interpreted to mean that the production refund for maize processed into starch must be equal to the difference between the threshold price and the supply price applicable on the date on which the maize is processed.

Pescatore Due Bahlmann

Delivered in open court in Luxembourg on 22 September 1983.

For the Registrar

H. A. Rühl

Principal Administrator

P. Pescatore

President of the Second Chamber

OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 7 JULY 1983 [1]

Mr President,
Members of the Court,

The Court has before it a request for a preliminary ruling from the Conseil d'État of the French Republic which, by a decision of 15 October 1982 lodged at the Registry on 9 December 1982, asks this Court to rule on the interpretation and validity of Article 2 (3) of Regulation No 2012/74 of the Commission of 30 July 1974. [2]

I — The circumstances which gave rise to the litigation before the Conseil d'État are as follows:

The company Roquette placed some maize under official supervision prior to 31 July 1974, on which date the marketing year for that cereal came to an end. Roquette processed the maize into starch after that date, namely in August and September 1974.

Regulation No 1125/74 of the Council of 29 April 1974 [3] had set 1 October as the commencement of the marketing year for maize, and 30 September of the following year as its closure. None the less in respect of the then current year Article 2 thereof had retained 1 August 1974 as the commencement of the marketing year.

1 — Translated from the French.

2 — Official Journal 1974, L 209, p. 44; the regulation lays down detailed rules as regards production refunds on starches for the application of Regulation (EEC) No 1132/74 of the Council of 29 April 1974 on production refunds in the cereals and rice sectors (Official Journal L 128, 10. 5. 1974, p. 24).

3 — Official Journal L 128, 10. 5. 1974, p. 12; the regulation entered into force on 1 August 1974.

Pursuant to Regulation No 1060/68 of the Commission of 24 July 1968,[1] Roquette collected from the Office national interprofessionnel des céréales [National Cereals Trades Board, hereinafter referred to as "the Office National"] advances relating to the production refunds payable on maize intended for the production of starch.

Pursuant to Article 1 of Regulation No 1060/68, the amount paid over had been calculated by reference to the difference between the threshold price at the beginning of the marketing year and the supply price for the cereal — in this instance, 16.065 and 6.80 units of account, respectively, per 100 kg.

After 1 August 1974, however, the threshold price had fallen to 10.66 units of account whereas the supply price had moved up to 8.20 units by virtue of Article 1 (1) of Regulation No 1132/74 of the Council.

After the basic product in question had been processed the Office National, on the basis of Article 2 (3) of Regulation No 2012/74 of the Commission, adjusted the amount paid to Roquette by reference to the difference between, on the one hand, the prevailing threshold price for the month of processing (that is, 10.66 units of account — a figure which Roquette does not dispute) and, on the other hand, the new supply price (8.20 units of account), and requested and obtained from the company repayment of the excess sum collected (namely FF 3 615 399.50) in accordance with Article 2 (3) (b) of that regulation.

1 — Official Journal, English Special Edition 1968 (II), p. 352; the regulation adopts certain detailed rules for the application of Regulations Nos 367/67/EEC and 371/67/EEC regarding production refunds on maize processed into groats and meal and on maize and common wheat processed into starch and quellmehl.

In proceedings before the Tribunal Administratif [Administrative Court], Lille, Roquette challenged the legal merits of the claim for repayment; although it did not contest the reference to the threshold price as it stood during the month of processing, the company maintained that the second factor to be taken into consideration was the earlier supply price.

On 22 April 1980 the Tribunal Administratif dismissed the application made by Roquette, which then appealed to the Conseil d'État.

II — The problem of readjusting production refunds and the present request for interpretation which arises from it display many common features with the reference made on 24 November 1981 by the German Bundesfinanzhof [Federal Finance Court] in Case 5/82, *Hauptzollamt Krefeld* v *Maizena*, which was lodged at the Registry on 7 January 1982.

The German court enquired of this Court the appropriate manner of calculating the production refund on maize placed under supervision prior to 1 August 1974 but subsequently processed into starch within the permitted period.

In its judgment of 15 December 1982 ([1982] ECR 4601), in the light of which the Bundesfinanzhof has not yet, at least to my knowledge, ruled, this Court held as follows:

"Both under the Community rules in force until 31 July 1974 and under those in force after that date, the production refund for maize processed into starch must be equal to the difference between the threshold *and* supply prices applicable *at the date at which the maize* is processed."

III — In its written observations submitted on 3 March 1983, Roquette explains that it "is not unaware of ... the judgment given on 15 December 1982 ..." and it "does not pretend that the judgment is other than largely unfavourable to its case". It "begs leave to urge, however, that the problem be examined afresh".

In the first instance, it draws attention to paragraph 16 of the judgment of this Court of 12 July 1977 in *Hoffmann's Stärkefabriken* v *Hauptzollamt Bielefeld*[1] which states that:

"Finally, in order to provide traders with sufficient time to adapt to the new situation Regulation No 3113/74,[2] although adopted on 9 December 1974, provides in the second paragraph of Article 3 that it shall only apply on 1 April 1975.

Since the production refund was paid and the amount thereof calculated pursuant to Article 2 (1) and (3) of Regulation No 2012/74 of the Commission of 30 July 1974 ... *at the time when the person entitled to the refund furnished proof* that the basic product in question had been placed under supervision by the authorities appointed by the Member States, the traders concerned were free to arrange their purchases of maize during the first quarter of 1975 so that their production qualified *in large measure* in the course of the following months for an unreduced refund."

Accordingly, Roquette takes the view that the date to be taken into account for the calculation of the refund is necessarily the date on which the commodity was placed under official supervision.

In the second instance, Roquette submits that *express* provision that account should also be taken of changes in the amount fixed by Article 1 (1) of Regulation No 1132/74 of the Council, that is to say, the supply price, was made only on the adoption of Regulation No 10/75 of the Commission of 31 December 1974.[3] Roquette insists on the wording of Regulation No 2012/74, which was in force at the time when the processing at issue took place, adding that "it is not possible for traders to engage in speculation as to the hidden intentions of the Commission".

IV — The arguments put forward by Roquette cannot be accepted.

In the first place, this Court noted in the *Maizena* judgment, mentioned above, that:

"... in the passage of the judgment (of 12 July 1977) the Court merely states that according to Article 2 (1) and (3) of Regulation No 2012/74 the production refund is to be paid and calculated at the moment when the person entitled thereto furnishes proof that the basic product has been placed under official supervision. Having regard to the reservation contained in the same article permitting adjustment of the refund, it is not possible to find in that passage any support for the view that the *date of processing* is not to be the date which determines the amount of the refund."[4]

1 — Case 2/77 [1977] ECR 1375, at p. 1395.

2 — Council Regulation No 3113/74 of 9 December 1974 amending Regulation No 1132/74 was published in the Official Journal on 12 December 1974. It entered into force on 15 December 1974 but did not become applicable until 1 April 1975.

3 — Official Journal L 1, 3. 1. 1975, p. 24; the regulation entered into force on the day of its publication.

4 — Judgment of 15 December 1982 in Case 5/82, *Hauptzollamt Krefeld v Maizena*, mentioned above, para. 10.

In the second place, the Court observed in the same judgment that:

". . . whilst before the entry into force of Regulation No 10/75 . . . Community law did not *expressly* deal with the problem of the practical effects of changes in [the supply price] occurring between the time when the maize was placed under supervision and the time when it was processed, it nevertheless *follows* from the *corpus* of provisions on the production refund for starch in force since 1967 that the refund was to be calculated on the basis of the rates valid *on the day of processing.* Unlike the threshold price, which changes monthly and in respect of which it was therefore necessary to make provision for adjustment, in Regulation No 2012/74 the supply price is fixed by the Council for an indefinite period and remains unchanged until the Council decides to alter it. In the absence of any express provision concerning the supply price to be used when calculating the refund, the price must *obviously* be determined by reference to the same date as that taken into account in determining the threshold price." [1]

The Court consequently held [2] that "calculation of the refund by reference to the *prices* in force at the time at which the maize is processed", that is to say, both the threshold price and the supply price, was consistent with Community law.

In fact, the economic justification for that finding is that the event giving rise to the refund is the processing of maize into starch, and not its being placed under official supervision. The advances paid to the processor on the basis of the prices in force at the time when the basic product is placed under supervision cannot prevent account being taken at a later stage of the actual cost of production.

I therefore conclude that the Court should rule as follows:

(a) Article 2 (3) of Regulation No 2012/74 of the Commission of 30 July 1974 must be interpreted to mean that the production refund for maize processed into starch is equal to the difference between the threshold price and the supply price applicable on the date on which the basic product in question is processed.

(b) Consideration of the question raised has disclosed no factor of such a kind as might, regard being had to Regulation No 1132/74 of the Council of 29 April 1974, affect the validity of that provision as interpreted above.

1 — Maizena case, para. 8.
2 — Ibid., para. 23.