

(a) Payment of denaturing premiums is based on Community law; its purpose is to further the aims of the common agricultural policy. Claims for repayment of premiums, on the ground of failure to observe the Community provisions governing the denaturing process, are therefore equally subject to Community law; the period within which it is possible to make such claims is governed by that legal order.

(b) According to the judgments of the Court of 15 July 1970 (Case 45/69 *Boehringer* [1970] ECR 769) and 14 July 1972 (Case 49/69 *BASF* [1972] ECR 713) the fixing of a limitation period and the rules for its application in the sphere of competition come within the powers of the Community legislature. The question of the limitation period is therefore covered by Community law.

(c) Several legal provisions in Community law govern questions concerning limitation periods: Article 43 of the Protocol on the Statute of the Court of Justice of the EEC, on matters arising from non-contractual liability; Decision No 5/65 of the High Authority of 17 March 1965 on the barring by time of claims in respect of levies provided for in Articles 49 and 50 of the ECSC Treaty (Official Journal, English Special Edition 1965-1966, p. 38); Regulation No 2988/74 of the Council of 26 November 1974 concerning limitation periods in proceedings and the enforcement of sanctions under the rules of the EEC relating to transport and competition (Official Journal L 319, p. 1). The sense and purpose of those rules requires a uniform reply to the question of what limitation period governs claims for repayment of sums paid under the provisions of Community

law. That uniform reply must be dictated by Community law. To allow differing limitation periods would prejudice the uniformity of application of Community law.

(d) The reply to the first question should therefore be as follows:

The question within what period claims for repayment of denaturing premiums granted under Regulation No 956/68 of 12 July 1968, Regulation No 2086/68 of 20 December 1968 and Regulation No 1403/69 of 18 July 1969 may be made must be decided on the basis of Community law.

Second question

(a) The case-law of the Court of Justice and the opinions of its Advocates General show that in the absence of any positive provision of Community law, the fundamental requirement of legal certainty prevents the Commission from indefinitely delaying the exercise of the powers conferred on it. It is therefore accepted, at least, that the right to take action against infringements lapses upon the expiry of a certain period.

(b) As to the length of the limitation period, in the absence of Community rules one must proceed, initially, on the basis of analogies drawn from other spheres of Community law.

Regulation No 2988/74 of the Council, for instance, provides in respect of the field of the law governing transport and competition for a limitation period of three years in respect of infringements of provisions concerning applications or notifications, and five years for other infringements. If action in respect of such infringements is barred on the expiry of five years, the same must apply with even greater force in respect of claims for payment.

According to Decision No 5/65 of the High Authority of the ECSC, claims in respect of production levies are barred after three years; the limitation period is six years if there are no declarations of production or in the event of incomplete or inaccurate declarations made wilfully or through negligence. There is no reason why it should be possible to claim repayment of denaturing premiums for a longer period than claims in respect of production levies, that is, beyond a period of three years.

According to Article 43 of the Protocol on the Statute of the Court of Justice of the EEC, proceedings against the Community in matters arising from non-contractual liability are barred after a period of five years from the occurrence of the events giving rise thereto. It would be contrary to the principle of equality of treatment for the limitation period on claims for compensation by a citizen of the Community against the latter to be shorter than for claims made by the Community against its citizens. The principle of legal certainty applies equally to both cases.

(c) A review of national provisions concerning limitation periods provides evidence as to the general principles of law which are common to the legal orders of the Member States with respect to the barring of claims for payment due to the State. A study of comparative law reveals that the principle that claims for debts due under public law are subject to limitation periods is recognized in all the legal systems and that the limitation periods applicable to the recovery of debts such as those which are the subject-matter of the main proceedings

are shorter than the general limitation periods, which vary between ten years (Italy) and thirty years (Federal Republic of Germany); requests for repayment under public law, which are analogous to the claims concerned in the present dispute, are subject, in the legal orders of the Member States, to a limitation period of between two and six years, the majority of limitation periods for such claims being five years.

(d) The reply which is proposed for the second question is as follows:

According to the general principles of the law of the European Communities claims for repayment of denaturing premiums are subject to a limitation period; that period is five years.

Third question

(a) This question is not directly relevant to resolving the main issue.

(b) The first and second subparagraphs of Article 10 (2) of the Verordnung Denaturierungsprämie Getreide of 8 August 1968 require undertakings which carry out denaturing procedures to retain certain records and documents relating to the denaturing of common wheat for seven years. The real question here is whether the principle of the protection of legitimate expectations and the principle of proportionality may, independently of limitation periods, preclude the exercise of a right to claim repayment on expiry of a certain period.

(c) As regards the principle of the protection of legitimate expectations, which is recognized in Community law, it is important to note, apart from the fact that more than seven years elapsed between certain denaturing operations and the claim for repayment of the premiums, the fact that the Einfuhr- und Vorratsstelle has carried out regular checks on the denaturing operations through its own inspectors. In such circumstances it would be contrary to the principle of the protection of legitimate expectations to claim repayment of denaturing premiums more than seven years after the denaturing operations concerned, on the basis of accounting investigations carried out after the event.

(d) As to the principle of proportionality, which is recognized in the case-law of the Court of Justice as one of the most important general principles of law, it should be observed that a period which is unlimited or greater than five or seven years is certainly not required in order to achieve the aim of the provisions concerning denaturing, and it would impose an excessive burden on undertakings which carry out denaturing.

(e) The legal orders of the Member States also recognize the principle according to which public administrative authorities who allow a lengthy period to elapse before claiming repayment of sums which they could have claimed immediately are prevented from exercising that right by the principle of the protection of legitimate expectations. A study of comparative law establishes that, independently of limitation periods, the law in most of the Member States acknowledges the principle that subsidies which have been granted, or other administrative measures giving rise to rights, cannot be withdrawn or cancelled after a certain period.

(f) The answer to the third question should be as follows:

In view of the principle of the protection of legitimate expectations and the

principle of proportionality, rights to the repayment of denaturing premiums the justification for which was checked at the time the denaturing was undertaken by inspectors of the competent national administrative authorities may be exercised only immediately after such inspection. Repayment is precluded at the latest on the expiry of the period during which records relating to the denaturing must be preserved as laid down by the national legislation, that period being of seven years' duration in the Federal Republic.

The *Bundesanstalt für landwirtschaftliche Marktordnung*, the defendant in both the main actions, is of the opinion that the reply to the first and third questions should be in the negative and that the negative reply to the first question makes the second question irrelevant.

First question

(a) No Community rules concerning periods of limitation on claims for repayment of denaturing premiums are to be found either in the Treaty or in other provisions of Community law or in the general principles of Community law. That being so the question of the barring of claims for repayment in connexion with intervention measures can only be resolved by reference to the rules in force in the Member State concerned.

(b) The lack of Community rules is a result of the structure of the Community legal order, the effect of which is, setting aside the spheres which are governed directly by the Community and its general task of harmonization, to entrust the application of Community law to the authorities and courts of the Member States. Repayment of premiums which have been paid in error is a matter which concerns the implementation of Community law; any temporal restriction, by means of the operation of a limitation period, on the possibility of claiming such a repayment must be governed by the rules of procedure of the Member States in question.

To introduce a limitation period in respect of the implementation of Community law by applying rules of national law is in conformity with the division of functions between the Community and its Member States provided for by the Treaty. That division justifies the fact that the restitution of sums paid is governed and restricted according to the relevant national provisions. The relationship between rights derived from Community rules and national rules of procedure is a complementary one.

(c) It is unnecessary to have recourse to general principles of Community law in order to decide what period of limitation applies to claims for repayment: the principles of legal certainty and order, which are an integral part of the systems of law of the Member States of the Community, are already embodied in the rule that the national provisions of the States concerned apply in respect of limitation periods.

(d) The Court has confirmed in a number of judgments the principle that where there are gaps in Community law internal law applies, especially internal administrative and procedural law. According to its case-law, in the absence of Community rules on the subject detailed procedures designed to safeguard rights conferred on individuals directly by Community law are to be governed by the internal legal orders of each Member State; thus for instance in

the sphere of social security law the limitation period applicable to advances which are to be repaid is, according to the Court, and as the law stands at present, that laid down by internal law. The Court has also held that in order to ensure legal certainty the limitation period must be fixed in advance, and only the Community legislature is competent to determine its length and method of application; in view of that conception the Court should reply to the first question which has been asked by the Verwaltungsgericht Frankfurt am Main in the affirmative, the result being that claims for reimbursement of unduly paid premiums are not subject to any limitation period.

(e) A supplementary argument in favour of the theory that the question of limitation should be decided on the basis of internal legal orders is to be found in the fact that the Community legislature first applied rules in respect of limitation periods in 1979, in particular by Council Regulations No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (Official Journal L 175, p. 1) and No 1697/79 of 24 July 1979 on the post-clearance recovery of certain export duties (Official Journal L 197, p. 1). In so far and as long as the Community legislature has not drawn up appropriate provisions, and bearing in mind the fact that harmonization at Community level is as yet incomplete, it is appropriate to apply the internal law in force as a complementary measure.

(f) This interpretation is equally well supported by German case-law concerning limitation periods in relation to Community rights: the Bundesfinanzhof has consistently applied the general provision in Article 195 of the Bürgerliches Gesetzbuch [German Civil Code], which provides for a limitation period of 30 years, to the barring of claims for export refunds.

(g) Even the Commission has acknowledged, in a reply to a written question (Official Journal 1974, C 145, p. 16), that "the refunding of charges which the Court of Justice has found incompatible with the Treaty is a matter which should normally be assessed, in the absence of Community rules, in the light of the Member States' general rules for the maintenance of order and certainty as to the law".

(h) The differences between the national provisions concerning limitation periods may, admittedly, cause the legal rights and obligations of the citizen to vary from one Member State to another. Such variations are merely the result of the application of Community law, at the present stage of integration, by the Member States.

(i) The first question put to the Court should be answered as follows:

Claims for the repayment of denaturing premiums which have been granted under the provisions of Regulation No 956/68 of 12 July 1968, Regulation No 2086/68 of 20 December 1968 and Regulation No 1403/69 of 18 July 1969 are subject to the legal rules of the Member States as regards the limitation periods to which they are subject.

Second question

The reply which has been proposed for the first question makes it unnecessary to examine the second; in any event, the result of it is that the question of limitation should be resolved in accordance with German law.

Third question

(a) The Court of Justice has, on a number of occasions, outlined the principles of law which are applicable in a comparative examination of national legislation; thus, for instance, it has accepted that the cancellation of an individual administrative measure which is unlawful is permissible if it is undertaken within a reasonable period. If, in the event that the length of that reasonable period had to be determined, the Court decided to adopt the period of seven years laid down by the German legislation for the preservation of records and documents concerning denaturing operations, it should be borne in mind that temporal restriction on the obligation to preserve the records is relevant at the most to the possibility of confirming, by means of inquiries carried out within the undertaking, the existence or otherwise of a conferred right, especially when the person concerned has already lawfully destroyed records which are more than seven years old; it does not preclude the possibility of cancelling an administrative measure which has the effect of conferring rights.

According to the Verwaltungsverfahrensgesetz [Law on administrative procedure], in force since 1 January 1977, an administrative measure which confers rights may not be withdrawn later than one year after the date on which the facts on which the claim for repayment is founded became known. That period was adhered to in both the main actions. The period of seven years during which documentary records must be preserved cannot therefore be adopted as the test for deciding whether or not the period within which it is possible, according to the case-law of the Court of Justice, to cancel administrative measures giving rise to rights is reasonable.

In any event, the sole purpose of the period during which records must be preserved is to permit the individual to destroy or to divest himself in any other manner of certain documents after the period has expired without incurring penal sanctions. While it is true that, in principle, for evidential reasons, any right to repayment can no longer be asserted, a distinction must be drawn between the practical impossibility of asserting such a right in the individual case, and the impossibility of asserting that right generally in law. To equate those two hypotheses one with the other would be to assimilate the period for the preservation of documents to the limitation period, whereas in fact the length of the preservation period and that of the limitation period are not identical.

(b) There is no general principle of Community law which states that, after the period for preserving important documents has expired, repayment of denaturing premiums may no longer be founded on such information as is still available. This problem also relates to the application of Community law by means of national legislation; it is therefore solely concerned with the regularity of the national procedure for applying an intervention measure which is prescribed by Community law. The periods during which records must be preserved help to ensure that the Community principles of legal certainty and proportionality are respected.

(c) The answer to the third question should be as follows:

There is no principle of Community law according to which claims for repayment of denaturing premiums may only be based, within a period of seven years, on the documents on the basis of which the premium was granted.

The *Commission* observes that the Court is asked to reply to the second question only in the event that the first question is answered in the affirmative, and that the

third question should be examined even if the Court of Justice considers that claims for reimbursement are governed by national law.

First question

(a) No rule, whether general or particular, has been established by the Community legislature concerning the repayment of denaturing premiums paid in error; on the contrary, it has imposed an obligation on Member States, under Article 8 of Regulation No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (Official Journal, English Special Edition 1970 (I), p. 218), to take, in accordance with national provisions laid down by law, regulation or administrative action, the measures necessary to satisfy themselves that transactions financed by the European Agricultural Guidance and Guarantee Fund are executed correctly and to recover sums lost as a result of irregularities or negligence. The express reference to national law makes it clear that the claims for repayment at issue in the main proceedings must be judged in the light of national law both as to their legal nature and as to the question of limitation.

(b) The general scheme of the rules which have been created within the framework of the common agricultural market and co-operation between Community law and national law is sufficient to show that the first question must be answered in the negative.

As at present constituted, the common organizations of the market are restricted to determining the rights and obligations of traders; however, the enforcement and implementation of those rights and obligations fall, in contrast, to a very large extent within the competence of the Member States. In the absence of rules of Community law Member States may and must, as part of the duty which has been assigned to them to apply the law, have recourse to their national law.

Obviously, such recourse to internal law for the purpose of implementing the common organizations of the market must not result in altering the scope of a Community regulation; however, the consistent case-law of the Court of Justice allows for the adoption and application of provisions of national law which do not create exemptions from the Community system, do not limit its scope and seek to achieve the same aim. As regards denaturing, the Court has held that Member States are free to enact detailed rules for the procedure for supervising denaturing "in relation to their own legal system and on their own responsibility".

Member States have been given the task, by Regulation No 729/70 and by Regulation No 283/72 of the Council of 7 February 1972 concerning irregularities and the recovery of sums wrongly paid in connexion with the financing of the common agricultural policy (Official Journal, English Special Edition 1972 (I), p. 90), of recovering from individuals the sums they have received in contravention of Community regulations in force. In the absence of any Community rules, Member States have no other possibility but to apply their national law in respect of action taken by them against the individuals concerned.

Conversely, as regards the recovery of a charge paid by undertakings or individuals in contravention of Community law, the Court of Justice has held unequivocally that national law is to apply.

Council Regulations Nos 1430/79 and 1697/79 are a preliminary but significant step on the road to the adoption at Community level of legal provisions concerning the enforcement and implementation of rights and obligations laid down by Community law. However, they do not concern denaturing premiums for common wheat; therefore the recovery of such premiums continues to be regulated by national law.

(c) Acknowledgement of the fact that differences between national rules on limitation periods and time-limits might bring about a difference in the treatment of traders in different Member States need not, however, mean that a legal void is created or that a general right to recovery must be created *in toto* with the aid of exaggerated analogies, based on Community law and equipped with specific limitation periods. In its judgments of 14 July 1972 *(the Aniline Dyestuffs* cases, [1972] ECR 619, 713 and 745), the Court of Justice stated that Community law knows no general principle regarding periods of limitation and that, in order to fulfil their function, such periods must be fixed in advance by the Community legislature; moreover, the Court sees no ground at all in the absence of harmonizing provisions for discouraging national courts from applying their internal law and has held that any differences in treatment due to the application of national law must be tolerated at the present stage of integration.

(d) In any event, there is no reason to fear unequal treatment with respect to the main proceedings here: claims by the State against its nationals for repayment of sums paid in error is subject in all the Member States to the longest limitation periods, in most cases thirty years, and in no case less than ten years.

Third question

In view of the reply given to the first question, this question is of merely academic interest. In so far as they may be useful, the following observations may be made upon it.

(a) No Community text expressly states the principle that an authority may not still found a claim for the recovery of a payment on the absence of all the documentary evidence required for the granting of the payment once the periods prescribed for preserving such information laid down by the appropriate provisions of internal law have expired.

(b) With regard to certain general principles of law it should be noted that the principle of good faith applies equally in Community law and has various consequences therein, particularly in the form of the objection based on the protection of legitimate expectations in respect of amendments to the law, and the principle that a public authority may not contradict its own conduct or that of the legislature. Regulation No 1697/79 applies that principle. Moreover, the principle *"non venire contra factum proprium"* is widely recognized in the case-law of the Court of Justice.

It is for the Verwaltungsgericht to decide, on the basis of the facts before it, to what extent that principle may be relied on as regards the claims for repayment at issue in the main proceedings.

The replies proposed

The Commission proposes the following replies to the first and third questions put by the Verwaltungsgericht Frankfurt am Main:

(a) The competent authorities of the Member States are required to recover from individuals any amounts paid on behalf of the European Agricultural Guidance and Guarantee Fund contrary to the provisions of Community law. In the absence of Community rules — in particular regarding the granting of denaturing premiums — such claims for repayment, together with the periods within which they must be made, are to be decided on the basis of national law.

(b) The principle according to which in the absence of special justification no person may rely on circumstances or arguments which contradict his own previous conduct applies equally in Community law.

III — Oral procedure

At the sitting on 13 March 1980 oral observations were submitted by the Lippische Hauptgenossenschaft e.G. and the Westfälische Central-Genossenschaft e.G., the plaintiffs in the main action, represented by Jürgen Gündisch, the Bundesanstalt für landwirtschaftliche Marktordnung, the defendant in the main action, represented by Eberhard Grobosch, Assistant Adviser of the Legal Section, and the Commission, represented by Albrecht Stockburger.

The Advocate General delivered his opinion at the sitting on 8 May 1980.

Decision

1 By two orders of 12 July 1979, received at the Court on 30 July and 7 August respectively, the Verwaltungsgericht Frankfurt am Main referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions concerning the interpretation of three regulations of the Commission, No 956/68 of 12 July 1968, No 2086/68 of 20 December 1968 and No 1403/69 of 19 July 1969 on the denaturing of common wheat (Journal Officiel L 164, p. 9 and L 307, p. 13; Official Journal, English Special Edition 1969 (II), p. 345), in relation to actions brought against the decisions adopted by the German intervention agency, the Bundesanstalt für landwirtschaftliche Marktordnung, on the repayment of denaturing premiums which had been paid when they were not due. The questions are worded as follows:

(a) Is the question within what period claims for repayment in connexion with the grant of denaturing premiums which have been paid on the basis of Regulation (EEC) No 956/68 of 12 July 1968, Regulation (EEC) No 2086/68 of 20 December 1968 and Regulation (EEC) No 1403/69 of 18 July 1969 may be made to be decided in accordance with the law of the European Communities?

(b) If Question (a) must be answered in the affirmative: Are such claims for repayment subject to a limitation period at all and, if so, what period of limitation must be taken as the basis in this instance?

(c) Does European law recognize the principle according to which claims for repayment of these denaturing premiums made after the expiry of the period prescribed by national law for which the records relating to the denaturing processes must be preserved (seven years in this case) can no longer be founded on the ground that it is clear from the records or other documents still existing that the denaturing processes were not carried out properly?

2 According to the file on the case the plaintiffs in the main proceedings, two agricultural co-operatives with registered premises in Lage and Münster respectively, carried out denaturing procedures during a period from 1968 to 1970 and 1974, and on the basis thereof they obtained the denaturing premiums provided for in the above-mentioned regulations. Following investigations carried out in respect of the recipient undertakings the intervention agency found that a number of the denaturing procedures had not been carried out in the manner prescribed by the Community regulations, and it issued claims in 1976 and 1977 for repayment of the denaturing premiums which should not have been granted. The objections to those claims raised by the plaintiffs in the main action having been unsuccessful, the plaintiffs brought actions before the Verwaltungsgericht.

3 It appears from the submissions of the plaintiffs that the fact that the denaturing procedures were improperly carried out is not contested. However, the plaintiffs' assertion before the Verwaltungsgericht is that because of the relatively lengthy period of time which has elapsed between payment of the premiums in question and the claims instituted by the German administrative authorities recovery of the premiums is no longer permissible, either because the claims are out of time, or owing to certain general principles such as the principle of the protection of legitimate expectations or the principle of proportionality. They consider that as the case concerns the recovery of payments granted by virtue of Community law, the rules and principles on the basis of which the problem which has arisen may be resolved should be drawn from Community law itself. On that basis they point, on the one hand, to the five-year limitation period laid down by Article 43 of the Statute of the Court in matters arising from liability on the part of the Community and to the specific limitation periods laid down in certain provisions of

secondary legislation, and, on the other hand, to the tendency which may be seen in the laws of the various Member States to make the limitation periods applicable in respect of claims by the administration shorter, as a rule, than the limitation period in civil law.

4 The intervention agency contends, however, that as there exists no specific limitation period on this connexion either in Community law or in national law, at the very most the general limitation period of 30 years fixed by civil law may apply.

5 The Commission, for its part, observes that in general the ascertainment and implementation of rights and obligations derived from the common organizations of the market are largely the responsibility of the Member States. It refers in that respect to Article 8 of Regulation No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (Official Journal, English Special Edition 1970 (I), p. 218) according to which "the Member States in accordance with national provisions laid down by law, regulation or administrative action shall take" the measures necessary, *inter alia,* to prevent and deal with irregularities or negligence. It recalls that the Court has consistently acknowledged in its case-law that the Community legislature has left to the Member States "the power to regulate the detailed rules of supervision under their own legal systems and on their own responsibility" (judgment of 11 July 1973, Case 3/73, *Hessische Mehlindustrie,* [1973] ECR 745; see also the judgments of 16 December 1976, Cases 33/76, *Rewe,* and 45/76, *Comet,* [1976] ECR 1989 and 2043).

6 The questions raised by the Verwaltungsgericht call for the following observations.

7 According to the general conception underlying the common organization of agricultural markets the granting of denaturing premiums provided for in the regulations which have been referred to is subject to a set of common rules which are applicable uniformly throughout the Community. However, management of that intervention mechanism is the task of the national intervention agencies, which are required, as a result, to perform all the supervisory duties necessary in order to ensure that denaturing premiums are granted only in accordance with the conditions laid down by the Community rules and that any infringement of the rules of Community law by those operating on the market is appropriately penalized. Therefore in the present

case it is undoubtedly the duty of the German intervention agency to control denaturing procedures, to undertake the requisite investigations and to require the repayment of any premium the payment of which appears to have been without justification under the rules and regulations applicable.

8 At the present stage of its development Community law does not include any specific provisions relating to the performance of that supervisory duty on the part of the appropriate national administrative authorities. The only requirement which must be imposed in that respect, from the Community point of view, is that in such matters the national authorities must proceed with the same care and attention as they exercise in implementing corresponding national laws, in order to prevent any weakening of the effectiveness of Community law.

9 As regards, in particular, the limitation periods or time-limits which may be derived from the application of certain general principles of administrative law relating to the recovery of payments made in error, Community law as it stands at present contains no appropriate provision. The limitation period laid down in Article 43 of the Statute of the Court of Justice applies exclusively to actions against the Community itself in matters of non-contractual liability, and it is therefore not relevant to the present subject-matter. The same comment may be applied to the other provisions which have been referred to by the plaintiffs.

10 Accordingly, it is for the national authorities to assess a situation such as that which has been brought before the Verwaltungsgericht on the basis of the rules and principles of their national laws, provided that they do not make a distinction between situations governed by Community law and similar situations subject to the application of national law alone. Furthermore, as regards more especially the problem which has been raised in the third question, it follows that Community law does not restrict the freedom of the national authorities competent in the matter to apply, when recovering benefits which have been mistakenly granted under the Community rules and in the absence of any specific rule concerning limitation periods, such limitation periods as may be drawn from the application of general principles recognized in the law of the country concerned. It is sufficient on this point

to refer to the grounds for the decision of the Court of 5 March 1980 (Case 265/78, *Ferwerda* v *Produktschap voor Vee en Vlees),* which concerns a problem similar to that before the Verwaltungsgericht.

11 The reply to be given to the Verwaltungsgericht is therefore that the question within what period administrative authorities may claim repayment of the denaturing premiums provided for in Regulations No 956/68 of the Commission of 12 July 1968, No 2086/68 of the Commission of 20 December 1968 and No 1403/69 of the Commission of 18 July 1969 which were wrongly paid to the recipients must, at the present stage in the development of Community law, be decided in accordance with the national law of the intervention agency responsible for the relevant sector of the market. Community law does not prevent the application of provisions or principles of national law the effect of which may be to restrict the period during which such repayment may be claimed, provided always that that question is settled in accordance with the same rules as those which apply to the performance of similar supervisory duties carried out by the national administrative authorities in the spheres in which they have sole responsibility.

Costs

12 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the questions referred to it by the Verwaltungsgericht Frankfurt am Main by orders of 12 July 1979, hereby rules:

The question within what period a national intervention agency may claim repayment of the denaturing premiums provided for in Regulations

No 956/68 of the Commission of 12 July 1968, No 2086/68 of the Commission of 20 December 1968 and No 1403/69 of the Commission of 18 July 1969 on the denaturing of common wheat which were wrongly paid to the recipients must, at the present stage in the development of Community law, be decided in accordance with the national law of the intervention agency responsible for the relevant sector of the market.

Community law does not prevent the application of provisions or principles of national law the effect of which may be to restrict the period during which such repayment may be claimed, provided always that that question is settled in accordance with the same rules as those which apply to the performance of similar supervisory duties carried out by the national administrative authorities in the spheres in which they have sole responsibility.

Touffait Pescatore Due

Delivered in open court in Luxembourg on 12 June 1980.

A. Van Houtte
Registrar

A. Touffait
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 8 MAY 1980 [1]

Mr President,
Members of the Court,

1. Already in the first few months of this year the Court has had occasion to consider more than once questions connected with the reimbursement of sums wrongly received or paid by the Member States pursuant to the common agricultural policy. Two days ago I delivered my opinion in Case 130/79, *Express Dairy Foods.* That was concerned

1 — Translated from the Italian.