JUDGMENT OF THE COURT
11 JULY 1973 [1]

Hessische Mehlindustrie Karl Schöttler KG v Einfuhr- und Vorratsstelle für Getreide und Futtermittel (preliminary ruling requested by the Hessisches Verwaltungsgericht)

'Denaturing of wheat'

Case 3/73

Summary

Agriculture — Common organization of the markets — Cereales — Denaturing — Supervision — Member States — Powers — Obligations
(Regulation No 172/67 of the Council, Art. 7; Regulation No 1403/69 of the Commission, Art. 4 (3))

The Community legislature refrained from enacting provisions regulating in detail the procedure for supervision of denaturing of cereals, leaving the Member States the power to regulate the detailed rules of supervision under their own legal system and on their own responsibility.
The national legislature is obliged to ensure by adequate supervision that denaturing is carried out in accordance with the relevant provisions and that claims for premiums are wellfounded. For this purpose it may subject plants wishing to carry out denaturing to a system of special approval, and demand that the managers possess the personal qualities necessary to avoid risks of abuse. The refusal to place any trust in a plant is subject to judicial control.

In Case 3/73

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

HESSISCHE MEHLINDUSTRIE KARL SCHÖTTLER KG

and

EINFUHR- UND VORRATSSTELLE FÜR GETREIDE UND FUTTERMITTEL,

1 — Language of the Case: German.

on the interpretation of certain provisions of Regulation No 172/67/EEC of the Council of 27 June 1967 and of Regulation No 1043/69/EEC of the Commission of 18 July 1969,

THE COURT

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

Advocate-General: J. P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

The Hessischer Verwaltungsgerichtshof (Administrative Court of Hesse) has asked the Court of Justice of the European Communities for a preliminary ruling on the question:

'Whether Article 7 of Regulation No 172/67/EEC of the Council of 27 June 1967 on general rules governing the denaturing of wheat and rye of bread-making quality (OJ No 130 of 28 June 1967, p. 2602/67) and Article 4 (3) of Regulation No 1403/69/EEC of the Commission of 18 July 1969 laying down detailed rules for the application of the provisions concerning denaturing of common wheat and rye of bread-making quality (OJ L 180 of 22 July 1969, p. 3) are to be interpreted as meaning that the denaturing must be carried out entirely — i.e. from the determination of the quality and quantity to the completion of the colouring or admixture with fish oil, etc — under the personal supervision of an official of the intervention agency or whether the requirement of supervision may be satisfied if the intervention agency merely ensures the possibility of an inspection of the denaturing operation at any moment, but requires "reliability" on the part of the person in charge of the denaturing plant.'

The wording of the two abovementioned Regulations is as follows:

A — Regulation No 172/67 of the Council 'To qualify for the premium, denaturing should be effected in agreement with the intervention agency and under its supervision'.

B — Regulation No 1403/69 of the Commission 'The granting of a denaturing premium shall be subject to

supervision by the intervention agency of the process of denaturing of common wheat, or of its admixture, unaltered, with compound feedingstuffs falling within Heading No 23.07 of the Common Custom Tariff . . .' (Art. 4 (3)).

The main action is concerned with the recognition of the plaintiff's plant as a denaturing undertaking.

On 15 January 1970, the plaintiff applied for the recognition of his plant as an undertaking for denaturing by the colouring of wheat or by the admixture to that cereal of fish oil/cod liver oil. This application was passed to the defendant by the son of Mr Karl Heinz Schöttler, the partner with full liability, whose son is both a partner with limited liability and a duly-authorized representative of the said undertaking.

From the order of the Hessische Verwaltungsgerichtshof, one can summarize the German law on the denaturing of wheat and rye of bread-making quality and the premium to be granted in this connection as follows:

(a) By paragraph 5 of the German law of 30 June 1967, implementing the Community provisions in connection with cereals etc. ('Bundesgesetzblatt BGBl' I, p. 1617), the new wording of which was drawn up by the amending law of 30 July 1968 (BGBl, p. 874) and which is now replaced by paragraphs 6 to 9 of the Law of 31 August 1972 implementing the common organization of the markets ('Marktorganisationsgesetz — MOG') (BGBl I, p. 1617), the German legislature authorized the Federal Minister of Food, Agriculture and Forestry (hereinafter called the Minister) to draw up rules on the conditions and the procedure for granting and the amount of denaturing premiums . . ., in so far as the adoption of such rules is necessary for the implementation of the comon organization of the markets.

(b) In pursance of this authorization, the Minister issued the decree of 8 August 1968 ('The applicant and in so far as he is not himself in charge of the denaturing, the person in charge of it, must satisfy the requirement of reliability necessary for effecting denaturing in accordance with the law') on the denaturing premium for cereals ('Bundesanzeiger' No 148 of 10 August 1968, mentioned in BGBl 1968 I p. 968), a Decree of 13 March 1970 amending the former Decree ('Bundesanzeiger' No 58 of 25 March 1970, mentioned in BGBl 1970, I, p. 310) and the Decree of 19 November 1971 on the denaturing premium for cereals (BGBl, I p. 1831). These decrees ensure that denaturing operations, for which the persons concerned intended to claim a premium, are only carried out (i) in recognized denaturing plants, (ii) only at times notified to the German intervention agency, the defendant in the main action, and (iii) on condition that such agency can send inspectors to the denaturing plant. The right to the premium is not however subject to actual supervision of the denaturing by an inspector. The forms drawn up by the 'Einfuhr- und Vorratsstelle' (hereinafter called the Cereals Office) in cases of supervision by its own officials envisage 'supervision' (Überwachung) either (i) by 'complete supervision on the spot', or (ii) by 'supervision on the spot by means of sampling' or (iii) by 'inspection of books'. These are the three methods of supervision prescribed in the forms for cases in which supervision is entrusted to independent authorities.

(c) In cases where there has been no actual supervision, or incomplete supervision, the denaturing permium is granted on the mere basis of a 'denaturing certificate' completed by the denaturing plant.

(d) Under Paragraph 4 (1), second sentence, No 4, of the Decree of 19 November 1971, the 'recognition' of denaturing plants is not only subject to their having the requisite equipment and qualified staff, but also to the condition that

the applicant for recognition and, in so far as he is not himself in charge of the plant, the person in charge of it, must be

regarded as sufficiently reliable to carry out the denaturing in accordance with the law ('die erforderliche Zuverlässigkeit besitzen').

By a Decision dated 10 June 1970 the defendant rejected the plaintiff's application on the ground that for its recognition as a denaturing plant the probity required to comply with Article 4 (1) (i) of the Regulation of 8 August 1968 on the granting of a denaturing premium for common wheat and with heading 2 — 1 of the Directives of 1 August 1969 on the granting of a denaturing premium for common wheat during the marketing year 1969/70, was not satisfied, as its member with personal liability could not be considered reliable in view of the fact that he had several times been convicted of offences involving dishonesty in connection with the cereal and flour trade.

On 26 June 1970, the plaintiff entered an appeal against this rejection on the grounds in particular, that its recognition as a denaturing plant had been promised orally to its managing director on the occasion of a visit by the Cereals Office, and that, as a result, the plaintiff had bought technical equipment worth about 10 000 DM. The appeal was rejected as unfounded by a Decision dated 9 July.

On 12 August 1970 the plaintiff brought proceedings to uphold the personal probity of Mr Karl Schöttler. In fact, the particular limited partnership concerned is one in which the son of the partner with full liability had a real influence on management. The son is 41 years old, whereas Karl Schöttler is 68. In fact, the management of the undertaking is already in the hands of the son, and there is no dispute as to his probity. The plaintiff submitted that, after having annulled the defendant's decisions of 10 June 1970 and 9 July 1970 the Verwaltungsgericht compelled it to recognize the plaintiff's denaturing plant.

The Verwaltungsgericht of Frankfurt-on-Main decided that the Decree of 8 August 1968 was illegal on procedural grounds but, on the other hand, the action to obtain direct recognition had to be rejected because its objective was not within the jurisdiction of an administrative court.

Both the plaintiff and the defendant appealed against this decision to the Administrative Court of the Land of Hesse the VIth Senate of which, considering that the solution to the dispute depends on the interpretation of provisions made by Community institutions, decided to suspend proceedings and to submit the question to the Court of Justice of the European Communities under Article 177 of the EEC Treaty.

The Administrative Court of the Land of Hesse considers that the requirement of 'Zuverlässigkeit', (reliability), expressed in paragraph 4 of the abovementioned Decree of 19 November 1971, is necessary to ensure the implementation of the Community provisions on denaturing premiums, since supervision of the denaturing process by the Cereals Office is carried out in a purely general manner, as it may be under the Regulation on the denaturing premium for cereals, which in fact corresponds to the actual practice adopted by the said office. And moreover this requirement of 'reliability' would be superfluous and unjustified if the practice of the Cereals Office were not in accordance with the provisions adopted by the Council and the Commission of the EEC mentioned in the question referred to the European Court of Justice and *every* denaturing had to be effected under complete supervision. In the opinion of the Court of Hesse the outcome of the action depends on the meaning to be given to the word 'supervision' appearing in the Regulations of the Council and the Commission of the EEC, and on the question whether even supervision can be satisfied by the detailed rules laid down in the German Decree of 19 November 1971 and on the manner in which they are applied by the Cereals Office. Consequently, it is necessary particularly to determine whether proof

of the 'Zuverlässigkeit' (reliability) of the person concerned, as imposed by paragraph 4 (1) of the abovementioned German statutory order, is in practice compatible with the concept of 'supervision' devolving on the intervention agency for denaturing.

The order referring the matter was received at the Court Registry on 23 January 1973. In accordance with Article 20 of the statute of the Court of Justice of the European Communities Firma Hessische Mehlindustrie Karl Schöttler, represented by Maître Gündisch, the Government of the Federal Republic of Germany, represented by Mr Seidel, as agent and the Commission of the European Communities, represented by Mr Kalbe presented their written submissions, and made oral observations at the hearing on 22 May 1973. The Advocate-General presented his opinion at the hearing on 7 June 1973.

II — Written Observations submitted before the Court under Article 20 of the Statute

A — The plaintiff

The plaintiff asks the Court to reply to the question of the national court whether the provisions in dispute must be interpretated as meaning that the denaturing is to be directly supervised by an official of the intervention agency and whether, because of this, the recognition of a plant as one approved for denaturing is not subject to the reliability (Zuverlässigkeit) of the manager, for such a criterion would go beyond the general framework of national industrial law. The plaintiff considers that supervision of the register is not compatible with the concept of 'supervision' in the aforementioned legal provisions. In effect the 'supervision' must be sufficient to ensure the effective denaturing of cereals for which a premium has been granted; in reality, the only requirement which can be made of the head of such an undertaking are those which he must satisfy under the general industrial law of the Member State in which the undertaking is situated.

B — The Commission

The Commission states that under the detailed rules of Regulation No 1403/69, the granting of the denaturing premium is subject to supervision by the intervention agency of the denaturing operations and that in Germany the premium is only granted in the case of cereals, which have been denatured in accordance with the law in 'a recognized denaturing plant'. The Commission points out that the defendant makes particular reference to the fact that it is impossible for it to supervise the whole of each stage of denaturing by its own supervisors and it must have recourse to supervision on the spot by sampling as well as the inspection of the books of account. This is the reason why conditions of probity imposed on the undertaking must be reinforced as, in such circumstances, the premium is paid on the basis of the 'denaturing certificate' by means of which the undertaking itself testifies that the denaturing was carried out in accordance with the law.

The Commission is of the opinion that, to be able to answer the question of the national court, one must know whether a Member State can, on grounds of 'personal probity' refuse to recognize an undertaking as one suitable for denaturing without infringing Community law. In other words, it is a question of whether or not the provisions of German law on this matter are compatible with the Community legislation governing denaturing premiums.

The Commission states that there is no specific provision determining in what manner and by what method the national intervention agencies are to carry out their obligations. It adds that present legislative practice and the

allocation of Community tasks shows that the Community legislature did not make any attempt to enact its own detailed provisions on procedural matters and instead left the Member States complete freedom to settle, in respect of organization and procedure, the detailed rules necessary for the essential measures of supervision in relation to their own legal systems and on their own responsibility, by allowing them to choose the solution most apt for their capabilities and their needs. The Commission refers to Case 39/70 from which it follows, in its opinion, that the national authorities are not forbidden in general terms to make a denaturing plant's participation in the system of premiums dependent on special approval. And in respect of such approval, the Member States are by no means unable if need be to lay down, in addition to Community criteria applying to a denaturing plant, other conditions peculiar to the State concerned.

In the Commission's opinion, the condition of 'personal probity' necessary for recognition as a denaturing plant and the justification for it depends strictly on the technical detailed rules and the degree of certainty offered by the supervision methods chosen, and in this respect it must not be ignored that the considerable financial importance of this system of grants involves the risk of abuse. It is within this general framework of diligence and efficacy that one requires that the intervention agencies only give aid for reasons of certainty, to denaturing plants whose commercial capacity, diligence and probity do not give rise to any serious doubt.

The Commission admits that the liberty given to the German intervention authority to draw up its own rules as to the disputed methods of supervision is to cease when the condition of 'personal probity' demanded of the applicant to enable him to obtain recognition as a denaturing plant affects the material scope of the provisions on premiums in Regulations Nos 172/67/EEC and 1403/69, and compromises the acquisition or the implementation of the plaintiff's rights or at least subjects them to unilateral national conditions which cannot be accepted in the interests of a uniform application of Community law. (The Commission refers to Cases 34/70 and 39/70).

The Commission also admits that recognition as a denaturing plant and refusal to grant such recognition unquestionably exceed the defendant's powers as to internal organization and are thus in principle capable of affecting the plaintiff's legal position under the common system of premiums. But the Commission states that the defendant's directives draw a clear distinction between the *denaturer* who either denatures himself, or has denaturing carried out, on his own account, the premium coming to him, and the *denaturing plant* in which the cereals are denatured; and it observes that apart from the reasons on which it based its decision, the rejection of the application only applies to the quality of the plaintiff in its capacity as a denaturing plant and does not aim at excluding its rights or its ability to claim the premium as a denaturer. The Commission maintains that even if the wording of Regulations Nos 172/67/EEC and 1403/69 does not specifically state it, these provisions indicate that it is the 'denaturer' who has the right to the premium and not the denaturing plant as such.

The Commission maintains that if one considers the scope of a refusal of recognition, one can see that it is in no way forbidden for the plaintiff to carry on its activity as a denaturing plant but it is merely forbidden to perform the denaturing for its own account or for the account of another for the purpose of obtaining the premiums and profiting thereby. Looked at in this way, one can nevertheless state, in the Commission's opinion, that the Community premium system gives no definite guarantee to the plaintiff to be financially assisted in his denaturing business by means of

corresponding premiums. Such benefit is only an indirect request and not the aim or the justification of the system of premiums, and it is not therefore, the subject of a right established in Community law.

Even if one begins to doubt the admissibility of the condition of 'personal probity' from the viewpoint of an infringement of general principles such as those of equal opportunity and equal treatment, the Commission claims that one always reverts, with regard to the infringement of Community law, to the question of whether Community law adequately ensures in the case at issue the legal position of the denaturing plant.

The Commission, referring to the regulations in force in other Member States, points out, that denaturing plants are recognized by different criteria in the various Member States and one cannot, therefore, find at Community level uniformity of the legal position and of interests from which alone an infringement of the principle of equal treatment can be dealt with under the procedure of Article 177 of the EEC Treaty.

Finally, on the question whether refusal of recognition as a denaturing plant on the ground of 'personal probity' exceeds the limits of what is essential and reasonable, the Commission is of the opinion that one must not reply in a general manner, but only by comparing the effects of such refusal with the requirements and the nature of the methods of supervision applied in each case. It adds that it is highly doubtful whether any reference to Community law can be made if it leaves the choice of the method of supervision to Member States and if the refusal on grounds of personal probity does not affect the rights of the plaintiff guaranteed by Community law. Finally, subject to all the principles in provisions being both of a general and individual nature such as those concerning the 'personal probity' of the applicant, the Commission arrives at the conclusion that with regard to a denaturing plant under the system of denaturing premiums for cereals, the Community provisions with regard to procedure and supervision or the general principles of law are not opposed to the use of this construction and do not limit in an unwarranted manner the rights of the plaintiff guaranteed by Community legislation.

C — *The German Government*

The *German Government* states in its observations that it follows from the wording of the provisions in dispute that denaturing must be supervised, and it maintains that the manner in which supervision must be carried out is not specified by Community legislation. It further submits that, because the concept of supervision is a legal concept which must be put into practice, the nature and exercise of the supervision must be prescribed in detail by the Member States. The aim of the supervision is the criterion which should be followed by the national legislature in arrangements made by it for such supervision, i.e. the guarantee that the denaturing is to be carried out in conformity with the relevant provisions and that any claim for premiums from EAGGF is well founded.

Referring to Case 39/70, the German Government observes that the judgment of the Court does not contradict this interpretation of the legal concept of supervision and that the provisions the interpretation of which gave rise to the said decision, contain a complete and detailed system of the detailed rules of security and supervision, whereas the Regulations to be interpretated in this case do not set up exhaustive rules.

Finally, the German Government asserts that it is necessary and also consistent with the standards of Community law to require, for the undertaking to be recognized as one for denaturing, that the person who manages it should be reliable and that, having regard to the

possibilities of paying premiums which are not due, this additional requirement also ensures that the aim of supervision is achieved. There is no question, as the Administrative Court of Hesse supposes, of an alteration of conditions which must bring about the practical application of the legal concept of supervision but rather of the accumulation of individual conditions each of which taken separately is insufficient to bring about the aims of the supervision. The German Government concludes that the disputed provisions must be interpreted as meaning that the supervision prescribed by them may enable the requirement to be made that those who manage denaturing plants must prove that they are reliable.

Grounds of judgment

1 By order dated 20 November 1972, received at the Court on 23 January 1973, the Hessischer Verwaltungsgerichtshof referred, under Article 177 of the EEC Treaty to the Court, for a preliminary ruling on the interpretation of Regulation No 172/67/EEC of the Council of 27 June 1967 (OJ No 130 of 28 June 1967, p. 2602) on general rules governing the denaturing of wheat and rye of bread-making quality and of Regulation No 1403/69/EEC of the Commission of 18 July 1969 laying down detailed rules for the application of the provisions concerning denaturing of common wheat and rye of breadmaking quality.

By the terms of the question, it is asked whether these Regulations must 'be interpreted as meaning that the denaturing must be carried out entirely under the personal supervision of an official of the intervention agency' — or 'whether the requirement of *supervision* may be satisfied if the intervention agency merely ensures the possibility of an inspection of the denaturing operation at any moment, but requires "reliability" (Zuverlässigkeit) on the part of the person in charge of the denaturing plant'.

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

Article 7 provides that 'to qualify for the premium denaturing should be effected in agreement with the intervention agency and under its supervision'.

3 Regulation No 1403/69/EEC fixes the standard method for denaturing by colouring, provides that in the case of denaturing otherwise than by colouring the means used must be at least as reliable as the standard methods, outlines the compound feedingstuffs to be used in denaturing by admixture, and defines the quality of cereals qualifying for a premium.

In pursuance of the terms of Regulation No 172/67/EEC, Article 4 (3) of Regulation No 1403/69/EEC provides that 'the granting of a denaturing premium shall be subject to supervision by the intervention agency of the process of denaturing of common wheat or of its admixture unaltered with compound feedingstuffs . . .'

(a) As to the first part of the question

4 The provisions are restricted to indicating that supervision is indispensable without specifying in what manner and by what method the national intervention agencies are to fulfil their obligations of supervision.

The word supervision implies an adequate inspection carried out by the State agencies or by agencies appointed by it.

In the management of this supervision the national legislature is obliged to ensure that the denaturing is carried out in accordance with the relevant provisions and that claims for premiums are well founded.

5 Different methods of supervision such as sampling, audit, or recognition of denaturing plants can, individually or in combination, be equally effective even though none of them constitutes an absolute guarantee.

6 The Community legislature refrained from enacting provisions regulating the procedure for supervision in detail, leaving the Member States the power to regulate the detailed rules of supervision under their own legal system and on their own responsibility by choosing the most appropriate solution, without requiring the constant presence of an official throughout the denaturing process.

7 It follows that the first part of the question must be answered in the negative.

(b) As to the second part of the question

8 There is no rule of Community law opposed to a Member State subjecting the possibility of a denaturing plant benefiting from the system provided to the condition of special recognition.

The right to a premium is not affected by refusal to recognize a plant as one for denaturing as the owner of cereals is still free to have his stocks denatured in accordance with the law in a recognized denaturing plant.

9 In view of this, the intervention agencies can demand that the managers of plants possess the personal qualities necessary to avoid the risks of abuse.

It has already been stated that, as the Community refrained from making rules for the procedure for supervision, the Member States were left with the task of enacting detailed rules for this in relation to their own legal system and on their own responsibility.

Moreover, it is to be noted that the refusal to place any trust in a plant carrying out denaturing is, as can be seen from the documents in the file, not withdrawn from judical control but in fact subject to it.

10 It follows that the second part of the question must be answered in the affirmative.

Costs

11 The costs incurred by the Commission of the European Communities and by the Government of the Federal Republic of Germany, which have submitted observations to the Court, are not recoverable and 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 Hessischer Verwaltungsgerichtshof, the decision on 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 defendant in the main action;
the Commission of the European Communities and the Government of the Federal Republic of Germany;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Article 177;
Having regard to Regulation No 172/67 of the Council of the European Communities of 27 June 1967;
Having regard to Regulation No 1403/69 of the Commission of the European Communities of 18 July 1969;
Having regard to the protocol on the statute of the Court of Justice of the European Communities, 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 question referred to it by the Hessischer Verwaltungsgerichtshof by order dated 20 November 1972, hereby rules:

1. **Article 7 of Regulation No 172/67/EEC of the Council of 27 June 1967 and Article 4 (3) of Regulation No 1403/67/EEC of the Commission of 18 July 1969 do not require that the entire denaturing process be carried out under the personal supervision of an official of the intervention agency.**

2. **The requirement of supervision imposed by the Regulations in question may be satisfied if the intervention agency merely ensures the possibility of an inspection of the denaturing operation at any moment, but requires 'reliability' (Zuverlässigkeit) on the part of the person in charge of the denaturing plant.**

Lecourt	Monaco	Pescatore
Donner	Mertens de Wilmars	Kutscher
Ó Dálaigh	Sørensen	Mackenzie Stuart

Delivered in open court in Luxembourg on 11 July 1973.

A. Van Houtte
Registrar

R. Lecourt
President