OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 23 SEPTEMBER 1982 [1]

Mr President,
Members of the Court,

The Tribunal Administratif [Administrative Court], Paris, has referred two questions to the Court for a preliminary ruling concerning certain regulations adopted in pursuance of the common agricultural policy, granting Community aid to traders who satisfy the conditions laid down in those regulations. The two regulations in question were adopted by the Community as part of its endeavours to dispose of skimmed milk production surpluses. In the first case, which concerns RU-MI Sàrl (Case 272/81), the milk was denatured for use as feed for animals other than young calves; in the second case, which concerns Société Laitière de Gacé (Case 273/81), the milk was processed into a relatively complex product, known as caseinate, which was intended in particular for use in the food industry.

In both cases, the substantial amount of aid provided for by Community legislation could not be granted as the denaturing undertaking had failed to satisfy a technical requirement which, according to the Commission, was essential for attainment of the objectives of that legislation. In both cases, however, it is undisputed that the milk used was withdrawn from the Community market, that the processed product was used in accordance with the purpose specified by the legislation, that the traders in question acted in good faith and that they sustained a very heavy loss as a result of the refusal to pay the aid to them.

In spite of the similarities to which I have drawn attention, I prefer to give a separate opinion in each case. The fundamental problem which they both raise concerns the validity of a technical requirement which has not been complied with in relation to the general principle of Community law known as the principle of proportionality. As the Agent for the Commission has rightly emphasized, the validity of a regulation must be examined case by case in order to determine whether that principle is complied with. That examination consists in analysing the relationship between the objectives pursued by a set of rules and the means adopted in order to achieve those objectives. Since those objectives and those means may vary appreciably from one set of rules to another, examination of the relationship between them necessarily varies accordingly.

Apart from that reason, which is sufficient justification for my treating the two cases separately, the Tribunal Administratif has raised, in this case alone, a further question concerning the interpretation of the relevant regulation.

This opinion therefore relates only to Case 272/81.

I — I shall begin by outlining the facts of the case.

On 14 May 1979, RU-MI (Rungis-Milk) Sàrl, a company with capital of FF 500 000, was declared successful tenderer for 250 tonnes of skimmed-milk powder pursuant to Commission Regulation (EEC) No 1844/77 of 10 August 1977.

1 — Translated from the French.

Article 1 thereof provides for special aid for milk sold by tender pursuant to the regulation if it is denatured, *inter alia*, in accordance with one of the formulae set out in Section 1 of the Annex to Commission Regulation (EEC) No 368/77 of 23 February 1977. [1]

Since RU-MI's tender did not exceed the maximum amount of the aid fixed by the Commission and was accompanied by the bank guarantee required, it was accepted on 22 May 1979 by Interlait, a company entrusted by the competent French intervention agency, Fonds d'Orientation et de Régularisation des Marchés Agricoles [Agricultural Markets Guidance and Stabilization Fund, hereinafter referred to as "the Fund"], with the supervision of the performance of denaturing contracts awarded under a tendering procedure. By contract dated 22 and 28 May 1979, RU-MI sold, *inter alia*, 50 tonnes of the skimmed-milk powder obtained under the tendering procedure to the Biard company, whose premises are approved by Interlait, on condition that Biard carried out the denaturing in accordance with Formula I B in Section 1 of the Annex to Regulation No 368/77. According to that formula, the denaturing of skimmed-milk powder is carried out by the addition to 100 kilograms of milk of at least 20 kilograms of fish-meal either non-deodorized or still having a strong smell, 300 grams of iron, in the form of ferrous sulphate heptahydrate and 120 grams of copper in the form of copper sulphate pentahydrate. On 6 June 1979, Interlait issued a permit to RU-MI authorizing it to carry out the necessary processing, on the express condition that the denaturing was to take place in the presence of an approved supervisor. The denaturing operations were carried out in the presence of the supervisor on Biard's premises from 11 to 16 June 1979 and representative samples of the processed product were taken for analysis.

As a result of those analyses, which were conducted by the Bureau des Produits Laitiers [Dairy Products Board] of the Service Vétérinaire d'Hygiène Alimentaire [Veterinary Food-Hygiene Department] of the Ministry of Agriculture, Interlait was obliged to inform RU-MI, by letter of 21 August 1979, that it was unable either to issue the denaturing certificate referred to in Article 13 (7) of Regulation No 1844/77 or to return the security lodged by RU-MI, unless the Fund expressed a different opinion. The tests revealed "the lack of conformity of the denaturing operation in view of the size of the copper sulphate granules" resulting in "the formation of a composite mixture precluding a thorough test". The failure to issue the denaturing certificate deprived RU-MI of the aid which it had expected to obtain, since Article 14 of Regulation No 1844/77 makes payment of the aid conditional upon production of that document. The Fund was unable to release the security and the loss sustained by RU-MI as a result of that fact and non-payment of the aid in respect of the denaturing of the 50 tonnes in question amounted to FF 270 000.

By letter of 17 September 1979, RU-MI's manager requested the Fund to consider the possibility of granting the aid and releasing the security. The manager stated, in particular, that Biard had assured RU-MI that it had used copper sulphate from the same supplier for some years and that the undertaking in question had at no time had any doubts regarding its compliance with the

1 — First indent of Article 9 (2) of Regulation No 1844/77

standards governing the size of the granules. The manager also stated that none of the denatured product was left since it had been used in the meantime as required by Regulation No 1844/77. The request was subsequently repeated by letter of 17 January 1980 in the form of an application for review of the previous decision.

In a telex message of 7 February 1980 to the Commission, the Fund emphasized in particular that in its view the objective of the regulation had been achieved "since the intervention agency has ascertained that the powder has been denatured for use in feed for pigs and poultry" and it aksed whether "in view of the lack of proportion between the sanction and the breach committed" it might be possible to "pay the aid and release the security or to impose a penalty".

In reply the Commission suggested that an additional analysis should be carried out. It yielded the following results, which were notified by the Service Vétérinaire d'Hygiène Alimentaire to the Fund by letter of 19 May 1980:

"The minimum quantities of tracers incorporated in accordance with Formula I B defined in the Annex to Regulation No 368/77 have been complied with."

Similarly, the specifications relating to the characteristics which the denaturing agents used must possess have been complied with and, in particular, the requirement that "at least 30% of the copper sulphate granules [must be] less than 200 microns in size", as specified in Section 3 B of the same annex.

However, in view of the "substantial variation in the size" of the granules and the presence of "large uncrushed crystals of up to several millimetres in size" the copper sulphate used "was not distributed uniformly in the sample . . . of the finished product", contrary to the requirements of Section 3 D.

In my opinion, it is clear from those findings that the only provision which RU-MI has failed to comply with is that relating to uniform distribution. Since, however, at least 30% of the granules in the mixture were less than 200 microns in size, it cannot be stated that the obligation to use finely ground copper sulphate was not complied with.

The Fund communicated those results to the Commission by telex message of 17 June 1980 in which it specified that an uneven distribution of the copper sulphate granules had been recorded during the first series of analyses and that no further analysis in that regard was possible since no sample of the product had been retained.

The Commission expressed its opinion by telex message of 7 July 1980 in which, on the basis of the Fund's finding that "the denaturing agent had not been evenly distributed in the milk powder", it stated that the European Agricultural Guidance and Guarantee Fund [hereinafter referred to as the EAGGF] would be unable to finance the aid in question.

In the meantime, RU-MI brought an action on 23 June 1980 before the Tribunal Administratif, Paris, for the annulment of the Fund's implied decision rejecting its application of 17 January 1980 and its application for the issue of a denaturing certificate qualifying it to receive the sum of FF 270 100 on the ground that that decision was *ultra vires*. In support of its claims, RU-MI main-

tained in particular that, in view of the fact that lack of conformity of the product was only very slight, the application by the Fund of Regulation No 1844/77 in the present case was contrary to the objective of that regulation and contravened the principle of proportionality.

Since, in order to determine whether that argument is well founded, it is necessary to interpret and to assess the validity of the Community regulation concerned, the Tribunal Administratif, Paris, has stayed the proceedings and now seeks a preliminary ruling from the Court on the following questions:

"1. Is the fact that the denaturing of the product in question departs only very slightly from the generally recognized standard sufficient to operate as a total bar against the trader's receiving the benefit of the special aid introduced by Regulation No 1844/77?

2. If so, does not that regulation contravene the principle of proportionality and is it valid inasmuch as the wording of Articles 13 (7) and 14 enables the same sanction to be applied both when no denaturing at all has taken place and when and where denaturing has been carried out but not wholly in the prescribed manner?"

II — The first question submitted to the Court concerns the interpretation of Regulation No 1844/77. In the words of Counsel for RU-MI, the question seeks to ascertain whether a flexible interpretation of the regulations is permissible, since that would make it possible to prevent situations in which a lack of conformity, described as very slight not only by the producer but also by the intervention agency, with one of the technical specifications of the regulation leads to the total loss of aid of a very considerable amount, to the detriment of traders who have acted in good faith.

Before I answer that question, I believe it is necessary to make an observation regarding its wording. The words "generally recognized standard" cannot, in my view, be maintained. By using that expression, the court making the reference is referring to the obligation to distribute the copper sulphate in a uniform manner. It is, therefore, a mandatory — and not a generally recognized — condition which is laid down by the Community legislation.

In my opinion, the essential question is whether Regulation No 1844/77 can be interpreted as meaning that the special aid provided for may not be withheld in its entirety in the case of a product which has been denatured under conditions which depart only very slightly from those laid down by the regulation.

1. Such an interpretation is, in my opinion, quite untenable.

It is tantamount to asking the national intervention agency not to take account of the requirements laid down by the regulation which make payment of the aid subject to production of the denaturing certificate and the issue of that certificate conditional upon compliance with the obligation to distribute the copper sulphate in a uniform manner. In other words, that interpretation, if accepted, would allow the agency not to apply all the Community rules in force. But in that case, what other rules would it apply? What would their content be? Who would draft them? Would their author deserve to be regarded as an auxiliary Community legislator? Obviously the consequences of that suggestion are unacceptable.

By definition, a regulation is binding in its entirety in so far as it has not been held to be wholly or partly contrary to a rule of Community law which overrides it. That is laid down in the second paragraph of Article 189 of the EEC Treaty and is referred to in the final sentence of every regulation, including those at issue which are no exception to the rule. Accordingly, there is nothing to suggest that any order of precedence exists regarding the binding force of the various requirements laid down in Regulations Nos 368 and 1844/77 whereby those which are purely technical in nature must be regarded as secondary or optional. For that reason, the role of national intervention agencies like the Fund is confined to mere implementation "of measures which involve the application of Community resources", [1] but excludes any power of interpretation or any discretion to asses the legal effect of Community law. If a national agency unilaterally presumed to exercise such a power, it would lay itself open to the risk that the EAGGF might refuse to refund any sums paid by the agency on that basis. [2]

2. That conclusion may be supported, if necessary, by reference to two judgments of the court which display certain similarities to the present case.

In Joined Cases 146, 192 and 193/81, *BayWa and Others* [1982] ECR 1503, the question raised was whether a premium for the denaturing of cereals was to be regarded as wrongly paid only if the denatured products could still be used for human consumption, or whether it was also to be so regarded if the rules governing the denaturing methods contained in the relevant Community legislation had not been complied with, that is to say, if the rules relating to the method to be used might be disregarded by a national intervention agency where there was no doubt that the objective of the legislation had been attained. In its judgment of 6 May 1982, the Court replied that the following was clear from the very wording of the relevant provision: "In the case of denaturing by colouring, only the standard method defined by Community law may be used" [3] and it added: "Those provisions are mandatory in nature. Their nature is, moereover, in conformity with the principle consistently referred to in the case-law of the Court to the effect that provisions of Community law and, in particular, of Council or Commission regulations which create a right to benefits financed by Community funds must be given a strict interpretation. Furthermore, to disregard [those provisions] would create a twofold risk: in the first place, an appraisal of the question whether the methods adopted for the denaturing of the wheat or rye have rendered the cereals unfit for human consumption might vary from one Member State to another and even within each Member State and secondly the equality of status of undertakings claiming the grant of a denaturing premium from the Community funds administered by the [EAGGF] might be compromised." [4] Clearly, that answer

1 — French Decree No 61-827 of 29 July 1961, as amended, establishing the Fund.

2 — Judgment of 7 February 1979 in Case 11/76 *Netherlands* v *Commission* [1979] ECR 245, Judgment of 7 February 1979 in Case 18/76 *Federal Republic of Germany* v *Commission* [1979] ECR 343.

3 — *BayWa AG and Others*, paragraph 9 of the decision.

4 — *BayWa AG and Others*, paragraph 10 of the decision.

also applies, for the reasons stated by the Court, to the case of special aid for the denaturing of skimmed-milk powder intended as feed for animals other than young calves which is withheld, in spite of the fact that the denatured milk has been used in conformity with the purpose specified by the Community legislation, on the ground that one of the ingredients in the denaturing formula was not uniformly distributed in the mixture, contrary to the provisions of that legislation.

In Case 101/78 *Granaria*, the question referred to the Court was whether the Netherlands intervention agency was obliged to refuse to issue a certificate pursuant to a regulation subsequently declared invalid to all those who failed to satisfy the conditions laid down by that regulation so long as its lack of validity had not been recognized. The Court replied that: "It follows from the legislative and judicial system established by the Treaty that, although respect for the principle of the rule of law within the Community context entails for persons amenable to Community law the right to challenge the validity of regulations by legal action, that principle also imposes upon all persons subject to Community law the obligation to acknowledge that regulations are fully effective so long as they have not been declared to be invalid by a competent court" and that if an undertaking failed to satisfy the conditions laid down the national authority had to refuse to issue the certificate. [1]

Thus, the problem raised in that case lay not in the interpretation of the provision which had not been complied with but in the assessment of its validity.

III — It is on the latter point that the Tribunal Administratif seeks a ruling from the Court when it asks, in its second question, whether Regulation No 1844/77 in fact contravenes the principle of proportionality inasmuch as it enables the same sanction to be applied both where no denaturing at all has taken place and where it has been carried out but not wholly in the prescribed manner.

1. Couched in those terms, that question can be given only one answer, namely that the principle of proportionality has indeed been infringed by Regulation No 1844/77. Clearly, it is contrary to the principle of proportionality, and indeed simply unfair, to impose the same sanction for the breach of two obligations laid down in the same instrument, one being a fundamental obligation and the other an obligation which is manifestly of secondary importance. It was in those terms, moreover, that the Court gave its ruling in the *Buitoni* case, [2] a precedent repeatedly relied upon during the proceedings by the plaintiff in the main action, the operative part of which provided a starting-point for the wording of the question raised.

It is still necessary to ascertain, however, whether those difficulties arise in the present case. Is there any certainty that, in this case too, a Community regulation imposes a single sanction for breach of a

1 — Judgment of 13 February 1979 in Case 101/78 *Granaria* [1979] ECR 623 at pp. 636-637, paragraphs 3 to 6 of the decision.

2 — Judgment of 22 February 1979 in Case 122/78 *Buitoni SA v FORMA* [1979] ECR 677 at p. 685, paragraphs 20 and 21 of the decision.

fundamental obligation (where no denaturing at all has taken place) and for breach of an obligation which is clearly of secondary importance (where denaturing has been carried out but not wholly in the prescribed manner)? If this case falls outside that category, the answer which I have just proposed should be disregarded, even though it is entirely appropriate to the question as worded. The Tribunal Administratif made a reference to the Court because it considered that determination of the dispute depended on the interpretation of Community law and therefore an incomplete answer to the questions submitted would prevent the national court from reaching a decision in the case.

I believe that there are two reasons for the excessive disparity between the terms in which the question is couched and the problems of Community law which the case raises, particularly as far as compliance with the principle of proportionality is concerned. The first of those reasons concerns the use of a word such as "sanction". Since the withholding of an *aid* is involved, in other words a benefit linked to an operation (the processing of skimmed milk into animal feed) which the owners of the skimmed milk were *not obliged* to perform, a word implying the imposition of a penalty is inappropriate. That was the view taken by the Court in its judgment of 26 June 1980 in Case 808/79, *Pardini*, which concerned the interpretation and validity of a provision laying down that no duplicates issued in the event of the loss of export licences might be used for the purpose of carrying out an export transaction. Since the court making the reference had described that provision as imposing a very severe penalty, the Court was anxious to point out "in the first place that the provisions in question cannot be regarded as imposing a 'penalty', in the proper sense of the term, upon a trader in the event of his licence or certificate being lost". [1]

How relevant is the comparison underlying the wording adopted between an undertaking which has failed, manifestly in breach of Regulation No 1844/77, to carry out any denaturing at all and an undertaking which has fulfilled that fundamental obligation but has failed to comply with a technical specification concerning the method of denaturing? I doubt whether it is relevant at all. The first limb of the comparison strikes me as academic since, in view of the security lodged, to submit a tender under a tendering procedure pursuant to Regulation No 1844/77 only to refrain subsequently from carrying out the denaturing or from having it carried out would be a very risky matter. In the first place, the existence and the amount of the bank guarantee which must accompany the tender and, secondly, the fact that the aid is paid on completion of the denaturing operation — which must, moreover, be carried out on approved premises and in the presence of an official supervisor — rule out in my opinion the participation in that type of tendering procedure either of a dishonest trader who has no intention of denaturing the product or of a trader who lacks the requisite technical or financial means or commercial ability to honour his commitments.

However, if that question needs to be reworded, how is it to be understood? Is it sufficient to eliminate the reference to a trader who has not carried out any

1 — Case 808/79 *Fratelli Pardini SpA* [1980] ECR 2103 at p. 2119, paragraph 14 of the decision.

denaturing at all and to ask whether there is not an excessive disparity, contrary to the principle of proportionality, between the failure to comply with the Community legislation and the sanction imposed for such failure?

I share the view expressed by the Commission that if the rule which was not complied with is essential for attainment of the objective laid down by the Community legislation, an infringement of that rule must inevitably entail the withholding of the aid; a less strict course of action would be insufficient to ensure that the denatured milk was not used as feed for calves. For that reason, it is impossible, in my opinion, to extend to the present case the approach adopted in Commission Regulation (EEC) No 1725/79 of 26 July 1979 on the rules for granting aid to skimmed milk processed into compound feedingstuffs and skimmed-milk powder intended for feed for calves, as amended by Commission Regulation (EEC) No 2851/80 of 31 October 1980. The first regulation provides for a decrease in the amount of the aid in proportion to the water content in excess of the amount stipulated; [1] the second regulation provides that in certain cases the aid may be paid out subject to the furnishing of a guarantee where the product as manufactured does not contain the requisite quantity of milk. [2] Those solutions cannot be applied in the present case because they are not directed towards the same objectives as those of Regulation No 1844/77, a condition which — as Mr Advocate General Reischl emphasized in his opinion in Case 77/81 *Zuckerfabrik Franken* [3] — is essential for that purpose. As regards feed for calves, the object of Regulation No 1725/79, as amended, is not, and could not be, to prevent fraud resulting from diversion of the product from its intended use.

However, those considerations do not, as they stand, go far enough. To reply that a breach of a provision of a regulation may, on condition that the provision is not manifestly irrelevant for the attainment of an objective laid down by that regulation, lawfully entail the withholding of the aid in its entirety is to beg the question. It is tantamount to asking the Tribunal Administratif, Paris, to assess the validity of that rule, although that is the very question which the Tribunal Administratif has referred to the Court.

In my opinion, therefore, the provision which has been infringed must be assessed in a different manner in the light of the principle of proportionality. A comparison must be made not between the provision and the consequence of the infringement thereof but, as Counsel for the Fund suggested at the hearing, between the provision and the aim of the regulation observance of which that provision is designed to ensure.

Accordingly, the real question at issue, on which determination of the case depends, seems to be whether or not the requirement contained in Section 3 D of the Annex to Regulation No 368/77 relating to the uniform distribution of copper sulphate used for denaturing in accordance with Formula I B in Section 1 of the same annex is manifestly irrelevant for attainment of the objective

1 — Third subparagraph of Article 1 (4).

2 — New subparagraphs of Article 4 (1) of Regulation No 1725/79.

3 — Case 77/81 *Zuckerfabrik Franken* v *Federal Republic of Germany*, judgment [1982] ECR 681, opinion at p. 697.

of Regulation No 1844/77, which is to prevent products thus denatured from being used as feed for young calves. If it is, the conclusion must be drawn that the principle of proportionality has been contravened.

I would add that, in my opinion, the Court has not so far had occasion to exercise its power of review in order to determine in the light of the principle of proportionality the validity of a provision of that kind.

2. The principle of proportionality, which is at issue in this case, "reflects the requirement that there must be a strict proportion between the aim pursued by the legislature and the means selected for the attainment of that aim" [1] and has long been recognized in the case-law of the Court since, even if only the disputes resulting from the application of the EEC Treaty are considered, the earliest judgments in which the principle was applied date back to 17 December 1970. [2] In the agricultural sector, an illustration of that principle — which is, moreover, a principle underlying "the Community legal order" [3] as a whole — is to be found in Article 40 (3) of the EEC Treaty, according to which a common organization of the markets "may include all measures required to attain the objectives" of the common agricultural policy; in negative terms, that amounts to prohibiting the Community authorities from adopting measures other than those which are necessary for the achievement of the objectives in question. [4]

For the principle to have been contravened, there must not only be a lack of proportion between the objective pursued and the means used to attain it but that lack of proportion must also be manifest. [5] That requirement is, in my view, justifiable. Rules which are subjected to review in the light of the principle of proportionality are most frequently adopted in sectors in which it is necessary to assess a complex economic situation, in the present case that of the market in milk products. Accordingly, in that sector the Community authorities must be able to exercise a wide discretion in the adoption of appropriate measures subject only to the limitation that there must be no manifest infringement of a superior rule of law.

3. In this case, none of the parties to these proceedings contests that Regulation No 1844/77 pursues two objectives both of which are of equal importance.

The first objective is the denaturing of milk with a view to making it unsuitable for human consumption. The addition of non-deodorized fish meal is sufficient to ensure the attainment of that objective.

The second objective is to make it impossible for the denatured milk to be

1 — Neri: "Le principe de proportionnalité dans la jurisprudence de la Cour relative au droit communautaire agricole", *Revue Trimestrielle de Droit Europeen*, 1981, No 4, p. 653.

2 — Judgments of the Court of 17 December 1970 in Case 11/70 *Internationale Handelsgesellschaft* [1970] ECR 1125 and in Case 25/70 *Köster* [1970] ECR 1161.

3 — Judgment of the Court of 5 May 1981 in Case 112/80 *Dürbeck* [1981] ECR 1095 at p. 1118, paragraph 40 of the decision.

4 — See in this connection: *Druesne:* "La Jurisprudence de la Cour de Justice des Communautes Europeennes en Matiere Agricole", Part Five: "Principe de Proportionnalité", *Revue du Marché Commun*, No 224, February 1979, p. 84.

5 — Judgment of 5 July 1977 in Case 114/76 *Bergmann KG* [1977] ECR 1211 at p. 1221, paragraph 7 of the decision; Judgment of 20 February 1979 in Case 122/78 *Buitoni SA* [1979] ECR 677 at p. 685, paragraph 20 of the decision; Judgment of 21 June 1979 in Case 240/78 *Atalanta Amsterdam BV* [1979] ECR 2137, at pp. 2150-2151, paragraphs 14 and 15 of the decision.

used as feed for young calves. That objective is clearly set out in the third recital in the preamble to Regulation No 1844/77 which states that "in view of the size of aid to be granted, it is necessary to take measures which will guarantee that the skimmed-milk powder is not diverted from its final use" and that "purchasers should therefore again be made subject to the obligation provided for in Regulation (EEC) No 368/77 to denature the skimmed-milk powder ... in such a way as to exclude its use for calf feed". It is justified by the fact that the grant of aid in the case of feed for animals other than young calves which, as was explained at the hearing, amounts to approximately 100 European currency units (ECU) per 100 kg is much higher than that provided for in the case of feed for young calves, which is approximately 60 ECU for the same quantity. The Commission seeks to prevent unauthorized use of the product by means of the provisions relating to ingredients other than fish meal, namely, in the case of the formula involved in this instance, ferrous sulphate and copper sulphate. Therefore it is necessary to determine in the light of that objective alone whether or not the rule relating to the uniform distribution of copper sulphate constitutes a requirement which is manifestly irrelevant. That, in my opinion, is the crux of the matter.

4. RU-MI has, on the basis of an expert opinion, assured the Court that the incorporation in the mixture of a quantity of copper sulphate corresponding to — and even, in this case, considerably in excess of — the minimum quantity prescribed by Formula I B and the presence of copper sulphate granules at least 30% of which are less than 200 microns in size constitute an absolute guarantee that the final product obtained cannot be diverted from its intended purpose in order to be used as feed for young calves.

The Commission, however, has informed the Court, also on the basis of an expert opinion, that uniform distribution of the granules is necessary in order to avoid the risk that a quantity of milk powder in which the sulphate has not been distributed may be separated physically from the rest of the mixture and may therefore be used as feed for young calves. In the Commission's view, such separation is technically possible, either by sifting or by vibration, and is economically profitable in view of the considerable difference between the amount of aid granted in the case of feed for calves and the amount granted in the case of feed for other animals.

In response to that specific argument, RU-MI points out that, technically it is impossible for any sieve to have a mesh sufficiently fine to retain the copper sulphate granules and that, from the economic point of view, the process of separation referred to by the Commission would, even if it were technically possible, require the denatured milk to be transported to the premises of an undertaking with adequate facilities for sifting it, which would render the cost of the operation absolutely prohibitive.

In the light of that exchange of views, the plaintiff in the main action appears to me to be in a stronger position than the Commission. In particular, there do not seem to be any reasonable grounds on which the arguments put forward by the plaintiff to meet the objections raised by the Commission can be refuted.

For that reason, I am of the opinion that the Court should rule as follows:

Provided that all the other conditions laid down by Commission Regulation (EEC) No 1844/77 are satisfied, in particular the condition relating to the quantity of copper sulphate required for the denaturing of the skimmed-milk powder in accordaance with Formula I B in Section 1 of the Annex to Commission Regulation (EEC) No 368/77, the requirement concerning the uniform distribution of the copper sulphate prescribed in Section 3 D of the same annex is invalid since, being manifestly irrelevant for the attainment of the objective of Regulation No 1844/77, which is to prevent the denatured products from being used as feed for young calves, it is contrary to the principle of proportionality.