On those grounds,

THE COURT

in answer to the question referred to it by the High Court of Justice, Ireland, hereby rules:

Article 6 of Regulation No 1134/68 in conjunction with Regulation No 756/70 must be understood to mean that the amount of aid for skimmed milk processed into casein before 7 October 1974 but marketed after that date is to be calculated by reference to the rate of conversion between the Irish pound and the unit of account applicable on the date of marketing.

Kutscher Donner Pescatore Mertens de Wilmars Sørensen

Mackenzie Stuart O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 3 March 1977.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE-GENERAL CAPOTORTI DELIVERED ON 9 FEBRUARY 1977 [1]

Mr President,
Members of the Court,

1. The recurrent currency fluctuations in recent years have, in the application of Community legislation, especially in agricultural matters, given rise to a number of disputes involving questions of interpretation which this Court has on several occasions been called upon to resolve. On this occasion, the High Court of the Republic of Ireland is seeking an interpretation of Community provisions relating to the granting of aids to manufacturers of casein or caseinates from skimmed milk with a view to determining at which point in time the amount of aid payable to an Irish

1 — Translated from the Italian.

producer must be calculated. Since the rate of exchange between the Irish pound and the unit of account changed on 7 October 1974, the determination of this point in time is of paramount importance when, as in the present case, the conditions upon which the application of the regulations on aids depends were fulfilled in part before and in part after the alteration in the rate of exchange.

The facts are that North Kerry Milk Products Ltd, whose business is the production of milk and milk products, manufactured large quantities of casein during the period between 4 July and 10 October 1974 and put it on the market subsequent to 7 October of that year, that is to say, after the date, indicated above, at which the rate of exchange between the Irish pound and the unit of account had been altered (from 2.1644 to 1.9485 u. a. to the Irish pound). The amount of aid due to the plaintiff in the main action for the quantity of casein and caseinates manufactured by it was calculated by the Irish Minister for Agriculture on the basis of a rate of 2.1644, the point of reference taken being the date when the milk was processed into casein, which was prior to 7 October. On the other hand, the company in question contends that it was entitled to the application of the rate of exchange, more favourable to it, which prevailed on the date when the product was put on the market and, accordingly, claims the payment of £44 687.71 to make up the sum of £539 101.40 which it considers to be due to it as aid.

Before the national court, the Irish Minister for Agriculture, the defendant in the main action, based his case on the interpretation given by the Commission of the European Communities to the relevant Community regulations and maintained that he did no more than apply them in accordance with the directions of the said institution.

Arising out of this dispute, the High Court of Ireland has asked this Court to give a preliminary ruling on the following question:

'Is the amount of aid payable to the plaintiff to be calculated by reference to:
(a) the rate of exchange between the Irish pound and the unit of account applicable on the date of manufacture of the casein or caseinates; or
(b) the rate of exchange between the Irish pound and the unit of account applicable on the date of marketing of the casein or caseinates?'

2. The granting of aid for skimmed milk produced in the Comunity and processed into casein was introduced by Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products. Under Article 11 of the said regulation it was a condition of aid that 'such milk and the casein produced from it reach certain standards'; 'general rules governing the aid' and, in particular, 'the conditions under which such aid may be granted' were, however, left to be determined by the Council in a later regulation. Finally, the Commission was made responsible, subject to the prior Opinion of the Management Committee for Milk and Milk Products, for the 'detailed rules for the application' of the article (Article 11 (3) and of the said regulation).

On 15 July 1968, the Council laid down the 'general rules for granting aid for skimmed milk processed into casein or caseinates' (Regulation (EEC) No 987/68). Responsibility for payment of aid was entrusted to 'the intervention agency of the Member State on whose territory the casein or caseinates are manufactured' (Article 2 (3)).

A few days later the Commission, in Regulation (EEC) No 1102/68, introduced the 'detailed rules for granting aid for skimmed milk processed into casein or caseinates'. Two of these rules are of special relevance here: one (Article 2) relating to the method of calculating

aid, and the other (Article 3) relating to applications for aid. Article 2 provides that 'for the purpose of calculating aid it shall be considered that 1kg of casein or caseinates has been manufactured from 37.75 kg of skimmed milk; this rule must be applied in conjunction with Regulation No 1103/68 of the Commission fixing the amount of aid per 100 kg of skimmed milk processed into casein and caseinates. Article 3 lays down that 'aid shall be granted only after the casein or caseinates have been marketed'; moreover, the application must also show the 'quantity of casein or caseinates of his own manufacture which he has marketed and for which he seeks aid'. In interpreting this requirement, which does not appear to be connected with any rule in the previous regulations of the Council, account must also be taken of the third paragraph of the preamble to the abovementioned regulation (No 1102/68), where the purpose of the regulation is defined and it is stated that the general rules laid down by the Council 'require detailed rules for their application *as regards the procedure for payment of aid*'.

The said Regulations Nos 1102/68 and 1103/68 were the subject of various amendments in subsequent measures. Nevertheless, Article 4 (1) of Regulation (EEC) No 756/70 of the Commission on granting aid for skimmed milk processed into casein and caseinates repeats the provision that 'aid shall be granted only after the casein or caseinates have been marketed'. Furthermore, in repealing Regulation (EEC) No 146/69, which had determined the amount of aid *ex novo*, Article 5 of Regulation (EEC) No 756/70 provides that it shall remain applicable 'to casein and caseinates *marketed* before this regulation enters into force'. Thus, the date of marketing was, by implication, taken as the decisive date for fixing the amount of aid.

More recently, in Regulation (EEC) No 533/75 of the Commission of 28 February 1975 the Commission adopted an explicit view on the question which differs from the position implied by Article 5 of Regulation (EEC) No 756/70. In fact, it added the following paragraph to Article 1 of Regulation (EEC) No 756/70: 'The amount of the aid granted shall be that applicable on the day of manufacture of the casein or the caseinates'. The justification for this was contained in the statement, in the second recital, that 'for reasons of clarity, it has proved necessary to specify that the date of manufacture of the casein or caseinates shall determine the amount of aid to be granted, the marketing of those products as referred to in Article 4 (1) of Regulation (EEC) No 756/70 being only one of the conditions of payment under the particular control arrangements provided for'.

The Community legislation referred to hitherto is, therefore, somewhat obscure and contradictory. On the one hand, the Council has, in its regulations, related the granting of aid to the act of processing the skimmed milk into casein or of the manufacture of the casein and, consistently with this, has made authority to pay aid depend on the place in which manufacture takes place. On the other hand, when required to lay down detailed rules for the application of Article 11 of the basic regulation of the Council (Regulation (EEC) No 804/68) and wishing, in particular, to define the detailed rules for payment of aid the Commission introduced marketing as the condition on which aid should be 'granted' and provided for the settlement of the legal problems which had meanwhile been created by changes in the amount of aid in a manner which implied that the marketing date had been chosen as the decisive date for fixing the amount. Later, however, it considered it necessary to declare that the marketing condition referred only to payment of the aid and that the amount in question must be calculated by reference to the date of manufacture of the casein.

3. In order to resolve this issue, account must be taken of another group of Community rules on conditions for alterations to the value of the unit of account used for the common agricultural policy. In this connexion, Regulation (EEC) No 653/68 of the Council of 30 May 1968 entrusted the Council itself with the task of adopting where necessary 'rules to be applied where there is an alteration in the relationship between the parity of a Member State's currency and the value of the unit of account' (Article 6 (1) (c)). It was followed by Regulation (EEC) No 1134/68 of 30 July 1968 of which the provisions of Article 4 (2) and Article 6 are of relevance here.

Article 4 (2) reads: 'For transactions carried out pursuant to provisions on the common agricultural policy or special trade systems for goods processed from agricultural products, the sums owed to or by a Member State or a duly authorized body, expressed in national currency and representing amounts fixed in those provisions in units of account, shall be paid on the basis of the relationship between the unit of account and the national currency which obtained *at the time when the transaction or part transaction was carried out*'.

Article 6 reads, in Italian: 'Per l'applicazione del presente regolamento è considerato come momento della realizzazione dell'operazione la data alla quale ha luogo il fatto generatore del credito sull'importo relativo all'operazione stessa, quale è definito dalla regolamentazione comunitaria o, in mancanza e in attesa di essa, dalla regolamentazione dello Stato membro interessato'.

It is clear from the above provision that the present case has to be decided by establishing the identity of 'il fatto generatore del credito' ('the event by virtue of which the amount becomes due') in the case of aid granted for processing skimmed milk into casein or caseinates. According to the Commission, this event is the processing itself; according to the plaintiff in the main action it is the marketing of the casein. In support of its contention, Kerry Milk Products refers to the English text of the said Article 6, which is couched in terms strikingly different from those in the other languages of the Community.

Its reads as follows: 'For the purposes of this regulation, the time when a transaction is carried out shall be considered as being the date on which occurs the event, as defined by Community rules or, in the absence of and pending adoption of such rules, by the rules of the Member State concerned, in which the amount involved in the transaction becomes due and payable'.

It is easy to understand why the plaintiff in the main action refers to the English version of Article 6, where the reference is to 'amount due and payable': the reason is that, even if the marketing of the casein was regarded only as a condition for the payment of aid, it would constitute the final point in time 'when the transaction... was carried out' within the meaning of the said Article 4 (2) of Regulation (EEC) No 1134/68. In other words, the point in time when the transaction was carried out would be regarded as that when there exists a debt of an ascertained amount payable to the producer on demand, and we have seen that, under the regulations of the Commission, a debt of this description exists only after the casein has been marketed.

In any event, it is not in my opinion possible to resolve the main issue in this case on the basis of the English text of Article 6 which I have quoted above. The first thing to be said is that the sentence is badly constructed. From the grammatical point of view, the words 'in which the amount involved in the transaction becomes due and payable' should relate to the words immediately

preceding them, namely, 'the Member State concerned', but the sentence then would make no sense, because there would be nothing to qualify the word 'event' what the event in question is; if, on the other hand, those words are related to the word 'event', this makes curious grammar ('the event... in which').

The phraseology employed is, therefore, obscure and, to clarify it, we must of necessity rely on the text in the other languages. It must, of course, be borne in mind that, according to the precedents established by this Court, the need for a uniform interpretation of Community regulations makes it impossible for reference to be made to the version in only one of the official languages and necessitates that, where there is doubt about the interpretation of one of the versions, reference must be made to the versions existing in the other languages of the Community (judgment of 5 December 1967 in *Van der Vecht,* Case 19/67 [1967] ECR 345). This principle applies *a fortiori* when, as in the present case, the text which gives rise to doubt constitutes the translation into a new official language of texts originally adopted in other languages of the Community and which, in those versions, has already been in force for some time.

4. The central issue in this case must, therefore, be expressed in a manner related to the terms of Article 6 of Regulation (EEC) No 1134/68 in the versions other than the English one. It is necessary to establish the date on which 'il fatto generatore del credito relativo all'importo dell'operazione' (the event by virtue of which the amount involved in the transaction becomes due), took place. In the present case, 'il fatto generatore' (the event by virtue of which, etc.) is not to be determined in accordance with the law of the Member State concerned: this is because of the existence of the Community regulations which I have already had occasion to review and to which priority must be given in accordance with the said Article 6.

Certain features of those regulations seem, *prima facie,* to suggest that the 'fatto generatore del credito' (the event by virtue of which the amount becomes due) to the producer of casein is its manufacture. I refer in the first place to the terms of the two regulations of the Council (Nos 804/68 and 987/68) in which there is reference to the granting of an aid for skimmed milk processed into casein and to the requirements for each, without any reference to the marketing of the product. Secondly, as stated above, the condition relating to marketing appears in the regulations of the Commission as part of the procedure for the payment of the aid (first recital of Regulation (EEC) No 1102/68, and second recital of Regulation (EEC) No 533/75); and the Commission rightly regards it as important to differentiate between the creation of entitlement to an amount as aid and payment of that amount. Finally, bearing in mind that Article 2 of Regulation (EEC) No 987/68 obliges manufacturers of casein to include the aid in the purchase price paid to the suppliers of skimmed milk, it seems reasonable to conclude that to determine the amount due to the producer by way of aid *at the time of manufacture* would, for the purpose of settling accounts between each producer and his milk suppliers, present less difficulty than to determine the said amount at a later date, namely at the time of marketing. In fact, the events in the present case go to show that between these two points in time there may be variations in the exchange rate affecting the unit of account which will give rise to the problem of their repercussions on the amount of aid. On the other hand, there can be no doubt that the calculation of the amount of aid can also be made at the time of manufacture, given the presumption, embodied in the Community rules, that every kilogramme of casein has been manufactured from a specified quantity of skimmed milk (see

Article 2 (2) of Regulation (EEC) No 756/70) and the fact that aid is fixed at a certain figure of units of account per 100 kg of skimmed milk processed (see Article 2 (1) of the same regulation).

Notwithstanding the foregoing considerations, manufacture of the casein is not, in my view, the event by virtue of which the amount becomes due to the producer. An individual right to the payment of a specific amount, within the meaning of Article 6 of Regulation (EEC) No 1134/68, can certainly not arise by virtue only of the regulations of the Council; as I said at the beginning, Article 11 of Regulation (EEC) No 804/68 left the Commission with the task of determining detailed rules for their application, especially as regards the amount of aid. When the Commission laid down that aid could be granted only after marketing (Article 3 (1) of Regulation (EEC) No 1102/68 and Article 4 (1) of Regulation (EEC) No 756/70), the event of marketing became the condition, not of payment of a sum which had already been fixed, but of the calculation of the amount to be paid to the producer: there can be no doubt that a producer who manufactures a given quantity of casein and markets only a smaller quantity is entitled to aid based on that smaller quantity only. No other interpretation can be placed on the Regulations cited (Nos 1102/68 and 756/70).

This is the only way of explaining how the Commission, on the occasion of the various changes in the amount of aid, could lay down that the change did not apply to caseins and caseinates marketing (marketed, not merely manufactured) before the change came into force and that the previous regulations each time repealed must apply to them (see Article of Regulation (EEC) No 756/70, Article 2 of Regulation (EEC) No 2814/71, Article 2 of Regulation (EEC) No 455/73 and Article 2 of Regulation (EEC) No 1399/73). If, in fact, the debt due to each producer arose solely from the fact that the milk had been processed into casein, it would be difficult to accept that the Commission could, in one of its regulations, change all the amounts due in respect of quantities of casein produced but not marketed. This applies in particular in the case of a reduction in the amount of aid which took place in pursuance of Regulation (EEC) No 2814/71.

There is also the possibility that the casein produced may be accidentally destroyed before being sold. Asked about this at the hearing, the Commission admitted that the producer would not be able to obtain aid in respect of the quantities lost. To my mind, this confirms that the producer has no aid due to him until after marketing. Even if, as laid down in Article 1 of Regulation (EEC) No 533/75, the amount is calculated at the date of manufacture, it can always be re-calculated at the date when the quantity sold is known and according to whether the quantity is or is not the same as that manufactured.

In these circumstances, would it make sense to consider the amount of the aid as due on the date of manufacture and the payment of that amount as subject to sale?

The factors constituting a debt and the conditions for payment can be separated only if the latter do not affect the existence of the debt or the amount to be paid: it is conceivable that a debt is not payable for a certain time or in the absence of certain conditions, and that hence the exercise of the right is suspended or conditional, provided, however, that the right remains unimpaired. But if a given 'condition' can affect the existence or the amount of the debt, it cannot be a mere condition of payment.

In its judgment of 17 May 1972 in *Leonesio* v *Italian Ministry for Agriculture* (Case 93/71) the Court held that the right of farmers to payment of

the slaughtering subsidy came into being on fulfilment of the conditions laid down in Regulation (EEC) No 1975/69 (of the Council) and Regulation (EEC) No 2195/69 (of the Commission). In the present case, in view of the fact that the regulations of the Council placed the emphasis on the processing and ignored the subsequent stage of marketing, it is possible to criticize the Commission for having decided to introduce a further condition for the granting of aid for the processing of milk into casein but, as the Commission was responsible for laying down the detailed rules for the application of the regulations and it did so on the basis of a favourable Opinion from the competent Management Committee, I find it difficult to dispute the applicability of the Commission's regulations (or, at least, of the provision which has appeared in them from the beginning, that the producer must have marketed the casein which he has produced before he can receive aid). If this is correct the principle contended for by the Commission in this case, that the event by virtue of which the amount of aid becomes due is the manufacture of the casein, is belied by the Commission's own regulations and practice.

Of course, it would not, in my view, be correct to state that the marketing of the casein or caseinates constitutes, in itself, the event which entitles the manufacturer to aid from the national intervention agency. Such a right arises only if a number of conditions obtain: skimmed milk and raw casein made from Community-produced milk must have been used (Article 1 of Regulation (EEC) No 756/70); manufacture must take place within the Community, and producers must keep a monthly record containing specific information (Article 3 of the said regulation: the books must show, *inter alia,* the quantities of casein and caseinates sold and the name of the purchaser); producers must be ready to submit to supervision; and, finally, the product must have been marketed. The marketing is, from the point of view of time, the last of the events which create the entitlement provided for by Community law. In addition, there is the procedure under national law involving the application to the intervention agency and the formal decision of the agency, which is responsible for ascertaining whether the conditions imposed by Community law exist, but these subsequent stages do not affect the application of Article 6 of Regulation (EEC) No 1134/68 which, as I have already emphasized, refers to the event creating the entitlement as it is defined by Community law.

5. For all the foregoing reasons I recommend that the Court should answer the question referred to it by the High Court of Ireland for a preliminary ruling under Article 177 of the EEC Treaty by stating that the amount of aid due to producers of casein or caseinates under Article 2 of Regulation (EEC) No 987/68 of the Council must be calculated on the basis of the rate of exchange between the unit of account and the national currency in which payment is to be made which was in force at the date when the products were marketed.