JUDGMENT OF THE COURT
15 NOVEMBER 1972[1]

Jozef Aimer
v Einfuhr- und Vorratsstelle für Getreide und Futtermittel
(Reference for a preliminary ruling by the Verwaltungsgericht Frankfurt)

'Denaturing of cereals'

Case 27/72

Summary

Agriculture — Common organization of the markets — Common wheat — Rye of bread-making quality — Denaturing — Premium — Granting of premium — Balance of less than 40 tonnes denatured on any day — Taking such balance into consideration — Conditions (Regulation (EEC) No 1403/69 of the Commission, Article 4)

The second sentence of Article 4(3) of Regulation (EEC) No 1403/69 of the Commission of 18 July 1969 must be interpreted as meaning that a balance of less than 40 tonnes denatured on any one day may be taken into consideration when granting a denaturing premium if it arose as a result of a rational use of the undertaking's capacity and provided that the maximum duration of the whole process is equivalent to an average of at least 40 tonnes per day.

In Case 27/72

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 action pending before that court between

JOZEF AIMER, Rotthalmünster,

plaintiff in the main action,

and

EINFUHR- UND VORRATSSTELLE FÜR GETREIDE UND FUTTERMITTEL, Frankfurt am Main,

defendant in the main action,

1 — Language of the Case: German.

on the interpretation of the second sentence of Article 4 (3) of Regulation (EEC) No 1403/69 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 Special Edition, 1969 (II), p. 345),

THE COURT

composed of: R. Lecourt, President, R. Monaco, President of Chamber, A. M. Donner, A. Trabucchi and J. Mertens de Wilmars (Rapporteur), Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts of the case and the procedure may be summarized as follows:

1. Regulation No 120/67/EEC of the Council of 13 June 1967 on the common organization of the market in cereals (OJ Special Edition, 1967, p. 33) provides for the granting of a denaturing premium by intervention agencies (Article 7(3)).
The general rules governing the denaturing of wheat and rye of bread-making quality were laid down in Regulation No 172/67/EEC of the Council of 27 June 1967 (OJ Special Edition, 1967, p. 139). The detailed rules for the application of this regulation have been laid down in turn by Regulations No 242/67/EEC of the Commission (JO No 137 of 30.6.1967, p. 2963), No 956/68 of the Commission (JO L 164 of 13.7.1968, p. 9) and No 1403/69 of the Commission (OJ Special Edition, 1969 (II), p. 345).

Article 4 of Regulation No 1403/69 of the Commission 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 feeding-stuffs.
Under paragraph 3 of this article the duration of the process 'shall not exceed one day per 40 tonnes of cereals processed' in the case of denaturing whereas it must not exceed 'thirty days per 50 tonnes or one working day of eight hours per 20 tonnes of cereals processed' in the case of the process of admixture unaltered.

2. The dispute before the national court turns on the refusal of the defendant in the main action to grant the plaintiff a denaturing premium for a denaturing process carried out on 26 August 1971.
The plaintiff in the main action, a corn merchant in Rotthalmünster, applied for and obtained a permit to denature 200 000

kg of common wheat by adding fish oil. On 24, 25 and 26 August 1971 he denatured part of this amount, 74.4 tonnes on 24 August, 21.5 tonnes on 25 August and 27.5 tonnes on 26 August 1971.
After the defendant had carried out a check, a denaturing premium was granted for the quantities denatured on 24 and 25 August 1971, amounting in aggregate to 145.9 tonnes, but was refused in respect of the amount denatured on 26 August because the minimum quantity per day of 40 tonnes had not been reached on that day.
The plaintiff objected to this decision. He took the view that the amount denatured on 26 August 1971 was a surplus and also pointed out that he could have split the amounts up in such a way that each day the minimum quantity was processed. The defendant rejected this objection by relying on Article 4 of Regulation No 1403/69 of the Commission. In its view this provision is mandatory and admits of no margin of discretion: since the minimum quantity per day of 40 tonnes had not been denatured on 26 August a premium cannot be granted for that day.
On 16 December 1971 the plaintiff commenced proceedings in the court making the reference requesting it to annul the contested decision and to order the defendant to pay the disputed premium.

3. Since the Verwaltungsgericht Frankfurt considers that a question relating to the interpretation of Community law had arisen, it referred the following question to the Court:

'Must the second sentence of Article 4(3) of Regulation (EEC) No 1403/69 of the Commission of 18 July be interpreted as meaning that the plaintiff could denature in one day an amount of less than 40 tonnes of cereals, whether or not this amount is the total amount of the cereals to be denatured or the balance thereof, or must it be interpreted as meaning that the authors of the regulation intended to determine by means of this provision the minimum amount of cereals to be denatured per day and at the same time the duration of the denaturing process?'

The court making the reference also makes the following observations in the ground of its judgment:

— The defendant's interpretation of the second sentence of Article 4(3) of Regulation No 1403/69 in its Directive of 30 July 1970 on the granting of a denaturing premium for common wheat during the 1970/71 cereal year appears to it to be open to question.

— On comparing the wording used in the disputed article with the wording of various other provisions relating to the common organization of the market in cereals, which make certain benefits conditional upon quantitative conditions, the court making the reference is of the opinion that in all these cases the provisions in question place the emphasis on the concept of 'minimum quantities', whereas in the disputed provision the emphasis is placed on the concept of 'duration'.

— In fact, although the recitals in the preamble to Regulation No 172/67, in respect of which the contested regulation lays down the manner in which they are to be put into effect, mention 'minimum quantities', these minimum quantities are not specified in the body of that regulation, as a reading of Article 3 thereof makes clear.
The minimum quantities specified in the recitals in the preamble to Regulation No 1403/69 olny apply to denaturing by admixture and not to the addition of fish oil which occurred in this case.

— Article 4 of the latter regulation states *inter alia* that the duration of the denaturing process 'shall not exceed one day per 40 tonnes of cereals processed'. This sentence is concerned with the *duration* of the denaturing process and not with the quantity to be denatured with the result that it only means that 40 tonnes cannot be denatured in more than one day.

— The court making the reference infers from this that the said rule implies, on the one hand, that an amount of less than 40 tonnes must, *a fortiori*, be denatured in 24 hours and, on the other hand, that an amount of more than 40 tonnes must be processed within a period which altogether does not exceed the period required to process the said amount at the rate of 40 tonnes per day.

4. The order referring the matter was received at the Court Registry on 15 June 1972.
The Commission of the European Communities has submitted its written observations. The plaintiff and the defendant in the main action stated that they did not intend to make use of their right to submit written observations.
After hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided not to make any preparatory inquiries.
The Commission, represented by Mr Kalbe, submitted its oral observations at the hearing on 5 October 1972.
The Advocate-General delivered his opinion at the hearing on 26 October 1972.

II — Observations submitted in accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

The observations submitted pursuant to Article 20 of the said statute may be summarized as follows:
The Commission regards the second sentence of Article 4(3) of Regulation No 1403/69 as being more than a rule prescribing the maximum period allowed for denaturing: it regards it also as a mandatory provision determining the minimum amount to be denatured each day.

1. It bases its case in the first instance on Regulations No 242/67/EEC of 30 June 1967 (JO No 137 of 30.6.1967) and No 956/68 (JO L 164 of 13.7.1968) adopted prior to the contested Regulation No 1403/69 which is merely a revised version of them. Article 5(3) of Regulation No 242/67/EEC lays down a period of one day per 40 tonnes, irrespective of the method adopted: denaturing by means of the addition of fish oil or admixture with feeding-stuffs. Article 4(3) of Regulation No 956/68, on the other hand, draws a distinction between denaturing by addition and denaturing by admixture and this provision has been reproduced without any material alteration in Regulation No 1403/69.
Moreover a recital in the preamble to Regulation No 956/68 relating to this provision expressly specifies 40 tonnes as the minimum quantity to be processed each day.

2. In the Commission's view the exception provided for by Article 5 of Regulation No 1403/69 in the event of an interruption of the denaturing process confirms the interpretation which it proposes.

3. Moreover, this interpretation is consistent with the objectives of the regulation. The purpose of the denaturing premium is to open up for surplus common wheat, that is to say, for wheat which cannot be sold as bread grains, an additional market by transforming it into cattle feeding-stuffs, and such a use means that it is in general uneconomic to offer common wheat in this form to the intervention agencies. In the case of common wheat intended for use as fodder, either because it is of poor quality or because this way of using it has always appeared to producers to be more profitable in the case of small amounts, it is neither necessary nor advisable to provide for a denaturing premium of this kind to be granted.
The requirement that a minimum quantity of 40 tonnes is denatured per day is a means of excluding the payment of any premium on the producer's own consumption, that is to say, on that amount of wheat, which, in so far as it is a small balance, would probably be used as cattle feeding-stuffs. This requirement also makes it possible to limit the number of undertakings which engage in denaturing to those

having the technical equipment which ensures that the denaturing complies with the regulations in force and those where the denaturing process can be supervised without any difficulty.

The Commission argues that this interpretation is also confirmed by the measures for supervising the process of denaturing. The costs both of denaturing and also of supervision would only be justified if a minimum quantity of 40 tonnes was processed, because the intervention agencies could not be compelled to set in motion their administrative machine if it were only necessary to denature a very small amount.
When considering this relationship between the costs and the usefulness of denaturing, it is necessary not only to exclude the cases where the total amount appears to be insufficient but also to keep the duration of the denaturing process within narrow limits and this according to the Commission can be more easily achieved by fixing a daily minimum quantity.
The only case where the payment of the premium is justified on quantities of less than 40 tonnes per day is in the view of the Commission set out, subject to strict conditions, in the second sentence of Article 5 of the same regulation.

The Commission takes the view that, by means of this interpretation which is consistent with its own practice and that of the intervention agencies, it has, on the one hand, attained the material objectives set out above and, on the other hand, has also secured, to the extent to which this is necessary, the uniform application in all the Member States of the regulations concerning the premium which the financial interests involved necessitate.
This need for uniformity was stressed by the Court in Case 94/71 (Judgment of 6 June 1972, *Schlüter & Maack*, Rec. 1972, p. 307) where the facts were similar in so far as the conditions for the granting of an export refund were concerned.
These requirements may well mean that the solution causing the least inconvenience to an undertaking cannot always be found but this is a consequence which cannot be avoided and which should be accepted so that the uniform application of the system of granting premiums is ensured.
The Commission submits that the answer to the question referred should therefore be that, as provided for in Article 4(3) and the first sentence of Article 5 of Regulation No 1403/69, the denaturing premium must only be paid on quantities of which at least 40 tonnes of wheat per day have been denatured.

Grounds of judgment

1 By order of 3 May 1972 which was received at the Court Registry on 15 May 1972 the Verwaltungsgericht Frankfurt am Main referred to the Court under Article 177 of the EEC Treaty for a preliminary ruling a question concerning the interpretation of the second sentence of Article 4(3) of Regulation No 1403/69 of the Commission of 18 July 1969 (OJ, Special Edition, 1969 (II), p. 345).

This regulation, which was adopted pursuant to Regulation No 172/67/EEC of the Council of 27 June 1967 (OJ, Special Edition, 1967, p. 139), lays down detailed rules for the application of the provisions concerning denaturing of common wheat and rye of bread-making quality and, in particular, defines the conditions to which the granting of a denaturing premium are subject.

Article 4 of the said regulation provides, *inter alia*, that 'the duration of the denaturing process shall not exceed one day per 40 tonnes of cereals processed'.

The Court is asked whether this provision must be interpreted as meaning that the owner of an undertaking is entitled to the premium if he denatures a quantity of less than 40 tonnes, whether or not this amount is the total amount or the balance thereof, if the duration of this denaturing process does not exceed one day, or whether the authors of the regulation intended to determine the minimum amount to be denatured each day at the same time as the duration of the denaturing process.

2 The file sent to the Court by the national court shows that, after the plaintiff in the main action had applied to the competent intervention agency for and obtained from it a permit to denature 200 tonnes of wheat, it notified the said agency in accordance with the administrative instructions in force in this connexion in the Federal Republic of Germany that it would carry out the denaturing on 24, 25 and 26 August 1971.

The total quantity to be denatured was reduced during the process to 173.4 tonnes 74.4 tonnes of which were processed on 24 August, 71.5 tonnes on 25 August and 27.5 tonnes on 26 August 1971 respectively.

The answer to this question must enable the national court to decide whether the amount of 27.5 tonnes can be taken into account when granting the denaturing premium.

3 Article 7 of Regulation No 120/67/EEC of the Council of 13 June 1967 on the common organization of the market in cereals (OJ, Special Edition, 1967, p. 33) authorizes the intervention agencies, with a view to supporting the market for products which cannot be sold in the normal way, to grant a denaturing premium for common wheat and pursuant to this provision Regulation No 172/67 lays down the general rules for attaining this objective.

The second recital in the preamble to this second regulation states that in view of the aim pursued denaturing can only be justified if it is applied to bread-making cereals of a certain minimum quality and if, having regard to the costs entailed by the supervision of denaturing, it is applied to minimum quantities thereof.

Consequently Article 3 of this regulation provides that 'Cereals for denaturing must be of a minimum quality and quantity to be determined'.
Further, Article 7 of this regulation reads: 'To qualify for the premium, denaturing should be effected in agreement with the intervention agency and under its supervision'.

4 The required conditions as to quality and quantity were determined by Regulation No 1403/69 for the period covered by the dispute.

Article 4(3) of this regulation provides that the duration of the denaturing process shall not exceed one day per 40 tonnes of cereals processed.

It is the Commission's view that the purpose of this provision is to make it obligatory to denature a minimum quantity of 40 tonnes of cereals each working day in any event, because processing a smaller amount cannot be allowed having regard to the heavy costs of supervising this process.

5 Although it is in keeping with the objective of the system which governs denaturing to preclude the granting of a premium on a total amount of less than 40 tonnes, the competent intervention agency is, however, in a position to decide whether to grant a premium on such an amount when it issues the denaturing permit.

The question of the total amount for which permission to denature is given cannot therefore be confused with the question of the duration of the denaturing process.

6 Supervision of this process entails considerable expense and the requirement that denaturing is carried out at the rate of 40 tonnes per day is therefore justified in order to avoid an increase in the amount of such supervision.

This minimum quantity stipulated by Article 1403/69 may, after taking account of the capacity of the undertaking in question, even by increased, by agreement between the operator and the intervention agency as provided for in Article 7 of Regulation No 172/67/EEC of the Council, with a view to using the undertaking's capacity in the most rational way.

7 If on the other hand the process of denaturing lasts several days, the objectives sought are attained if the total duration of the process does not exceed a period which is equivalent to a daily average of 40 denatured tonnes, provided that the undertaking's capacity has been used in a rational way.

Consequently a balance of less than 40 tonnes denatured on any one day may be taken into consideration, if it arose as a result of a rational use of the undertaking's capacity for denaturing and provided that the maximum duration of the whole process is equivalent to an average of at least 40 denatured tonnes per day.

A narrower interpretation of Article 4(3) would go beyond the objectives sought and must for this reason be rejected.

Costs

8 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 Verwaltungsgericht, Frankfurt am Main, 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 Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Article 177;
Having regard to Regulations Nos 120/67 and 172/67 of the Council of the European Economic Community of 13 June 1967 and 27 June 1967 respectively;
Having regard to Regulation No 1403/69 of the Commission of the European Community of 18 July 1969;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
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 Verwaltungsgericht Frankfurt am Main by order of 3 May 1972, hereby rules:

The second sentence of Article 4 (3) of Regulation (EEC) No 1403/69 of the Commission of 18 July 1969 must be interpreted as meaning that a balance of less than 40 tonnes denatured on any one day may be taken into consideration if it arose as a result of a rational use of the undertaking's denaturing capacity and provided that the maximum duration of the whole process is equivalent to an average of at least 40 tonnes per day.

Lecourt Monaco Donner

Trabucchi Mertens de Wilmars

Delivered in open court in Luxembourg on 15 November 1972.

A. Van Houtte
Registrar

R. Monaco
(President of Chamber)
For the President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 26 OCTOBER 1972[1]

Mr President,
Members of the Court,

The subject-matter of the proceedings of the national court giving rise to the reference which must be dealt with today is a claim for payment of a denaturing premium for common wheat. In order to understand these proceedings the following preliminary observations are necessary.

In order to provide additional new markets for surplus common wheat, which cannot be sold as bread grains on the market, and in this way to support the market for common wheat, Article 7(3) of Regulation No 120 of 13 June 1967 on the common organization of the market in cereals (OJ, English Special Edition 1967, p. 33) provides that 'the intervention agencies ... may ... grant a denaturing premium for common wheat'. Regulation No 172/67/EEC of the Council of 27 June 1967 (OJ, English Special Edition, 1967, p. 139) contains additional 'general rules governing the denaturing of wheat'. These include Article 3 which I now quote and which reads 'Cereals for denaturing must be of a minimum quality and quantity to be determined'. Article 4(2) of this regulation provides that the premium shall be granted at the request of the interested party if the requirements of Article 3 *inter alia* are observed. Further, Article 7 provides: 'To qualify for the premium, denaturing should be effected in agreement with the intervention agency and under its supervision'. The Commission adopted further implementing provisions, first of all in Regulation No 242 of 30 June 1967 (JO No 137 of 30.6.1967, p. 2963/67), then in Regulation No 956 of 12 July 1968 (JO L 164, p. 9) and also in Regulation No 1403/69 of 18 July 1969 (OJ, English Special Edition, 1969 (II), p. 345) which has special relevance in this case. It is necessary to quote the article of this latter regulation which provides that the denaturing premium shall consist of two components, one allowing for the differences between prices for common wheat and barley, the other allowing for the technical costs of denaturing or the special costs of admixture, fixed at a flat rate. Moreover Article 4(3) 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 feeding-stuffs falling within heading No 23.07 of the Common Customs Tariff. the duration of the denaturing process shall not exceed one day per 40 tonnes of cereals processed. The duration of the process of admixture, unaltered, with compound feeding-stuffs shall not exceed thirty days per 50 tonnes or one working day of eight hours per 20 tonnes of cereals processed. The inter-

1 — Translated from the German.