provided for are not complied with, particularly as regards the final intended use.

It is sufficient for the requirements of Community law for only the first order to have been made in writing provided that the other subsequent contracts of sale may be presumed to refer to the first order, even if they were made orally, and that it is guaranteed that the penalties may also be imposed in the same or subsequent orders.

The other conditions of those contracts and their legal effects are governed by national law.

In Joined Cases 66 and 99/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the VIIIth Civil Senate of the Bundesgerichtshof [Federal Court of Justice] for a preliminary ruling in the action pending before that court between

ARNOLD POMMEREHNKE (Case 66/81)

and

BUNDESANSTALT FÜR LANDWIRTSCHAFTLICHE MARKTORDNUNG [Federal Office for the Organization of Agricultural Markets],

1. FIRMA WILHELM FRANZEN
2. HANS-HARALD WITT (Case 99/81)

and

BUNDESANSTALT FÜR LANDWIRTSCHAFTLICHE MARKTORDNUNG

on the interpretation of Article 6 of Regulation No 349/73 of the Commission of 31 January 1973 on the sale at reduced prices of intervention butter for direct consumption as concentrated butter (Official Journal, L 40, p. 1),

THE COURT

composed of: A. Touffait, President of Chamber, Lord Mackenzie Stuart and U. Everling, Judges,

Advocate General: P. VerLoren van Themaat
Resistrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

I — Facts and procedure

The Commission adopted Regulation No 349/73 of 31 January 1973 on the sale at reduced prices of intervention butter for direct consumption as concentrated butter (Official Journal, L 40, p. 1) mainly to dispose of stocks of butter arising as a result of intervention on the butter market under Article 6 of Regulation 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 (I), p. 176). To that end the Commission provided an opportunity to sell butter in the form of concentrated butter at a reduced price; this was to be done "at the request of a Member State which considers itself in a position to lead it to a successful conclusion", that is to say ensuring that the concentrated butter was put to its intended use and did not disturb the market. Article 6 (1) and (2) of the regulation is worded as follows:

"(1) Any person who holds the butter or the concentrated butter must keep records showing for each delivery the name and address of buyers of the butter or the concentrated butter and the quantities purchased.

(2) Where the butter is resold, the obligations concerning processing, putting up and the final intended use of the butter shall be mentioned in the contract of sale.

Such contract must be made in writing and specify that the buyer is aware of the penalties imposed by the Member State in question for breaches of the aforesaid obligations."

Pursuant to Regulation No 2561/72 of 6 December 1972 (Official Journal, English Special Edition 1965-1972, p. 61), replaced by Regulation No 349/73, the Commission, by decision of 22 December 1972, authorized the Federal Republic of Germany to sell 6 000 tonnes of concentrated butter at a reduced price. By decision of 8 February 1973 the Commission reduced that amount to 4 000 tonnes.

The Einfuhr- und Vorratsstelle für Fette, which has been succeeded by the respondent to the appeal in the main action, the Bundesanstalt für landwirtschaftliche Marktordnung (hereinafter referred to as "the Bundesanstalt"), made itself responsible, as intervention agency, for the sale of the concentrated butter and to that end adopted on 13 February 1973 directives requiring purchasers from it not to sell the concentrated butter save on the basis of a written contract which must contain an undertaking in respect of a penalty for non-compliance, to be imposed in turn on subsequent purchasers.

It was in that context that, as regards Case 66/81, Mr Pommerehnke, at the time proprietor of the undertaking Albrecht, Schütze & Co., acquired 71 740 kg of concentrated butter from several companies. In 12 out of 17 cases the representatives of the company had signed documents headed "Contract of sale and undertaking", each of which

stated the quantity purchased but not the sale price; in two other cases the document did not state the quantity purchased; finally in the remaining three cases there was no written undertaking. In the written undertakings the company undertook to observe the provisions in the directives of the Einfuhr- und Vorratsstelle and to pay it, in the event of infringement, the difference between the intervention price and the sale price fixed by the Commission. The butter so acquired was sold to third parties, without the transaction's being recorded in writing, and used in their businesses.

In Case 99/81 the undertaking Franzen, of which Mr Hans-Harald Witt is the member personally liable, bought from Butter- und Eierzentrale Nordmark GmbH 6 560 kg of concentrated butter. Only on the first order did the representative of Franzen sign the document referred to above: the quantity and the price of the goods were not stated but on the other hand it was stated that the undertaking would apply to all other deliveries ordered by telephone. 2 900 kg of the concentrated butter so acquired was sold without a written contract of sale and without a written undertaking from the purchaser being subsequently sought. After resale by the latter the concentrated butter sold was used contrary to the purpose intended.

The two appellants maintained before the Bundesgerichtshof that they were not liable to the penalties demanded because they had not signed a written contract of sale with their suppliers, and the court therefore considers that a decision in the two actions depends on "whether the promise to pay a penalty for non-compliance was made in the requisite written form".

In order to resolve that question the Bundesgerichtshof considers that an interpretation of Article 6 (2) of Regulation No 349/79 is necessary.

In its view that provision also applies to cencentrated butter and "as sales of butter at a reduced price take place on each occasion within the territory of a single Member State" it considers that the requirement of writing merely states the principle, but that on the other hand the detailed arrangements and the consequences bound up with that obligation are a matter for the law of the Member States. Only after stating its point of view does it conclude that since the third paragraph of Article 177 prevents it from giving its own interpretation, it is right to bring the matter before the Court.

In consequence the national court decided to stay the proceedings and by two orders dated 11 March and 8 April 1981 referred the following questions to the Court:

"1. Does Article 6 (2) of Regulation (EEC) No 349/73 of the Commission of 31 January 1973 (Official Journal, L 40, 13 February 1973, p. 1) apply only to the resale of butter in its natural state, or does it also apply to the resale of concentrated butter?

2. If that provision covers concentrated butter:

(a) what are the conditions to be imposed as to the observance of the requirement of writing under Community law? In particular, if only the buyer's declaration, *containing no details as to price or*

quantity, and not the seller's, is put in writing does that suffice to meet the requirement of writing, or are such conditions to be determined according to the laws of the Member States?

(b) If Community law regards an order which is signed only by the buyer as sufficient to meet the requirement of writing, is it adequate for only the first order to be set out in writing whilst subsequent contracts of sale are made orally by reference to the first order?

(c) If the requirement of writing has not been met under Community law, is the contract of sale, including the buyer's undertaking therein to pay a penalty for non-compliance, void under Community law or are the legal consequences left to be determined according to the laws of the Member States?"

The two orders of reference were lodged at the Court Registry on 31 March 1981 (Case 66/81) and 24 April 1981 (Case 99/81) respectively.

By order dated 13 May 1981 the Court decided to join the two cases for the purposes of the procedure and judgment.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged by Mr Pommerehnke, the appellant in the main action in Case 66/81, represented by Mr Dotzauer, Rechtsanwalt, Hamburg, Firma Franzen and Mr Witt, appellants in the main action in Case 99/81, represented by Mr Festge, Rechtsanwalt, Hamburg, the Bundesanstalt, the respondent to the appeal on a point of law in the main action, represented by Professor Nirk, Rechtsanwalt at the Bundesgerichtshof, Karlsruhe, and by the Commission of the European Communities, represented by Mr Hilf, a member of its Legal Department, acting as Agent, assisted by Mr Stockburger, Rechtsanwalt, Frankfurt am Main.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided, by order dated 25 November 1981, to assign the cases to the Third Chamber pursuant to Article 95 of the Rules of Procedure and to open the oral procedure without any preparatory inquiry.

II — Observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

A — First question

The *appellants in the main actions and the Commission* share the view of the Bundesgerichtshof to the effect that Article 6 (2) of Regulation No 349/73 concerns the subsequent sale of both butter and concentrated butter.

It appears from the three sets of observations that such interpretation follows both from the wording and the purpose of the regulation.

It is true that whilst Article 6 (1) mentions expressly both butter and concentrated butter Article 6 (2) mentions only butter, but to conclude that the provisions of paragraph 2 cover

only butter and not concentrated butter would conflict with the purpose and wording of that paragraph.

That article is part of the general scheme of Regulation No 349/73 the purpose of which is the sale of butter on condition that it is the ultimate consumers who should profit and not the processing industry, which is the reason why there is need for "an effective system of checks for which Article 6 of the regulation contains provisions on the keeping of records and the contract in writing at the time of the distribution of butter, whether it be processed butter or natural butter", especially as such butter "cannot be marketed and thus sold to the ultimate consumer except as concentrated butter".

To apply Article 6 (2) only to butter would lead to absurd results.

Further the written form of contracts of sale of concentrated butter at a reduced price is also required because concentrated butter is also marketed on normal terms, that is to say at a higher price than that of the concentrated butter referred to by Regulation No 349/73. Writing helps to distinguish the two different kinds of concentrated butter in trade and to prevent abuse.

Finally according to Regulation No 349/73 concentrated butter is a specific form of butter whereas the term "butter" is a generic concept as appears not only from the title of the regulation but also from the sixth recital in the preamble thereto and Article 1 (a). It is true that those strict definitions are not observed in all cases and it is necessary to check for each provision of Regulation No 349/73 whether the term "butter" is employed in its generic sense, thus covering the terms "butter" and "concentrated butter", or solely for the form of natural butter; however as regards Article 6 (2) "it is clear from the wording . . . that 'butter' is there used in a broad sense covering 'concentrated butter".

On the other hand the *Bundesanstalt* takes the opposite view. First the wording of the regulation, in its view, clearly distinguishes between butter and concentrated butter, especially in Articles 1, 2, 3 and 4 and that distinction is not contradicted by the provisions of Articles 5, 6 (1) and 7 so that it is not possible "to say that the second sentence of Article 6 (2) of the regulation contains an error of drafting when it speaks of butter instead of concentrated butter"; secondly the "principle" at the root of the rule in Article 6 (2) is that "the resale of the ***butter*** must be the subject of a written contract in order that there may be recourse to proceedings in cases where it is subsequently found that there has been wrongful use of the butter before it was processed into concentrated butter, that is to say after the security is released".

The Bundesanstalt adds moreover that pursuant to Article 12 of the regulation the Federal Republic of Germany has made the necessary provisions to ensure the proper use of the concentrated butter and assuming that a contract of purchase is really necessary such a contract was in fact made between the Bundesanstalt and the buyers from it.

B — Second question

The *appellant Pommerehnke* shares the view of the Bundesgerichtshof and also considers that the detailed arrangements and consequences associated with the requirement of a written contract for the sale of concentrated butter are a matter for the law of each Member State. That argument is confirmed on the one hand by the fact that the penalties for disregard of the obligations referred to in Article 6 are determined by the Member States and on the other hand by the fact that there is no rule in Community law concerning either what are the actual conditions for a contract in writing or the legal consequences of their breach.

Thus according to Pommerehnke recourse to the general principles of the law of the Member States of the Community does not come into question especially as such principles would be difficult to establish.

On the other hand Pommerehnke considers that the argument of the Bundesgerichtshof to the effect that "sales of butter at a reduced price take place on each occasion within the territory of a single Member State" is not "convincing". He states in that respect that he has knowledge of "cases in which concentrated butter from storage has been marketed in Belgium pursuant to Regulation No 349/73 and sold by Belgian undertakings to German undertakings and then resold in that country".

Nevertheless Pommerehnke stresses that transactions in relation to the sale of butter have taken place "almost exclusively within each Member State in which the butter was removed from storage". As a result parties to the sale ought to assume that the formalities regarding writing are governed by national law. The fact that the respondent's predecessor did not observe the rules of national law is irrelevant.

The *Commission* also shares the view of the Bundesgerichtshof on that issue. In its view the purpose of the second subparagraph of Article 6 (2) requires as a minimum condition of Community law that the obligations, including the penalties for non-compliance, which a buyer of butter or concentrated butter assumes be stated in writing in the first contract of sale and that contract be signed by the buyer.

Thus Article 6 (2) simply declares the principles for which the Member States, being authorized to act, remain empowered to give a precise definition of the formal requirements and to prescribe the legal effects in the event of infringement of the provisions.

The Commission therefore proposes that the second question of the Bundesgerichtshof should be answered as follows:

"To satisfy the requirement in the second subparagraph of Article 6 (2) of Regulation (EEC) No 349/73 that the contract of sale must be in writing it suffices to set out in writing in the contract of sale the obligations which a buyer of butter or concentrated butter has undertaken and for him to sign in confirmation of his awareness of those obligations. On the other hand the Member States in question remain competent to lay down other conditions with regard to the writing, to decide whether the seller must also sign the contract of sale or to decide whether in the event of several orders a document must be drawn up for each order and what are the legal consequences in the event of infringement of the requirements in relation to writing."

The *appellant in the main action, Franzen,* proposes that the second question put by the Bundesgerichtshof should be answered point for point.

As regards first of all the question of the requirements with regard to the form of writing Franzen maintains that the interpretation of the concept "contract of sale" must be uniform throughout the EEC and therefore not solely according to the national law of the Member States. Since there is no uniform procedure of the provision for the EEC defining the legal concept of writing as used in Article 6 (2) of Regulation No 349/73 it is necessary to work out an interpretation in the light of the sense and objectives of the requirement of writing on the one hand and the law of the Member States on the other.

The sense and aim of the formal requirement of a written contract is the "function of warning" the parties and "the function of providing evidence" both *inter partes* and *vis-à-vis* third parties. It follows that when such a requirement is formulated both parties must include in the writing the nature, quantity and price of the goods and both must sign.

Franzen then gives a summary of the laws of the Member States on the requirement of writing; it infers first "that a number of Member States provide that in the event of writing required by law or agreement the two parties should sign a document containing the contract or two identical documents" and secondly that "according to the law of all the Member States even where a written contract of sale is necessary and a written offer tacitly accepted by delivery is sufficient, a contract of sale must cover at least the quantity and price, if not the other conditions of delivery as well".

As to the question put by the Bundesgerichtshof at (b) Franzen considers that it calls for answer only if the Court decides to answer the question at (a) to the effect that the signature by the buyer on an order is sufficient to satisfy the requirements of writing. It is therefore only by way of precaution that it considers the question whether only the first contract must be in writing or whether successive contracts must also satisfy that requirement.

Since the purpose of the provision in question is to serve the double function of warning and evidence it is necessary for each contract of sale to satisfy the above-mentioned requirements.

Finally as regards the question at (c) Franzen considers that in so far as it is a Community rule which provides for writing for contracts the consequences of non-observance of that requirement must be a matter for Community law.

It is true that here too there is no Community rule governing the matter but it is for the Court to fill the gap.

In Franzen's view "it is logical to consider a contract not made in the written form prescribed by law to be void" which is the position under German and Greek law.

Further, in the present case writing was prescribed not solely in the interests of the parties to the contract but also in the interests of the public, for writing was intended to ensure also "that the sale of butter at reduced prices took place properly". As there was no provision in Regulation No 349/73 that the obligations which the buyer was intended to assume "could be imposed on him even in the absence of writing" and as EEC law is characterized by strict rules of evidence — in which respect Franzen refers to the consequences for the holder

of the loss of marketing certificates in relation to goods — disregard of the requirement of writing for a contract for the sale of concentrated butter "has made it impossible to impose on the buyer a valid obligation relating to the use of the goods bought or a penalty for disregard of those obligations".

The Member States are also bound by the provision in the second subparagraph of Article 6 (2). Although a buyer cannot be made liable in the absence of a contract in writing as set out above, breach of the regulations need not for that reason go unpunished for "the Member State could and should hold the seller liable for selling concentrated butter without a written contract of sale contrary to the obligation upon him to do so".

In consequence Franzen proposes that the second question put by the Bundesgerichtshof should be answered as follows:

"(a) The formalities for the written form of contract of sale under Article 6 (2) of Regulation No 349/73 are determined according to the general principles of EEC law. In consequence there is no written form of contract of sale save where there is a contract signed *by both parties*, stating the nature of the goods, the price and quantity.

(b) It is not sufficient for only the first order to be in writing and other contracts of sale to be made orally by reference to the first order. On the contrary it is necessary for each contract, independent of any other, to be in writing.

(c) In the event of disregard of the formalities of writing as prescribed in the second subparagraph of Article 6 (2) of Regulation No 349/73 which applies also to contracts for the sale of concentrated butter, the contract of sale including the promise therein by the buyer to pay a penalty for non-compliance is null and void according to Community law."

To satisfy the formalities of writing it is sufficient in the view of the *Bundesanstalt* for only the buyer to sign an undertaking to respect the ultimate destination of the butter sold at a reduced price or to pay the amount of the penalty provided under national law as was done in the present case.

The Bundesanstalt states that the purpose of Regulation No 349/73 was the speedy sale of butter for direct consumption and to do so to sell it at a reduced price in the form of concentrated butter. Thus the contract in writing provided for in the second subparagraph of Article 6 (2) "means only that the buyer has to sign a written undertaking" since he alone assumes an obligation and has therefore to be informed of its scope and extent. Thus the signature of the institution in the Member State responsible for ensuring compliance with the regulation was not necessary.

In the same way it suffices under Community law for compliance with the formalities of writing prescribed in the second subparagraph of Article 6 (2) if the buyer "has signed the contract of purchase for the first order and the undertakings in the contract are expressly stated to apply to subsequent orders especially because in the contract of purchase in respect of the first order there was express reference to all subsequent orders". That moreover was what was done.

Finally the Bundesanstalt considers that the problem of the consequences of any disregard of the requisite formalities of writing does not arise because the formalities of writing imposed by Community law were observed. In the present case since it is a question "of policy measures taken by the State in respect of which only the undertaking by the buyer who makes himself liable must be in writing, the strict requirements imposed by private law must not be applied".

III — Oral procedure

At the sitting on 4 February 1982 oral argument was presented by the following: Mr Festge, Rechtsanwalt, Hamburg, for Wilhelm Franzen and Hans-Harald Witt, appellants in proceedings before the Bundesgerichtshof; Mr Dotzauer, Rechtsanwalt, Hamburg, for Mr Pommerehnke, likewise an appellant in proceedings before the Bundesgerichtshof; Professor Nirk, Rechtsanwalt at the Bundesgerichtshof, Karlsruhe, for the Bundesanstalt and by Mr Stockburger, Rechtsanwalt, Frankfurt am Main, assisted by Mr Hilf, a member of the Commission's Legal Department, for the Commission of the European Communities.

The appellant, Arnold Pommerehnke, stated that as regards the last question put by the Bundesgerichtshof he could allow his written observations to stand only by way of an alternative argument and that on this point he espoused the conclusions of the other appellant, Wilhelm Franzen.

The Advocate General delivered his opinion at the sitting on 18 March 1982.

Decision

1 By orders of 11 March and 8 April 1981 which were received at the Court on 31 March and 24 April 1981 respectively the Bundesgerichtshof [Federal Court of Justice] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Article 6 of Regulation No 349/73 of the Commission of 31 January 1973 and on the sale at reduced prices of intervention butter for direct consumption as concentrated butter (Official Journal, L 40, p. 1).

2 Those questions were raised in the context of two actions, the first between Mr Pommerehnke and the Bundesanstalt für landwirtschaftliche Marktordnung [Federal Office for the Organzation of Agricultural Markets, hereinafter referred to as "the Bundesanstalt"] and the second between the undertaking Wilhelm Franzen and Mr Hans-Harld Witt on the one hand and the Bundesanstalt on the other. The cases concerning those disputes were joined by order of the Court of 13 May 1981.

3 The Commission adopted the regulation in question in order to dispose of stocks of butter arising as a result of intervention on the butter market under Article 6 (1) and (2) of Regulation 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 (I), p. 176). To that end the Commission provided an opportunity to sell butter in the form of concentrated butter at a reduced price. This was to be done "at the request of a Member State which considers itself in a position to lead it to a successful conclusion", that is to say by ensuring that the concentrated butter was not diverted from its intended use and did not disturb the butter market.

4 In order to ensure that those aims were observed the Commission adopted the following provisions in Article 6 of Regulation No 349/73:

"(1) Any person who holds the butter or concentrated butter must keep records showing for each delivery the name and address of buyers of the butter or the concentrated butter and the quantities purchased.

(2) Where the butter is resold, the obligations concerning processing, putting up and the final intended use of the butter shall be mentioned in the contract of sale.

Such contract must be mentioned in writing and specify that the buyer is aware of the penalties imposed by the Member State in question for breaches of the aforesaid obligations."

5 By decision of 8 February 1973 the Commission authorized the Federal Republic of Germany to sell 4 000 tonnes of concentrated butter at a reduced price. The Einfuhr- und Vorratsstelle für Fette, which has been succeeded by the Bundesanstalt, made itself responsible for the sale of the concentrated butter as intervention agency and to that end adopted on 13 February 1973 directives requiring buyers not to sell the concentrated butter save on the basis of a written contract of sale which had to contain an undertaking in respect of a penalty for non-compliance, to be imposed in turn on subsequent buyers.

6 It was in that context that the appellants in the main proceedings acquired a certain quantity of concentrated butter from various companies. Some of those purchases were made without the documents headed "Contract of sale and undertaking" being signed and the supplier's written declaration of sale was missing in every case. Some of those documents stated the quantity purchased but not the price whilst others stated neither, but each written undertaking contained a clause by which the buyer undertook to observe the provisions contained in the directives of the Einfuhr- und Vorratsstelle and to pay it, and afterwards the Bundesanstalt, in the event of infringement the difference between the intervention price and the sale price fixing by the Commission.

7 Some of the butter so acquired was resold to third parties without the transactions being recorded in writing and was used by those third parties contrary to the prescribed purpose.

8 After they had been fined in proceedings at first instance the appellants ultimately appealed on a point of law to the Bundesgerichtshof against their sentence on the ground that they were not liable to pay the fines demanded because they had not entered into a written contract of sale with their suppliers.

9 The Bundesgerichtshof considers that the outcome of the two actions turns on the question whether the promise to pay a contractual fine was made in the requisite written form and that an interpretation of Article 6 (2) of Regulation No 349/73 is necessary. Consequently it has submitted the following questions to the Court in Case 66/81:

"1. Does Article 6 (2) of Regulation (EEC) No 349/73 of the Commission of 31 January 1973 (Official Journal, L 40, 13 February 1973, p. 1) apply only to the resale of butter in its natural state, or does it also apply to the resale of concentrated butter?

2. If that provision covers concentrated butter:

(a) what are the conditions to be imposed as to the observance of the requirement of writing under Community law? In particular, if only the buyer's declaration, and not the seller's, is put in writing does that suffice to meet the requirement of writing, or are such conditions to be determined according to the laws of the Member States?

(b) If Community law regards an order which is signed only by the buyer as sufficient to meet the requirement of writing, is it adequate for only the first order to be set out in writing whilst subsequent contracts of sale are made orally by reference to the first order?

(c) If the requirement of writing has not been met under Community law, is the contract of sale, including the buyer's undertaking therein to pay a penalty for non-compliance, void under Community law or are the legal consequences left to be determined according to the laws of the Member States?"

The Bundesgerichtshof has submitted the same questions in Case 99/81 except that in Question 2 (a) it describes the buyer's declaration as "containing no details as to price and quantity".

The first question

10 According to the Bundesgerichtshof Article 6 (2) of Regulation No 349/73 also applies to concentrated butter because the aim of the regulation must be to prevent unequal treatment as regards the sale of butter and concentrated butter and that the term "butter" must be considered to be a general term covering its state both before and after processing.

11 Although paragraph 1 of Article 6 of Regulation No 349/73 refers to butter or concentrated butter, paragraph 2 mentions only "butter". Furthermore, the operations listed in paragraph 2 such as "processing" and "putting up" seem to refer only to butter and to concentrated butter and not to concentrated butter since logically the latter is already processed and put up.

12 However, the title of the regulation in question and the recitals in the preamble to it show that its aim is to abolish large stocks of intervention butter by promoting extra consumption of butter solely by direct consumption as concentrated butter. Therefore it was absolutely essential to set up an effective control system and if necessary to provide for penalties for irregularities, hence the provisions contained in Article 6 and set out in further detail in the subsequent articles.

13 That system would be deprived of all its effectiveness if the penalties did not apply to concentrated butter since, if that were the case, it could be sold to commercial processors and thus be diverted from its intended use, namely direct consumption.

14 It follows that since all concentrated butter must be directly consumed the conditions laid down in Article 6 (2) of the regulation in question as regards the resale of butter also apply to the sale of concentrated butter in order to avoid any possibility of the diversion of that concentrated butter from its intended use.

15 Consequently the answer to the first question of the Bundesgerichtshof should be that Article 6 (2) of Regulation No 349/73 also applies to the resale of concentrated butter.

The second question

16 It should be pointed out in the first place that the third recital in the preamble to the regulation in question states that provision should be made for "this measure to be taken at the request of a Member State which considers itself in a position to lead it to a successful conclusion" and that Article 12 of the regulation provides that:

"The Member States shall adopt all necessary provisions for the amount of the price reduction or the amount of aid to be reflected at the retail stage . . .".

17 However, the Commission made a point of imposing on each of the Member States concerned by that operation the obligation, quite separate from the measures which those States might consider it necessary to adopt, to require a contract of sale to be made in writing and to state that the buyer is aware of the penalties fixed by the Member State in question for which he is liable should he fail to observe the restrictions laid down with regard in particular to the final intended use of the butter.

18 The Bundesgerichtshof considers that since sales of butter at a reduced price always take place on the territory of a single Member State the provision concerning the written form must be considered as embodying rules of

principle whereas the elaboration of those rules and the consequences thereof are a matter for the laws of the Member States. It takes the view, moreover, that the Member States are also empowered to impose additional requirements more stringent than those of Community law in order to meet the obligation which they have undertaken to lead that operation "to a successful conclusion".

19 It should be recalled that the objective of the regulation in question is to dispose of stocks of intervention butter at a reduced price by direct consumption.

20 Therefore it clearly follows from the provisions of Article 6 (2), viewed in the light of the aims pursued by the totality of these rules of public law, that the words "contract of sale" have a meaning different from that which is usual in private law.

21 The essential point as regards the rules in question is that the buyer should acknowledge in writing that he is aware of the penalties for which he is liable should he fail to comply with the obligations laid down, in particular as regards the final intended use of the butter sold at a reduced price.

22 In the present case the guarantees concerning the use of butter sold at a reduced price in accordance with the requirements of the regulation and any penalties which may be applicable are governed in detail by the directives of the Einfuhr- und Vorratsstelle of 13 February 1973 and they must therefore be interpreted in accordance with national law. However, in case of doubt, such interpretation must take account of the Community measures adopted and be in concordance with the aim of the Community rules in question.

23 In regard to Regulation No 349/73 it is therefore sufficient for the purpose of satisfying the necessity for a written contract for the buyer to have undertaken in writing to comply with the obligations laid down by the national directives and for that written document to mention the penalties for which the buyer is liable for breach of those obligations.

24 Consequently, if a first order leads to a written contract signed by the buyer and containing the particulars described above, even though later orders are made orally, all the orders satisfy the requirement as to writing laid down in Article 6 (2) if the penalties applicable may also be imposed if the obligations provided for are not complied with in the case of the subsequent orders.

25 Consequently, it is sufficient for the buyer unilaterally to undertake in writing to comply with the obligations as to the final intended use imposed by the Community rules in question.

26 The answer to the second question should therefore be as follows:

(a) In order to satisfy the requirement as to writing laid down in Article 6 (2) of Regulation No 349/73 only the buyer's undertaking must be made in writing — even if it contains no details as to price or quantity — provided that the written undertaking mentions the penalties for which the buyer is liable if the obligations provided for are not complied with, particularly as regards the final intended use;

(b) It is sufficient for the requirements of Community law for only the first order to have been made in writing provided that the other subsequent contracts of sale may be presumed to refer to the first order, even if they were made orally, and that it is guaranteed that the penalties may also be imposed in the case of subsequent orders;

(c) The other conditions of those contracts and their legal effects are governed by national law.

Costs

27 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 proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber)

in answer to the questions submitted to it by the Bundesgerichtshof by orders dated 11 March and 8 April 1982 hereby rules:

1. **Article 6 (2) of Regulation No 349/73 of the Commission of 31 January 1973 on the sale at reduced prices of intervention butter for direct consumption as concentrated butter (Official Journal, L 40, p. 1) also applies to the resale of concentrated butter.**

2. (a) **In order to satisfy the requirement as to writing laid down in Article 6 (2) of Regulation No 349/73 only the buyer's undertaking must be made in writing — even if it contains no details as to price or quantity — provided that the written undertaking mentions the penalties for which the buyer is liable if the obligations provided for are not complied with, particularly as regards the final intended use;**

   (b) **It is sufficient for the requirements of Community law for only the first order to have been made in writing provided that the other subsequent contracts of sale may be presumed to refer to the first order, even if they were made orally, and, that it is guaranteed that the penalties may also be imposed in the same or subsequent orders;**

   (c) **The other conditions of those contracts and their legal effects are governed by national law.**

Touffait Mackenzie Stuart Everling

Delivered in open court in Luxembourg on 29 April 1982.

For the Registrar

H. A. Rühl

Principal Administrator

A. Touffait

President of the Third Chamber