Council laying down general rules for granting private storage aid for pigmeat and No 1889/76 of the Commission laying down detailed rules for granting private storage aid for pigmeat. The Member States may apportion amongst several national, institutions the task of adopting the various necessary implementing measures. In this latter case it is however incumbent on the said national institutions to ensure by appropriate means that the measures which they adopt are co-ordinated in such a way that they do not jeopardize the proper functioning of the organization of the market.

2. The belated transmission to the competent intervention agency of the documents relating to the various storage operations does not prevent the acquisition of the right to aid within the meaning of Article 6 (2) of Regulation No 1889/76 provided that the obligations set out in Article 3 (2) of the said regulation have been fulfilled in their entirety.

3. The absolute nature of Article 5 (2) of Regulation No 1889/76 is contrary to the principle of proportionality in that it does not permit the penalty for which it provides to be made commensurate with the degree of failure to implement the contractual obligations or with the seriousness of the breach of those obligations.

   Accordingly, notwithstanding the provisions of that article, Article 4 (2) (b) of Regulation No 2763/75 of the Council remains applicable in the sense that the competent authority may declare the deposit forfeit in whole or in part according to the gravity of the breach of the contractual obligations.

In Case 240/78

Reference to the Court under Article 177 of the EEC Treaty by the College van Beroep voor het Bedrijfsleven [administrative court of last instance in matters of trade and industry], The Hague, for a preliminary ruling in the proceedings pending before that court between

ATALANTA AMSTERDAM B.V., Amsterdam

and

PRODUKTSCHAP VOOR VEE EN VLEES, Rijswijk

on the interpretation of certain provisions of Regulation (EEC) No 2759/75 of the Council of 29 October 1975 on the common organization of the market in pigmeat (Official Journal L 282, p. 1), of Regulation (EEC) No 2763/75 of the Council of 29 October 1975 laying down general rules for granting private storage aid for pigmeat (Official Journal L 282, p. 19) and of Regulation (EEC) No 1889/76 of 29 July 1976 laying down detailed rules for granting private storage aid for pigmeat (Official Journal L 206, p. 82),

THE COURT

composed of: J. Mertens de Wilmars, President of the First Chamber, acting as President, Lord Mackenzie Stuart (President of the Second Chamber), P. Pescatore, M. Sørensen, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to 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

Regulation (EEC) No 2759/75 of the Council of 29 October 1975 on the common organization of the market in pigmeat (Official Journal L 282, p. 1) permits intervention measures to be taken when there is a substantial fall in the price of pigmeat in the Community (Article 4 (2) and (3)). Such intervention measures may take the form of aid for private storage (Article 3).

Regulation (EEC) No 2763/75 of the Council of 29 October 1975 laying down general rules for granting private storage aid for pigmeat (Official Journal L 282, p. 19) states that private storage aid is to be granted in accordance with the terms of contracts concluded with intervention agencies; such contracts are to express the reciprocal obligations of the contracting parties in standard terms for each product (Article 1 (3)). Pursuant to Article 3 (2) (c) of Commission Regulation (EEC) No 1889/76 of 29 July 1976 laying down detailed rules for granting private storage aid for pigmeat (Official Journal L 206, p. 82) one of the obligations which the contract concluded with the intervention agency "without delay" the documents relating to the various storage operations.

Regulation No 2763/75 of the Council further provides that only applicants who have given security for the fulfilment of their contract obligations by lodging a

deposit, "which shall be forfeited in whole or in part if these are not fulfilled or only partially fulfilled (Article 4 (2) (b)) shall be permitted to tender and to conclude a contract.

In this connexion Commission Regulation No 1889/76 contains the following provision:

"The security shall be wholly forfeit if the obligations imposed by the contract are not fulfilled" (Article 5 (2)).

In 1977 Atalanta Amsterdam B.V. (hereinafter referred to as "Atalanta") concluded a number of contracts with the Voedselvoorzieningsin- en verkoopbureau (the office for the purchase and sale of food supplies, hereinafter referred to as "the V.I.B."), the intervention agency competent in the Netherlands for storage aids. The V.I.B. stated in particular in Notice No 9/77 the conditions for the conclusion of contracts for private storage aids for pigmeat. Point V (E) of those conditions provides that the contracting party must draw up, on a special form provided for that purpose, a weekly list of the quantities stored, by product and by refrigeration plant. Those forms must be completed and sent to the V.I.B. accompanied by documents concerning the storage operations in sufficient time for them to reach it in the week following that in which the storage operations were effected.

For certain storage operations Atalanta omitted to send the documents to the V.I.B. within the prescribed period. The V.I.B. considered that the deposits lodged for the various contracts must therefore be forfeited. The V.I.B. notified that decision to Atalanta by a letter of 1 November 1977 whereby it also informed it that the Produktschap voor Vee en Vlees [Board for cattle and meat] would thereafter take charge of the procedure concerning aid and that Atalanta could, where appropriate, refer to the Produktschap in this matter.

Since the Produktschap considered that Atalanta, in breach of the provisions of Point V (E) of Notice No 9/77 of the V.I.B., had failed to fulfil within the proper time the obligations which, under the contracts, were conditions of the storage, it refused to grant the aid requested by Atalanta.

Atalanta accordingly instituted proceedings against the decision of the Produktschap. The proceedings were also directed against the decision declaring the deposits forfeit. The Produktschap, in the course of the oral procedure before the College van Beroep voor het Bedrijfsleven, declared that it could not arrive at a decision on the forfeiture of the deposits because it considered that power to take such a decision fell solely within the competence of the V.I.B.

The College van Beroep voor het Bedrijfsleven, by an order of 1 November 1978, submitted, in accordance with Article 177 of the EEC Treaty the following questions for a preliminary ruling to the Court of Justice.

"1 Does it follow from the provisions and the scope of Regulation (EEC) No 2759/75 of the Council, Regulation (EEC) No 2763/75 of the Council — in particular Article 1 (3) — and Commission Regulation (EEC) No 1889/76 — in particular Article 3 (2), Article 4 (2) and Article 8 — that the power to take decisions for the implementation and application of the granting of private storage aid for pigmeat provided for and regulated in those regulations, including the rules in respect of the provision and the possible forfeiture

of deposits, is exclusively held by the national intervention agencies,

or

must the provisions and the scope thereof be understood as meaning that the power to take decisions in respect of the implementation and application of the rules laid down by those provisions both in respect of the granting of aid and in respect of deposits, or else solely in respect of the granting of aid, is held by the national Member States, albeit with the obligation to grant the aid in accordance with the contract concluded with the relevant intervention agency?

II Properly interpreted, does Article 6 (2) and (3) of Commission Regulation (EEC) No 1889/76 signify that the storer

(1) has a right to aid if the obligations referred to in Article 3 (2) (a) of the aforesaid regulation are fulfilled in their entirety,

and

(2) has a right to payment of the amount of aid once it has been ascertained that the contractual obligations have been fulfilled and, *inter alia*, the proof of storage has been sent to the intervention agency, although this was not done 'without delay',

or

must the aforesaid Article 6 (2) and (3) be interpreted as signifying that although all the obligations set out in Article 3 (2) of the aforesaid regulation have been fulfilled the storer nevertheless is not entitled to aid if the proof of storage referred to in Article 3 (2) (c) of the regulation was sent to the relevant intervention agency but not 'without delay'?

III (1) Must the term 'obligations' in Article 4 (2) (b) of Regulation (EEC) No 2763/75 be understood as including only obligations to put into store and to store pigmeat or must that term be understood as including also subsidiary obligations with regard to information and supervision?

(2) Must the term 'obligations' in Article 5 (2) of Regulation (EEC) No 1889/76 be understood as including only the obligations to put into store and to store pigmeat or must that term be understood as including also the obligations referred to in Article 6 (2) (b) to (e) of the last-mentioned regulation?

(3) If Article 4 (2) (b) of Regulation (EEC) No 2763/75 must be understood as signifying that the term 'obligations' used there includes only the obligations to put into store and to store pigmeat but in Article 5 (2) of Regulation (EEC) No 1889/76 the same term is to include the obligations described in Article 3 (2) (b) to (e) of that regulation is the aforesaid Article 5 (2) valid in that respect?

IV (1) Must Article 5 (2) of Regulation (EEC) No 1889/76 be interpreted as meaning that the security shall be forfeit in its entirety if the failure to fulfil the relevant principal or subsidiary obligations was only partial?

(2) If Question I is answered in the affirmative is Article 5 (2) in that respect compatible with Article 4 (2) (b) of Regulation (EEC) No 2763/75 wherein it is provided in respect of deposits that they shall be forfeited in whole or in part 'if [the contractual obligations] are not fulfilled or are only partially fulfilled' and if not is Article 5 (2) in that respect invalid?"

The judgment was received at the Court Registry on 3 November 1978.

The appellant in the main action, represented by C. Sjenitzer, of the Amsterdam Bar, the respondent in the main action, represented by its chairman, G. A. Meijer, and the Commission of the European Communities, represented by H. Bronkhorst, a member of its Legal Department, acting as Agent, lodged written observations in accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC.

The Court, having heard the report of the Judge-Rapporteur and the views of the Advocate General, decided to open the oral procedure without any preparatory inquiry.

II — Observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

A — *The appellant in the main action* submitted the following observations on the four questions referred by the College van Beroep voor het Bedrijfsleven.

Question I

Question I is intended to determine the body having power to take decisions for the purpose of the implementation of regulations on the granting of private storage aids for pigmeat and of the regulations laying down detailed rules for the application thereof.

The argument put forward by the Produktschap at the hearing before the College van Beroep, to the effect that the Produktschap decides upon the granting of aids whilst another authority, the V.I.B., decides matters concerning deposits, creates an unfortunate risk of a discrepancy between the decision adopted with regard to the deposit and that adopted with regard to the aid.

However, since none of the basic regulations establishes definitive rules, providing instead a framework which the measures of the Member States must not exceed, the appellant in the main action considers that, having regard to the need to concentrate the power of decision in the hands of a single authority, the Netherlands system, within which the Produktschap is invested with the power of decision, is effective in practice and not at variance with the (minimal) requirements of the regulations.

Question II

Question II is concerned only with the non-payment of the aid. The parties agree that Atalanta has complied in full with the material requirements of the rules on storage and that it has only failed to send the documents concerning the putting of the goods into storage within the period laid down by the V.I.B.

Having regard to the tenor of the judgment of the College van Beroep the appellant in the main action considers that the second question also requests the Court, by implication, to decide what is meant by the words "without delay" ("onverwijld"). According to the appellant in the main action the period prescribed by the Mededeling Vlees

(Notice No 9/77) does not coincide with the scope of the concept expressed by the words "without delay".

If the Court considers that the foregoing is not by implication included in the question which was submitted to it or considers that the period laid down by the "Mededeling Vlees" is in order, the appellant in the main action observes that it is clear from the wording of Article 6 (2) of Regulation No 1889/76 of the Commission that the right to an aid is created as soon as the obligation laid down in Article 3 (2) (a) is fulfilled. It is inconceivable that the regulation should permit a situation in which the right to receive an aid can never be honoured by payment thereof.

The prompt transmission of documents is undoubtedly important but minor omissions at the level of administrative formalities should be assessed in a spirit of fairness and in terms of the interests concerned; the prevention of such minor omissions must not be undertaken as though they constituted failures to fulfil essential obligations.

Questions III and IV

Questions III and IV concern the deposits. In this connexion it is clear that Regulation No 1889/76 of the Commission, unlike Article 4 (2) of Regulation No 2763/75 of the Council, does not recognize the complete loss of the right to recover the deposit. The answers to the third and fourth questions are related in that, if the complete loss of the right to recovery of the deposit were the only possible outcome, that loss would be justified only if there were serious negligence such as to threaten the objectives of the rules — so that the penalty is not disproportionate to the fault. On the other hand, if it were possible to impose a partial loss of the right to recover the deposit the administrative penalty could be rendered proportionate thereto.

It appears that the reply to Question IV (1) must be in the negative and that, if the Court were to arrive at a different conclusion, Article 5 (2) of Commission Regulation No 1889/76 is not compatible with Article 4 (2) of Regulation No 2763/75 of the Council, which was clearly and expressly intended to permit partial forfeiture as a reduced penalty.

There would be no incompatibility if Article 5 (2) of Commission Regulation No 1889/76 were interpreted as applying to the breach of important obligations imposed upon the contracting parties, whilst Article 4 (2) of Regulation No 2763/75 of the Council refers to the breach of both important and less important obligations.

B — The *respondent in the main action* emphasizes first of all that the decision at issue in the main action was taken only after it had on a number of occasions given express warnings of the consequences which would follow if the necessary documents were lodged late.

The respondent in the main action then describes the legal framework within which the powers which it exercises were conferred by Netherlands legislation.

Question I

According to the respondent in the main action the Community regulations in question left to the Member States the duty of appointing the bodies charged

with the implementation of the said regulations. The words "intervention agency" employed in the Community provisions can mean in the Netherlands the Produktschap, the V.I.B. or both.

In accordance with Netherlands legislation the Produktschap is competent to settle questions concerning aid whilst the V.I.B. is competent to take decisions concerning deposits. The reason for conferring that competence on the V.I.B is that it, as a contracting party, is the better placed to assess whether the contractual obligations have been fulfilled.

Although applications against the decisions of the V.I.B. fall within the jurisdiction of the ordinary courts and not that of the administrative courts the V.I.B. would take the necessary action if the Court of Justice ruled that the deposit should be released wholly or in part.

Question II

Since Article 6 (2) of Commission Regulation No 1889/76 is prefaced by the words "without prejudice to the other obligations of the storer", it does not provide a basis for the view that the right to the aid is created as soon as all the obligations set out in Article 3 (2) (a) have been fulfilled. The person concerned must establish that he has fulfilled not only the obligations listed in Article 3 (2) but also the obligations laid down by other articles.

Question III

The respondent in the main action states that it would also have preferred Community legislation itself to leave the necessary discretion, on the point in question, to vary penalties in accordance with the nature of the obligations. The wording of the provisions in question nevertheless leaves no doubt as to how they must be understood. Both the wording of Article 4 (2) (b) of Regulation No 2763/75 of the Council and that of Article 5 (2) of Commission Regulation No 1889/76 are clear.

The respondent in the main action again emphasizes that in its view the obligations are not restricted to those set out in Article 6 (2) (b) to (e) of Commission Regulation No 1889/76. In the wording of Article 6 (2) of Regulation No 1889/76 the expression "without prejudice to the other obligations of the storer" is in fact employed.

If the word "obligation" were interpreted as meaning exclusively the obligations concerning the taking into store and maintenance of the pigmeat in store there would no longer exist penalties for failure to fulfil subsidiary obligations. Such a solution is undesirable by reason of the important supervisory function interent in those obligations. Furthermore, regard must also be had for the fact that the provisions concerning refusal of aid and forfeiture of the deposit are applied with circumspection. Nevertheless, all reasonable attitudes have their limits; those limits were exceeded in the present case.

Having regard to the foregoing it is unnecessary to consider the reply to be given to Question III (3) put by the College.

Question IV

According to the respondent in the main action there is no doubt that Article 5 (2) of Commission Regulation No 1889/76 must be interpreted to mean that the deposit must be held to have been forfeited in its entirety where the principal and subsidiary obligations in question are only partially fulfilled.

The wording of Article 5 (2) of Commission Regulation No 1889/76 is compatible in all respects with that of

Article 4 (2) (b) of Regulation No 2763/75 of the Council. The wording of the latter provision does not preclude a declaration that the entire deposit is forfeited where there is a partial failure to fulfil contractual obligations. If the legislature had intended to make the extent of the loss of the right to have the deposits released commensurate with the degree of fulfilment of the obligation it would have had to employ different wording.

In its concluding remarks the respondent in the main action states in particular that it would be desirable in every respect to draw a distinction in accordance with the nature of the obligations for the purpose of the penalties which it may be necessary to impose for failure to respect those obligations. The respondent in the main action nevertheless considers that that would require amendment to the wording or a judgment of the Court of Justice to that effect.

C — The *Commission* submits the following observations on the four questions referred to the Court by the College van Beroep voor het Bedrijfsleven:

Question I

According to the Commission it is clear from the wording of the regulations in question that they leave to the Member States the power to enact the necessary implementing legislation prescribed in the regulation in such form as they consider appropriate. The use of the words "intervention agency" in the passages concerned certainly does not lead to the conclusion that the Commission referred by those words to specific agencies or institutions of the Member States. The only meaning which can be attached to those words is that the agency appointed by the Member State effects intervention operations. As the Community provisions do not state that in each Member State intervention measures may be effected exclusively by a single agency there is nothing to prevent a Member State from entrusting to one agency (such as the V.I.B.) the task of concluding storage contracts and to another (such as the Produktschap) the payment of the aid.

The view put forward by the Commission is fully in accordance with that adopted by the Court of Justice in the judgment delivered in *International Food Company* v *Produktschap voor Groenten en Fruit* [1971] 2 ECR 1107. In that judgment the Court ruled that when provisions of the Treaty or of regulations confer powers or impose obligations on Member States for the purposes of the implementation of Community law the question of how such powers are to be exercised and whether the States may entrust the implementation of such obligations to specific national authorities is solely a matter for the constitutional system of each State.

Question II

The Community provisions governing the conclusion of storage contracts lay down binding rules for the contractual relations between the parties. Those rules replace the ordinary law of contract, whether in relation to private or public law.

The Commission considers that Article 6 (2) and (3) of Commission Regulation No 1889/76 must be interpreted to bear the first meaning suggested by the College. That view is based on the general system of the regulation, whereby the obligation set out at the beginning of Article 3 (2) and at subparagraph (a) providing for the taking into store and storage of the agreed quantity of the product in question for the period stipulated is considered as the principal obligation incumbent on the storer under the contract. This is confirmed by the wording of Article 6 (2) of the same regu-

lation whereby the right to the aid is acquired as soon as that obligation is fulfilled, albeit without prejudice to the other obligations of the storer.

Consequently the right to payment of the amount of the aid must be considered to be acquired at the moment when the supporting documents have been sent, albeit too late, and as soon as the other conditions laid down in the contract have been fulfilled.

Question III

According to the Commission the word "obligations" employed in Article 4 (2) (b) of Regulation No 2763/75 of the Council and in Article 5 (2) of Commission Regulation No 1889/76 covers both the obligation to take the pigmeat into storage and to keep it in store as well as the other obligations concerning information and supervision laid down in the storage contract. The word "obligations" employed in both cases in relation to the contract as a whole does not admit of a restriction of its scope to one or more quite specific obligations.

In view of the reply given to Question III (1) and (2) the point raised concerning validity in paragraph (3) is devoid of purpose.

Question IV

The Commission claims that Commission Regulations No 1889/76 was adopted in implementation of Regulation No 2763/75 of the Council and accordingly cannot be incompatible with it. In the present case the question of incompatibility does not arise since Article 5 (2) of Commission Regulation No 1889/76 must be interpreted having regard to the principle of proportionality, which is a general principle of administrative law which must always be applied to Community law. According to that principle failure to fulfil purely subsidiary obligations cannot result in the forfeiture of the entire deposit.

The Commission accordingly suggests that the reply to the questions referred should be as follows:

"1. The provisions of Regulations Nos 2759/75, 2763/75 and 1889/76 must be interpreted to mean that the power to take decisions for the implementation and application of the rules in those regulations on the granting of aids and on deposits is held exclusively by the Member States.

2. Pursuant to Article 6 (2) and (3) of Regulation No 1889/76 a storer who has failed to send documentary proof of storage to the intervention agency without delay

(1) is entitled to an aid if all the obligations set out in Article 3 (2) (a) of the said regulation are completely fulfilled, and

(2) is entitled to payment of the amount of the aid as soon as it is established that the conditions of the contract have been fulfilled and that *inter alia* documentary proof of storage has been sent to the intervention agency.

3. By 'obligations' for the purposes of Article 4 (2) (b) of Regulation No 2763/75 and of Article 5 (2) of Regulation No 1889/76 must be understood both the obligations to

take into store and to store pigmeat and the other obligations referred to in Article 6 (2) (b) to (e) of Regulation No 1889/76.

4. Article 5 (2) of Regulation No 1889/76 must be interpreted as meaning that the deposit shall be forfeited in whole or in part if the contractual obligations have not been fulfilled or if they have been fulfilled only in part, subject to the application of the principle of proportionality".

III — Oral procedure

Atalanta Amsterdam B.V., the appellant in the main action, represented by C. Sjenitzer, and the Commission of the European Communities, represented by H. Bronkhorst, submitted oral argument and replied to questions put by the Court at the hearing on 2 May 1979.

The Advocate General delivered his opinion at the hearing on 30 May 1979.

Decision

1 By an order of 1 November 1978 which was received at the Court Registry on 3 November 1978 the College van Beroep voor het Bedrijfsleven referred, under Article 177 of the Treaty, four questions to the Court on the interpretation and validity of various provisions of Regulation (EEC) No 2759/75 of the Council of 29 October 1975 on the common organization of the market in pigmeat (Official Journal L 282, p. 1), Regulation (EEC) No 2763/75 of the Council of 29 October 1975 laying down general rules for granting private storage aid for pigmeat (Official Journal L 282, p. 19) and Commission Regulation (EEC) No 1889/76 of 29 July 1976 laying down detailed rules for granting private storage aid for pigmeat (Official Journal L 206, p. 82).

2 Those questions have been raised in the context of an action between the Produktschap voor Vee en Vlees, the intervention agency competent in the Netherlands for the granting of storage aids, the respondent in the main action, and an undertaking, the appellant in the main action, which had concluded a number of contracts for the storage of pigmeat with the Voedselvoorzienings in- en verkoopbureau, hereinafter referred to as "the V.I.B.", the intervention agency competent in the Netherlands for the conclusion of storage contracts and for settling matters concerning deposits lodged by storers. Since the appellant in the main action had failed in connexion with certain storage operations to send to the V.I.B. within the period laid down the documents relating to those operations the V.I.B.

decided that the deposits lodged in respect of the storage contracts in question should be forfeited. For the same reason the Produktschap voor Vee en Vlees refused to grant the storage aid requested by the appellant in the main action, which accordingly instituted proceedings before the national court.

Question I

3 The first question submitted by the College is intended to establish whether power to take decisions concerning the application of the rules laid down by the provisions of Regulation Nos 2759/75, 2763/75 and 1889/76 is held by the national intervention agencies or by the Member States.

4 It must be noted in this connexion that the Community regulations in question did not determine which institutions in each Member State are competent to take the intervention measures envisaged and assigned to the Member States the task of designating the said institutions (see Article 4 (3) of Regulation No 2759/75).

5 It is accordingly for each Member State to determine the institutions which are empowered within its domestic legal system to adopt measures in implementation of the above-mentioned Community regulations. Since the possibility was not expressly excluded by the said regulations, the Member States may apportion amongst several national institutions the task of adopting the various necessary implementing measures. In this latter case it is however incumbent on the said national institutions to ensure by appropriate means that the measures which they adopt are co-ordinated in such a way that they do not jeopardize the proper functioning of the organization of the market.

6 The reply to Question I must therefore be that the power to take decisions with regard to the application of the rules laid down by the provisions of Regulations Nos 2759/75, 2763/75 and 1889/76 is held by the institutions designated for that purpose by each Member State.

Question II

7 In the second place the Court of Justice is asked to state whether Article 6 (2) of Regulation No 1889/76 must be interpreted as meaning that

the right to payment of an aid must be considered to have been acquired if all the obligations set out in Article 3 (2) (a) of that regulation have been fulfilled in their entirety and *inter alia* the documents relating to the storage have been sent, albeit too late, to the intervention agency or whether on the other hand Article 6 (2) of the above-mentioned regulation must be interpreted as meaning that the storer cannot claim the right to an aid if the documentary proof of storage has not been sent to the intervention agency "without delay".

8 Article 3 (2) of Regulation No 1889/76 provides that contracts concerning the private storage of products in the pigmeat sector concluded with intervention agencies must in particular impose the following obligations on the storer:

"(a) at his own risk and expense to take the agreed quantity of the product into store within the time-limits laid down and to store it for the stipulated period, and during that period not to alter the stored products in any way or exchange them for other products".

Article 3 (2) also provides that the contract concluded between the intervention agency and the storer must in addition impose a number of other conditions which are principally intended to permit the agency to check that the undertakings given by the storer are complied with, in particular that requiring him:

"(c) to forward to that intervention agency without delay the documents relating to the various storage operations".

9 Article 6 (2) of Regulation No 1889/76 provides that:

"Without prejudice to the other obligations of the storer, aid may only be claimed if the obligations set out in Article 3 (2) (a) are fulfilled in their entirety".

10 It accordingly appears from Article 3 (2) (a), read in conjunction with Article 6 (2), that the regulation draws a distinction between, on the one hand, the principal obligations which are incumbent on the storer under the storage contract, the fulfilment of which is a condition of acquisition of the right to the aid and, on the other hand, obligations intended to permit the supervision of the storage operations. Thus Article 6 (2) of the regulation precludes the storer from claiming the aid only if the principal obligations have not been fulfilled in their entirety.

11 It follows that, although the storer cannot claim payment of the aid if he has not in particular sent to the intervention agency the documents relating to the storage operations, the mere fact that he did not do so within the prescribed period does not in itself entail the loss of the right to aid where the principal obligations imposed in the contract have been fulfilled in their entirety.

12 The reply to Question II must accordingly be that belated transmission to the competent intervention agency of the documents relating to the various storage operations does not prevent the acquisition of the right to aid within the meaning of Article 6 (2) of Regulation No 1889/76 provided that the obligations set out in Article 3 (2) of the said regulation have been fulfilled in their entirety.

Questions III and IV

13 Finally, the Court is requested to define the scope and pronounce upon the validity of Article 5 (2) of Commission Regulation No 1889/76 with particular reference to the provisions laid down in Article 4 (2) (b) of Regulation No 2763/75 of the Council.

14 Article 4 (2) (b) of the regulation of the Council provides that:

"only applicants who have given security for the fulfilment of their contract obligations by lodging a deposit, which shall be forfeited in whole or in part if these are not fulfilled or are only partially fulfilled, shall be permitted to tender and to conclude a contract".

On the specific point of the action to be taken with regard to the deposit where the contractual obligations have not been fulfilled Article 5 (2) of Commission Regulation No 1889/76 provides, on the other hand, that "The security shall be wholly forfeit if the obligations imposed by the contract are not fulfilled".

15 Apart from the difficulty in reconciling the wording of Article 5 (2) of Commission Regulation No 1889/76 with that of Article 4 (2) (b) of Regulation No 2763/75 of the Council, in implementation of which Regulation

No 1889/76 was adopted, it should also be observed that the absolute nature of Article 5 (2) of the above-mentioned regulation is contrary to the principle of proportionality in that it does not permit the penalty for which it provides to be made commensurate with the degree of failure to implement the contractual obligations or with the seriousness of the breach of those obligations.

16 The reply to Questions III and IV referred by the national court must therefore be that notwithstanding the provisions of Article 5 (2) of Commission Regulation No 1889/76, Article 4 (2) (b) of Regulation No 2763/75 of the Council remains applicable in the sense that the competent authority may declare the deposit forfeit in whole or in part according to the gravity of the breach of the contractual obligations.

Costs

17 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

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

On those grounds,

THE COURT

in answer to the questions referred to it by the College van Beroep voor het Bedrijfsleven, by judgment of 1 November 1978, hereby rules:

1. **The power to take decisions with regard to the application of the rules laid down by the provisions of Regulations Nos 2759/75, 2763/75 and 1889/76 is held by the institutions designated for that purpose by each Member State.**

2. **The belated transmission to the competent intervention agency of the documents relating to the various storage operations does not prevent the acquisition of the right to aid within the meaning of Article 6 (2) of Regulation No 1889/76 provided that the obligations set out in Article 3 (2) of the said regulation have been fulfilled in their entirety.**

3. **Notwithstanding the provisions of Article 5 (2) of Commission Regulation No 1889/76, Article 4 (2) (b) of Regulation No 2763/75 of the Council remains applicable in the sense that the competent authority may declare the deposit forfeit in whole or in part according to the gravity of the breach of the contractual obligations.**

Mertens de Wilmars Mackenzie Stuart Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 21 June 1979.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President of the First Chamber,
Acting as President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 30 MAY 1979 [1]

Mr President,
Members of the Court,

The common organization of the market in pigmeat (Regulation (EEC) No 2759/75 of the Council of 29 October 1975, Official Journal L 282 of 1 November 1975, p. 1) provides in Article 3 that intervention measures may be taken if there is a substantial fall in prices. These measures include *inter alia* aid in respect of private storage.

The Council, as is provided for in Article 7 of Regulation No 2759/75, laid down basic rules for that purpose in Regulation (EEC) No 2763/75 of 29 October 1975 (Official Journal L 282, p. 19); implementing provisions in that connexion were enacted in Commission Regulation (EEC) No 1889/76 of

1 — Translated from the German.