JUDGMENT OF THE COURT
15 SEPTEMBER 1982 [1]

Denkavit Futtermittel GmbH v Federal Republic of Germany (reference for a preliminary ruling from the Verwaltungsgericht Frankfurt am Main)

(Aid for skimmed milk — Inspection charges)

Case 233/81

Agriculture — Common organization of the markets — Milk and milk products — Aid for skimmed milk — Cost of the necessary inspections — Charging to the undertaking concerned — Permissibility — Conditions

(Commission Regulation No 1725/79, Art. 10)

Article 10 of Regulation No 1725/79 does not prohibit Member States from charging, under national legislation, the cost of carrying out inspections pursuant to that article to the undertaking concerned provided that the charges which the undertaking is asked to pay represent the normal cost of inspections of that nature and are not so great as to be liable to deter undertakings from carrying on the activities which the aid for skimmed milk is intended to encourage.

In Case 233/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht [Administrative Court] Frankfurt am Main for a preliminary ruling in the action pending before that court between

DENKAVIT FUTTERMITTEL GMBH, Warendorf,

and

FEDERAL REPUBLIC OF GERMANY, represented by the Bundesamt für Ernährung und Forstwirtschaft [Federal Office for Food and Forestry], Frankfurt am Main,

1 — Language of the Case: German

on the interpretation of Article 10 of 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 (Official Journal L 199, p. 1),

THE COURT

composed of: J. Mertens de Wilmars, President, G. Bosco, A. Touffait and O. Due (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe, T. Koopmans, U. Everling, A. Chloros and F. Grévisse, Judges,

Advocate General: F. Capotorti
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The order making the reference, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

Denkavit Futtermittel GmbH, the plaintiff in the main proceedings, (hereinafter referred to as "Denkavit") is a manufacturer of milk-based substitute feedingstuffs for calves. In that manufacturing process it uses skimmed-milk powder in respect of which it receives aid. That aid is designed to promote the sale of a part of the surplus production of milk products in the form of feed for animals.

The grant of the aid, consideration of the conditions for the grant thereof and the relevant inspection measures are governed by the following provisions:

Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (Official Journal, English Special Edition 1968 (I), p. 176). Pursuant to Article 10 (1) of that basic regulation, with regard to the milk products sector "aid shall be granted for skimmed milk and skimmed-milk powder which are produced in the Community and are for use as feedingstuffs if these products reach certain standards";

Regulation (EEC) No 986/68 of the Council of 15 July 1968 laying down general rules for granting aid for skimmed milk and skimmed-milk powder for use as feed (Official Journal, English Special Edition 1968 (I), p. 260). That regulation, which was adopted pursuant to Article 10 (2) of Regulation No 804/68, lays down the basic substantive conditions for the system of aid. It is the task of the intervention agency of each Member State to pay the amount of the aid after proof that the skimmed milk has been used as feed or for the manufacture of compound feedingstuffs or that the skimmed-milk powder has been denatured or used for the manufacture of compound feedingstuffs. Article 4 (2) requires Member States to take the measures necessary to ensure the application of those provisions.

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. That regulation, adopted pursuant to Article 10 (3) of basic Regulation No 804/68, adopts provisions in implementation of Regulation No 986/68. It defines certain terms (for example "denaturing" and "compound feedingstuffs"), lays down detailed rules on the manufacturing and marketing procedures for feedingstuffs for animals and provides for inspection measures.

Effect was given to those Community regulations in the Federal Republic of Germany by the German implementing law on the common organization of the markets (Bundesgesetzblatt I 1972, p. 1617) and by the adoption of the German regulation relating to the grant of aid to skimmed milk of 31 May 1977 (Bundesgesetzblatt I, p. 792).

Skimmed-milk powder used for milk-based substitute feedingstuffs for animals is eligible for the grant of aid only if the skimmed-milk powder satisfies the conditions set out in Article 1 of Regulation No 1725/79 and if the milk-based substitute feedingstuffs for animals satisfy the conditions laid down in Article 4 of that regulation. In order to ensure compliance with those provisions, national authorities are required to take the inspection measures stipulated in Article 10 of Regulation No 1725/79. To that end, in addition to the regular inspection of records and accounts they must also, at least once a month, take samples of the products in question on the premises used for manufacture and analyse their composition.

Pursuant to Article 12 of the aforesaid German regulation relating to the grant of aid for skimmed milk, a fee is payable in respect of the costs incurred in the taking of samples and their analysis. That provision is worded as follows:

"Where, pursuant to the provisions mentioned in Article 1, supervision by the administrative authorities necessitates the taking of samples or analyses of the products the costs relating to the packaging and transport of samples and the analysis of the products must be refunded to the departments responsible under Article 2. Those costs shall be

borne by the person submitting the application for aid."

On the basis of that provision Denkavit received a demand to pay charges amounting to DM 329.90. Those inspection charges related to an application for aid amounting to DM 1 745 604.58 in respect of 115 572 kg of skimmed-milk powder.

Denkavit objected to that demand, but without success, and consequently brought an action before the Verwaltungsgericht [Administrative Court] Frankfurt am Main, which stayed the action and referred the following question to the Court of Justice:

"Is it compatible with Community law for the Federal Republic of Germany to impose a charge for the costs of inspecting products under Article 10 of Commission Regulation (EEC) No 1725/79 of 26 July 1979 (Official Journal 1979, L 199, p. 1)?".

The order for reference dated 8 July 1981 was lodged at the Court Registry on 17 August 1981.

In pursuance of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted on behalf of Denkavit, the plaintiff in the main action, by Dietrich Ehle, Rechtsanwalt, Cologne, by the Government of the Federal Republic of Germany, represented by M. Seidel, acting as Agent, and by the Commission of the European Communities, represented by Meinhard Hilf, a member of its Legal Department, acting as Agent, assisted by Albrecht Stockburger, Rechtsanwalt, Frankfurt am Main.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

II — Summary of the written observations submitted to the Court

As to the facts *Denkavit* observes first that its associated companies in other Member States of the EEC are likewise subject to regular inspections under the provisions of Article 10 of Regulation No 1725/79. None of those companies is however required to pay a fee for the costs relating to those inspections.

As to the legal position Denkavit relies on three arguments in claiming that the charging of fees under Article 12 of the German regulation relating to the grant of aid to skimmed milk is incompatible with Community law:

1. There is no legal basis in Community law for the charging of such a fee since Member States have no power to adopt national provisions dealing with the costs of inspections imposed by the Community.

2. It is in breach of the common price system.

3. The administrative actions giving rise to the charges are undertaken solely in the general interest.

1. *As to the absence of Community rules relating to the charges, Denkavit* observes that Article 10 of Regulation No 1725/79 contains no provision relating to the costs of the regular inspections of all undertakings manufacturing the products in question which the authorities are required to carry out. On the other hand Article 9 (4) of that regulation does provide for the recovery of costs in respect of a special investigation carried out at the claimant's request and in his interest.

The regulation thus makes a clear distinction between those two types of inspection. Therefore, Denkavit maintains that the legislature deliberately refrained from stipulating that the recipient of aid must bear the costs relating to regular inspections. Regulation No 1725/79 constitutes an exhaustive set of rules. The Member States may thus not claim fees to cover the costs of regular inspections.

Denkavit alleges, furthermore, that the Member States are not empowered to adopt national provisions relating to charges. The judgment of the Court of 30 November 1978 in Case 31/78 *Bussone* v *Italian Ministry for Agriculture and Forestry* [1978] ECR 2429 appears to be based on a different idea but that judgment is not relevant to the present case. On the one hand the organization of the market in eggs which was at issue in that case did not lead to a standardization of prices unlike the provisions governing the market for milk products which is relevant in this case. On the other hand that case concerned quality controls carried out in the interest of the consumer whilst the present case concerns inspections carried out solely in the general interest.

Furthermore, the rules concerning the charges at issue are not procedural rules but have the effect of imposing a supplementary condition for the grant of the aid, a condition not stipulated by Regulation No 1725/79 which governs the matter.

According to Denkavit even the Commission has no power under Regulation No 1725/79 to impose on the undertakings concerned an obligation to bear the charges of those inspections. In fact Article 4 (2) of Regulation No 986/68 of the Council, as amended by Regulation No 1038/72 of the Council of 18 May 1972 (Official Journal, English Special Edition 1972 (II), p. 456), provides that "Member States shall take the measures *necessary*" to ensure the application of the provisions laid down in Article 2 (4) and (5) and Article 3 (2). The implementing regulation adopted by the Commission could not amend the basic regulation or derogate from it. Provisions governing charges are not necessary for the exercise of supervisory control by the State (see judgments of the Court of 14 December 1972 in Case 29/72 *Marimex* v *Amministrazione delle Finanze dello Stato* [1972] ECR 1309 at paragraph 5, and of 25 January 1977 in Case 46/76 *Bauhuis* v *Netherlands* [1977] ECR 5 at paragraph 14. The same argument applies *a fortiori* to the relationship of a Commission regulation to a national implementing regulation (see judgment of the Court of 11 February 1971 in Case 39/70 *Norddeutscher Vieh- und Fleischkontor* v *Hauptzollamt Hamburg-St. Annen* [1971] ECR 49 at paragraph 4).

Finally Denkavit emphasizes that no support for the obligation to pay the charges may be drawn from the rules governing the obligation to furnish proof underlying Regulation No 1725/79. Two distinct rules are involved which in the present case bear no relation to each other. Community law admits of no general principle according to which legitimate administrative controls justify the charging of a fee for the costs which they entail (see judgment of the Court of 5 July 1978 in Case 137/77 *City of Frankfurt am Main* v *Neumann* [1978] ECR 1637 at paragraph 12).

The *Government of the Federal Republic of Germany* considers that the inspection charges provided for in Article 10 of Regulation No 1725/79 constitute one of the preconditions for entitlement to benefit from the aid. Those pre-

conditions are laid down in Article 1, 3 and 4 of Regulation No 1725/79 and in Article 1 of Regulation No 986/68. In accordance with the general rules governing the obligation to furnish proof it is the person claiming entitlement who must prove at his own expense that those preconditions have been satisfied. That proof cannot be established without a laboratory inspection of the compound feedingstuffs for animals manufactured in accordance with Article 4 of Regulation No 1725/79. For that reason the cost of those inspections should be borne by the undertaking concerned.

In fact the rules governing those charges are an integral part of the procedural rules which must be applied when the regulation is implemented. In accordance with the case-law of the Court it is for the Member States, in the absence of Community rules, to adopt the necessary procedural provisions or to apply, if appropriate, existing national rules of procedure. If that argument is accepted the charging of national fees intended to cover costs of inspections imposed by Community law must be considered to be lawful (see the judgments of the Court of 30 November 1978 in *Bussone*, mentioned above, of 16 December 1976 in Case 33/76 *REWE* v *Landwirtschaftskammer Saarland* [1976] ECR 1989, of 16 December 1976 in Case 45/76 *Comet* v *Produktschap voor Siergewassen* [1976] ECR 2043 and of 12 June 1980 in Joined Cases 119 and 126/79 *Lippische Hauptgenossenschaft and Westfälische Central-Genossenschaft* v *Bundesanstalt für landwirtschaftliche Marktordnung* [1980] ECR 1863.

Such an interpretation does not conflict with Article 9 (4) of Regulation (EEC) No 1725/79. That provision is concerned more with a specific case namely that of a special investigation carried out in the sole interest of the recipient of the aid if that person, after an initial inspection under Article 10 has led to a negative result, nevertheless still wishes to prove his entitlement to the aid.

The *Commission* observes that the detailed rules governing inspection procedures must be laid down by the Member States since the Community legislature refrained from laying down all the procedural details. In the same way the question of the financing of the inspections must be a matter for the discretion of the Member States (see judgment in *Bussone* mentioned above and the judgment of the Court of 12 June 1980 in Case 130/79 *Express Dairy Foods* [1980] ECR 1887).

The Commission considers that Article 9 (4) of Regulation No 1725/79 is intended to cover an exceptional case. In this particular case involving the recovery of an aid unduly paid the Community legislature thought fit following regular inspections which achieved negative results to provide for the possibility of a "special" investigation enabling the person concerned to prove that a part only of his production failed to satisfy the conditions laid down by the regulation. It is not possible to draw any conclusions from that as to the financing of general inspection measures laid down by Article 10.

2. *As to the infringement of the common system of prices* Denkavit refers to the case-law of the Court from which it is clear that Member States may no longer, by means of unilateral provisions, intervene in the machinery of price formation as it exists following the common organization of markets (see judgment of the Court of 18 October 1979 in Case 5/79 *Procureur Général* v *Buys and Others* [1979] ECR 3203). The amount of the aid in question may not be influenced either directly or indirectly

by measures adopted unilaterally by a Member State.

Denkavit maintains that the charging of fees for the costs of inspection in fact reduces the amount of the aid granted, thus threatening the objective of the Community which is to fix the aid according to economic criteria laid down by Article 2a of Regulation No 986/68 as inserted by Regulation No 666/74 (Official Journal 1974, L 85, p. 58). As a result the net price of skimmed-milk powder intended for feed for animals is higher in the Federal Republic of Germany than in the other Member States where no such system exists.

The *Government of the Federal Republic of Germany* considers that the present case does not involve a direct challenge to the system of prices. Therefore the judgment of the Court of 23 January 1975 in Case 31/74 (*Galli* [1975] ECR 47 at paragraph 15) is not relevant to the case. At the most there is no more than an indirect impediment which can hardly be said to have even nominal importance. In point of fact the fees relating to inspection costs amount to 0.03 % of the total of the aid in question.

Nor was there a breach of the principle of equality laid down by Article 40 (3) of the EEC Treaty since the fees in question were charged according to uniform criteria. The fact that other Member States charge no like fee or no fee at all does not amount to any kind of a breach of the principle of equality but merely demonstrates that the Member States have power to provide national rules relating to the cost of inspections until harmonization has been achieved in that field.

The *Commission* recalls the judgment given in Case 31/78 *Bussone,* mentioned above, according to which the discretion conceded to Member States as regards the means of regulating administrative costs may not be exercised in such a way as to put at risk the objectives of the rules conferring such discretion. The amount of the inspection charges in this case is not such as to put at risk the objective of the aid, namely the maintenance of the target price. Given the relation between the amount of the inspection charges (DM 329.90) and the amount of the aid (DM 1.7 million) it cannot be claimed that the imposition of charges might hamper the achievement of the objectives of the aid. The relationship in this case between those two amounts may moreover be considered to be representative.

3. *As to the nature of the charges*

Denkavit observes that it is clear from the case-law of the Court that administrative action by the State, which is intended to maintain a system of inspections in the general interest, cannot be considered a service rendered to an individual of such a nature as to justify the imposition of a pecuniary charge. Such charges should on the contrary be borne by the public.

Denkavit stresses that the aid to skimmed-milk powder is granted solely in the general interest. It is not intended to confer an advantage on the industry concerned but to ensure the proper functioning of the common organization of the market (see judgments of the Court of 14 March 1973 in Case 57/72 *Westzucker* [1973] ECR 321 at paragraph 20; and of 21 February 1974 in Case 162/73 *Birra Dreher* [1974] ECR 201 at paragraph 8). The grant of direct aid is intended to avoid the stocking of skimmed-milk powder.

If the aid itself is granted in the general interest that applies *a fortiori* to the regular inspections carried out within the framework of the aid system. The object of the inspections is precisely to ensure that the skimmed-milk powder is actually used for animal feedingstuffs and to prevent the same product from benefiting from the aid several times (see third recital in the preamble to Regulation No 1725/79). As far as Denkavit is concerned it thus constitutes an inspection for fiscal purposes carried out solely in the interest of the Community.

In conclusion Denkavit proposes that the Court should give the following reply to the question raised by the Verwaltungsgericht Frankfurt:

"The fees which the Federal Republic of Germany demands from persons applying for aid, to cover the costs relating to the packaging and transport of samples and the costs relating to inspections of products carried out in pursuance of Article 10 of Regulation No 1725/79, are incompatible with Regulation No 1725/79 and with Regulations Nos 804/68 and 986/68."

The *Government of the Federal Republic of Germany* argues that neither the system of aid in question nor the system of inspections accompanying it is intended to serve exclusively the public interest. The public interest lies only in the creation of certain incentives to undertakings. Each private undertaking then decides if it is in its own interest to benefit from those incentives. Moreover the aid granted represents an economic advantage for manufacturers of compound animal feedingstuffs because it enables them to offer compound animal feedingstuffs of high quality at low prices and thus to obtain a market advantage.

As a result of those considerations the Government of the Federal Republic of Germany concludes that previous decisions of the Court relating to administrative action by the State which seeks to enforce a control measure prescribed solely in the public interest and which thus does not constitute a service rendered to an individual cannot be transposed to the present case. The controls involved in those cases were imposed *solely* on grounds of health policy in the context of the importation of goods coming from another Member State. The interests which were at stake in those cases were thus different from those at stake in this case where it is only by means of the inspections in question that it is possible to prove entitlement to the aid.

In conclusion the Government of the Federal Republic of Germany considers that an affirmative reply should be given to the question raised.

The *Commission* maintains that the case-law of the Court allows no assumption to be made that Member States are only empowered to charge fees for costs of inspections where the State has performed a service in return. It claims that there is only one precedent, namely the judgment of the Court of 25 January 1977 in Case 46/76 *Bauhuis*, mentioned above, which however involved Articles 9, 12, 13 and 16 of the Treaty. In the present case it is not the principle of free movement which is at stake but the imposition of charges relating to inspections carried out in the framework of the common organizations of the markets.

In the same way the judgment in *Bussone*, mentioned above, gives no ground for concluding that the charging of a fee for an inspection always implies that those inspections represent a service rendered by the State to the individual concerned.

The Commission explains that every recipient of aid must furnish proof of his entitlement to such aid. The recipient only discharges that burden of proof when the results of the inspections carried out at his premises, which are recorded in the analysis and inspection reports, have given rise to no observations (Article 9 (2) (b)). Article 9 (2) sets out very clearly that the aid is to be paid only if the applicant supplies on the one hand satisfactory evidence of processing during the month for which the aid is applied for and on the other hand supplies the analysis report and inspection report corresponding to the amounts processed during the month preceding the month in respect of which the aid is applied for. The inspection authority, by verifying the quality of the product, therefore relieves the applicant of a good deal of his obligation to furnish proof. In the absence of any inspections by the administration it would be for the applicant to supply in every case proof of quality, proof which he might only be able to supply by arranging for regular private analyses and inspections to be carried out, which would be a costly matter.

In conclusion the Commission proposes that the Court should give the following reply to the question raised:

"The charging by the Federal Republic of Germany of fees corresponding to the costs actually borne by the administration in respect of inspections of products carried out in pursuance of Article 10 of Commission Regulation No 1725/79 of 26 July 1979 (Official Journal L 199, p. 1) is compatible with Community law."

III — Oral procedure

At the sitting on 26 May 1982 oral argument was presented for Denkavit by Dietrich Ehle, Rechtsanwalt, Cologne, and for the Commission of the European Communities by Meinhard Hilf, a member of its Legal Department, acting as Agent, assisted by Albrecht Stockburger, Rechtsanwalt, Frankfurt am Main.

The Advocate General delivered his opinion at the sitting on 30 June 1982.

Decision

1 By an order of 8 July 1981 which was received by the Court on 17 August 1981 the Verwaltungsgericht [Administrative Court] Frankfurt am Main referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question concerning the interpretation of Article 10 of 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 (Official Journal L 199, p. 1).

2 The question arose in the course of an action by a manufacturer of calf feed made from skimmed-milk powder challenging a decision of the Bundesamt für Ernährung und Forstwirtschaft [Federal Office for Food and Forestry], the German intervention agency, which charged it DM 329.90 for expenses connected with the inspection of products eligible for Community aid. The decision was based on Article 12 of the German regulation of 1977 on the grant of aid for skimmed milk (Beihilfenverordnung-Magermilch [skimmed milk aid regulation] Bundesgesetzblatt 1977 I, p. 792) which provides that the expenditure incurred in taking samples and making analyses of goods is to be charged to the persons applying for aid.

3 The undertaking in question maintained that the Community regulations governing aid for the use of skimmed-milk powder for animal feed left the Member States no discretion to regulate the manner in which the necessary inspections connected with the grant of aid in that sector were to be exercised, and the Verwaltungsgericht therefore asked the Court whether it was compatible with Community law for the Federal Republic of Germany to impose a charge for the cost of inspecting products pursuant to Article 10 of Regulation No 1725/79.

4 The point raised by the national court in the question is whether Article 10 is to be interpreted as preventing a Member State from charging undertakings, under national law, for the cost of the inspections carried out in pursuance of that provision.

5 It should be noted that Article 10 of Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (Official Journal, English Special Edition 1968 (I), p. 176) provides that aid is to be granted for skimmed-milk powder which is produced in the Community and is for use as feedingstuffs if the product reaches certain standards. Regulation (EEC) No 986/68 of the Council of 15 July 1968 laying down general rules for granting aid for skimmed milk and skimmed-milk powder for use as feed (Official Journal, English Special Edition 1968 (I), p. 262) provides, in Article 3, that aid shall be paid only when proof has been given that the skimmed-milk powder has been denatured or used in the manufacture of compound feedingstuffs and in Article 4, as amended by Regulation No 1038/72 of the Council of 18 May

1972 (Official Journal, English Special Edition 1972 (II), p. 456), that Member States are to take the measures necessary to ensure the application of those provisions.

6 That is the context in which Article 10 of Regulation No 1725/79 must be placed. It describes the inspection measures which are to be taken by the Member States as regards, in particular, the maximum moisture content of skimmed-milk powder and the use of the product, whether as such or in the form of a mixture, in the manufacture of compound feedingstuffs within the meaning of the regulation. As to that last point, Article 10 (2) provides that the control measures to be determined by the Member State concerned are to fulfil at least the conditions laid down therein. Article 10 (3) provides that the results of the inspections are to be recorded by the agency responsible for inspection in the analysis report and the inspection report the form of which is laid down in the regulation; copies of the documents are to be forwarded to the undertaking concerned.

7 Article 10 of Regulation No 1725/79 reveals on examination that no provision is made as to the costs of the inspections which are to be carried out. However, inasmuch as Article 10 states that the control measures are to fulfil "at least" the conditions laid down therein, and provides that they are to be determined by the Member States, it indicates that the Community rules concerning such inspections are not exhaustive.

8 The wording of the regulation does not, therefore, prevent Member States either from carrying out such inspections free of charge or from requiring the undertakings in question to reimburse the expenditure which such inspections entail.

9 It must therefore be concluded, as the Court has held with regard to the common organization of the market in eggs (judgment of 13 November 1978 in *Bussone*, Case 31/78 [1978] ECR 2429), that the Community rules leave Member States free to resolve the problem of financing the controls.

10 While Member States' freedom in that respect may not be used in such a way as to jeopardize the objectives of the rules under which it is granted those

objectives will not be jeopardized if the charges which the undertaking is asked to pay represent the normal cost of inspections of that nature and are not so great as to be liable to deter undertakings from carrying on the activities which the aid is intended to encourage.

11 In the order making the reference the Court's attention is also drawn to Article 9 (4) of Regulation No 1725/79 which provides that, if the applicant so requests, a special investigation may be carried out, the costs of which shall be borne by the applicant. Since there is no express provision as to costs in Article 10 it may be inferred, according to the order, that costs connected with inspections carried out pursuant to Article 10 may not be recovered from the undertakings concerned.

12 It should be noted, however, as the Commission has rightly emphasized, that Article 9 (4) refers to a specific case, namely that when recovery is sought of aid unduly paid the undertaking in question may furnish proof that the relevant Community provisions have been disregarded in respect of only some of the skimmed milk or skimmed-milk powder which was used between two dates on which inspections were carried out. The fact that Article 9 (4) requires the costs of furnishing such proof to be borne by the undertaking concerned has therefore no bearing on the interpretation to be given to Article 10.

13 For all those reasons the interpretation to be given in reply to the question which has been raised must be that Article 10 of Regulation No 1725/79 does not prohibit Member States from charging, under national legislation, the cost of carrying out inspections pursuant to that article to the undertaking concerned provided that the charges which the undertaking is asked to pay represent the normal cost of inspections of that nature and are not so great as to be liable to deter undertakings from carrying out the activities which the aid is intended to encourage.

Costs

14 The costs incurred by the Government of the Federal Republic of Germany and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in

so far as the parties to the main dispute are concerned, in the nature of a step in the action before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Verwaltungsgericht Frankfurt am Main by an order dated 8 July 1981, hereby rules:

Article 10 of Regulation No 1725/79 does not prohibit Member States from charging, under national legislation, the cost of carrying out inspections pursuant to that article to the undertaking concerned provided that the charges which the undertaking is asked to pay represent the normal cost of inspections of that nature and are not so great as to be liable to deter undertakings from carrying on the activities which the aid is intended to encourage.

Mertens de Wilmars Bosco Touffait

Due Pescatore Mackenzie Stuart O'Keeffe

Koopmans Everling Chloros Grévisse

Delivered in open court in Luxembourg on 15 September 1982.

For the Registrar

H. A. Rühl
Principal Administrator

J. Mertens de Wilmars
President