In Case 46/82,

FEDERAL REPUBLIC OF GERMANY, represented by Dr Martin Seidel, Ministerialrat at the Federal Ministry of Economics, Bonn, and Jochim Sedemund, Cologne, acting as authorized Agents, with an address for service in Luxembourg at the Chancery of the Embassy of the Federal Republic of Germany, 20-22 Avenue Émile-Reuter,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Jörn Sack, a member of its Legal Department, with an address for service in Luxembourg at the office of Oreste Montalto, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that Commission Decision No 81/1034/EEC of 16 November 1981 (Official Journal, L 375, p. 7), concerning the clearance of the accounts presented by the Federal Republic of Germany in respect of the European Agricultural Guidance and Guarantee Fund, Guarantee Section, Expenditure for 1975, is void, inasmuch as the Commission has failed to charge to the Fund the sum of DM 16 978 093.28 for the payment of monetary compensatory amounts relating to national deliveries of wheat and wheat flour by way of food aid, together with the sum of DM 945.51 in respect of the payment of aid for the private storage of table wine,

THE COURT,

composed of: J. Mertens de Wilmars, President, K. Bahlmann and Y. Galmot (President of Chambers), P. Pescatore, O. Due, U. Everling and C. Kakouris, Judges,

Advocate General: S. Rozès
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure, and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

In the contested decision of 16 November 1981, which was notified to the Permanent Representation of the Federal Republic of Germany at the European Communities on 3 December 1981, the Commission disallowed the financing by the Community of a sum totalling DM 32 894 745.37.

By way of reasons for disallowing the sum in question, the decision itself, referring exclusively to Articles 2 and 3 of Regulation (EEC) No 729/70 of the Council of 21 April 1970 (Official Journal, English Special Edition 1970 (I), p. 218), observed in general terms that the refunds disallowed had not been granted in accordance with the Community rules on the subject.

Following suspension of the proceedings pending before the Court, the parties reached a partial agreement succeeding in appreciably reducing the amount disputed, which now stands at DM 5 407 890.68, instead of the figure of DM 16 978 093.28 entered in the application. As regards the sum of DM 945.51 relating to aid for the storage of wine, the issue became nugatory as the parties were able to reach agreement on the matter.

Thus, according to the concurring statements of the two parties, the present stage of the action is concerned exclusively with the monetary compensatory amounts paid out during the financial year 1975 for national supplies of wheat and wheat flour drawn from public intervention stocks and delivered as part of the food-aid programme between 1 July 1972 and 18 March 1975.

In respect of those supplies the Einfuhr- und Vorratsstelle für Getreide und Futtermittel [Import and Storage Agency for Cereals and Feedingstuffs, hereinafter referred to as "the German intervention agency"] had, within the permitted period, submitted the payment documents to the Hauptzollamt Hamburg-Jonas [Principal Customs Office Hamburg-Jonas, hereinafter referred to as "the Hauptzollamt"], the body empowered to disburse export refunds and monetary compensatory amounts; the documents did not, however, contain any express request for monetary compensatory amounts.

The Hauptzollamt initially did no more than give a decision on the export refunds, and, in most cases, it refused payment thereof on the ground that no such refunds existed between November 1973 and March 1975.

During the summer of 1975 the German intervention agency then claimed payment of the monetary compensatory amounts *a posteriori*, by means of applications which were all drawn up on plain paper and consisted of a single sentence referring expressly, *inter alia*, to the original payment documents.

Following those applications, the Hauptzollamt adopted decisions permitting the

payment of the monetary compensatory amounts and paid over a total of DM 18 230 594 in the course of the financial year 1975, in pursuance of Community rules on the subject, in particular Regulation (EEC) No 1463/73 of the Commission of 30 May 1973 laying down detailed rules for the application of monetary compensatory amounts (Official Journal, L 146, p. 1). As the applications from the German intervention agency for payment of the monetary compensatory amounts had been received by the Hauptzollamt within the six-month period laid down by Article 14 of that regulation, the payments in question were charged by the Commission to the European Agricultural Guidance and Guarantee Fund (hereinafter referred to as "the Fund").

Apart from those cases, which involved DM 1 252 500.72, the Commission refused Community financing for the compensatory amounts paid retroactively, on the ground that no express application as required by German law on the payment of monetary compensatory amounts had been submitted within the period prescribed by Community law. In that regard, it was alleged, there had therefore been an infringement of Article 14 of Regulation No 1463/73, which provides as follows:

"The application for payment of a 'monetary' compensatory amount must be submitted, save in cases of *force majeure,* within the six months following the date of completion of customs formalities; otherwise it shall be rejected."

Applications for monetary compensatory amounts must be submitted in accordance with Article 13 of the regulation, which provides that:

"Payment of 'monetary' compensatory amounts to be granted shall be made only in receipt of a written application from the person concerned. Member States may draw up a special form for this purpose."

The 200 or so requests for payment which the German intervention agency submitted to the Hauptzollamt between July 1972 and March 1975 took the form of printed forms known as "Control Copies 5" or "T 5" as prescribed by Community transit procedure, a specimen of which is annexed to Regulation (EEC) No 2315/69 of the Commission of 19 November 1969 on the use of Community transit documents for the purpose of applying Community measures for verifying the use and/or destination of goods (Official Journal, English Special Edition 1969 (II), p. 515). Article 1 of the regulation is worded as follows:

"When the application of a Community measure adopted in respect of imports or exports of goods, or of movement of goods within the Community, is conditional upon proof that such goods are intended for the use and/or destination provided for or prescribed by that measure, proof shall be furnished by producing a special copy of the Community transit document, hereinafter referred to as 'the control copy', bearing the number 5."

In the matter of monetary compensatory amounts, the applications for payment were submitted in several different forms.

In some cases the T 5 control copies bore the typewritten heading "Ausgleichsbetrag Währung" (monetary compensatory amount).

In many cases the control copy showed, under Heading 106, the provisions of the notices applicable in each instance, issued

by the Federal Ministry of Food, Agriculture and Forestry, laying down national implementing measures on the grant of monetary compensatory amounts.

Approximately one third of the T 5 control copies contained no express reference to the monetary compensatory amounts.

After the present action had been brought, the Commission agreed to charge the monetary compensatory amounts to the Fund provided that they had been paid over by the Hauptzollamt in cases which, despite the absence of any express request for payment, the control copies had referred to the compensatory amounts or had mentioned under Heading 106 the provisions of the aforesaid notices applicable to each particular case. Those cases represent a total of DM 11 570 202.60, thus reducing the disputed amount to DM 5 407 890.68.

The written procedure in this case followed the normal course except as regards the suspension of proceedings referred to above, which enabled the parties to reach a settlement out of court as regards part of their dispute.

Upon 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. However, the Court put various questions to the Government of the Federal Republic of Germany and to the Commission.

II — Conclusions of the parties

The *Government of the Federal Republic of Germany* claims, having regard to the explanations given after the commencement of the action, that the Court should:

1. Declare void the decision of the Commission of 16 November 1981 concerning the clearance of the accounts presented by the Federal Republic of Germany in respect of the expenditure financed by the European Agricultural Guidance and Guarantee Fund, Guarantee Section, Expenditure for 1975, in so far as a sum of DM 5 407 890.68 for the payment of monetary compensatory amounts in respect of German deliveries of food aid consisting of wheat and wheat flour was not taken over by the said Fund;

2. Order the Commission to pay the costs.

The *Commission* contends that the Court should:

1. Dismiss the applications in so far as the substantive issues have not been settled;

2. Order the applicants to pay the costs.

III — Submissions and arguments of the parties

The *Government of the Federal Republic of Germany* maintains that the delivery of fully completed control copies may be regarded as an implied request for payment of monetary compensatory amounts. In doing so it relies on a number of points and, in particular, on the following assertions which it makes:

(a) The control copies submitted showed by the very manner in which they had been completed that the exportation of the goods conferred entitlement to a refund.

(b) All the conditions required for the payment of monetary compensatory amounts were satisfied in the cases forming the subject-matter of these proceedings.

(c) It was pointless, in respect of the period from November 1973 to March 1975, to lodge applications for export refunds accompanied by a fully completed control copy unless the document was to be read as signifying the wish to receive *all* the refunds at issue, because the German intervention agency as originator of the appliction was equally aware that export refunds were out of the question at that time.

(d) It would be sheer formalism to require an express application for payment when it is clear from the documents produced, and in particular from the filling-in of columns which could serve no purpose other than payment, that the goods in question confer entitlement to such payment, and in circumstances where all the details needed for checking and calculating the amounts payable have been entered.

(e) The Commission itself readily acknowledged that the Fund should bear — and this, according to the applicant, emphasizes once again its formalistic approach — those disbursements of monetary compensatory amounts in respect of which the German intervention agency had, apart from submitting the fully-completed control copies, gone no further than to make an informal request for payment of the amounts.

The German Government points to the judgments of 6 June 1972 (Case 94/71, *Schlüter & Maack* v *Hauptzollamt Hamburg* [1972] ECR 307) and of 22 January 1975 (Case 55/74, *Unkel* v *Hauptzollamt Hamburg-Jonas,* [1975] ECR 9), both of which deal with cases in which the competent autority had refused payment of export refunds on the ground that the formal application for payment required under German law had not been submitted within the prescribed period. In both cases, the Court held that delivery of the full set of documents, as evidence that the goods qualify for a refund, is objectively equivalent to a sufficient application for payment. In the opinion of the German Government, the considerations on which those judgments are based are directly applicable in these proceedings. That follows, first, from the identical structure of the payment procedures and, secondly, from the fact that Article 6 (1) of Regulation No 1463/73 expressly declares in that context that provisions concerning the grant of export refunds shall apply to trade with non-member countries. Those two judgments demonstrate, the German Government alleges, that the fact of filling in the columns on the control copy constitutes sufficient evidence of the desire to receive the refund. It further emphasizes that, under paragraph 11 of the *Schlüter & Maack* judgment mentioned above, although Member States may, for reasons of internal administrative organization require exporters also to make an application in the form prescribed by national law, they are not entitled to penalize failure to fulfil this obligation by forfeiture of the right of a refund.

The German Government also argues that the interpretation of a declaration of a desire for payment cannot depend on the subjective manner in which the recipient thereof understands it. That

principle is also borne out by the two cases mentioned above, in which the Hauptzollamt had similarly been unwilling to concede that the export certificates or control copies held by the exporters constituted applications for export refunds, and in which the Court none the less acknowledged that the documents in queston might be regarded as such.

According to the German Government, the fact that the German intervention agency failed to take legal action against the decisions at issue is irrelevant. The absence of legal proceedings against the decisions adopted on the export refunds in no way affects the interpretation of the documents accompanying the application. In the first instance, the mere fact that no action has been brought against the partial absence of a decision on the application can no longer negate the objective declaratory value, which may be established by interpretation, possessed by the documents accompanying the application. Above all, however, German administrative law does not admit of a challenge to favourable decisions on export refunds. It cannot be accepted that that part of an application which has not received a favourable decision should be regarded as having been by implication rejected; on the contrary, the decision remains pending before the administrative body until such time as it becomes the subject of an express decision, whether favourable or not. It follows that the original favourable decision as part of the application cannot give rise to recourse to legal proceedings.

Referring to the arguments mentioned above and to the case-law of the Court, the German Government takes the view that submission of the duly completed copies must be viewed as an implied application for a refund of the monetary compensatory amounts, which it is entitled to claim even when the Commission has not previously acknowledged it, that is to say, in cases in which the copies contained no direct or indirect reference to monetary compensatory amounts.

Were the Court to give a narrow interpretation of the formal requirements imposed by Community law for an application for payment, the question of the allocation of costs should, at all events, be examined in the light of the principle of proportionality, which is also recognized by Community law.

The German Government stresses in that connection that this case is concerned with a formal defect pointed out by the Commission on the basis of a check which was not carried out until three years later, when the accounts were being cleared, and that the defect has no bearing whatever on the substantive merits of the application. In such a case it is incompatible with the principle of proportionality that an exceptionally strict interpretation of a mere provision governing form and procedure should lead, when all the conditions of substance are fulfilled, to the imposition on a Member State of the considerable financial burdens which properly fall upon the Fund by virtue of substantive provisions of Community law. In that connection the German Government refers to the judgment of the Court of 21 June 1979 (Case 240/78, *Atalanta* v *Produktschap voor Vee en Vlees*, [1979] ECR 2137).

The German Government observes that, unlike the circumstances of Case 240/78 mentioned above, this case is not concerned with non-compliance with a requirement of form but rather with the question whether infringement of a requirement of form imposed by

Community law may, by way of interpretation, be held to have occurred. The government further notes that when a number of interpretations of a provision are possible, the principle of proportionality itself demands, for the purposes of interpreting Community law, that preference be given to the interpretation which best accords with that principle.

Lastly, the German Government refers to the principle of equality of treatment. It claims that the Commission granted monetary compensatory amounts to all other Member States by way of Community financing of deliveries under the food-aid programme. As long as formal applications for payment have not been called for by all other Member States as they have been for the Federal Republic of Germany under its national legislation, there is discrimination against exporters, owing to the rejection of German applications which have indeed been the subject of a disbursement. Such an outcome is not compatible with Community law as understood by the Court in the matter of refunds; see the judgment in Case 94/71, mentioned above.

The *Commission* concedes that the submission of the T 5 document constitutes a written application for an export refund for the purposes of Community law whenever it appears from the information entered on the document that the product in question gives entitlement to the payment of a refund. The Commission sees no reason why the principle acknowledged by the Court should not apply to monetary compensatory amounts.

Nevertheless, in this case the Commission stresses that the fact that the use of special printed forms is expressly authorized by the second sentence of Article 13 of Regulation No 1463/73 shows that such use is not a matter coming exclusively within the competence of Member States to lay down procedure in cases where Community law has not already done so.

However, the Commission states that it was not guided by that aspect of the case when making its decision. In its opinion, the determining factor remains the fact that the German intervention agency not only omitted to indicate its wish to submit a claim for payment of the monetary compensatory amounts, but indeed indicated a wish *not* to submit such a claim. To award monetary compensatory amounts even when the party concerned has signified no desire to apply for them would be to ignore the principle that such amounts are paid, not as a matter of course but only on demand. If it were otherwise, the duty to submit an application would become quite meaningless and the principle of automactic payment would thereby be endorsed. A subsequent change of mind over the submission of an application cannot, in the Commission's view, assume any significance unless it takes the form of the submission of an application within the period prescribed.

According to the Commission, the fact that, in two out of three groups of cases, the T 5 documents refer to monetary compensatory amounts in one form or another is explained solely by the participation of private undertakings in export operations. Those undertakings completed the necessary documents in the same manner as those dealing with commercial exports. The German authorities would probably have not inserted such references into the documents. The fact the German authorities were late in including those references also demonstrates that they had not been expecting to do so and discovered the position only at the eleventh hour.

In those cases the Commission accepts the principle that the monetary compensatory amount should be paid, on the

ground that the party represented (the intervention agency) benefits inasmuch as its designated representatives (private undertakings) did more on its behalf than, according to the Commission, it had intended to do itself, namely by submitting in time applications for payment of monetary compensatory amounts.

The Commission believes that the Federal authorities had originally thought that there was no entitlement to the grant of monetary compensatory amounts. The Commission draws that inference not only from the fact that the German intervention agency failed to submit an application in accordance with the national rules in force, but also from the fact that such an application was lodged out of time, which, in its view, implies that it had not been preceded by any other application within the prescribed period. The inference is, the Commission contends, further borne out by the fact that the non-payment of the monetary compensatory amounts had initially been accepted without protest.

The inertia which the German intervention agency displayed towards applications for payment of monetary compensatory amounts is clearly demonstrated by the consideration that in some cases the Haupzollamt initially applied the monetary coefficient to the export refund but later cancelled it, without the relevant adjustments' eliciting any protest from the intervention agency. Lastly, the Commission notes that, in its decisions on the award of monetary compensatory amounts, the Hauptzollamt itself expressly mentioned that the applications had been submitted out of time by the intervention agency.

The Commission takes the view that it was not until the German authorities had realized that Regulation No 456/75 had, owing to the insertion of the new Article 16a into Regulation No 1463/73, precluded the application of monetary compensatory amounts (collection and award) both in trade within the Community and in the case of exports to non-member countries, whenever products drawn from intervention stocks were delivered as part of a national food-aid programme, that it became clear that, prior to the entry into force of that regulation, it was evidently possible to grant monetary compensatory amounts in respect of exports of agricultural produce effected in the context of national deliveries under the food-aid programme as well.

The Commission takes the view that, if it be regarded as lawful to require submission of a written application within a stated period and if, in particular, that requirement be considered proportionate to its purpose, the fact of submitting an application is a significant one. The absence of any desire to submit an application therefore calls for a refusal to award the monetary compensatory amounts.

Moreover, the Commission does not have the impression that it has relied on too strict or too formalistic an interpretation, or that it has thereby offended against the principle of proportionality.

It believes that the legal point raised in this connection comes down to the question of whether it is possible to regard delivery of the T 5 document as an application even when it may be taken as certain that the party concerned did not intend to submit an application for payment of monetary compensatory amounts.

Furthermore, the Commission rejects the Federal Government's argument that it would have been pointless to send back the duly completed control copies unless

the object were to obtain the monetary compenstory amounts for the period during which there was no entitlement to export refunds. On that point, the Commission contends that there might be other reasons to explain such conduct; for example, the documents might be lodged for statistical purposes. The lodging of documents such as the T 5 form might therefore serve to guard against all eventualities.

Lastly, the Commission remarks that in respect of the other Member States in which the question of the acceptance of claims for payment of compensatory amounts might arise, it has applied the same principles as in the present case.

In its reply, the *Federal German Government* dismisses the Commission's interpretation to the effect that the decisive factor for the acceptance of a claim for payment of monetary compensatory amounts is that the German intervention agency should manifest a conscious desire to that effect. The Federal Government emphasizes that, on the contrary, the above-mentioned case-law of the Court shows that it is unimportant that the documents should disclose a conscious desire on the part of the applicant to seek payment of monetary compensatory amounts; the only decisive point is, rather, the objective declaration contained in the documents delivered.

Consequently, the Commission's allegations that the German intervention agency did not consider itself entitled to payment of the monetary compensatory amounts in this case are beside the point.

In its rejoinder, the *Commission* summarizes its argument that the case-law of the Court relating to similar instances cannot be understood to mean that the submission of the control copies sets up an irrebuttable presumption of a request for payment of monetary compensatory amounts but, on the contrary, that monetary compensatory amounts may not be paid over in cases in which everything suggests that the exporter in question did not intend to claim such payment.

The Commission goes on to dismiss the Federal Government's argument that it would be contrary to the principle of proportionality to refuse reimbursement of monetary compensatory amounts paid by the Hauptzollamt. In the Commission's opinion, the Federal Government puts forward that argument on account of the size of the amounts at issue in this case. None the less, since the Federal Government does not deny in principle that the award of monetary compensatory amounts may, under Community law, be made conditional on submission of an application to that effect within a stated period, the size of the amounts in question cannot, in itself, nullify the relevant provision.

IV — Oral procedure

At the sitting on 17 May 1983, oral argument was presented by the Government of the Federal Republic of Germany, represented by Jochim Sedemund, and by the Commission, represented by Jörn Sack.

The Advocate General delivered her opinion at the sitting on 4 October 1983.

Decision

1 By an application lodged at the Court Registry on 8 February 1982, the Federal Republic of Germany brought an action under the first paragraph of Article 177 of the EEC Treaty, claiming that the Court should declare void Commission Decision No 81/1034/EEC of 16 November 1981 concerning the clearance of the accounts presented by the Federal Republic of Germany in respect of the European Agricultural Guidance and Guarantee Fund, Guarantee Section, Expenditure for 1975 (Official Journal, L 375, p. 7), in so far as the Commission failed to charge to the European Guidance and Guarantee Fund (hereinafter referred to as "the Fund") a sum of DM 16 978 093.28 for the payment of monetary compensatory amounts in respect of national deliveries of wheat and wheat flour by way of food aid to developing countries, and an amount of DM 945.51 for the payment of aids for the private storage of table wine. Following negotiations between the parties in the course of the written procedure, the Commission conceded that the Fund should bear the amount relating to the wine-storage, together with a part — namely DM 11 570 202.60 — of the sum claimed by way of monetary compensatory amounts, with the result that the dispute between the parties is henceforth confined to a sum of DM 5 407 890.68.

2 The monetary compensatory amounts at issue were awarded by the competent German authority, namely the Hauptzollamt [Principal Customs Office] Hamburg-Jonas (hereinafter referred to as "the Hauptzollamt"), to the Einfuhr- und Vorratsstelle für Getreide und Futtermittel [Import and Storage Agency for Cereals and Feedingstuffs, hereinafter referred to as "the German intervention agency"], in response to applications submitted by the latter in August 1975, in the form of reminders. The applications referred to export transactions carried out between 1 July 1972 and 18 March 1975.

3 On the occasion of those exports, the German intervention agency had submitted documents concerning payment to the Hauptzollamt within the six-month period laid down by Article 14 of Regulation No 1463/73 of the Commission of 30 May 1973 laying down detailed rules for the application of "monetary" compensatory amounts (Official Journal, L 146, p. 1). Amongst the documents were some referred to as "No 5 control copies", such as are required when the applications of a Community measure concerning the exportation of goods is conditional on evidence that the goods in question have been put to the use or have reached the destination referred to or prescribed by that measure. The documents also included

requests for export refunds but no express request for monetary compensatory amounts.

4 On reception of the documents, the Hauptzollamt granted export refunds in respect of export transactions carried out prior to November 1973, but refused them in respect of the period thereafter, on the ground that Community rules made no provision for refunds on export transactions carried out after November 1973. The Hauptzollamt made no decision as to the award of monetary compensatory amounts before receiving the reminders in August 1975.

5 The Commission is of the opinion that this absence of requests and decisions is explained inasmuch as both the Hauptzollamt and the German intervention agency were unaware of the fact that the export transactions which had been effected conferred an entitlement to monetary compensatory amounts. It was, the Commission contends, not until after publication of Regulation No 456/75 of the Commission of 26 February 1975 (Official Journal, L 51, p. 5), which abolished, as regards the future, the entitlement to monetary compensatory amounts in respect of food-aid transactions, that the German intervention agency and the Hauptzollamt realized that such entitlement actually existed in respect of the transactions already completed.

6 However, as regards exports effected more than six months prior to the reminders sent by the intervention agency, the Commission took the view, when the accounts were being cleared, that the retroactive award of such amounts had been contrary to the aforesaid Regulation No 1463/73, because Article 13 thereof requiers a written application from the party concerned, and also because, in the Commission's view, that application must be lodged within the same six-month period as that laid down by Article 14 with regard to submission of the application for payment. The Commission therefore decided not to charge those amounts to the Fund.

7 In court, the German Government referred in particular to the judgment of 22 January 1975 (Case 55/74 *Unkel* v *Hauptzollamt Hamburg-Jonas* [1975] ECR 9), in which the Court ruled that the submission of the control copy to the competent national authority for the grant of refunds was equivalent to an application for a refund if that copy contained information enabling it to be seen that it related to goods conferring an entitlement to the refund. The

government takes the view that this case-law may be regarded as applicable to the sphere of monetary compensatory amounts, especially as Article 6 of the aforesaid Regulation No 1463/73 provides that, in trade with non-member countries, provisions concerning the grant of export refunds shall apply to such amounts. The government further states that the control copies which were attached to the documents relating to payment lodged by the German intervention agency contained all the information required for the grant of the monetary compensatory amounts.

8 The Commission does not contest the latter statement and it accepts that the case-law cited above may equally be applied in the context of monetary compensatory amounts. It was for that reason, the Commission claims, that it agreed, following the negotiations in the course of the written procedure, to charge to the Fund the monetary compensatory amounts paid out by the Hauptzollamt in all cases in which the control copy contained any reference whatever to those amounts or to the rules governing them.

9 As regards the remaining cases on the other hand, the Commission maintains that it is impossible to postulate an application since there is no evidence of any desire to that effect. In such cases it is even obvious that the German intervention agency did not intend to submit an application.

10 In that connection, it is appropriate in the first place to stress that, although it may be necessary, for the proper working of the complex system of monetary compensatory amounts, to require, in Article 13 of the aforesaid Regulation No 1463/73, a written application from the person concerned, it is necessary, as the Court has previously held with with regard to refunds in its judgments of 6 June 1972 (Case 94/71 *Schlüter & Maack* v *Hauptzollamt Hamburg-Jonas* [1972] ECR 307 and 22 January 1975 (the *Unkel* case mentioned above), to avoid any formalism which would go further than is necessary for an effective supervision of the transactions.

11 In the second place, it is appropriate to recall that during the major part of the period in question exports of goods, as in this case, could not confer an entitlement to export refunds. For that reason, the lodging of the documents relating to payment with the authority empowered to grant refunds and monetary compensatory amounts may be seen to have been effected as a precaution, in case it should serve some useful purpose. In the cirsumstances it would be incorrect to construe the absence of an express application as a

waiver of entitlement to the amounts to which, according to the information contained in the documents regarding payment, the trader was entitled.

12 As it is common ground between the parties that the control copies which were enclosed with the documents regarding payment submitted by the German intervention agency contained details enabling it to be established that the goods involved conferred an entitlement to monetary compensatory amounts, the delivery of those control copies to the Hauptzollamt must therefore be regarded as equivalent to a written application for payment of those amounts.

13 It follows that the disputed decision should be declared void to the extent requested by the Federal Republic of Germany.

Costs

14 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares void Commission Decision No 81/1034/EEC of 16 November 1981 concerning the clearance of the accounts presented by the Federal Republic of Germany in respect of the European Agricultural Guidance and Guarantee Fund, Guarantee Section, Expenditure for 1975, in so far as the Commission refused to charge to the said Fund the sum of DM 5 407 890.68 by way of monetary**

compensatory amounts granted on the export of goods supplied as part of the national food-aid programme;

2. Orders the Commission to pay the costs.

Mertens de Wilmars Bahlmann Galmot

Pescatore Due Everling Kakouris

Delivered in open court in Luxembourg on 9 November 1983.

For the Registrar

H. A. Rühl

Principal Administrator

J. Mertens de Wilmars

President

OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 4 OCTOBER 1983 [1]

Mr President,
Members of the Court,

I — The Court has before it an action brought on 8 February 1982 by the Federal Republic of Germany against the Commission of the European Communities, seeking a declaration that its Decision No 81/1034 of 16 November 1981 disallowing the financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (hereinafter referred to as 'as Fund'), of the sum of DM 32 894 745.37.

The sum at issue covered two items: the first, of DM 945.51, related to the payment of aid for the private storage of table wine, and the second, of DM 16 978 093.28, related to payment by the competent customs office (Hamburg-Jonas) of monetary compensatory amounts for supplies of German food aid in the form of wheat and wheat flour, effected on behalf of the national intervention agency.

The grounds given for disallowing the latter sum were that it was not in

1 — Translated from the French.