OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT DELIVERED ON 21 JANUARY 1982 [1]

Mr President,
Members of the Court,

1. Introduction

The Fromme case before us today displays a number of features which will not satisfy everyone's sense of justice. The court which made the reference for a preliminary ruling manifestly found in the claim for interest in question a number of factors repugnant to its own sense of justice. However, not every offence against one's sense of justice can be removed by means of Community law. At the hearing even the plaintiff in the main action admitted that the court which made the reference for a preliminary ruling drew too heavily on Community law in its questions and explanations of them. The point for consideration in cases of this kind, in which our sense of justice may be offended against, is the sharp distinction made between:

(a) The breach of legal principles of national law on which this Court cannot rule in proceedings under Article 177 of the Treaty;

(b) The breach of written rules and unwritten principles of Community law, including the restrictions which Community law places on the validity or substance of national legal rules. The Court's answers to the questions raised must cover this aspect in particular. Not only the plaintiff in the main action but also the Commission have urged the Court to provide precise answers to the questions raised so that the national court can on the basis of those answers come to a decision on all relevant questions of Community law which are raised;

(c) The aspects of the case which our legal sense finds unsatisfactory and which only the national or Community legislature can resolve in the future.

The most important of the relevant facts before the Court are as follows:

In 1970 the merchant Fromme received from the Bundesanstalt für landwirtschaftliche Marktordnung [Federal Office for the Organization of Agricultural Markets, hereinafter referred to as "The Bundesanstalt"] a premium amounting to DM 128 497.62. The premium was paid under Regulation (EEC) No 172/67 of the Council (Official Journal, English Special Edition 1967, p. 139) in which the basic rules for the denaturing scheme were laid down. After an inspection of books had disclosed that for the purpose of such denaturing Fromme had added less blue colorant than implementing Regulation (EEC) No 1403/69 of the Commission (Official Journal, English Special Edition 1969 (II), p. 345) required, a demand was made at the end of 1977 for the payment of the premium. It is not contested that the aim of that provision on denaturing — the denatured wheat was to be used solely for cattle-feed — was fulfilled in this case. Nevertheless, by decision of 8 December 1967 Fromme was required to repay the premium and it did so. The

1 — Translated from the Dutch.

proceedings which led to the present reference to the Court do not therefore relate to the principal claim. In 1980, however, the Bundesanstalt also claimed interest on the wrongly-paid premium which, according to the plaintiff in the main action, owing to the time which had elapsed, amounts in total to 70 to 80% of the principal sum. The questions referred to this Court by the national court relate only to that claim for interest.

The claim for interest is based on the second sentence of Article 11 (1) of the Order of the German Federal Minister of Agriculture of 8 August 1968 concerning premiums for the denaturing of cereals, as amended by Order of that Minister of 14 February 1973 concerning the adjustment of the rules on interest contained in orders implementing the common organizations of the markets. The legal basis for the last order is the Gesetz zur Duchführung der Gemeinsamen Marktorganisationen [Law on the Implementation of the Common Organization of the Markets] of 31 October 1972.

The question for this Court in these proceedings is whether rules of this kind which apply in the Federal Republic of Germany are in conformity with Community law. In a case such as this one, in which premiums which have been wrongly paid are reclaimed, the above-mentioned interest order provides for a fixed rate of interest to be charged in respect of the period from the date on which the premium was paid to the date on which it was repaid (approximately seven years in this case), the rate being 3% above the prevailing discount rate of the German Federal Bank and not less than 6.5%.

The relevant German rules are in their turn based upon or must at any rate be examined in the light of Regulation (EEC) No 729/70 of the Council (Official Journal, English Special Edition 1970 (I), p. 218). In particular Article 8 of that regulation provides:

"(1) The Member States in accordance with national provisions laid down by law, regulation or administrative action shall take the measures necessary to:

Satisfy themselves that transactions financed by the Fund are actually carried out and are executed correctly;

Prevent and deal with irregularities;

Recover sums lost as a result of irregularities or negligence.

The Member States shall inform the Commission of the measures taken for those purposes and in particular of the state of the administrative and judicial procedures.

(2) In the absence of total recovery, the financial consequences of irregularities or negligence shall be borne by the Community, with the exception of the consequences of irregularities or negligence attributable to administrative authorities or other bodies of the Member States.

The sums recovered shall be paid to the paying authorities or bodies and deducted by them from the expenditure financed by the Fund.

(3) The Council, acting by a qualified majority on a proposal from the Commission, shall lay down general rules for the application of this article."

Implementing measures of the kind referred to in Article 8 (3) have not yet been adopted, a fact which, from the point of view of effective, unified action against fraud in each Member State, is certainly to be regretted. I shall return to

this point when I consider certain aspects of the rules on interest in question. Regulation (EEC) No 1403/69 of the Commission (Official Journal, English Special Edition, 1969 (II), p. 345) does however implement the Council regulation on matters other than those now at issue.

The Verwaltungsgericht [Administrative Court] Frankfurt am Main stayed the main proceedings in order to refer the following questions to the Court:

"1. Is it compatible with the Treaty establishing the European Economic Community for the Federal Republic of Germany to charge on undue payments of denaturing premiums interest calculated from the day of payment at 3% above the prevailing discount rate of the German Federal Bank but in any event of not less than 6.5%, without being authorized to do so by any provision of Community law?

2. If the answer to the foregoing is in the negative:

Does Article 8 (1) of Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the Common Agricultural Policy (Official Journal, English Special Edition 1970 (I), p. 218) confer any authority entitling the Federal Republic to charge interest of the kind mentioned in Question1?

3. If the answer to the foregoing is in the negative:

Is there any other provision or general principle of Community law from which such authority may be deduced?"

2. Analysis of the questions put to the Court

In their written observations the plaintiff in the main action, the Federal Republic of Germany and the Commission are at one in agreeing that the questions raised by the national court and the legal reasoning behind them, which is set out in the Report for the Hearing, reveal a fundamental misunderstanding of the general relationship between Community law and national law in the field of the organization of the agricultural markets. In the present state of Community law it is not possible to sum up that general relationship by stating that national legislatures alone have power in this field in so far as they are expressly empowered by Community law in that respect. When answering the questions that misunderstanding will need to be borne in mind. Since the misunderstanding underlies each of the questions raised, the interpretative guidelines of relevance for the national court will have to be framed more or less independently of those questions. In this regard, however, all the questions of Community law which have emerged during these proceedings and which are relevant for the national court will have to be examined.

To enable a useful answer to be given to the national court the questions may therefore be reframed as follows: "Is the power of a Member State to charge interest on reclaiming wrongly-paid denaturing premiums calculated from the date on which the premium was paid at a rate of 3% above the prevailing discount rate of the central bank concerned but in any event at not less than 6½% restricted by:

(1) The Treaty establishing the European Economic Community;

(2) Article 8 (1) of Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (Official Journal, English Special Edition 1970 (I), p. 218) or

(3) Other provisions or general principles of Community law?"

I shall deal with those questions in the following order. Because of the misunderstanding which each question reveals on this point I shall first consider some fundamental principles of Community law concerning the implementation of the common agricultural policy by national authorities. Next I shall consider how far Article 8 of Regulation (EEC) No 729/70 leads to different conclusions in this regard.

I shall then consider the two most important restrictions which, albeit with varying results for the purposes of this case, are inferred in all the written observations from the Court's case-law. Finally, with reference to the third question, I shall also consider whether other restrictions on national authorities arise from provisions or general principles of Community law other than those which figured in the Court's decision previously dealt with. In so doing I shall devote particular attention to the question of the applicability in this case of the principle of proportionality developed in other decisions of the Court.

3. Basic principles of Community law concerning the implementation of the common agricultural policy by national authorities

The point is made in all the written observations that it appears from the way in which the questions are framed that the national court which referred them for a preliminary ruling wrongly assumed that Member States may charge interest, in cases of the reclaiming of wrongly-paid premiums, only if they are expressly authorized to do so by Community law.

In very general terms it may be inferred from the first sentence of Article 5 of the EEC Treaty that Member States have the obligation to take appropriate measures, whether general or particular, to ensure the implementation of the regulations in the field of the common agricultural policy. To that extent authorization is not necessary.

However, the Court had already made it clear in its judgment in Case 40/69 *Bollmann* [1970] ECR 69 and Case 74/69 *Krohn* [1970] ECR 451 that such national implementing measures may not adversely affect, alter or expand the scope of the Community regulation. In its judgment in Case 118/76 *Balkan-Import-Export* [1977] ECR 1177 the Court re-affirmed that restriction on national powers which may be considered to be an elaboration of the second paragraph of Article 5 of the EEC Treaty.

As regards the present problems, the Court gave substance to that principle in Joined Cases 119 and 126/79 *Lippische Hauptgenossenschaft* [1980] ECR 1863 by ruling that as far as the grant of premiums is concerned it is the duty of the national authorities to require the repayment of any premium paid without justification (paragraph 7 of the decision). It may be inferred from subsequent passages of that judgment that that power of the Member States relates not only to the adoption of procedural measures for reclaiming of sums

mistakenly paid, whilst the laying down of substantive conditions would be reserved to the Community. The Court merely stated that in such matters the national authorities must proceed with the same care and attention as they exercise in implementing corresponding national laws, in order to prevent any weakening of the effectiveness of Community law (paragraph 8 of the decision). In that connexion the laying down of limitation periods or timelimits was expressly held to be permissible by the Court. Referring to the principle contained in Article 5 of the Treaty that national implementing measures must not undermine Community law, the Court stated in its judgment in Case 265/78 *Ferwerda* [1980] ECR 617 that it is for the Member States to determine the courts having jurisdiction and to fix the procedural rules but such rules may not be less favourable than those governing similar national claims and may in no case be laid down in such a way as to render it impossible in practice to exercise the rights which the national courts must protect (paragraph 10 of the decision). In paragraph 17 of its judgment in the *Express Dairy Foods* case (Case 130/79 [1980] ECR 1887) the Court held in the same line that it is for the Member States, and particularly for national courts, to settle ancillary questions, such as the payment of interest, relating to the problem of undue payments.

However, besides imposing the requirement of effectiveness and prohibiting the scope of Community law from being adversely affected, altered or extended, the previous decisions of the Court also enunciated a prohibition of discrimination. This prohibition is clearly more specific in nature than the prohibition, contained in the second paragraph of Article 40 (3) of the EEC Treaty, of "any discrimination between producers or consumers within the Community". That prohibition of discrimination which is designed to give legal protection to all traders in the Community certainly also applies to national measures implementing the common organization of the market. However in the decisions of the Court now under consideration the prohibition of discrimination was formulated in such a way as to assimilate implementing measures of Community law to other comparable provisions of *national* law. That was expressed by the Court in paragraph 12 of its judgment in *Ferwerda* (Case 265/78 [1980] ECR 617) in the following terms: "... the express reference to national laws is subject to the same limits as those affecting the implied reference, the need for which has been acknowledged in the absence of Community provisions, inasmuch as the application of national legislation must be effected in a non-discriminatory manner having regard to the procedural rules relating to disputes of the same type, but purely national ...". Earlier, in paragraph 8 of the same judgment, the Court had also stated that there must be no discrimination in respect of procedural and substantive conditions on which the authorities of the Member States may levy the said charges and, if necessary, recover financial benefits which were wrongly granted. In the *Express Dairy Foods* case (Case 130/79 [1980] ECR 1887) the Court likewise held in paragraph 12 that: "... the application of national legislation must

be effected in a non-discriminatory manner having regard to the procedural rules relating to disputes of the same type, but purely national . . .". Finally, the Court held in *Lippische Hauptgenossenschaft* (Joined Cases 119 and 126/79 [1980] ECR 1863) that: "It is for the national authorities to assess a situation such as that which has been brought before the Verwaltungsgericht on the basis of the rules and principles of their national laws, provided that they do not make a distinction between situations governed by Community law and similar situations subject to the application of national law alone".

I therefore infer from the decisions of this Court first that the method of application of Community law adopted by Member States may not undermine the effectiveness of that law and may not therefore be less effective than the method of applying comparable national rules. That follows in particular from paragraph 8 of the Court's decision in the *Lippische Hauptgenossenschaft* cases. Secondly, it appears to me to follow from the passages which I later cited from the *Ferwerda, Express Dairy Foods* and *Lippische Hauptgenossenschaft* cases that individuals too, may not be treated less favourably than is the case where comparable, purely national provisions are applied. Since opinion is sharply divided on the exact meaning of the prohibition of discrimination in this case, I shall, when considering the third question put to the Court, also examine the extent to which further clarification is possible here. Furthermore, I shall then also return to the question of effectiveness which I shall consider in the light of the arguments submitted during the proceedings.

4. The rules governing the allocation of powers contained in Article 8 of Regulation (EEC) No 729/70

The above-mentioned principles emerging from the Court's decisions apply of course only so far as Community law does not provide otherwise. I shall therefore now consider to what extent Article 8 of Regulation (EEC) No 729/70 enables conclusions to be drawn which constitute anything more than a refinement of the principles established so far.

In Cases 146, 192 and 193/81 *Baywa* and *Raiffeisenbankgenossenschaft*, one of the questions put by the same national court as that which made the reference to the Court in this case is: "Does Article 8 of Regulation (EEC) No 729/70 ... require Member States in every case to recover unlawfully granted denaturing premiums or does the regulation allow Member States to leave individual cases of recovery to the discretion of the competent authorities, in accordance with national legal provisions?".

Since the hearing in those more recent cases had not yet taken place when this opinion was being prepared it is not possible to take account in this opinion of what emerges from that hearing. The judgment in this case may perhaps be able to do so, however. The question raised in regard to Article 8 in this case is based on the misunderstanding of the allocation of powers which I have already pointed out. The point is not whether Article 8 contains an enabling provision but whether it contains restrictions on the powers of Member States which depart from the above-mentioned general principles which emerge from the decisions of the Court.

In any event Article 8 provides further elaboration of the above-mentioned general obligation contained in Article 5 of the EEC Treaty. According to Article 8 Member States must, in accordance with their national legislation, take *inter alia* "the measures necessary" to:

"...

...

Recover sums lost as a result of irregularities or negligence".

Article 8 (2) further provides *inter alia* that the sums recovered are to be paid to the paying authorities or bodies and deducted by them from the expenditure financed by the Fund.

The Council has not used the power provided for by Article 8 (3) to adopt general rules for the application of Article 8 in spite of a Commission proposal made on the very issue of the calculation of interest.

Like the Commission I can find nothing in the wording of Article 8 which would exclude the power of Member States, as inferred from the decisions which I have just cited, to lay down rules for the payment of interest on recovery claims as well. The Commission also rightly observes that Regulation (EEC) No 283/72 of the Council of 7 February 1972 concerning irregularities and recovery which is also applicable in this case, does not contain any restrictive provisions either. Therefore it may be inferred from the decisions of the Court, in particular from the judgments in Case 26/74 *Roquette* [1976] ECR 677 and Case 131/77 *Express Dairy Foods* [1980] 1887, that in principle Member States have the power to adopt rules on the question of the payment of interest. But in this respect, too, the restrictions which I mentioned earlier, namely that such rules may not adversely affect, alter or expand the scope of the Community regulation, in this case Article 8 of Regulation (EEC) No 729/70, apply. I share the Commission's view that in this respect the plaintiff in the main action and the national court, in its judgment, are wrong to place a restrictive, literal interpretation on Article 8. According to their interpretation only the actual sums wrongly paid may be reclaimed.

The Court has already held in Case 11/76 *Netherlands* v *Commission* [1979] ECR 245 that: "The text of Article 8 in the different language versions ... contains too many contradictory and ambiguous elements to provide an answer to the questions at issue. In order to interpret that provision, therefore, it is necessary to consider its context and the objective of the rules in question" (paragraph 6 of the decision). In the next paragraph the Court stated that: "Article 8 defines the principles in accordance with which the Community and the Member States are to organize measures to combat fraud and other irregularities in connexion with the operations financed by the EAGGF. It makes provision both for measures for the recovery of sums wrongly paid and for administrative and judicial procedures against the persons responsible."

In this regard the Commission is, in my view, right in its submission that the first consideration in assessing the national implementing measures is whether they are effective from the point of view of

the aims of Article 8 (as defined by the Court).

Finally, the plaintiff in the main action has stressed, in particular in the course of the hearing, the importance of the national court's finding that the interest claimed is not paid to the Community but accrues to the budget of the Federal Republic. It might well be asked whether that is in accordance with the provisions of Article 8 (2). Nevertheless, I share the view of the Federal Republic of Germany and the Commission that this point is not relevant to the relationship between the plaintiff in the main action and the Bundesanstalt. So far as that relationship is concerned only the first part of Article 8 (2) is relevant, and not in addition the relationship between the national implementing bodies and the Fund, which is governed by the last part of Article 8 (2).

Article 8 does not throw any new light on the two general restrictions which Community law places on national implementing measures (the scope of Community law must not be affected and there must be no discrimination) and which are in principle acknowledged in all the written observations. To that extent Article 8 does not change the general principles contained in the case-law of the Court. As I indicated earlier, I shall now return to the question to what extent must those general principles be further defined in a situation such as the one in this case.

When considering the third question of the Verwaltungsgericht, in the form in which I have recast it, I shall also examine separately the problem of the extent to which it may be inferred from Article 8 that the principle of proportionality expressed in other branches of the case-law of the Court must also be applied in this case and the meaning which might then be given to it.

5. Further definition, for the purposes of the situation in this case, of the general restrictions laid down in the case-law of the Court

5.1. With regard to the question whether the German implementing measures adversely affect, alter or expand the scope of Article 8 of Regulation (EEC) No 729/70, which is the provision applicable in this case, I now propose, in view of what I have already said on this subject, to examine the only outstanding question of relevance, namely whether any upper limit on the interest to be charged may be inferred from Article 8. At the hearing the representative of the Federal Republic of Germany denied this in no uncertain terms. He said that from the point of view of prevention the interest could not be high enough. The Commission confined itself to stating that the rules on interest must be effective ("wirksam") and that, whichever form they take, they are indispensable if Article 8 is to be effectively applied. However, at the end of the hearing the Commission's representative agreed that the interest rate may not be fixed at an unrestrictedly high level, for example at 30%. In my view, too, an interest rate which differed too much from the general level of interest rates prevailing in the Member State concerned would entail the danger of widespread litigation and might cause traders to give up denaturing because of the excessive degree of risk. To that extent the rate of interest is thus limited, in my view, by the prohibition of discrimination on which I have yet to speak.

The plaintiff in the main action took a different view, namely that interest may only be claimed where the recipient of

the premium which was irregularly paid to him made some gain from it and that it is then necessary to take account of other specific circumstances in each individual case. For example, consideration should be given to the absence of intention or the trifling and purely formal nature of the irregularity in question.

In the *Balkan-Import-Export* case the Court did in fact recognize as permissible a hardship provision of national law and, in the *Ferwerda* case, the application of a principle of legal certainty according to which payments received in good faith may not be reclaimed.

In paragraph 10 of the judgment in the *Lippische Hauptgenossenschaft* cases the Court also stated with reference to the principle of limitation that Community law does not restrict the freedom of the national authorities competent in the matter to apply, when recovering benefits which have been mistakenly granted under the Community rules ... such limitation periods as may be drawn from the application of general principles recognized in the law of the country concerned. In view of the decisions in the *Balkan* and *Ferwerda* cases, the passage to which I have just referred could in my opinion perfectly well be given a more general meaning, and one not confined to the field of the limitation of actions.

All those earlier cases, however, involved decisions declaring that national rules were permissible. Should German law have similar general principles, it might be possible to rule upon them by virtue of the principle of non-discrimination. However, in the judgments in question those principles were not principles of Community law but principles of national law which were judged to be permissible.

What remains to be examined in the present case, besides the significance to be attributed to the prohibition of discrimination in this instance, is the question whether the principle of proportionality developed by the Court in other branches of the Common Agricultural policy might also be relied upon in this case. As I have indicated, I shall also come back to that question in the following parts of this section of my opinion.

5.2. With regard to the principle of non-discrimination I have drawn from the decisions of the Court the inference that, when Community law is applied and therefore when payments wrongly made are claimed back under Community law, individuals may not be treated either more favourably or less favourably than they normally are when purely national law is applied. It is certainly not the task of the Court to give further guidance to the national court on the question, which was debated during the proceedings, which other national rules should be used for the purpose of the comparison in this instance. That is a question which must be answered in accordance with national law. All the same I feel that it is perfectly possible, by using the systematic approach developed by the Commission in its written and oral observations to provide further abstract explanation on the basis of the decisions of the Court

First of all the Commission's view that the specific nature of Community law and the special problems of control which arise in this field justify more stringent rules on the matter of interest strikes me as being at odds with the rule against discrimination the clearest formulation of which is to be found in the Court's judgments in the *Express Dairy*

Foods and *Lippische Hauptgenossenschaft* cases.

At the hearing the Commission's representative presented a more detailed account of its point of view by making four points.

First, Community law would undoubtedly be opposed to being put in a worse position than national law applicable to (comparable) national cases. For the purposes of Community law, however, no objection could made if Community law were placed in a better position than comparable national rules on interest. As I have said, the first point of the Commission's argument seems to me to be incompatible with the judgments in the *Express Dairy Foods* and *Lippische Hauptgenossenschaft* cases. The supporting argument to the effect that harmonization with the laws of other Member States could thereby be promoted seems to me to be untenable as well. First of all, in one judgment concerning Article 92, namely in Joined Cases 6 and 11/69 *(French rediscount rate)* [1969] ECR 523, the Court rejected such harmonization of interest rates because it distorts competition. Although in those cases it was a question of harmonizing downwards, the same principle applies to the adjustment of interest rates to higher rates prevailing in other Member States. Differences in specific interest rates which depart from the general differences in interest rates between the Member States lead to distortion of competition within the meaning of either Article 92 of the EEC Treaty (if they are adjusted downwards) or Article 101 (if they are adjusted upwards). Moreover, in so far as it is desired to harmonize rules on interest, it appears from the information given in the proceedings by the Federal Republic and the Commission concerning the absence of any clear general guidelines that the Member States are not in a position to harmonize them. Nor is it their task. Only the Council, by virtue of Article 8 (3) of the regulation in question would be in a position and have the power to harmonize them. I would also refer on that point to paragraph 12 of the decision in the *Express Dairy Foods* case. If the specific interest rates at issue in this case were harmonized the Council, too, would have to avoid specific distortions caused by the divergencies, varying from one Member State to another, from the general interest rate. The extent of a uniform increase in the normal national rate of interest, which might be deemed to be necessary in the case of demands for repayment of this kind, would be limited by the requirements of the Community interest.

The second point made by the Commission at the hearing was that one reason for an objective difference in interest rates might be that the application of Community law is appreciably more difficult and creates greater problems of control than the implementation of national administrative law because it requires two bodies constituted under two different legal systems to operate in conjunction with one another. As to that point, I doubt first of all whether reclaiming denaturing premiums which have been paid contrary to Community law is in fact more difficult than reclaiming much higher subsidies which have been paid to industrial undertakings contrary to Community or national law. Nevertheless the file on the case seems to show that in the Federal Republic of Germany less stringent interest rules apply to the reclaiming of irregular payments of subsidies of the last-mentioned kind. That apart, the notion that, for those institutional reasons, compliance with Community law should be enforced by

means of more stringent penalties than are necessary for ensuring compliance with national economic law governing comparable matters appears to me to be unsound in principle and not conducive to the acceptance of Community law in the Member States. Again, in so far as substantive differences or special Community interests might require more stringent penalties for irregularities, that requirement would have to be expressed in an implementing regulation adopted pursuant to Article 8 (3).

The third point made by the Commission at the hearing, namely that it would be permissible to adjust the rate of interest to one of the rates which Community law itself lays down in other fields and which vary from 8 to 12%, appears to me to be equally incompatible with the principles formulated in the decisions of the Court.

Finally, the same holds true, so it seems to me, as regards the fourth factor discerned by the Commission in the prohibition of discrimination formulated in the Court's decisions, in so far as that factor adds something new to the other three. The Commission considers that a fixed or fictitious rate of interest which is adopted in a special law enacted to implement Community law and is different from the rest of national law does not constitute discrimination.

Therefore each and every one of the points which the Commission has submitted for the purpose of the Court's answer to the Verwaltungsgericht Frankfurt strike me as being incompatible with the decisions of the Court. What is more, I feel that such precise formulations in the Court's answer are neither necessary nor desirable. Since, however, the decisions of the Court seem to make such questionable interpretations possible, I feel that some sharpening of the Court's previous formulations is necessary. The Court could provide this by making it clear that where sums irregularly paid to individuals are reclaimed and interest thereon is calculated, those individuals may not be treated either more favourably or less favourably than would be the case under provisions of national law and general principles of law applying to substantively comparable cases in the purely national legal framework.

5.3. As I indicated previously, I shall now examine the question whether the principle of proportionality evolved in the decisions of the Court in many branches of Community law may, as a general principle of Community law, also be relevant to the present issue. Besides having been developed in numerous judgments in the field of agricultural policy the principle has been developed in particular in the application of safeguard clauses. It is also regularly applied by the Commission in matters of competition policy conducted on the basis of Article 85 (3) (a) and Article 92 (3) of the EEC Treaty.

In such cases it was always a matter of applying provisions of Community law the wording of which, or the interpretation placed on it by the Court in its decisions or by the Commission in its practice, contained the restriction that the action undertaken must be "required" (first subparagraph of Article 40 (3)), "indispensable" (Article 85 (3)) or "justified and necessary for the objective in view" (safeguard provisions of public policy). The opening words of Article 8 of Regulation (EEC) No 729/70 of the Council, which is applicable in this case, constitutes such a

clause. I accordingly consider that the principle of proportionality, as developed in many decisions of the Court, also constitutes a general principle of Community law in this case which restricts the national application of that article by Member States.

In my view it follows in particular from that principle of proportionality that there must be sufficient proportionality between the interest claimed and the advantage attained though the application of a hardship provision of national law or other means of mitigation applicable in similar kinds of cases might be justified where it is made apparent that the aim of the denaturing scheme (the use of the relevant quantity of common wheat for cattle-feed) has actually been attained in a specific case despite a minor infringement of the relevant Community provisions.

Furthermore, since the principle of proportionality under consideration has not been discussed, at any rate not explicitly, in these proceedings, I do not propose that the Court should include such far-reaching considerations in its answer. Perhaps, however, the hearing in Cases 146, 192 and 193/81 *Baywa and Others* will provide a greater degree of clarity in this respect so that it may well be possible for the Court to be more specific in its judgment in this case. In particular the discussion of the third question raised in those cases might throw more light on this point.

6. Proposals for answering the questions put to the Court

I now come to my specific proposals for the answers to be given to the questions put to the Court in this case. The answers may run parallel, as indicated in the introduction to my opinion, with the three questions put to the Court and in my view provide the national court with ample guidelines for interpreting all questions of Community law which have emerged during the proceedings. I recall that I reframed the questions raised to read as follows:

"Is the power of a Member State to charge interest on reclaiming wrongly-paid denaturing premiums calculated from the date on which the premium was paid at a rate of 3% above the prevailing discount rate of the central bank concerned but in any event at not less than 6½% restricted by:

(1) The Treaty establishing the European Economic Community;

(2) Article 8 (1) of Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (Official Journal, English Special Edition 1970 (I), p. 218) or

(3) Other provisions or general principles of Community law?"

I propose the following answers to the question as reformulated above:

1. Inasmuch as Community law does not contain any provisions by way of derogation or restrictions Member States not only have the power but are also required by virtue of the first sentence of Article 5 of the EEC Treaty

to adopt all appropriate measures, whether general or particular, to ensure the fulfilment of the obligations arising out of that Treaty or resulting from the common organization of the agricultural markets. It results from the present general state of Community law that in principle this is also the case as regards rules on interest in the case of reclaiming wrongly-made payments such as those in question in this case.

2. Although the obligation resulting from the first sentence of Article 5 of the EEC Treaty itself is amplified by Article 8 of Regulation (EEC) No 729/70 (Official Journal, English Special Edition 1970 (I), p. 218) it is not restricted as regards rules on interest of the kind at issue in this case, at any rate so long as Article 8 (3) is not implemented and without prejudice to the principles of interpretation stated below.

3. A Member State's powers to adopt and apply rules on interest such as those at issue in this case are restricted in particular by the following general principles of Community law which emerge *inter alia* from the case-law of the Court of Justice:

   (a) National implementing measures may not adversely affect, alter or expand the scope of the Community regulations in question;

   (b) When sums wrongly received by individuals are reclaimed or the interest to be charged on such sums is calculated individuals may not be treated more favourably or less favourably than would be the case under national legislation and general principles of national law applicable to substantively comparable cases in the purely national legal field;

   (c) The principle of proportionality embodied in Community law and developed in Community legal practice.