

Avis juridique important

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Judgment of the Court (Fifth Chamber) of 21 September 1983. - Deutsche Milchkontor GmbH and others v Federal Republic of Germany. - References for a preliminary ruling: Verwaltungsgericht Frankfurt am Main - Germany. - Recovery of aids unduly paid - Skimmed-milk powder. - Joined cases 205 to 215/82.

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Summary

Parties

Subject of the case

Grounds

Decision on costs

Operative part

Keywords

1 . AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - MILK AND MILK PRODUCTS - AIDS FOR SKIMMED-MILK POWDER - SKIMMED-MILK POWDER - DEFINITION

(REGULATION NO 986/68 OF THE COUNCIL , ART . 1)

2.MEMBER STATES - OBLIGATIONS - IMPLEMENTATION OF COMMUNITY LAW - APPLICATION OF PROCEDURAL AND SUBSTANTIVE RULES OF NATIONAL LAW - CONDITIONS

(EEC TREATY , ART . 5)

3.EUROPEAN COMMUNITIES - OWN RESOURCES - WRONGLY-PAID COMMUNITY AIDS - RECOVERY - DISPUTES - APPLICATION OF NATIONAL LAW - CONDITIONS AND LIMITS

(REGULATION NO 729/70 OF THE COUNCIL , ART . 8 (1))

4.EUROPEAN COMMUNITIES - OWN RESOURCES - WRONGLY-PAID COMMUNITY AIDS - RECOVERY - DISPUTES - APPLICATION OF NATIONAL LAW - SCOPE - BURDEN OF PROOF

(REGULATION NO 729/70 OF THE COUNCIL , ART . 8 (1))

5.AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - MILK AND MILK PRODUCTS - AIDS FOR SKIMMED-MILK POWDER - MONITORING OF COMPLIANCE WITH COMMUNITY REGULATIONS - DUTY OF THE NATIONAL AUTHORITIES - SCOPE - FAILURE TO FULFIL DUTY - CONSEQUENCES - DETERMINATION BY THE NATIONAL COURT - APPLICATION OF NATIONAL LAW

(EEC TREATY , ART . 5 ; REGULATION NO 729/70 OF THE COUNCIL , ART . 8 ; REGULATION NO 990/72 OF THE COMMISSION , ART . 10)

Summary

1. A PRODUCT CONSISTING OF A SPRAY-DRIED MIXTURE OF SKIMMED MILK AND A POWDER COMPOSED OF WHEY, SODIUM CASEINATE AND LACTOSE IS NOT SKIMMED-MILK POWDER FOR THE PURPOSES OF THE COMMUNITY REGULATIONS GOVERNING AID FOR SKIMMED-MILK POWDER AND, MORE PARTICULARLY, OF ARTICLE 1 OF REGULATION NO 986/68 EVEN IF ITS COMPOSITION IS THE SAME AS THAT OF SKIMMED-MILK POWDER MADE FROM COW'S MILK.

2. ACCORDING TO THE GENERAL PRINCIPLES ON WHICH THE INSTITUTIONAL SYSTEM OF THE COMMUNITY IS BASED AND WHICH GOVERN THE RELATIONS BETWEEN THE COMMUNITY AND THE MEMBER STATES, IT IS FOR THE MEMBER STATES, BY VIRTUE OF ARTICLE 5 OF THE TREATY, TO ENSURE THAT COMMUNITY REGULATIONS, PARTICULARLY THOSE CONCERNING THE COMMON AGRICULTURAL POLICY, ARE IMPLEMENTED WITHIN THEIR TERRITORY. IN SO FAR AS COMMUNITY LAW, INCLUDING ITS GENERAL PRINCIPLES, DOES NOT INCLUDE COMMON RULES TO THIS EFFECT, THE NATIONAL AUTHORITIES WHEN IMPLEMENTING COMMUNITY REGULATIONS ACT IN ACCORDANCE WITH THE PROCEDURAL AND SUBSTANTIVE RULES OF THEIR OWN NATIONAL LAW; HOWEVER, THIS RULE MUST BE RECONCILED WITH THE NEED TO APPLY COMMUNITY LAW UNIFORMLY SO AS TO AVOID UNEQUAL TREATMENT OF PRODUCERS AND TRADERS.

3. IN THE PRESENT STATE OF COMMUNITY LAW SUMS UNDULY PAID BY WAY OF AIDS UNDER THE COMMUNITY REGULATIONS ARE RECOVERED BY THE NATIONAL AUTHORITIES ACCORDING TO THE RULES AND PROCEDURES LAID DOWN BY NATIONAL LEGISLATION SUBJECT TO THE LIMITS IMPOSED BY COMMUNITY LAW INASMUCH AS THE RULES AND PROCEDURES LAID DOWN BY NATIONAL LAW MUST NOT HAVE THE EFFECT OF MAKING IT VIRTUALLY IMPOSSIBLE TO IMPLEMENT COMMUNITY REGULATIONS AND NATIONAL LEGISLATION MUST BE APPLIED IN A MANNER WHICH IS NOT DISCRIMINATORY COMPARED TO PROCEDURES FOR DECIDING SIMILAR BUT PURELY NATIONAL DISPUTES.

COMMUNITY LAW DOES NOT PREVENT NATIONAL LAW FROM HAVING REGARD, IN EXCLUDING THE RECOVERY OF UNDULY-PAID AIDS, TO SUCH CONSIDERATIONS AS THE PROTECTION OF LEGITIMATE EXPECTATION, THE LOSS OF UNJUSTIFIED ENRICHMENT, THE PASSING OF A TIME-LIMIT OR THE FACT THAT THE ADMINISTRATION KNEW, OR WAS UNAWARE OWING TO GROSS NEGLIGENCE ON ITS PART, THAT IT WAS WRONG IN GRANTING THE AIDS IN QUESTION, PROVIDED HOWEVER THAT THE CONDITIONS LAID DOWN ARE THE SAME AS FOR THE RECOVERY OF PURELY NATIONAL FINANCIAL BENEFITS AND THE INTERESTS OF THE COMMUNITY ARE TAKEN FULLY INTO ACCOUNT.

4. IN REFERRING TO NATIONAL LAW AS REGARDS THE RECOVERY OF AIDS UNDULY PAID ARTICLE 8 (1) OF REGULATION NO 729/70 MAKES NO DISTINCTION BETWEEN THE SUBSTANTIVE CONDITIONS FOR THEIR RECOVERY AND THE RULES OF PROCEDURE AND FORM WHICH MUST BE FOLLOWED IN RECOVERING THEM. THOSE CONDITIONS AND RULES, INCLUDING THOSE ALLOCATING THE BURDEN OF PROOF, ARE THEREFORE ALL DETERMINED BY NATIONAL LAW, SUBJECT TO THE RESTRICTIONS WHICH MAY DERIVE FROM COMMUNITY LAW IN THIS REGARD.

5. MEMBER STATES MUST VERIFY BY MEANS OF APPROPRIATE CONTROLS THAT SKIMMED-MILK POWDER COMPLIES WITH THE RELEVANT COMMUNITY RULES SO AS TO ENSURE THAT COMMUNITY AIDS ARE NOT PAID IN RESPECT OF PRODUCTS FOR WHICH THEY OUGHT NOT TO BE GRANTED. IT IS FOR THE NATIONAL COURT TO DETERMINE THE CONTROLS NECESSARY FOR THIS PURPOSE HAVING REGARD IN PARTICULAR TO THE CIRCUMSTANCES AND TECHNIQUES AVAILABLE.

IT IS FOR THE NATIONAL COURT TO DETERMINE THE CONSEQUENCES OF ANY FAILURE TO FULFIL THAT DUTY ON THE BASIS OF THE RELEVANT NATIONAL LAW.

Parties

IN JOINED CASES 205 TO 215/82

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

DEUTSCHE MILCHKONTOR GMBH (205/82),

E . KAMPPFMEYER (206/82),

SCHWARZWALDMILCH GMBH (207/82),

INNTALER MISCHFUTTER GMBH & CO . KG (208/82),

HELMUT BECKER GMBH & CO . KG (209/82),

PLANGE KRAFTFUTTERWERKE GMBH & CO . KG (210/82),

JOSERA-WERK (211/82),

FRISCHLI-MILCHWERKE HOLTORF + SCHAKEL KG (212/82),

HEMO MOHR KG (213/82),

DENKAVIT FUTTERMILCH GMBH (214/82),

DMV LAGEREI- UND VERWALTUNGSGESELLSCHAFT MBH (215/82)

AND

FEDERAL REPUBLIC OF GERMANY , REPRESENTED BY THE BUNDESAMT FUR ERNAHRUNG UND FORSTWIRTSCHAFT (FEDERAL OFFICE FOR FOOD AND FORESTRY),

Subject of the case

ON THE INTERPRETATION OF VARIOUS PRINCIPLES OF COMMUNITY LAW RELATING TO CLAIMS FOR THE RECOVERY OF AIDS UNDULY GRANTED FOR SKIMMED-MILK POWDER WHICH HAS BEEN PROCESSED INTO ANIMAL FEED ,

Grounds

1 BY 11 ORDERS DATED 3 JUNE 1982 , WHICH WERE RECEIVED AT THE COURT ON 11 AUGUST 1982 , THE VERWALTUNGSGERICHT (ADMINISTRATIVE COURT) FRANKFURT AM MAIN REFERRED TO THE COURT FOR A PRELIMINARY RULING UNDER ARTICLE 177 OF THE EEC TREATY QUESTIONS AS TO THE INTERPRETATION OF VARIOUS PROVISIONS OF REGULATION (EEC) NO 986/68 OF THE COUNCIL OF 15 JULY 1968 LAYING DOWN GENERAL RULES FOR GRANTING AID FOR SKIMMED MILK AND SKIMMED-MILK POWDER FOR USE AS FEED (OFFICIAL JOURNAL , ENGLISH SPECIAL EDITION 1968 (I) , P . 260) , REGULATION (EEC) NO 990/72 OF THE COMMISSION OF 15 MAY 1972 ON DETAILED RULES FOR GRANTING AID FOR SKIMMED MILK PROCESSED INTO COMPOUND FEEDINGSTUFFS AND FOR SKIMMED-MILK POWDER FOR USE AS FEED (OFFICIAL JOURNAL , ENGLISH SPECIAL EDITION 1972 (II) , P . 428) AND REGULATION (EEC) NO 729/70 OF THE COUNCIL OF 21 APRIL 1970 ON THE FINANCING OF THE COMMON AGRICULTURAL POLICY (OFFICIAL

JOURNAL , ENGLISH SPECIAL EDITION 1970 (1), P . 218), AND AS TO THE PRINCIPLES OF COMMUNITY LAW REGARDING THE RECOVERY OF UNDULY-PAID AIDS .

2 THOSE QUESTIONS WERE RAISED IN DISPUTES PENDING BEFORE THE VERWALTUNGSGERICHT (ADMINISTRATIVE COURT) FRANKFURT AM MAIN BETWEEN THE BUNDESAMT FUR ERNAHRUNG UND FORSTWIRTSCHAFT (FEDERAL OFFICE FOR FOOD AND FORESTRY), THE COMPETENT AUTHORITY FOR PAYING AIDS FOR THE PROCESSING OF SKIMMED-MILK POWDER IN THE FEDERAL REPUBLIC OF GERMANY , AND A NUMBER OF UNDERTAKINGS WHICH MAKE COMPOUND FEEDINGSTUFFS AND TRADE IN MILK PRODUCTS . THE UNDERTAKINGS ASKED THE VERWALTUNGSGERICHT TO ANNUL DECISIONS OF THE BUNDESAMT FUR ERNAHRUNG UND FORSTWIRTSCHAFT REQUIRING THEM TO REPAY SUMS GRANTED TO THEM FOR SKIMMED-MILK POWDER PURSUANT TO ARTICLE 10 (1) OF REGULATION (EEC) NO 804/68 OF THE COUNCIL OF 27 JUNE 1968 ON THE COMMON ORGANIZATION OF THE MARKET IN MILK AND MILK PRODUCTS (OFFICIAL JOURNAL , ENGLISH SPECIAL EDITION 1968 (1), P . 176), REGULATIONS NOS 986/68 OF THE COUNCIL AND 990/72 OF THE COMMISSION , REFERRED TO ABOVE , AND COMMISSION REGULATION (EEC) NO 1624/76 OF 2 JULY 1976 CONCERNING SPECIAL ARRANGEMENTS FOR THE PAYMENT OF AID FOR SKIMMED-MILK POWDER DENATURED OR PROCESSED INTO COMPOUND FEEDINGSTUFFS IN THE TERRITORY OF ANOTHER MEMBER STATE (OFFICIAL JOURNAL 1976 , L 180 , P . 9).

3 PURSUANT TO THE AFORESAID PROVISIONS THE PLAINTIFF UNDERTAKINGS IN THE MAIN PROCEEDINGS RECEIVED THE AIDS FOR SKIMMED-MILK POWDER EITHER FOR THE PROCESSING OF SKIMMED-MILK POWDER INTO COMPOUND FEEDINGSTUFFS OR FOR THE EXPORTATION OF SKIMMED-MILK POWDER TO ITALY FOR THE PURPOSE OF SUCH PROCESSING . IN THE MAIN PROCEEDINGS THE BUNDESAMT FUR ERNAHRUNG UND FORSTWIRTSCHAFT CONTENDS THAT THE SKIMMED-MILK POWDER FOR WHICH THE PLAINTIFFS RECEIVED THE AIDS DID NOT SATISFY THE CONDITIONS LAID DOWN BY THE COMMUNITY REGULATIONS IN SO FAR AS THE POWDER CAME FROM THE UNDERTAKING MILCHWERKE AUETAL-BEYER KG (HEREINAFTER REFERRED TO AS '' AUETAL '').

4 IN 1978 AND 1979 AUETAL USED , BESIDES SKIMMED MILK , LARGE QUANTITIES OF A PRODUCT COMPOSED OF 56% POWDERED WHEY , 31% SODIUM CASEINATE AND 13% LACTOSE TO MAKE SKIMMED-MILK POWDER . AS REGARDS ITS CONTENT OF PROTEIN , CARBOHYDRATES AND SO FORTH , THE COMPOSITION OF THE POWDER MADE IN THAT WAY WAS THE SAME AS THAT OF SKIMMED-MILK POWDER MADE FROM FRESH SKIMMED MILK . THE ISSUE IN THE MAIN PROCEEDINGS IS , DEPENDING ON THE CASE , WHETHER AND TO WHAT EXTENT THE PLAINTIFFS RECEIVED AND USED FOR THE PROCESSING AND EXPORTATION OF THE SKIMMED-MILK POWDER IN QUESTION NORMAL SKIMMED-MILK POWDER SUPPLIED BY AUETAL OR ANOTHER SUPPLIER OR POWDER MADE BY AUETAL USING THE PARTICULAR METHOD DESCRIBED ABOVE AND PUT ON THE MARKET AS SKIMMED-MILK POWDER .

5 THE VERWALTUNGSGERICHT FOUND THAT AT THE MATERIAL TIME NEITHER THE UNDERTAKINGS IN THE MILK PRODUCT INDUSTRY NOR THE PUBLIC LABORATORIES WERE ABLE , USING THE METHODS OF CHEMICAL ANALYSIS HABITUALLY EMPLOYED AT THAT TIME , TO DETECT ANY DIFFERENCE BETWEEN SKIMMED-MILK POWDER MADE FROM FRESH SKIMMED MILK AND THE POWDER MADE BY AUETAL USING THE PARTICULAR METHOD IN QUESTION . THE PLAINTIFFS IN THE MAIN PROCEEDINGS THEREFORE ARGUE THAT THEY COULD NOT TELL WHETHER OR NOT THEY WERE RECEIVING AND USING A PRODUCT OTHER THAN SKIMMED-MILK POWDER MADE FROM FRESH SKIMMED MILK .

6 THE USE OF THAT PARTICULAR MANUFACTURING METHOD BY AUETAL WAS DISCOVERED BY THE COMPETENT GERMAN AUTHORITIES IN MAY 1979 . THE PARTIES TO THE MAIN PROCEEDINGS ARE AT ODDS ON THE QUESTION WHETHER ITS USE MIGHT AND OUGHT TO HAVE BEEN DISCOVERED EARLIER AS SOME EVIDENCE OF UNUSUAL MANUFACTURING PROCESSES HAD PREVIOUSLY BEEN FOUND . FOLLOWING THE DISCOVERY THE BUNDESAMT FUR ERNAHRUNG UND FORSTWIRTSCHAFT DECIDED TO CANCEL THE NOTICES GRANTING AID AND TO DEMAND REPAYMENT OF THE SUMS UNDULY PAID UNDER THOSE NOTICES ON THE GROUND THAT THE CONDITIONS FOR THE GRANT OF AIDS , NAMELY THE USE OF SKIMMED-MILK POWDER IN THE PRESCRIBED QUANTITY AT LEAST ,

WERE NOT FULFILLED BECAUSE THE PLAINTIFF UNDERTAKINGS HAD USED , AT LEAST IN PART , POWDER MADE BY AUETAL .

7 IN THE PROCEEDINGS BEFORE THE VERWALTUNGSGERICHT FRANKFURT THE PLAINTIFFS CONTEST THOSE DECISIONS OF THE BUNDESAMT FÜR ERNÄHRUNG UND FORSTWIRTSCHAFT ON THE GROUND THAT THE CONDITIONS LAID DOWN BY ARTICLE 48 OF THE VERWALTUNGSVERFAHRENSGESETZ (LAW ON ADMINISTRATIVE PROCEDURE) OF 25 MAY 1976 (BUNDESGESETZBLATT I , P . 1253) ON WHICH AN ADMINISTRATIVE DECISION GRANTING A PECUNIARY ADVANTAGE MAY BE REVOKED AND SUMS PAID PURSUANT TO SUCH A DECISION RECOVERED ARE NOT FULFILLED IN THE PRESENT CASE .

8 THE NATIONAL COURT CONSIDERED THAT THE DISPUTES RAISED A NUMBER OF QUESTIONS CONCERNING THE INTERPRETATION OF COMMUNITY LAW . IT THEREFORE SUBMITTED THE FOLLOWING QUESTIONS TO THE COURT FOR A PRELIMINARY RULING :

' ' 1 . DOES A PRODUCT CONSISTING OF A SPRAY-DRIED MIXTURE OF SKIMMED MILK AND A DRIED-MILK PRODUCT COME WITHIN THE DEFINITION OF SKIMMED-MILK POWDER LAID DOWN IN ARTICLE 1 (C) OF REGULATION (EEC) NO 986/68 OF THE COUNCIL OF 15 JULY 1968 IF THAT END PRODUCT REVEALS THE SAME COMPOSITION (PROTEIN , CARBOHYDRATE ETC .) AS SKIMMED-MILK POWDER DERIVED DIRECTLY FROM COW ' S MILK?

2. DOES ARTICLE 10 OF REGULATION (EEC) NO 990/72 OF THE COMMISSION OF 15 MAY 1972 FOUND AN OBLIGATION ON THE PART OF THE AUTHORITIES OF THE MEMBER STATES TO SUPERVISE THE PRODUCTION OF SKIMMED-MILK POWDER ON THE PRODUCER ' S PREMISES?

3. DOES ARTICLE 10 OF THE LAST AFOREMENTIONED REGULATION ENURE FOR THE BENEFIT OF THE RECIPIENTS OF AID AS THIRD PARTIES , THAT IS , MAY THEY INVOKE FAILINGS OF THE AUTHORITIES IN THAT RESPECT SO AS TO PRECLUDE A DEMAND FOR REPAYMENT?

4. DOES COMMUNITY LAW , IN PARTICULAR ARTICLE 8 (1) OF REGULATION (EEC) NO 729/70 OF THE COUNCIL OF 21 APRIL 1970 , CONTAIN RULES GOVERNING THE SUBSTANTIVE BURDEN OF PROOF OR ARE THOSE RULES DETERMINED BY NATIONAL LAW AS REGARDS THE QUESTION WHETHER , IN A GIVEN CASE , AIDS FOR SKIMMED MILK AND SKIMMED-MILK POWDER FOR USE AS FEED UNDER REGULATION NO 986/68 OF THE COUNCIL , AND COMMISSION REGULATIONS ADOPTED IN IMPLEMENTATION THEREOF , HAVE BEEN UNLAWFULLY GRANTED? IF COMMUNITY LAW CONTAINS RULES GOVERNING THE BURDEN OF PROOF : WHAT ARE THOSE RULES?

5. DOES ARTICLE 8 (1) OF REGULATION NO 729/70 OF THE COUNCIL OF 21 APRIL 1970 PROVIDE A DIRECT LEGAL BASIS UPON WHICH NATIONAL AUTHORITIES MAY DEMAND REIMBURSEMENT OF AID GRANTED UNLAWFULLY WITH THE RESULT THAT THE FACTUAL PRECONDITIONS TO BE SATISFIED FOR SUCH A DEMAND ARE DEFINITELY LAID DOWN IN THAT PROVISION?

6. IF THE FIFTH QUESTION IS ANSWERED IN THE AFFIRMATIVE : WITHIN WHAT PROVISIONS , IF APPROPRIATE SUPPLEMENTED BY UNWRITTEN LEGAL PRINCIPLES OF COMMUNITY LAW , IS THE EXPECTATION OF THE RECIPIENT OF AID PROTECTED AND IF SO UNDER WHAT CONDITIONS AND TO WHAT EXTENT? MAY THE RECIPIENT OF AID IN PARTICULAR UNDER CERTAIN CIRCUMSTANCES PLEAD LOSS OF ENRICHMENT AND IS THERE SUCH A LOSS WHERE THE RECIPIENT OF AID HAS PASSED THE AID ON IN THE SELLING PRICE? IS RECOVERY PRECLUDED WHERE THE AUTHORITY KNEW , OR DID NOT KNOW AS A RESULT OF GROSS NEGLIGENCE , THAT IT WAS GRANTING THE AID UNLAWFULLY?

7. IF THE FIFTH QUESTION IS ANSWERED IN THE NEGATIVE : IS IT COMPATIBLE WITH COMMUNITY LAW FOR NATIONAL LAW TO PRECLUDE A DEMAND FOR REPAYMENT OF AID GRANTED UNLAWFULLY :

WHERE THE BENEFICIARY RELIED UPON THE NOTICE GRANTING AID BEING MAINTAINED IN FORCE AND THAT EXPECTATION , WEIGHED AGAINST THE PUBLIC INTEREST IN REVOCATION , IS WORTHY OF PROTECTION (PARAGRAPH 48 (2) , FIRST TO THIRD SENTENCES , OF THE VERWALTUNGSVERFAHRENSGESETZ (LAW ON ADMINISTRATIVE PROCEDURE) OF 25 MAY 1976 - BGBl I P . 1253) ;

WHERE THE BENEFICIARY CAN PLEAD LOSS OF ENRICHMENT UNLESS HE KNEW , OR DID NOT KNOW AS A RESULT OF GROSS NEGLIGENCE , THE CIRCUMSTANCES LEADING TO THE ILLEGALITY OF THE NOTICE GRANTING THE AID (SEVENTH SENTENCE OF PARAGRAPH 48 (2) OF THE VERWALTUNGSVERFAHRENSGESETZ) ;

WHERE A PERIOD OF ONE YEAR HAS ELAPSED BEGINNING WITH THE POINT IN TIME AT WHICH THE AUTHORITY RECEIVED KNOWLEDGE OF FACTS JUSTIFYING THE REVOCATION OF AN UNLAWFUL NOTICE GRANTING AID , IRRESPECTIVE OF WHETHER THE PERSON CONCERNED KNEW THAT SUCH FACTS HAD COME TO THE NOTICE OF THE AUTHORITY (PARAGRAPH 48 (4) OF THE VERWALTUNGSVERFAHRENSGESETZ) ;

WHERE THE AUTHORITY KNEW , OR DID NOT KNOW AS A RESULT OF GROSS NEGLIGENCE , THAT IT WAS GRANTING THE AID UNLAWFULLY (SIXTH SENTENCE OF PARAGRAPH 48 (2) OF THE VERWALTUNGSVERFAHRENSGESETZ IN CONJUNCTION WITH PARAGRAPH 814 OF THE BÜRGERLICHES GESETZBUCH (GERMAN CIVIL CODE)) ?

''

9 THE FIRST OF THOSE QUESTIONS CONCERNS THE CONDITIONS UPON WHICH AIDS ARE GRANTED WHILST THE SECOND TO SEVENTH QUESTIONS ARE CONCERNED WITH VARIOUS ASPECTS OF THE RECOVERY OF AIDS BY NATIONAL AUTHORITIES WHERE THEY HAVE BEEN PAID WITHOUT THE CONDITIONS FOR THEIR GRANT HAVING BEEN FULFILLED . TO MAKE IT EASIER TO FORMULATE THE RELEVANT PRINCIPLES WITH THE AID OF WHICH THE NATIONAL COURT SHOULD BE ABLE TO DECIDE THE CASES BEFORE IT THE QUESTIONS SUBMITTED WILL BE REARRANGED AND DEALT WITH IN THE FOLLOWING ORDER :

THE CONDITIONS UPON WHICH AIDS ARE GRANTED (FIRST QUESTION) ;

THE EXTENT TO WHICH COMMUNITY LAW AND NATIONAL LAW APPLY TO THE QUESTION OF THE RECOVERY OF UNDULY-PAID AIDS (FIFTH AND SIXTH QUESTIONS) ;

THE PROTECTION OF LEGITIMATE EXPECTATION AND ASSURANCE OF LEGAL CERTAINTY IN THE RECOVERY OF UNDULY-PAID AIDS (SEVENTH QUESTION) ;

THE BURDEN OF PROOF IN THE RECOVERY OF UNDULY-PAID AIDS (FOURTH QUESTION) ;

THE OBLIGATION TO MONITOR THE MANUFACTURE OF SKIMMED-MILK POWDER AT THE MANUFACTURER ' S PREMISES (SECOND AND THIRD QUESTIONS) .

THE CONDITIONS UPON WHICH AIDS ARE GRANTED

10 BY ITS FIRST QUESTION THE NATIONAL COURT WISHES TO KNOW HOW IT MUST INTERPRET THE TERM ' ' SKIMMED-MILK POWDER ' ' USED IN THE COMMUNITY REGULATIONS ON AIDS FOR SKIMMED-MILK POWDER AND , MORE SPECIFICALLY , ARTICLE 1 OF REGULATION NO 986/68 OF THE COUNCIL IN ORDER TO DECIDE WHETHER OR NOT A POWDER SUCH AS THAT MADE BY AUETAL MEETS THE CONDITIONS FOR THE GRANT OF AIDS .

11 IN ITS OBSERVATIONS TO THE COURT THE PLAINTIFF FRISCHLI-MILCHWERKE HOLTORF + SCHAEKEL KG TAKES THE VIEW THAT IT IS THE PHYSICAL COMPOSITION AND NOT THE MANUFACTURING PROCESS WHICH IS DETERMINATIVE AS REGARDS THE DEFINITION OF SKIMMED-MILK POWDER , ESPECIALLY AS THE RECONSTITUTION OF MILK PRODUCTS

FROM THEIR PREVIOUSLY SEPARATED CONSTITUENTS IS THE USUAL AND ACCEPTED PRACTICE IN COMMUNITY DAIRIES .

12 THE POINT TO BE MADE IN THIS REGARD IS THAT ARTICLE 1 (D) OF REGULATION NO 986/68 OF THE COUNCIL DEFINES SKIMMED-MILK POWDER AS '' POWDERED MILK '' AND ALSO SPECIFIES ITS FAT AND MOISTURE CONTENT . MILK ITSELF IS DEFINED IN ARTICLE 1 (A) AS '' THE MILK-YIELD OF ONE OR MORE COWS , TO WHICH NOTHING HAS BEEN ADDED AND WHICH HAS , AT THE MOST , BEEN ONLY PARTIALLY SKIMMED '' . IT IS CLEAR FROM THOSE DEFINITIONS THAT A PRODUCT FOR THE MANUFACTURE OF WHICH SUBSTANCES OTHER THAN THE MILK-YIELD OF ONE OR MORE COWS HAVE BEEN USED CANNOT ATTRACT AIDS UNDER THE INTERVENTION MACHINERY REFERRED TO ABOVE , REGARDLESS OF THE CHEMICAL COMPOSITION OF THE FINAL PRODUCT OBTAINED IN THAT WAY .

13 THE LITERAL INTERPRETATION IS SUPPORTED BY THE PURPOSE OF THE SYSTEM OF AIDS IN QUESTION , WHICH , UNDER THE INTERVENTION SYSTEM ESTABLISHED BY REGULATION NO 804/68 OF THE COUNCIL , IS TO ENABLE MILK TO BE DISPOSED OF AT THE PRICE FIXED WITHIN THE COMMON ORGANIZATION OF THE MARKET IN MILK AND MILK PRODUCTS . IT WOULD BE CONTRARY TO THAT OBJECTIVE FOR AIDS FOR SKIMMED-MILK POWDER TO BE ATTRACTED BY A PRODUCT MADE FROM SUBSTANCES NO LONGER ON THE MILK MARKET OR IN RESPECT OF WHICH SIMILAR AIDS HAVE ALREADY BEEN GRANTED WHEN THEY WERE MANUFACTURED , AS IS THE CASE WHERE SKIMMED MILK IS PROCESSED INTO CASEIN AND CASEINATE IN ACCORDANCE WITH ARTICLE 11 OF REGULATION NO 804/68 OF THE COUNCIL .

14 THE ANSWER TO THE FIRST QUESTION MUST THEREFORE BE THAT A PRODUCT CONSISTING OF A SPRAY-DRIED MIXTURE OF SKIMMED MILK AND A POWDER COMPOSED OF WHEY , SODIUM CASEINATE AND LACTOSE IS NOT SKIMMED-MILK POWDER FOR THE PURPOSES OF THE COMMUNITY REGULATIONS GOVERNING AID FOR SKIMMED-MILK POWDER AND , MORE PARTICULARLY , OF ARTICLE 1 OF REGULATION (EEC) NO 986/68 OF THE COUNCIL OF 15 JULY 1968 EVEN IF ITS COMPOSITION IS THE SAME AS THAT OF SKIMMED-MILK POWDER MADE FROM COW ' S MILK .

THE EXTENT TO WHICH COMMUNITY LAW AND NATIONAL LAW APPLY TO THE QUESTION OF THE RECOVERY OF UNDULY-PAID AIDS

15 ACCORDING TO THE EXPLANATIONS PROVIDED BY THE NATIONAL COURT , ITS FIFTH QUESTION IS IN SUBSTANCE WHETHER COMMUNITY LAW AND IN PARTICULAR ARTICLE 8 (1) OF REGULATION NO 729/70 OF THE COUNCIL OF 21 APRIL 1970 DIRECTLY AUTHORIZES THE COMPETENT NATIONAL AUTHORITIES TO DEMAND REPAYMENT OF AIDS UNDULY PAID , SO THAT THE SUBSTANTIVE CONDITIONS FOR A RIGHT OF RECOVERY ARE EXHAUSTIVELY SET OUT IN THAT PROVISION , OR WHETHER RECOVERY IS GOVERNED BY THE RULES AND PROCEDURES LAID DOWN BY NATIONAL LEGISLATION ; IF IT IS , THE COURT WISHES TO KNOW WHAT LIMITS ARE PLACED ON THE APPLICATION OF NATIONAL LAW .

16 IN ORDER TO ANSWER THAT QUESTION IT IS NECESSARY TO RECALL FIRST THE RELEVANT RULES AND GENERAL PRINCIPLES OF COMMUNITY LAW EVOLVED BY THE COURT IN ITS DECISIONS .

17 ACCORDING TO THE GENERAL PRINCIPLES ON WHICH THE INSTITUTIONAL SYSTEM OF THE COMMUNITY IS BASED AND WHICH GOVERN THE RELATIONS BETWEEN THE COMMUNITY AND THE MEMBER STATES , IT IS FOR THE MEMBER STATES , BY VIRTUE OF ARTICLE 5 OF THE TREATY , TO ENSURE THAT COMMUNITY REGULATIONS , PARTICULARLY THOSE CONCERNING THE COMMON AGRICULTURAL POLICY , ARE IMPLEMENTED WITHIN THEIR TERRITORY . IN SO FAR AS COMMUNITY LAW , INCLUDING ITS GENERAL PRINCIPLES , DOES NOT INCLUDE COMMON RULES TO THIS EFFECT , THE NATIONAL AUTHORITIES WHEN IMPLEMENTING COMMUNITY REGULATIONS ACT IN ACCORDANCE WITH THE PROCEDURAL AND SUBSTANTIVE RULES OF THEIR OWN NATIONAL LAW ; HOWEVER , AS THE COURT STATED IN ITS JUDGMENT OF 6 JUNE 1972 IN CASE 94/71 (SCHLUTER & MAACK

V HAUPTZOLLAMT HAMBURG-JONAS (1972) ECR 307) , THIS RULE MUST BE RECONCILED WITH THE NEED TO APPLY COMMUNITY LAW UNIFORMLY SO AS TO AVOID UNEQUAL TREATMENT OF PRODUCERS AND TRADERS .

18 IT IS IN THIS CONTEXT , THEN , THAT ARTICLE 8 (1) OF REGULATION NO 729/70 OF THE COUNCIL PROVIDES THAT ' ' IN ACCORDANCE WITH NATIONAL PROVISIONS LAID DOWN BY LAW , REGULATION OR ADMINISTRATIVE ACTION ' ' MEMBER STATES MUST TAKE THE MEASURES NECESSARY TO PREVENT AND DEAL WITH IRREGULARITIES AFFECTING THE OPERATIONS OF THE EUROPEAN AGRICULTURAL GUIDANCE AND GUARANTEE FUND AND TO RECOVER SUMS LOST AS A RESULT OF IRREGULARITIES OR NEGLIGENCE . CONSEQUENTLY THE COMPETENT NATIONAL AUTHORITIES ARE BOUND TO EXERCISE ALL THE SUPERVISION NECESSARY TO ENSURE THAT AIDS ARE GRANTED ONLY UPON THE CONDITIONS LAID DOWN BY THE COMMUNITY REGULATIONS AND THAT ANY INFRINGEMENT OF THE RULES OF COMMUNITY LAW IS APPROPRIATELY PENALIZED . AT ITS PRESENT STAGE OF DEVELOPMENT COMMUNITY LAW DOES NOT INCLUDE ANY SPECIFIC PROVISIONS RELATING TO THE EXERCISE OF THAT SUPERVISION BY THE COMPETENT NATIONAL AUTHORITIES .

19 IN ACCORDANCE WITH THOSE PRINCIPLES THE COURT HAS REPEATEDLY HELD (ON 5 MARCH 1980 IN CASE 265/78 H . FERWERDA BV V PRODUKTSCHAP VOOR VEE EN VLEES (1980) ECR 617 , ON 12 JUNE 1980 IN JOINED CASES 119 AND 126/79 LIPPISCHE HAUPTGENOSSENSCHAFT EG AND ANOTHER V BUNDESANSTALT FUR LANDWIRTSCHAFTLICHE MARKTORDNUNG (1980) ECR 1863 AND ON 6 MAY 1982 IN CASE 54/81 FIRMA WILHELM FROMME V BUNDESANSTALT FUR LANDWIRTSCHAFTLICHE MARKTORDNUNG (1982) ECR 1449 AND JOINED CASE 146 , 192 AND 193/81 BAYWA AG AND OTHERS V BUNDESANSTALT FUR LANDWIRTSCHAFTLICHE MARKTORDNUNG (1982) ECR 1503) THAT IN THE ABSENCE OF PROVISIONS OF COMMUNITY LAW DISPUTES CONCERNING THE RECOVERY OF AMOUNTS UNDULY PAID UNDER COMMUNITY LAW MUST BE DECIDED BY NATIONAL COURTS PURSUANT TO THEIR OWN NATIONAL LAW SUBJECT TO THE LIMITS IMPOSED BY COMMUNITY LAW INASMUCH AS THE RULES AND PROCEDURES LAID DOWN BY NATIONAL LAW MUST NOT HAVE THE EFFECT OF MAKING IT VIRTUALLY IMPOSSIBLE TO IMPLEMENT COMMUNITY REGULATIONS AND NATIONAL LEGISLATION MUST BE APPLIED IN A MANNER WHICH IS NOT DISCRIMINATORY COMPARED TO PROCEDURES FOR DECIDING SIMILAR BUT PURELY NATIONAL DISPUTES .

20 IT FOLLOWS THAT ARTICLE 8 (1) OF REGULATION NO 729/70 DOES NOT GOVERN THE RELATIONS BETWEEN THE INTERVENTION AGENCIES AND THE TRADERS CONCERNED AND IN PARTICULAR IT DOES NOT CONSTITUTE A LEGAL BASIS AUTHORIZING THE NATIONAL AUTHORITIES TO BRING ACTIONS TO RECOVER UNDULY-PAID AIDS FROM THEIR RECIPIENTS ; SUCH ACTIONS ARE GOVERNED BY NATIONAL LAW .

21 ALTHOUGH AS A RESULT OF SUCH RELIANCE ON NATIONAL LAW THE CONDITIONS FOR THE RECOVERY OF UNDULY-PAID AIDS MAY VARY TO SOME EXTENT FROM ONE MEMBER STATE TO ANOTHER , THE EFFECT OF SUCH DIFFERENCES , WHICH MOREOVER IN THE PRESENT STATE OF DEVELOPMENT OF COMMUNITY LAW ARE INEVITABLE , IS REDUCED BY THE LIMITS TO WHICH THE COURT HAS SUBJECTED THE APPLICATION OF NATIONAL LAW IN THE DECISIONS CITED ABOVE .

22 IN THE FIRST PLACE THE APPLICATION OF NATIONAL LAW MUST NOT AFFECT THE SCOPE AND EFFECTIVENESS OF COMMUNITY LAW . THAT WOULD BE THE CASE IN PARTICULAR IF THE APPLICATION OF NATIONAL LAW MADE IT IMPOSSIBLE IN PRACTICE TO RECOVER SUMS IRREGULARLY GRANTED . FURTHERMORE , THE EXERCISE OF ANY DISCRETION TO DECIDE WHETHER OR NOT IT WOULD BE EXPEDIENT TO DEMAND REPAYMENT OF COMMUNITY FUNDS UNDULY OR IRREGULARLY GRANTED WOULD BE INCONSISTENT WITH THE DUTY TO RECOVER SUCH SUMS WHICH ARTICLE 8 (1) OF REGULATION NO 729/70 IMPOSES ON THE NATIONAL ADMINISTRATION .

23 SECONDLY , NATIONAL LAW MUST BE APPLIED IN A MANNER WHICH IS NOT DISCRIMINATORY COMPARED TO PROCEDURES FOR DECIDING SIMILAR BUT PURELY NATIONAL DISPUTES . THIS MEANS FIRST THAT IN SUCH CASES THE NATIONAL

AUTHORITIES MUST ACT WITH THE SAME DEGREE OF CARE AS IN COMPARABLE CASES CONCERNING SOLELY THE APPLICATION OF CORRESPONDING NATIONAL LEGISLATION AND IN ACCORDANCE WITH RULES AND PROCEDURES WHICH DO NOT MAKE THE RECOVERY OF THE SUMS IN QUESTION MORE DIFFICULT . SECONDLY , NOTWITHSTANDING THE PRINCIPLE REFERRED TO ABOVE THAT THE EXERCISE OF ANY DISCRETION TO DECIDE WHETHER OR NOT IT IS EXPEDIENT TO DEMAND REPAYMENT IS RULED OUT , THE OBLIGATIONS IMPOSED BY NATIONAL LEGISLATION ON UNDERTAKINGS WRONGLY GRANTED PECUNIARY ADVANTAGES BASED ON COMMUNITY LAW MUST BE NO MORE STRINGENT THAN THOSE IMPOSED ON UNDERTAKINGS WHICH HAVE WRONGLY RECEIVED SIMILAR ADVANTAGES BASED ON NATIONAL LAW , PROVIDED THAT THE TWO GROUPS OF RECIPIENTS ARE IN COMPARABLE SITUATIONS AND THEREFORE DIFFERENT TREATMENT IS OBJECTIVELY UNJUSTIFIABLE .

24 HOWEVER , IF DISPARITIES IN THE LEGISLATION OF MEMBER STATES PROVED TO BE SUCH AS TO COMPROMISE THE EQUAL TREATMENT OF PRODUCERS AND TRADERS IN DIFFERENT MEMBER STATES OR DISTORT OR IMPAIR THE FUNCTIONING OF THE COMMON MARKET , IT WOULD BE FOR THE COMPETENT COMMUNITY INSTITUTIONS TO ADOPT THE PROVISIONS NEEDED TO REMEDY SUCH DISPARITIES .

25 THE ANSWER TO THE FIFTH QUESTION OF THE VERWALTUNGSGERICHT FRANKFURT AM MAIN MUST THEREFORE BE THAT IN THE PRESENT STATE OF COMMUNITY LAW SUMS UNDULY PAID BY WAY OF AIDS UNDER THE COMMUNITY REGULATIONS ARE RECOVERED BY THE NATIONAL AUTHORITIES ACCORDING TO THE RULES AND PROCEDURES LAID DOWN BY NATIONAL LEGISLATION SUBJECT TO THE LIMITS IMPOSED BY COMMUNITY LAW ON SUCH AN APPLICATION OF NATIONAL LAW .

26 IN VIEW OF THAT ANSWER TO THE FIFTH QUESTION , THE SIXTH QUESTION , WHICH IS SUBJECT TO THE PREMISE THAT THE RECOVERY OF UNDULY-GRANTED AIDS IS GOVERNED BY RULES AND PROCEDURES LAID DOWN BY COMMUNITY LAW , HAS NO PURPOSE .

THE PROTECTION OF LEGITIMATE EXPECTATION AND ASSURANCE OF LEGAL CERTAINTY IN THE RECOVERY OF UNDULY-PAID AIDS

27 THE NATIONAL COURT ' S SEVENTH QUESTION IS IN SUBSTANCE WHETHER THE RESTRICTIONS WHICH COMMUNITY LAW PLACES ON THE APPLICATION OF NATIONAL LAW MAY EXCLUDE CONSIDERATION OF THE PROTECTION OF LEGITIMATE EXPECTATION AND ASSURANCE OF LEGAL CERTAINTY IN THE RECOVERY OF AIDS UNDULY PAID .

28 IT IS CLEAR FROM THE ORDERS FOR REFERENCE THAT THE VERWALTUNGSGERICHT FRANKFURT AM MAIN HAS ASKED THIS QUESTION IN ORDER TO ENABLE IT TO DECIDE WHETHER THE APPLICATION OF PARAGRAPH 48 OF THE VERWALTUNGSVERFAHRENGESETZ TO A CASE LIKE THIS IS CONSISTENT WITH THE AFOREMENTIONED PRINCIPLES OF COMMUNITY LAW . TO TAKE ACCOUNT OF THE PRINCIPLES OF THE PROTECTION OF LEGITIMATE EXPECTATION AND ASSURANCE OF LEGAL UNCERTAINTY THAT PARAGRAPH PROVIDES IN PARTICULAR THAT :

AN UNLAWFUL ADMINISTRATIVE DECISION GRANTING A PECUNIARY BENEFIT MAY NOT BE REVOKED IN SO FAR AS THE BENEFICIARY HAS RELIED UPON THE DECISION AND HIS EXPECTATION , WEIGHED AGAINST THE PUBLIC INTEREST IN REVOKING THE DECISION , MERITS PROTECTION ;

THE RECIPIENT OF SUCH A BENEFIT MAY PLEAD LOSS OF ENRICHMENT IN ACCORDANCE WITH THE RELEVANT RULES OF CIVIL LAW UNLESS HE KNEW , OR WAS UNAWARE OF OWING TO GROSS NEGLIGENCE ON HIS PART , THE CIRCUMSTANCES WHICH MADE THE GRANT OF THE BENEFIT UNLAWFUL ;

UNLESS OBTAINED BY FRAUD , DURESS OR BRIBERY , AN UNLAWFUL ADMINISTRATIVE DECISION MUST BE REVOKED WITHIN ONE YEAR FROM THE TIME WHEN THE ADMINISTRATION BECAME AWARE OF THE FACTS IN QUESTION ;

THE AMOUNT UNDULY PAID CANNOT BE RECOVERED WHERE THE AUTHORITY KNEW , OR WAS UNAWARE OWING TO GROSS NEGLIGENCE ON ITS PART , THAT IT WAS GRANTING THE BENEFIT UNLAWFULLY .

29 IN THE COMMISSION ' S VIEW , THE APPLICATION OF AT LEAST SOME OF THE CRITERIA LAID DOWN BY PARAGRAPH 48 OF THE VERWALTUNGSVERFASSUNGSGESETZ FOR THE EXCLUSION OF RECOVERY OF AIDS UNDULY PAID MIGHT CONFLICT WITH THE PRINCIPLE THAT THE APPLICATION OF NATIONAL LAW MUST NOT AFFECT THE SCOPE AND EFFECTIVENESS OF COMMUNITY LAW . THIS WOULD BE THE CASE IN PARTICULAR IF THE PERIOD IN WHICH THE RIGHT OF RECOVERY HAD TO BE EXERCISED WERE TOO SHORT OR IF KNOWLEDGE OR NEGLIGENCE ON THE PART OF THE NATIONAL AUTHORITY WERE SUFFICIENT TO PRECLUDE THE RECOVERY OF AIDS UNDULY PAID .

30 THE FIRST POINT TO BE MADE IN THIS REGARD IS THAT THE PRINCIPLES OF THE PROTECTION OF LEGITIMATE EXPECTATION AND ASSURANCE OF LEGAL CERTAINTY ARE PART OF THE LEGAL ORDER OF THE COMMUNITY . THE FACT THAT NATIONAL LEGISLATION PROVIDES FOR THE SAME PRINCIPLES TO BE OBSERVED IN A MATTER SUCH AS THE RECOVERY OF UNDULY-PAID COMMUNITY AIDS CANNOT , THEREFORE , BE CONSIDERED CONTRARY TO THAT SAME LEGAL ORDER . MOREOVER , IT IS CLEAR FROM A STUDY OF THE NATIONAL LAWS OF THE MEMBER STATES REGARDING THE REVOCATION OF ADMINISTRATIVE DECISIONS AND THE RECOVERY OF FINANCIAL BENEFITS WHICH HAVE BEEN UNDULY PAID BY PUBLIC AUTHORITIES THAT THE CONCERN TO STRIKE A BALANCE , ALBEIT IN DIFFERENT WAYS , BETWEEN THE PRINCIPLE OF LEGALITY ON THE ONE HAND AND THE PRINCIPLES OF LEGAL CERTAINTY AND THE PROTECTION OF LEGITIMATE EXPECTATION ON THE OTHER IS COMMON THE LAWS OF THE MEMBER STATES .

31 WHERE THE RULES AND PROCEDURES APPLIED BY THE NATIONAL AUTHORITIES IN THE RECOVERY OF COMMUNITY AIDS ARE THE SAME AS THOSE WHICH THEY APPLY IN COMPARABLE CASES CONCERNING PURELY NATIONAL FINANCIAL BENEFITS , THERE IS IN PRINCIPLE NO REASON TO ASSUME THAT THOSE RULES AND PROCEDURES ARE CONTRARY TO THE NATIONAL AUTHORITIES ' DUTY UNDER ARTICLE 8 OF REGULATION NO 729/70 TO RECOVER SUMS IRREGULARLY GRANTED AND THAT CONSEQUENTLY THEY REDUCE THE EFFECTIVENESS OF COMMUNITY LAW . THIS APPLIES IN PARTICULAR TO GROUNDS FOR EXCLUDING RECOVERY WHERE THESE ARE RELATED TO THE ADMINISTRATION ' S OWN CONDUCT AND IT CAN THEREFORE PREVENT THEM FROM OCCURRING .

32 IT SHOULD BE ADDED , HOWEVER , THAT THE PRINCIPLE THAT NATIONAL LEGISLATION MUST BE APPLIED WITHOUT DISCRIMINATION COMPARED TO PURELY NATIONAL PROCEDURES OF THE SAME KIND REQUIRES THE INTERESTS OF THE COMMUNITY TO BE TAKEN FULLY INTO CONSIDERATION IN THE APPLICATION OF A PROVISION WHICH , LIKE THE FIRST SENTENCE OF PARAGRAPH 48 (2) OF THE VERWALTUNGSVERFAHRENSGESETZ , REQUIRES THE VARIOUS INTERESTS IN QUESTION , NAMELY ON THE ONE HAND THE PUBLIC INTEREST IN THE REVOCATION OF THE MEASURE AND ON THE OTHER HAND THE PROTECTION OF THE LEGITIMATE EXPECTATION OF THE PERSON TO WHOM IT IS ADDRESSED , TO BE WEIGHED UP AGAINST ONE ANOTHER BEFORE THE DECISION IS REVOKED .

33 THE ANSWER TO THE SEVENTH QUESTION MUST THEREFORE BE THAT COMMUNITY LAW DOES NOT PREVENT NATIONAL LAW FROM HAVING REGARD , IN EXCLUDING THE RECOVERY OF UNDULY-PAID AIDS , TO SUCH CONSIDERATIONS AS THE PROTECTION OF LEGITIMATE EXPECTATION , THE LOSS OF UNJUSTIFIED ENRICHMENT , THE PASSING OF A TIME-LIMIT OR THE FACT THAT THE ADMINISTRATION KNEW , OR WAS UNAWARE OWING TO GROSS NEGLIGENCE ON ITS PART , THAT IT WAS WRONG IN GRANTING THE AIDS IN QUESTION , PROVIDED HOWEVER THAT THE CONDITIONS LAID DOWN ARE THE SAME AS FOR THE RECOVERY OF PURELY NATIONAL FINANCIAL BENEFITS AND THE INTERESTS OF THE COMMUNITY ARE TAKEN FULLY INTO ACCOUNT .

THE BURDEN OF PROOF IN THE RECOVERY OF UNDULY-PAID AIDS

34 BY ITS FOURTH QUESTION THE VERWALTUNGSGERICHT FRANKFURT AM MAIN SEEKS TO ASCERTAIN THE RULES REGARDING THE BURDEN OF PROOF IN CASES WHERE UNDULY-PAID AIDS ARE RECOVERED .

35 AS THE COMMISSION POINTS OUT IN ITS OBSERVATIONS IN A CONTEXT SUCH AS THE PRESENT CASE THE QUESTION OF THE BURDEN OF PROOF ARISES ONLY TO A LIMITED EXTENT . FIRST , IT IS FOR THE NATIONAL AUTHORITIES TO EXHAUST AS A MATTER OF COURSE ALL THE POSSIBLE MEANS OF ESTABLISHING THE FACTS ON WHICH THE APPLICATION OF THE COMMUNITY PROVISIONS DEPENDS IN ANY SPECIFIC CASE . ONLY WHERE IT IS IMPOSSIBLE TO VERIFY THOSE FACTS MAY THE QUESTION ARISE AS TO WHO BEARS THE BURDEN OF THAT CIRCUMSTANCE , AND WHETHER THE NATIONAL AUTHORITIES MAY STILL BRING PROCEEDINGS AGAINST THE UNDERTAKING CONCERNED .

36 AS REGARDS THE LAW APPLICABLE FOR THIS PURPOSE , IT MUST BE OBSERVED THAT IN REFERRING TO NATIONAL LAW AS REGARDS THE RECOVERY , OF AIDS UNDULY PAID ARTICLE 8 (1) OF REGULATION NO 729/70 MAKES NO DISTINCTION BETWEEN THE SUBSTANTIVE CONDITIONS FOR THEIR RECOVERY AND THE RULES OF PROCEDURE AND FORM WHICH MUST BE FOLLOWED IN RECOVERING THEM . THOSE CONDITIONS AND RULES , INCLUDING THOSE ALLOCATING THE BURDEN OF PROOF , ARE THEREFORE ALL DETERMINED BY NATIONAL LAW , SUBJECT TO THE RESTRICTIONS REFERRED TO ABOVE WHICH MAY DERIVE FROM COMMUNITY LAW IN THIS REGARD . THE INFORMATION GIVEN IN THE ORDERS FOR REFERENCE AS TO THE EXACT TERMS OF THE RELEVANT RULES OF NATIONAL LAW DOES NOT ENABLE THE COURT TO FORMULATE ANY FURTHER GUIDELINES FOR THE INTERPRETATION OF COMMUNITY LAW IN THIS REGARD .

37 HOWEVER , THE PLAINTIFFS DEUTSCHE MILCHKONTOR GMBH , FIRMA E . KAMPFFMEYER , SCHWARZWALDMILCH GMBH AND INNTALER MISCHFUTTER GMBH & CO . KG FURTHER CONTEND THAT COMMUNITY LAW IS APPLICABLE , IN THE CASE OF EXPORTS OF SKIMMED-MILK POWDER TO ITALY UNDER THE PROVISIONS OF COMMISSION REGULATION NO 1624/76 , AS REGARDS THE PROOF THAT THE EXPORTED PRODUCT MET THE REQUIREMENTS OF THE COMMUNITY REGULATIONS . THEY ARGUE THAT SUCH PROOF IS PROVIDED BY THE FACT THAT THE ITALIAN CONSIGNEES SUBMITTED THE NECESSARY EVIDENCE TO THE ITALIAN AUTHORITIES IN ORDER TO OBTAIN THE RELEASE OF THE SECURITY REQUIRED BY THAT REGULATION .

38 THE POINT TO BE MADE WITH REGARD TO THAT ARGUMENT IS THAT THE EVIDENCE SUBMITTED IN ACCORDANCE WITH REGULATION NO 1624/76 TO THE AUTHORITIES IN THE MEMBER STATES OF DESTINATION RELATES TO THE DENATURING OR PROCESSING OF THE SKIMMED-MILK POWDER BY THE IMPORTER , ITS PURPOSE BEING TO OBTAIN THE RELEASE OF THE SECURITY HELD BY THE AUTHORITIES OF THAT MEMBER STATE . IT DOES NOT RELATE TO THE QUESTION WHETHER THE SKIMMED-MILK POWDER EXPORTED FOR THE PURPOSES OF DENATURING OR PROCESSING MET THE CONDITIONS LAID DOWN BY REGULATION NO 986/68 FOR THE GRANT OF AIDS IN THE EXPORTING MEMBER STATE .

39 THE ANSWER TO THE FOURTH QUESTION ASKED BY THE VERWALTUNGSGERICHT FRANKFURT AM MAIN MUST THEREFORE BE THAT THE BURDEN OF PROOF IN THE RECOVERY OF AIDS UNDULY PAID IS DETERMINED BY NATIONAL LAW SUBJECT TO ANY RESTRICTIONS WHICH DERIVE FROM COMMUNITY LAW IN THIS REGARD .

THE OBLIGATION TO MONITOR THE MANUFACTURE OF SKIMMED-MILK POWDER AT THE MANUFACTURER ' S PREMISES

40 LASTLY , BY ITS SECOND AND THIRD QUESTIONS THE VERWALTUNGSGERICHT FRANKFURT AM MAIN ASKS WHETHER THE NATIONAL AUTHORITIES ARE UNDER A DUTY TO MONITOR THE MANUFACTURE OF SKIMMED-MILK POWDER AT THE MANUFACTURER ' S PREMISES AND IF SO WHETHER A FAILURE TO FULFIL THAT DUTY MAY BAR THE RECOVERY OF THE AIDS UNDULY PAID .

41 THE FEDERAL REPUBLIC OF GERMANY AND THE UNITED KINGDOM CONTEND THAT NO SUCH DUTY EXISTS . THEY ARGUE THAT REGULATION NO 990/72 OF THE COMMISSION , TO

ARTICLE 10 OF WHICH THE VERWALTUNGSGERICHT FRANKFURT AM MAIN REFERS IN ITS QUESTIONS , CONCERNS ONLY THE DENATURING OF SKIMMED-MILK POWDER AND ITS PROCESSING INTO COMPOUND FEEDINGSTUFFS AND NOT ITS MANUFACTURE .

42 IT SHOULD BE NOTED THAT THE VARIOUS PROVISIONS REQUIRING NATIONAL AUTHORITIES TO EXERCISE A CERTAIN AMOUNT OF SUPERVISION TO ENSURE THAT THE RELEVANT PROVISIONS OF COMMUNITY LAW , SUCH AS ARTICLE 10 OF REGULATION NO 990/72 OF THE COMMISSION AND ARTICLE 8 OF REGULATION NO 729/70 OF THE COUNCIL , ARE OBSERVED MERELY EXPRESSLY CONFIRM A DUTY WHICH MEMBER STATES ALREADY HAVE BY VIRTUE OF THE PRINCIPLE OF COOPERATION LAID DOWN IN ARTICLE 5 OF THE TREATY .

43 CONSEQUENTLY , MEMBER STATES MUST VERIFY BY MEANS OF APPROPRIATE CONTROLS THAT SKIMMED-MILK POWDER COMPLIES WITH THE RELEVANT COMMUNITY RULES SO AS TO ENSURE THAT COMMUNITY AIDS ARE NOT PAID IN RESPECT OF PRODUCTS FOR WHICH THEY OUGHT NOT TO BE GRANTED . IT IS FOR THE NATIONAL COURT TO DETERMINE THE CONTROLS NECESSARY FOR THIS PURPOSE HAVING REGARD IN PARTICULAR TO THE CIRCUMSTANCES OF THE CASE AND THE TECHNIQUES AVAILABLE AT THE TIME .

44 AS REGARDS THE CONSEQUENCES OF A FAILURE TO EXERCISE SUCH SUPERVISION FOR THE RECOVERY OF SUMS UNDULY PAID AND IN PARTICULAR THE QUESTION WHETHER THE RECIPIENTS OF THE AIDS MAY RELY ON THE FAILURE AS A DEFENCE TO AN ACTION FOR RECOVERY , IT FOLLOWS FROM THE FOREGOING STATEMENTS REGARDING THE EXTENT TO WHICH COMMUNITY LAW AND NATIONAL LAW ARE APPLICABLE TO THE QUESTION OF THE RECOVERY OF UNDULY-PAID AIDS AND FROM THE PRINCIPLES OF THE PROTECTION OF LEGITIMATE EXPECTATION AND ASSURANCE OF LEGAL CERTAINTY THAT IN THE PRESENT STATE OF DEVELOPMENT OF COMMUNITY LAW THOSE CONSEQUENCES ARE DETERMINED BY NATIONAL LAW AND NOT BY COMMUNITY LAW . IT IS THEREFORE LIKEWISE THE TASK OF THE NATIONAL COURTS TO DETERMINE THEM ON THE BASIS OF THE RELEVANT NATIONAL LAW .

45 THE ANSWER TO THE SECOND AND THIRD QUESTIONS MUST THEREFORE BE THAT THE NATIONAL AUTHORITIES MUST MONITOR THE MANUFACTURE OF SKIMMED-MILK POWDER BY CONDUCTING INSPECTIONS AT THE MANUFACTURER ' S PREMISES IF THIS IS NECESSARY TO ENSURE THAT THE COMMUNITY RULES ARE OBSERVED . IT IS FOR THE NATIONAL COURT TO DETERMINE THE CONSEQUENCES OF ANY FAILURE TO FULFIL THAT DUTY ON THE BASIS OF THE RELEVANT NATIONAL LAW .

Decision on costs

COSTS

46 THE COSTS INCURRED BY THE FEDERAL REPUBLIC OF GERMANY , THE UNITED KINGDOM AND THE COMMISSION OF THE EUROPEAN COMMUNITIES , WHICH HAVE SUBMITTED OBSERVATIONS TO THE COURT , ARE NOT RECOVERABLE . SINCE THESE PROCEEDINGS ARE , IN SO FAR AS THE PARTIES TO THE MAIN ACTIONS ARE CONCERNED , IN THE NATURE OF A STEP IN THE ACTIONS PENDING BEFORE THE NATIONAL COURT , THE DECISION ON COSTS IS A MATTER FOR THAT COURT .

Operative part

ON THOSE GROUNDS ,

THE COURT (FIFTH CHAMBER) ,

IN ANSWER TO THE QUESTIONS SUBMITTED TO IT BY THE VERWALTUNGSGERICHT
FRANKFURT AM MAIN BY ORDERS OF 3 JUNE 1982 , HEREBY RULES :

1 . A PRODUCT CONSISTING OF A SPRAY-DRIED MIXTURE OF SKIMMED MILK AND A POWDER COMPOSED OF WHEY , SODIUM CASEINATE AND LACTOSE IS NOT SKIMMED-MILK POWDER FOR THE PURPOSES OF THE COMMUNITY REGULATIONS GOVERNING AID FOR SKIMMED-MILK POWDER AND , MORE PARTICULARLY , OF ARTICLE 1 OF REGULATION (EEC) NO 986/68 OF THE COUNCIL OF 15 JULY 1968 EVEN IF ITS COMPOSITION IS THE SAME AS THAT OF SKIMMED-MILK POWDER MADE FROM COW ' S MILK .

2. IN THE PRESENT STATE OF COMMUNITY LAW SUMS UNDULY PAID BY WAY OF AIDS UNDER THE COMMUNITY REGULATIONS ARE RECOVERED BY THE NATIONAL AUTHORITIES ACCORDING TO THE RULES AND PROCEDURES LAID DOWN BY NATIONAL LEGISLATION SUBJECT TO THE LIMITS IMPOSED BY COMMUNITY LAW ON SUCH AN APPLICATION OF NATIONAL LAW .

3. COMMUNITY LAW DOES NOT PREVENT NATIONAL LAW FROM HAVING REGARD , IN EXCLUDING THE RECOVERY OF UNDULY-PAID AIDS , TO SUCH CONSIDERATIONS AS THE PROTECTION OF LEGITIMATE EXPECTATION , THE LOSS OF UNJUSTIFIED ENRICHMENT , THE PASSING OF A TIME-LIMIT OR THE FACT THAT THE ADMINISTRATION KNEW , OR WAS UNAWARE OWING TO GROSS NEGLIGENCE ON ITS PART , THAT IT WAS WRONG IN GRANTING THE AIDS IN QUESTION , PROVIDED HOWEVER THAT THE CONDITIONS LAID DOWN ARE THE SAME AS FOR THE RECOVERY OF PURELY NATIONAL FINANCIAL BENEFITS AND THE INTERESTS OF THE COMMUNITY ARE TAKEN FULLY INTO ACCOUNT .

4. THE BURDEN OF PROOF IN THE RECOVERY OF AIDS UNDULY PAID IS DETERMINED BY NATIONAL LAW SUBJECT TO ANY RESTRICTIONS WHICH MAY DERIVE FROM COMMUNITY LAW IN THIS REGARD .

5. THE NATIONAL AUTHORITIES MUST MONITOR THE MANUFACTURE OF SKIMMED-MILK POWDER BY CONDUCTING INSPECTIONS AT THE MANUFACTURER ' S PREMISES IF THIS IS NECESSARY TO ENSURE THAT THE COMMUNITY RULES ARE OBSERVED . IT IS FOR THE NATIONAL COURT TO DETERMINE THE CONSEQUENCES OF ANY FAILURE TO FULFIL THAT DUTY ON THE BASIS OF THE RELEVANT NATIONAL LAW .