OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 27 March 1990 *

Mr President,
Members of the Court,

1. The Verwaltungsgericht (Administrative Court) Frankfurt am Main (Federal Republic of Germany) has, by order of 16 March 1990, referred to the Court for a preliminary ruling a question seeking to ascertain whether the third subparagraph of Article 9(2) of Commission Regulation (EEC) No 2499/82 of 15 September 1982 [1] is valid in so far as it provides for full recovery of aid paid to the distiller in the case where the latter has not, within a period of 90 days, paid to the wine producer the minimum buying-in price as laid down in that regulation.

2. This question arose in the context of a dispute between the undertaking Firma Otto Lingenfelser (hereinafter referred to as 'Lingenfelser'), a small distillery based in Achern-Grossweier, and the Bundesamt für Ernährung und Forstwirtschaft (Federal Office for Food and Forestry), which is the competent intervention agency in the Federal Republic of Germany for the purposes of the abovementioned regulation. In view of the fact that Lingenfelser had paid to the wine producers' group 'Deutsches Weintor' the minimum buying-in price for three consignments of wine later than 90 days after the date of delivery of each consignment, the intervention agency demanded repayment of the aid which it had granted in respect of the three consignments in question. The appeal brought by Lingenfelser before the Verwaltungsgericht against recovery of the aid forms the subject of the main proceedings in the present case.

3. Regulation No 2499/82 laid down the provisions governing the system of preventive distillation for the 1982/83 wine year. The principle underlying that system had been laid down by Council Regulation (EEC) No 337/79 of 5 February 1979 [2] as amended by Council Regulation (EEC) No 2144/82 of 27 July 1982. [3] Those provisions establish a system under which the producer delivers to the distiller, pursuant to contracts between wine producers and distillers which have been approved by the competent intervention agency, the quantity of wine contractually stipulated, in return for payment of a minimum buying-in price as laid down in Article 5 of Regulation No 2499/82. Under Article 9(1) of the regulation, the distiller is to pay that price not later than 90 days after the wine has entered the distillery, and is to receive aid from the intervention agency, in accordance with the first subparagraph of Article 9(2) of the regulation, within 90 days of submitting proof of distillation. Finally, the distiller is required under the third subparagraph of Article 9(2) to supply the intervention agency with proof that he has paid the minimum buying-in price within 90 days of actual delivery of the wine; that provision also stipulates that, if such proof is not submitted within 120 days of the date of submission of the proof of distillation, 'the

* Original language: French.

1 — Regulation laying down provisions concerning preventive distillation for the 1982/83 wine year (OJ L 267, 16.9.1982, p. 16).

2 — Regulation on the common organization of the market in wine (OJ L 54, 5.3.1979, p. 1).

3 — Regulation amending Regulation (EEC) No 337/79 on the common organization of the market in wine (OJ L 227, 3.8.1982, p. 1).

amounts paid shall be recovered by the intervention agency'.

4. In the present case, Lingenfelser paid the minimum buying-in price for the three consignments of wine 92, 93 and 91 days after the actual delivery of the wine. As the Court was informed at the hearing, these rather minor delays were due to a misunderstanding on the part of Lingenfelser as to the date from which the prescribed period started to run. Lingenfelser believed, in accordance with what appears to be the standard practice in business transactions within the Federal Republic of Germany, that the period started to run from receipt of the producer's invoice, rather than from the date of actual delivery.

5. On this point, I ought to mention at once that the textual argument briefly submitted by Lingenfelser and based on a discrepancy between the German text of Regulation No 2499/82, on the one hand, and the French and English texts, on the other, seems to me to lack any substance. The words 'Innerhalb von 90 Tagen nach Eingang bei der Brennerei' [within 90 days of entry into the distillery] cannot be interpreted as referring to the entry of the invoice into the distillery, but clearly allude to 'l'entrée dans la distillerie' [entry into the distillery] of the wine, as referred to in the French text.

6. The question referred by the Verwaltungsgericht concerns the validity of Regulation No 2499/82 inasmuch as that provides for total forfeiture of aid where the period of 90 days for payment of the minimum buying-in price has been exceeded. An initial problem in this regard is to decide exactly which provision provides for this total forfeiture. The national court which referred the question pointed specifically to the third subparagraph of Article 9(2) of Regulation No 2499/82. If we examine that provision, we shall find that, in fact, it provides formally for recovery by the intervention agency of amounts already paid only in the case where the distiller fails, within 120 days of the date of submission of proof of distillation, to supply proof that he has paid the minimum buying-in price not later than 90 days following delivery of the wine. We may thus ask whether Regulation No 2499/82 contains any provision on the basis of which aid may be fully recovered by the intervention agency in the event that payment of the minimum buying-in price occurs more than 90 days after delivery of the wine. Must we consider a recovery of this kind to be based *by implication* on the third subparagraph of Article 9(2), cited above? The Commission, for its part, pointed out at the hearing that the intervention agency may recover the full amount of aid if the conditions governing the granting thereof have not been satisfied, without the need for any express provision to that effect in the regulation. The Agent of the Commission, in answer to a question from the Court, spoke of a right to full recovery derived from general principles of law.

7. We should note at this point that the Commission's argument, while it is not incorrect in law, is none the less somewhat problematic. If a regulation dealing with a system of aid in the agricultural sector takes the trouble to set out *a number of cases* which may give rise to full recovery of aid by the intervention agency, it seems to me that traders are more likely to misinterpret the provisions if *all cases* attracting such a penalty are not set out. In the context of rules which are liable to have serious consequences for traders, I cannot feel that the interpretation under which some of those consequences are expressly defined and others have to be presumed is particularly felicitous. Moreover, it is certainly unlikely to facilitate the supervisory task which the Court may be called on to perform, as in the present case, concerning the validity of a full recovery of aid. Indeed, it may prove

far from easy to determine whether an implied provision in a regulation is in conformity with the law of the Community and in particular with the principle of proportionality. I would hope that the Commission will ensure that it does not seek refuge behind 'general principles of law', particularly in the case of provisions designed to penalize the failure by traders to comply with obligations incumbent on them. I, for my part, would prefer to take the view in the present case that the penalty of total forfeiture of aid in the event of payment after the expiry of the 90-day period may be implicity inferred from the third subparagraph of Article 9(2) of Regulation No 2499/82, which provides for this penalty where proof is not supplied inside a specified period that the minimum buying-in price was paid within 90 days.

8. Lingenfelser, in the main proceedings, brought into question on two grounds the validity of the total recovery of aid where the 90-day period is exceeded. The first ground, more extensively developed at the hearing than in the written observations, concerns the limits of the enabling powers conferred on the Commission by the abovementioned Council Regulation No 337/79. The second ground relates to the principle of proportionality.

9. Let me say at the outset that the arguments put forward by Lingenfelser designed to persuade the Court to regard the introduction of a maximum period of 90 days for payment of the minimum buying-in price to the purchaser as an 'over-regulation' not covered by the enabling powers conferred by Regulation No 337/79 have failed to convince me any more than they convinced the Commission or the intervention agency.

10. Let us examine the first ground. Regulation No 337/79 was designed 'to stabilize markets and ensure a fair standard of living for the agricultural community concerned' [4] in the wine sector. With that objective in mind, it determined that 'provision should be made under certain conditions for preventive distillation at a buying-in price which is not such as to encourage production of wine of insufficient quality'. [5] Accordingly, Article 11 of Regulation No 337/79 established the general framework for preventive distillation by determining the wines to which the scheme may apply and the buying-in price below which the price paid by the distiller may not fall. Under paragraph 5 of that article, 'The decision to carry out the distillation . . . and the detailed rules for the application of this article shall be adopted in accordance with the procedure laid down in Article 67'. That procedure allows the Commission to adopt measures, subject to consultation with a 'management committee'. It was under these circumstances that the Commission enacted Regulation No 2499/82 and laid down a maximum period of 90 days for payment by the distiller of the buying-in price to the producer.

11. Lingenfelser bases its view that there was 'over-regulation' on the part of the Commission, and thus that the Commission exceeded the enabling powers conferred upon it, on the lack of purpose served by the introduction of the 90-day period. I do not believe that it is possible to enter into a discussion before the Court on the degree of utility of the various periods laid down by Article 9 of Regulation No 2499/82, in order to decide whether the Commission has kept within the scope of the enabling powers conferred on it by Regulation No 337/79. Any discussion of this kind would fail to take account of the wide discretion which, in this instance, has been given to the Commission in a sector which lies at the heart of the common agricultural policy. This means that the review of validity which

4 — Third recital in the preamble to Regulation No 337/79.

5 — Ninth recital in the preamble to Regulation No 337/79.

has to be carried out in such a case clearly cannot consist in examining the merits of each measure. It must be confined to considering the question whether the limits of the discretion conferred on the Commission have clearly been exceeded. I do not believe that the Commission, by prescribing a specific period within which the distiller must pay the minimum buying-in price to the producer, has laid down an implementing rule that is manifestly alien to the system of preventive distillation, the general framework of which has been fixed by the Council. Viewed in the context of a policy of encouraging producers to withdraw their wine from the market and deliver it for distillation, the prescribing of a period within which the producer may be assured of receiving from the distiller the minimum price provided for by Regulation No 337/79 does not in itself appear alien to the objectives pursued.

12. I should add in this regard, and since the matter is of some relevance to the present case, that the other periods mentioned in Article 9 of Regulation No 2499/82 do not at all appear, on a first reading, to overlap with the period of 90 days at issue in this case. The maximum period of 90 days which runs from submission of the proof of distillation and within which the intervention agency must pay the aid to the distiller, does not by itself contain any guarantee as to the period within which the producer is to receive the minimum buying-in price. With regard to the period of 120 days which begins to run from the same submission of proof, it is far from obvious to me that the guarantees which that period might, at first, offer for the producer are equivalent to those provided under a 90-day period which begins to run from the date of delivery of the wine by him.

13. Accordingly, as regards consideration of the question whether powers have manifestly been exceeded, which is the only form of review to be envisaged in the matter of the Commission's compliance with the enabling powers conferred on it by the Council, I do not believe that anything has been put forward which could call in question the validity of the introduction of a maximum period within which the producer must receive payment.

14. It is now necessary to examine the question whether or not total recovery of aid paid to the distiller is disproportionate where the latter has failed to pay the minimum buying-in price to the producer within the period of 90 days.

15. It may be useful to review the principles which the case-law of the Court has evolved on this question. Thus, in the case of a penalty such as the non-release of a security because of failure to observe a period for submission of proof, the Court took the view that it was necessary to examine whether such a penalty

'exceeds what is appropriate and necessary to attain the objective sought'. [6]

With regard to the non-release of a security on the ground of the trader's failure to submit proof that certain quantities of butter had been processed within the period prescribed by Community rules, the Court pointed out that the supervision of compliance with the principle of proportionality of a provision of Community law made it necessary

'. . . to establish, in the first place, whether the means it employs to achieve its aim correspond to the importance of the aim

6 — Judgment of 20 February 1979 in Case 122/78 *Buitoni* v *Forma* [1979] ECR 677, at p. 684, paragraph 16; similar formula in the judgment of 17 May 1984 in Case 15/83 *Denkavit Nederland* v *Hoofdproduktschap voor Akkerbouwprodukten* [1984] ECR 2171, at p. 2185, paragraph 25.

and, in the second place, whether they are necessary for its achievement'.[7]

In its judgment of 24 September 1985 in *Man (Sugar)* v *IBAP*, the Court, after recalling what it had said relating to the need to ascertain whether the means employed 'are appropriate and necessary to attain the objective sought', went on to point out in that regard that

'where Community legislation makes a distinction between a primary obligation, compliance with which is necessary in order to attain the objective sought, and a secondary obligation, essentially of an administrative nature, it cannot, without breaching the principle of proportionality, penalize failure to comply with the secondary obligation as severely as failure to comply with the primary obligation'.[8]

16. The Court's judgment of 27 November 1986 in *Maas* v *BALM* supplied, I believe, some further clarification of the principles thus formulated. The Court there stated that, in order to answer a question on compliance with the principle of proportionality, in a case where the period laid down by Community law for the shipment of consignments of cereals and rice intended as food aid had been exceeded, it was necessary to establish,

'in accordance with well-established case-law ... whether the obligations at issue ... must be regarded as principal obligations whose observance is of fundamental importance to the proper functioning of a Community system and whose infringement may be punished by total forfeiture of the security, without there being any breach of the principle of proportionality, or whether they are secondary obligations whose infringement should not be punished with the same rigour as is applied to the failure to fulfil a principal obligation'.[9]

17. The further clarification here, it seems to me, consists in a certain structuring of the distinction between a principal obligation and a secondary obligation. In earlier decisions of the Court, it is true, the application of the principle of proportionality had in a number of cases suggested this distinction, but without making such a close association as does the *Maas* judgment between the principal obligation and the penalty of total forfeiture of the security, for example. The judgment in *Man (Sugar)* v *IBAP*, which I have already cited, suggested that compliance with the principle of proportionality required that failure to comply with a secondary obligation and with a principal obligation ought not to be punished with equal severity. The *Maas* judgment appears to imply that breach of a principal obligation may, in principle, attract a specific and heavy penalty, in that case the total forfeiture of a security. The more recent case-law of the Court seems, therefore, to raise, in a way, a presumption that total forfeiture of a security or aid is proportionate to the failure to comply with a principal obligation. Is a presumption of this kind, however, not open to rebuttal? I would point out, in this regard, that the earlier decisions of the Court show a degree of relativity in suggesting that the penalty for an ancillary obligation cannot be as severe as that attending a principal obligation, without, however, affirming expressly that total forfeiture (of aid or a security), as a penalty for breach of a principal obligation, is to be regarded as a proportionate penalty.

7 — Judgment of 23 February 1983 in Case 66/82 *Fromençais* v *Forma* [1983] ECR 395, at p. 404, paragraph 8; similar formula in the judgment of 1 October 1985 in Case 125/83 *OBEA* v *Corman* [1985] ECR 3039, at p. 3051, paragraph 36.

8 — Case 181/84 [1985] ECR 2889, at p. 2903, paragraph 20.

9 — Case 21/85 [1986] ECR 3537, at p. 3556, paragraph 15.

18. We can see that, in those cases in which the Court has ensured that the penalties for ancillary obligations are not as severe as those for principal obligations, the latter penalties more often than not involved total forfeiture. However, to say, as the Court has done in several judgments, that the penalty of total forfeiture, provided by a regulation in respect of a principal obligation, is disproportionate if, under the same regulation, it is also used to penalize an obligation ancillary to the first, is, in my view, not necessarily the same as declaring that breach of a principal obligation may, as a matter of principle, result in total forfeiture. Similarly, while recognizing the proportionality of the total forfeiture of aid or of a security in the case of failure to comply with an obligation, the essential or principal nature of which is expressly linked to the risk that the product covered by the aid may be used for purposes other than those intended, as in the Court's judgment of 2 December 1982 in *RU-MI* v *Forma*,[10] or to the risk of speculation, as in the judgment of the Court in *Fromançais*, already cited, it does not seem to me that the Court affirmed that total forfeiture of aid or a security for the slightest breach of any principal obligation, of whatever kind, was as a matter of principle to be regarded as a proportionate penalty.

19. The judgment in *Maas* is itself instructive in this regard. While it pointed out in that case that the designation as a principal obligation could not be questioned with regard to the obligation to ship goods within a specified period, the Court went on to state that

'. . . in the case of goods carried by sea, that obligation is not infringed where the goods are shipped and the vessel puts out to sea a few days behind schedule'.[11]

Thus, the Court, bearing in mind the fact that in that case it was not disputed that the vessel arrived at the port of destination by the prescribed date, and concluding consequently that 'where the shipment period is exceeded by only a short time', forfeiture of the security was not justified, provided that it did not impair 'the proper functioning of the food-aid system', introduced a qualification to treating, as a matter of principle, total forfeiture as a proportionate penalty for breach of principal obligations. We should bear in mind that this qualification occurs in the evaluation of the extent to which the obligation has not been complied with. It amounts to saying that, although breach of a principal obligation may, in principle, be penalized by total forfeiture, not every failure to comply with such an obligation necessarily constitutes a breach attracting that penalty.

20. It would thus appear that the Court accepts the possibility of modifying the application of a penalty such as total forfeiture in the case where a principal obligation has been breached. In truth, the Court has thereby allowed the principle of proportionality to continue to be effective in the area of breaches of principal obligations which entail total forfeiture, regardless of the proportionality as a matter of principle mentioned earlier. Consequently, if it should be acknowledged, as it has by the Court, that there is still some need for proportionality in cases where principal obligations have been breached, might it not be appropriate to emphasize the formulas used in judgments prior to that in *Maas*? As we have seen, the case-law of the Court presents two complementary formulas. According to the first of these, compliance with the principle of proportionality makes it necessary to check, in the first place, whether the provision of Community law in question employs methods which are in keeping with the importance of the objective pursued and, secondly, whether those methods are necessary in order to attain it. The second stresses that rules of Community law may not impose penalties

10 — Case 272/81 [1982] ECR 4167.

11 — Case 21/85, cited above, paragraph 17 of the decision, at p. 3556.

of equal severity on failure to comply with a secondary obligation and on failure to comply with a principal obligation. Those formulas appear to me adequate to meet the ultimate aims of the Court's examination of proportionality. I believe that the case-law of the Court has been motivated in particular by the desire not to exclude any activity from the requirement of proportionality, and that in that regard the flexibility of the two formulas set out above is better suited to furthering that objective than is an excessively close association of the concept of principle obligation with a particular type of penalty. I, for my part, intend to refer during the remainder of my discussion to this flexible notion, which more obviously promotes maximum effectiveness of the principle of proportionality.

21. In order to verify in the present case whether the principle of proportionality has been respected, it is first of all necessary to define the objectives in furtherance of which the obligation at issue was laid down. As this concerns the period of 90 days, it must be examined in the light of the 11th recital in the preamble to Regulation No 2499/82, which states that '... provision should be made for the minimum price guaranteed to producers to be paid to them, as a general rule, within a period which will enable them to attain a profit comparable to that which they would have obtained from a commercial sale'.[12] In the context of the general objective of the system of preventive distillation, it appears at first sight to be important to dissuade many producers from placing wine of insufficient quality on the market by giving them the opportunity to sell to distillers. In that connection, the sale for purposes of distillation must be attractive to the producers. One element in that attraction is the calculation of the minimum buying-in price to be paid by distillers to producers. A further element concerns the period within which that buying-in price must be paid, in the sense that it is important that, in the case of sales for the purpose of distillation, producers are not paid any later than would be the case in a normal commercial transaction. This latter point is developed in the 11th recital, cited above, in the preamble to the regulation. In that regard, the requirement that payment be made within periods similar to those which are normal in business may be considered to be vital for the efficient operation of the system of preventive distillation.

22. In view of this importance, is it necessary to lay down a mandatory period of 90 days, which, if exceeded to even the slightest degree by the distiller, will result in total forfeiture of aid? To answer in the affirmative, it would be necessary to accept, in a way, that the most trifling failure to observe the time-limit, even by one single day, would result in the wine's not being paid for, in the context of preventive distillation, under conditions comparable to those existing in normal business practice and that the slightest tolerance in this regard would dissuade producers from selling to distillers. I have come across nothing in the documents relating to this case to support the view that such an effect could be imputed to the fact that the period of 90 days has been slightly exceeded. On the contrary, it might even be asked whether the scheme regarding the period for payment as it stands does not go somewhat beyond the requirement of '[comparable] profit' formulated in the 11th recital in the preamble to the regulation. Considered in the light of commercial practices in the wine trade in the Federal Republic of Germany, as outlined to the Court in this case, it appears that the period laid down in Regulation 2499/82, which begins to run from the entry of the wine into the distillery, is shorter than that in the trade, which starts to run when the distiller receives the invoice. Thus, in a situation of this kind, it appears difficult, to say the

12 — First clause.

least, to claim that any amount of time by which the period is exceeded, no matter how small, places the producer in a position in which he may consider himself to be less well treated than in the event of a normal sale. It is even likely that a payment made a few days after the expiry of the period laid down by the regulation would still be made within the period that is used in the wine trade in the Federal Republic of Germany.

23. Thus, although we must always bear in mind the margin of discretion which the Commission has in laying down detailed legal rules for the common organization of the markets, it appears open to question even at first sight whether the penalty of total forfeiture of the aid is absolutely necessary, where the prescribed period has been exceeded by a few days, in order to ensure the efficient operation of the system of preventive distillation, and, under that system, payment of the price to the producer under conditions comparable to those in the trade.

24. The indispensable nature of the total forfeiture of aid as a penalty for every case in which the 90-day period is exceeded, no matter by how short a time, is open to question from another angle. If it is accepted that payment within a period comparable to that applying in commercial practice is vital for the efficient operation of the system, it is not at all obvious that a reduction of aid according to the amount of time by which the period has been exceeded would not have made it possible to give the desired guarantee. Under the system established by Regulation No 2499/82, it is the certainty that aid will be paid which enables the distiller to pay the minimum buying-in price to the producer. The Agent of the Commission laid particular stress on this point at the hearing. Thus, any reduction in the amount of aid is likely to affect the profit which the distiller expects to make from the transaction. In those circumstances, we may imagine that the prospect of a significant, albeit partial, reduction, would by itself be sufficient to encourage the distiller to keep within the prescribed period.

25. To conclude, a number of thoughts come to mind in relation to Article 12 of Regulation No 2499/82 which concern the situation in which a quantity of wine has been distilled which differs from that stipulated in the contract. It is provided that the intervention agency is to pay the aid for the quantity of wine actually distilled, on condition that the difference between such quantity and the quantity contractually provided for remains within a margin of 10%. Reasoning *a contrario*, we must assume that if the difference exceeds 10%, the aid is no longer paid at all. It is perfectly understandable that the Community rules should take account of circumstances outside the control of the operators in question which may lead to a reduction in the quantity of wine actually distilled. However, it is necessary to point out that, since Regulation No 2499/82 establishes a system of preventive distillation designed to withdraw as much inferior-quality wine as possible from the market in order to maintain market stability, it makes allowance for a *fixed* quantitative variation of 10% without any consequence other than a proportional payment of aid. None the less, the primary objective of the system of preventive distillation remains the withdrawal of wine from the market. The various arrangements laid down in Regulation No 2499/82 are intended to serve that objective. The Commission, however, has taken the view that a quantitative variation of not more than 10%, *without verification of its causes*, is compatible with partial payment of the aid, whereas total forfeiture of the aid is the penalty attaching to payment made, by no matter how short a time, outside a period which relates, not to the primary objective of the system of

preventive distillation, but rather to one of the obligations which contribute towards the attainment of that objective.

26. That leads me to think that if it is possible, according to the Commission, to accept that aid should be paid proportionately in the case of a reduction in the quantity distilled of up to 10%, without the fundamental objectives of the programme of preventive distillation being thereby endangered, it is difficult to accept that a system entailing total forfeiture of aid for exceeding to the slightest extent the period allowed to the distiller for making payment is absolutely indispensable for the purpose of safeguarding those fundamental objectives. In my view, it is not important to consider whether human error in the form of lack of attention is less excusable than chemical processes such as evaporation, as the Commission has suggested. What must be considered is the impact of the failure to comply with a particular obligation on the attainment of those objectives. I have been unable to find anything in the documents relating to this case to warrant the conclusion that the fact of having exceeded the period for payment by a few days amounted to a threat of such gravity that it was necessary to attach to it consequences considerably more severe than in the case where it is found that there has been a reduction in the quantity of wine actually withdrawn from the market.

27. To conclude my Opinion, I would like to make one final comment on the internal consistency of Regulation No 2499/82. It is hard not to feel confused when confronted with this peculiar mixture of penalties expressly prescribed and penalties which have to be implied, and with the juxtaposition of principal and ancillary obligations, both of which are penalized with equal severity through total forfeiture of aid, in disregard of the decided case-law to which the Commission has referred. The third subparagraph of Article 9(2) is doubly pertinent in this respect, since it provides expressly for the total forfeiture of aid where proof that an ancillary obligation has been carried out is not submitted within a specified period, and implicitly prescribes the same penalty for the case in which the obligation itself has not been carried out. On a final note, I would point out that the question whether the system established by Regulation No 2499/82 is designed to prevent the distiller from receiving aid before he has paid the minimum price to the producer, or whether, on the contrary, it is designed to allow him to receive that aid, is still, in the light of the documents relating to the case and of the explanations presented at the hearing, far from being clarified. Both these possibilities can arise under the regulation depending on the financial position and the good intentions of the intervention agency. Obviously, this does not help to cast light on the internal logic of the system or to define as precisely as possible the actual significance of the period at issue and the effect of any failure to observe it. In this regard also, it is difficult to establish that total forfeiture of the aid is dictated by necessity.

28. To sum up, then, my view is that, although a period for payment comparable to that applying in normal commercial relations is essential to the system of preventive distillation established by Regulation No 2499/82, and although it is for the Commission to determine the length of that period, it has not been shown that exceeding the prescribed period, by no matter how short a time, adversely affected the essential objectives of the system in such a way that it had to be penalized, in every instance, by total forfeiture of the aid. It appears to me, therefore, that the principle of proportionality was, to that extent, not observed.

29. I shall now conclude by proposing that the Court should rule as follows:

'The third subparagraph of Article 9(2) of Regulation (EEC) No 2499/82 is invalid in so far as it penalizes with total forfeiture of aid any failure to comply with the period prescribed for payment by the distiller of the minimum buying-in price to the producer.'