OPINION OF MR ADVOCATE GENERAL JACOBS
delivered on 20 November 1990 *

My Lords,

1. In these proceedings, the Federal Republic of Germany ('Germany') seeks the partial annulment of Commission Decision 88/630/EEC (Official Journal 1988 L 353, p. 30) on the clearance of the accounts presented by Germany in respect of the expenditure for 1986 of the European Agricultural Guidance and Guarantee Fund ('EAGGF') to the extent that the Commission disallowed certain expenditure incurred by Germany. The action is concerned with four distinct areas:

controls on denaturing of skimmed-milk powder (disallowance of DM 61 377 605.77);

controls on butter quality during trial storage period (disallowance of DM 1 947 053);

delayed takeover of intervention butter (disallowance of DM 1 789 856.23);

advance payment of export refunds (disallowance of DM 190 429.76).

Controls on denaturing of skimmed-milk powder

2. The first head of the action illustrates one of the more grotesque consequences of the Community's milk surplus: the adulteration of skimmed-milk powder with substances such as ferrous sulphate and copper sulphate. With a view to reducing intervention stocks of skimmed-milk powder, Commission Regulation (EEC) No 368/77 (Official Journal 1977 L 52, p. 19) initiated a scheme for the sale by tender of skimmed-milk powder for use in feed for pigs and poultry. In order to ensure that the skimmed-milk powder could not be diverted to the more lucrative calf-feeding market, prospective tenderers were required to give an undertaking to denature the skimmed-milk powder, or have it denatured, either in accordance with one of the formulae set out in section 1 and with the prescriptions set out in Section 3 of the Annex to the regulation, or by direct incorporation into a feedingstuff (Article 6(1)). Section 1 of the Annex to Regulation No 368/77, as amended in particular by Commission Regulation No 2923/82 (Official Journal 1982 L 304, p. 64), sets out the different denaturing formulae. Paragraph D of Section 3 of the Annex, which lays down general prescriptions

* Original language: English.

regarding denaturing and incorporation, provides that:

'The products added to skimmed-milk powder, when the formulae in Section 1 are used, must be distributed in a uniform manner so that when two 50 g samples, drawn at random from a 25 kg batch are chemically analysed the results are the same for both samples within the tolerable error limits of the analysis method used. . . .'

3. Under Article 16(2) of Regulation No 368/77, the competent authority of the Member State concerned is responsible for checking that denaturing or direct incorporation has been properly carried out, and to that end it is required both to verify accounts and to provide for on-the-spot supervision.

4. The dispute is concerned with the nature of the tests required to ensure that the denaturing substance is distributed in the skimmed-milk powder in a uniform manner. Prior to 21 September 1987, Germany relied on inspections during the denaturing process and on subsequent organoleptic tests in order to check the homogeneity of the denatured product, but did not carry out a chemical analysis. The Commission, however, insists that a chemical analysis is required in accordance with Section 3 D of the Annex to Regulation No 368/77.

5. The primary arguments advanced by Germany against the disallowance are that Regulation No 368/77 contains no specific provision requiring a chemical analysis and that in any event the obligation under Article 6(1) to comply with the requirements of Section 3 of the Annex applies to the tenderer and not to the Member State.

6. These arguments have, however, already been rejected in Joined Cases 258/87, 337/87 and 338/87 *Italy* v *Commission* [1989] ECR 3359 where, at paragraph 18 of the judgment, the Court ruled that the technical requirements at paragraph D of section 3 of the Annex form an integral part of the system of control of denaturing established by Regulation No 368/77 and that those requirements themselves indicate the systematic nature of the chemical analysis.

7. In the light of that judgment, Germany was asked in a written question from the Court whether it wished to pursue this part of the action. It replied in the affirmative, citing certain other arguments which had not been raised or considered in the earlier case:

First, that in view of the particular denaturing formula used in Germany (Formula IK) a chemical analysis is an inadequate means of checking the homogeneity of the denatured product. This is because the chemical analysis will only indicate indirectly whether the colza meal — the decisive denaturing substance used under that formula — has been distributed uniformly. On the other hand, the combination of checks during mixing and organoleptic testing is adequate for that purpose.

Secondly, it is questionable whether a chemical analysis is compatible with Council Directive 70/524/EEC concerning additives in feedingstuffs (Official Journal English Special Edition 1970 (III), p. 840) in that it is designed to verify the uniform distribution of certain denaturing substances (i.e. ferrous sulphate and copper sulphate) which, according to that directive, may not in any event be added to animal feed.

Thirdly, no account is taken of the fact that, after 21 September 1987, Germany did carry out a chemical analysis on retained samples of skimmed-milk powder which had been denatured in 1986. Since the legislation is silent as to the timing and frequency of chemical analyses, and since those tests showed that the denaturing substances had been uniformly distributed, it is contrary to the principle of proportionality to require Germany to bear the entire burden of the amount disallowed.

8. In my view, these additional arguments must also be rejected. As regards the first argument, the Court has consistently held, notably in Case 819/79 *Germany* v *Commission* [1981] ECR 21, at paragraph 10 of the judgment, that where Community legislation prescribes a particular system of supervision by national authorities, the need for a uniform application of Community law requires that Member States must comply with that system, so that it is not necessary to consider whether an alternative system might be more effective than the one prescribed. In any event, even if it were true (which the Commission denies) that in view of the particular denaturing formula used in Germany, a chemical analysis is not fully effective in determining whether the denaturing substance is uniformly distributed, such an analysis must none the less constitute a useful additional check on the correct denaturing of the skimmed-milk powder.

9. As regards the second argument, as the Commission points out, while Directive 70/524 excludes the use in feedingstuffs of ferrous sulphate or copper sulphate in monohydrate form, it does not prohibit the use of ferrous sulphate heptahydrate or copper sulphate pentahydrate, which are the relevant substances referred to in certain of the denaturing formulae (including Formula IK) set out in section 1 of the Annex to Regulation No 368/77.

10. In relation to Germany's final argument, it is correct that the Community legislation does not prescribe the timing or frequency of the use of chemical analysis. However, in my view the argument cannot succeed, since it is in any event plain that the testing by the German authorities, more than nine months after denaturing had taken place, of retained samples of skimmed-milk powder produced in 1986 cannot amount to the systematic use of chemical analysis which, as the Court indicated in Joined Cases 258/87, 337/87 and 338/87 *Italy*, referred to above, forms an integral part of the system of control of denaturing.

11. Reliance on the principle of proportionality is in my view inappropriate in the context of this case. The Court has consistently held, *inter alia* in Case 238/86 *The Netherlands* v *Commission* [1988] ECR 1191, at paragraphs 25 and 26 of the judgment, that Articles 2 and 3 of Regulation No 729/70 on the financing of the common agricultural policy (Official Journal, English Special Edition 1970 (I), p. 218) permit the Commission to charge to the EAGGF only sums paid in accordance with the relevant Community rules, leaving the Member States to bear the burden of any other sum paid. Where those rules authorize payment of aid only on condition that certain formalities relating to proof or supervision are observed, aid paid in disregard of that condition is not in accordance with Community law so that the expenditure incurred may not be charged to the EAGGF, even if it were established that no substantive irregularity has been committed. Moreover, the third and fourth recitals of Regulation No 368/77 make it plain that strict observance of the requirement that the skimmed-milk powder will not be diverted from its intended final use is one of the principal objectives of the regulation.

12. I would therefore dismiss the first head of the action.

Controls on butter quality during the trial storage period

13. Detailed rules of application for intervention on the market in butter and cream are laid down in Commission Regulation (EEC) No 685/69 (Official Journal, English Special Edition 1969 (I), p. 194), as amended in particular by Commission Regulation (EEC) No 1829/80 (Official Journal 1980 L 178, p. 22) and Commission Regulation (EEC) No 1836/86 (Official Journal 1986 L 158, p. 57). Under Articles 2 and 3 of Regulation No 685/69, intervention agencies are to buy in butter only if it satisfies certain requirements, including conditions as to good keeping quality. To that end, Article 6(1) (as amended by Regulation No 1836/86) provides that prior to definitive purchase the butter must first be kept for a storage test period of two months starting from the date of entry of the butter into the cold storage depot. Under Article 6(2) (as amended by Regulation No 1829/80), the seller by his offer undertakes that 'where, during the storage test period, the deterioration in the quality of the butter proves greater than that which normally results from storing butter satisfying the requirements referred to in Article 2', he will take back the butter, reimburse any buying-in price already paid and pay the storage costs from the day of takeover to the date of removal from storage.

14. The dispute here, as in Case C-22/89 *Netherlands* v *Commission* [1990] ECR I-4799, concerns the timing of the tests to determine whether abnormal deterioration has taken place. The practice of the German authorities is to analyse the butter, as a general rule, between the fiftieth and sixtieth day after its entry into storage. In the Commission's view, the tests for keeping quality should not be carried out before the sixtieth day after its entry into storage.

15. In contesting the disallowance, Germany argues that Regulation No 685/69 does not lay down any precise rule as to the timing of the tests for butter

quality and that the methods of analysis used by the competent intervention agency are such that it is in fact possible to determine with certainty after only two weeks of storage whether the butter is going to deteriorate to an abnormal extent during the trial storage period. Germany also points out that application of the Commission's strict view would lead to considerable practical difficulties: from the administrative point of view, it would be very difficult to organize all testing exactly on the sixtieth day of storage, while the results of tests carried out after that date could be open to challenge by the affected traders. Finally, Germany argues that the Commission has failed to give adequate reasons for disallowing what amounts to 0.25% of the relevant expenditure.

16. In my view, these arguments must be rejected. As I have already stated in my Opinion in Case C-22/89, delivered on 7 November 1990 [1990] ECR I-4805, the wording of Article 6(1) of Regulation No 685/69, which refers to a storage trial period of two months, itself indicates that the testing for quality deterioration cannot take place before the sixtieth day. This strict interpretation is supported by the objective of the trial period and of the quality tests, which is to provide a guarantee of keeping quality before the butter is definitively taken into intervention storage.

17. The fact that testing at an earlier date might provide an equivalent guarantee is in my view irrelevant. As already mentioned in relation to the first head of claim, the Court has consistently ruled, notably in Case 819/79 *Germany* v *Commission*, cited above, that where Community legislation prescribes a particular system of supervision, the need for a uniform application of Community regulations requires that Member States must comply with that system, so that it is not necessary to consider whether an alternative system might be more effective. The same conclusion must apply where it is merely claimed that an alternative system is equally effective to the one prescribed.

18. The practical difficulties arising from this strict view can in my opinion be met by carrying out the tests as promptly as possible at the end of the trial period. It appears improbable that where tests are carried out within, at the latest, a few days of the expiry of the trial period, a trader would be able convincingly to argue that any abnormal deterioration discovered by the tests had not taken place during that period.

19. As regards the final argument, the Court has consistently accepted that, as regards the requirement of reasoning for decisions disallowing expenditure, it is permissible to refer to the reasons for disallowance given in the Commission's Summary Report for the clearance of the EAGGF accounts for the years in question, which is communicated to the Member States (see, for example, Case 238/86 *Netherlands* v *Commission*, cited above, paragraphs 15 and 16 of the judgment). From the Summary Report for 1986 (Doc. VI/160/88 — FR, pp. 54 and 55), it appears that five Member States, including

Germany, suffered a disallowance of 0.25% of relevant expenditure in respect of the quantities of butter examined before the sixtieth day, and that the Commission reached this percentage on the basis of two considerations. First, the quality controls on production carried out were, on the whole, adequate. Secondly, the results of the tests for keeping quality carried out in the Member States which did observe the correct procedures indicated that only a small proportion of the total quantities failed to meet the necessary standard. The Commission indicates in its Defence to these proceedings that that proportion was, on average, about 0.25% of the quantities of butter tested.

20. It was plainly not possible for the Commission to determine after the event which quantities of butter tested before the sixtieth day would not have been passed as satisfactory if the correct procedures had been followed. It was therefore not unreasonable for it to assume that the quantity which would have been rejected under the correct procedures would have corresponded to the Community average. Indeed, since the alternative approach would have been to disallow the total amount of relevant expenditure, the Commission's approach must even be seen as generous to the Member States concerned. I therefore consider that the reasons given for the adoption of the percentage must be regarded as adequate.

21. Accordingly, the second head of the action must in my view also be dismissed.

Delayed takeover of intervention butter

22. The third head of the application, like the second, concerns the storage of intervention butter. Detailed rules of application for intervention on the market in butter and cream are laid down in Commission Regulation (EEC) No 685/69 (Official Journal, English Special Edition 1969 (I), p. 194),

23. Prior to 1986, the date of takeover of butter by the intervention agency, i. e. the date on which the agency assumes responsibility for storage costs, insurance etc., in principle coincided with the day on which the butter entered the refrigerated storage depot designated by the intervention agency. In February 1986, following the announcement of its proposal to lower the intervention price for butter in the 1986/87 milk year, the Commission introduced a system of delayed takeover in order to prevent a surge of speculative sales into intervention. Under that system, sellers were required to bear the costs of intervention for periods of varying duration calculated from the date of entry of the butter into storage. In summary, the position during 1986 was as follows:

— before 28 February 1986: no provision for delayed takeover;

— 28 February 1986 to 11 May 1986: delayed takeover period of 60 days (Commission Regulation (EEC) No 521/86, Official Journal 1986 L 51, p. 65, in conjunction with Council Regulation No 1226/86, Official Journal 1986 L 109, p. 19);

— 12 May 1986 to 12 June 1986: no provision for delayed takeover;

— 13 June 1986 to 11 September 1986: delayed takeover period of 60 days (Commission Regulation (EEC) No 1836/86, Official Journal 1986 L 158, p. 57);

— 12 September 1986 to 31 December 1986: delayed takeover period of 120 days (Commission Regulation (EEC) No 2814/86, Official Journal 1986 L 260, p. 14, and Commission Regulation (EEC) No 3293/86, Official Journal 1986 L 304, p. 24).

24. The Commission alleges that the Bundesanstalt für Landwirtschaftliche Marktordnung ('the BALM'), the German intervention agency, permitted sellers to manipulate the dates of their offers to sell and of delivery into intervention in such a way as to avoid the application of delayed takeover periods, and in particular to exploit the fact that there was no delayed takeover period between 12 May 1986 and 12 June 1986. According to the Commission, the BALM allowed sellers to withdraw offers to sell made up to 11 May 1986, when a 60-day delayed takeover period applied, and to re-present the offers after that date. In addition during the period 12 May 1986 to 12 June 1986, the BALM permitted sellers to submit offers relating to the whole of their next month's butter production instead of the next week's production, which had been the practice to date: the sellers were thus able to withdraw a large proportion of their future production from the effects of the delayed takover period. The result of these manipulations was that of 26 454.475 tonnes of butter put into storage in May 1986, and of 19 159.515 tonnes put into storage in June 1986, only 1 328.85 tonnes and 1 067.64 tonnes respectively were subject to a delayed takeover period of 60 days (Summary Report, p. 62).

25. Germany does not deny that the above events took place. It argues against the disallowance essentially on four grounds. First, that under German law, and generally under the laws of the Member States, an offer to sell is not regarded as binding: the BALM thus had no legal ground to refuse to allow sellers to withdraw and represent their offers. Secondly, that it was not possible for practical reasons to change the established procedures at short notice. Thirdly, the Commission had, in a letter to the German Minister for Agriculture of 24 May 1982 (annexed to the Application), specifically permitted the submission of offers to sell butter which had not yet been produced and had not taken any steps to withdraw that permission. That letter moreover confirmed the non-binding character of offers by specifying that sellers must be permitted to withdraw their offers if the possibility of sale on the open market presented itself. Finally and more generally, Germany argues that if there were lacunae in the Community legislation which sellers could exploit, it was for the Commission to take the necessary steps.

26. In summary, the Commission's view is that the introduction in February 1986 of delayed takeover periods produced a new economic and legal situation which required the German authorities of their own motion

to alter their practices so as to treat offers as binding and not to accept offers for butter which had not yet been produced.

27. In my opinion, the arguments of the German Government must be rejected. As regards the first argument, as the Commission points out, the Community system of intervention contains its own specific rules which may diverge from normal contractual principles. That the system is a specific one is illustrated by the fact that an intervention agency, as recipient of an offer to sell, does not enjoy the freedom to accept or reject an offer which it would in principle have in the ordinary contractual situation: on the contrary, once the conditions of intervention are fulfilled, it is obliged to accept an offer to sell into intervention (see, for example, Case 49/71 *Hagen* [1972] ECR 23, at paragraph 10 of the judgment). If the contractual freedom of the intervention agency can be so constrained by Community rules, then, in my view, the freedom of the offeror to withdraw his offer before acceptance can also be restricted where this is necessary to achieve the objectives of the legislation.

28. It is in my view plain that such a restriction was necessary in the circumstances which gave rise to the introduction of the system of delayed takeover, since otherwise that system could be easily circumvented by the simple device of withdrawing the offer and representing it at a more favourable time.

29. As regards Germany's second argument, I am not convinced that it was impossible to react swiftly to the new situation. The 60-day delayed takeover period laid down in Regulation No 521/86 ceased to have effect at the end of the 1985/86 milk year, i.e. 12 May 1986, and it should then have immediately been apparent to the intervention agency (as it plainly was to the sellers) that a loophole had arisen in the legislation which could be exploited if preventative action were not taken. It was not necessary to establish a complicated new set of procedures: it sufficed merely to inform any seller who sought to withdraw his offer on or after 12 May 1986 that the offer was to be treated as binding, or alternatively, that if the offer was withdrawn, it could not be re-presented at a later date.

30. I am also of the view that, with the introduction of the system of delayed takeover, the German authorities should have ended, or at any rate suspended, the practice of accepting offers for butter which had not yet been produced. It must have been clear to the intervention agency in May-June 1986, when sellers began to offer to sell a whole month's, instead of a week's, future production, that the purpose of the device was to circumvent the delayed takeover period. As the Commission points out, the permission granted in 1982 (apparently only to Germany) to purchase butter which had not yet been produced was made in a completely different situation in which the practice did not result in an increased burden on the EAGGF and did not conflict with the rules of the intervention system.

31. In my view, it is also necessary to reject the final argument, to the effect that it was for the Commission, which had permitted a lacuna to arise in its legislation, to take steps to prevent circumvention of the system.

32. The Court has consistently held that 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 (see Joined Cases 205/82-215/82 *Deutsche Milchkontor* [1983] ECR 2633, at paragraph 17). Moreover, Article 8(1) of Regulation No 729/70 provides that Member States must take the measures necessary to prevent and deal with irregularities affecting the operations of the EAGGF. The purpose of the new system of delayed takeover, namely the prevention of speculative selling, was made abundantly clear, in particular in the recitals to Regulation No 521/86. In those circumstances, it was incumbent on Member States, of their own motion, to make any adaptation to their administrative rules or practices which was necessary to ensure that the objectives of the system were met.

33. I would therefore reject the third head of the action.

Advance payment of export refunds

34. Article 5(1) of Council Regulation (EEC) No 565/80 on the advance payment of export refunds in respect of agricultural products (Official Journal 1980 L 62, p. 5) provides that an amount equal to the export refund shall, at the request of the party concerned, be paid as soon as the products or goods have been brought under the customs warehousing or free zone procedure with a view to their being exported within a set time-limit. Under the first paragraph of Article 6 of the same regulation, the benefit of the advance payment arrangements is subject to the lodgment of a security guaranteeing reimbursement of an amount equal to the sum paid, plus an additional amount. Under the second paragraph of Article 6, the security is to be forfeited wholly or in part *inter alia* if there proves to be no right to the export refund or a right to a smaller refund.

35. Commission Regulation (EEC) No 798/80 lays down detailed rules for the arrangements introduced by Regulation No 565/80 (Official Journal 1980 L 87, p. 42). Article 2(1) provides that admission under the advance payment arrangements shall be subject to the lodging with the customs authorities of a payment declaration under which the exporter states his intention to place the products or goods under customs control, to export them and to qualify for a refund. Article 3(1) provides that at the time of acceptance of the payment declaration, the products or goods shall be placed under customs control. Under Article 4(2), the examination of the payment declaration and of the products or goods themselves shall be used for determining the refund. Detailed provision is also made for securities. Article 7(1) requires that, prior to acceptance of the payment declaration, a security is to be furnished equal to the amount to be paid in advance

of export plus any applicable monetary compensatory amount and a specified additional percentage of the sum thus arrived at. Under Article 10(1)(b), the release in full of the security is subject to the production of proof that the products concerned give rise to an entitlement to a refund equal to or higher than the amount paid prior to export.

36. In 1984 an unnamed German company presented to the German customs authorities a payment declaration indicating its intention to export 783 531.2 kg of wheat starch and requested that the goods be placed under customs control and that the export refunds be paid in advance. The customs authorities (for reasons which are not clear) did not carry out an inspection of the goods, but authorized an advance payment of DM 59 985.28 to the company. At the same time, the customs authorities charged to an overall guarantee lodged by the company DM 190 427.76, representing the amount of the advance payment and a supplement of DM 130 442.48, calculated in accordance with Article 7(1) of Regulation No 798/80, to be held as a security. Subsequently, the customs authorities discovered that only 167 766 kg of the total quantity declared by the company had in fact been produced but had not been packaged for export, and that the remaining quantity had not even been produced. The customs authorities therefore adopted a decision requiring repayment of the amount advanced and declaring forfeit the security of DM 130 442.48. The company lodged an administrative appeal and obtained a stay of execution of the decision. The matter was not resolved until October 1988 when the company repaid, with interest, the amount of the advance payment, and the customs authorities released the security.

37. The Commission, taking the view that the premature declaration was probably made for speculative reasons, considered that the amount of the advance payment should have been promptly recovered, and that the security should have remained forfeit. It therefore disallowed the sum of those two amounts, as regards the security on a provisional basis only pending further clarifications on the part of the German Government.

38. In contesting the disallowance, Germany first points out that under Article 8(1) of Council Regulation (EEC) No 729/70 on the financing of the common agricultural policy sums lost through irregularities or negligence are to be recovered in accordance with the laws, regulations and administrative provisions of the Member States. The delay in the recovery of the advance payment was not the result of negligence but was caused by the administrative appeal and by the fact that the customs authorities had a large backlog of similar cases. In the circumstances, the Commission should have awaited the outcome of the administrative appeal and was not entitled to disallow the amount of the advance payment in the clearance of accounts for 1986.

39. As regards the security, Germany argues that Community law did not prescribe what should be done when a payment declaration was presented in respect of (largely) non-existent goods. National law therefore applied, and under German customs law the fact that the goods were not in existence at the material time invalidated and nullified the payment declaration so that there was no legal basis for declaring the security forfeit. To accept that the payment declaration, although

incorrect, was nonetheless validly made, would mean accepting that non-existent goods can be deemed to be placed under the customs warehousing regime, a view which would entail practical and financial difficulties for the Community. In addition, Germany argues that the Commission has not given adequate reasons for the disallowance of the amount of the security.

40. In my opinion, these arguments cannot succeed. Article 8(1) of Regulation No 729/70 imposes on Member States an obligation to 'take the measures necessary' to prevent and deal with irregularities and to recover sums lost as a result of irregularities or negligence. As the Court indicated in its recent judgment of 11 October 1990 in Case C-34/89 *Italy* v *Commission* [1990] ECR I-3603, at paragraph 12 of the judgment), the first two paragraphs of Article 8 of Regulation No 729/70 are an expression, as regards the financing of the common agricultural policy, of the general obligation of diligence laid down in Article 5 of the Treaty, an obligation which implies that Member States must act promptly to prevent and deal with irregularities.

41. It is in my view plain that the German authorities were excessively slow in seeking recovery of the advance payment. The amount was reimbursable as soon as it became apparent, in November 1984, that the payment declaration submitted by the company was incorrect. Of course the company could not be prevented from exercising its right to an administrative appeal, but once the issue had been reviewed under the appeal procedure and it had been found, in March 1986, that there were no grounds for impugning the decision of the customs authorities, immediate steps should have been taken to recover the advance payment. The Court has never permitted Member States to rely on administrative inadequacy or inconvenience as an excuse for failure to perform their obligations.

42. As regards the security, I accept that genuine doubts as to the legality of the forfeiture excuse an element of delay in reaching a final decision. However, I cannot accept that the final decision of the German authorities to release the security was the correct one. The relevant Community rules, namely the second paragraph of Article 6 of Regulation No 565/80 and Article 10(1)(b) of Regulation No 798/80, make it clear that where, as in this case, there is no entitlement to the refund, the security is to be forfeited in full. There was therefore no room for application of national customs law. Moreover, as the Commission points out, the purpose of the payment declaration and of the requirement that a security be lodged is to guarantee the performance by the exporter of his obligation to export. The application of a national rule entailing the nullity of the declaration in cases where the goods had not been produced would deprive the security of its function in that an exporter could, without any risk to himself, make false declarations as to the existence of the goods and his intention to export them.

43. As regards the question of reasoning, the eighth recital to the contested Commission decision records that the expenditure disallowed for Germany includes an amount of DM 130 442.48 in

respect of a security for a certain quantity of wheat starch 'which should have been credited to EAGGF'. The decision does therefore give a reason for the disallowance, albeit in very summary form. Nonetheless, I consider that this reasoning must be considered adequate in the circumstances of this case. In the first place, the forfeiture of the security could properly be regarded as automatic in these circumstances. Secondly, the ninth recital to the Commission decision makes it clear that the disallowance of the amount of the security was initially made on a provisional basis only, pending further clarification of the issues involved, and this is confirmed at p. 23 of the Summary Report. Thirdly, in so far as the German authorities still entertained doubts about the reasons for the disallowance, it is clear from the case file that there were exchanges of correspondence between the Commission and the German Government on this issue both before and after the adoption of the contested decision and that the matter was also considered in the Fund Committee. It therefore appears that the German Government must have been aware of the reasons why the Commission considered that the amount in question could not be charged to the EAGGF. In those circumstances, the objection relating to insufficient reasoning must also be rejected.

Conclusion

44. Accordingly, I am of the opinion that the Court should:

(1) Dismiss the action;

(2) Order the Federal Republic of Germany to bear the costs.