OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT DELIVERED ON 20 JUNE 1984 [1]

Mr President,
Members of the Court,

1. Introduction

1.1. In the present case the national court has referred questions relating to the legal nature and status of deposits lodged in accordance with provisions adopted under the common agricultural policy, as referred to in Article 1 (1) of Council Regulation (EEC) No 352/78 of 20 February 1978 (Official Journal 1978, L 50, p. 1).

As appears from the aforesaid provision such deposits are sometimes variously named in agricultural regulations. The provision mentions "securities" and "guarantees"as synonyms for the term "deposits". That does not affect the question as to what principal obligation the deposit guarantees.

1.2. From the Commission's answer to the written questions put by the Court on 15 December 1983 and from our own research it appears that such deposits are very often required in the agriculture sector and in other areas also. The Commission mentions *inter alia* in its answer customs law and a recent measure affecting the steel industry (Decision No 3716/83/ECSC of 23 December 1983, Official Journal 1983, L 373, p. 5).

It further appears from the Commission's answer that the legal nature and status of such deposits does not depend so much on what they are called as on the wording and objective of the regulations, directives or decisions in which they occur. The legal nature may be that of a security guaranteeing the performance of certain pecuniary obligations. However, in the Commission's view, the legal nature of the deposit may also be more comparable to that of an administrative or contractual penalty. In its answer the Commission gave examples of various kinds of deposit. It admits however that the penal nature does not always appear with the desired clarity in the wording of the regulations, directives or decisions. The reason is that certain Member States do not wish expressly to recognize the Community's right to impose administrative or other sanctions under the common agricultural policy. The Commission discussed that issue at length, especially at the hearing. As regards the legal status of deposits, it knows of no provision under which the release of the deposit automatically entails the extinction of the principal obligation which the deposit guarantees.

1.3. In view of that brief summary of the Commission's answer to the first written question it is understandable that

1 — Translated from the Dutch.

the national court also considers itself faced in the present case with problems relating to the legal nature and status of a deposit which is first released and then demanded again. As appears from the Commission's answer, it is true there are cases in which the regulation in question expressly provides for the reconstitution of a deposit which has been released (Articles 31 and 40 of Commission Regulation (EEC) No 3183/80, Official Journal 1980, L 338, p. 1).[1] That is however not so in the present case. According to the information available to the Commission, the legal practice of the Member States in the matter is not uniform. In that respect, I refer, first, to the Commission's answer to the written question and, secondly, to the further explanations which it gave at the hearing. The judgment in the present case can therefore make an important contribution to the additional clarification of the legal nature and status of deposits such as that involved and also those provided for under many other rules.

1.4. The questions put by the Verwaltungsgericht Frankfurt am Main are worded as follows:

"1. Does Article 4 of Regulation (EEC) No 1071/68 of the Commission of 25 July 1968 laying down detailed rules for granting private storage aid for beef and veal (Official Journal, English Special Edition 1968 (II), p. 354) enable the national intervention agencies, after the period of storage has been completed, to recover a deposit which has been wrongly released?

2. If the first question is answered in the negative: Are national rules under which it is possible to revoke a wrongful decision releasing a deposit and to reclaim the amount of the deposit after the period of storage has expired compatible with Community law?

3. If the second question is answered in the affirmative: Are national rules such as those described in the second question which make revocation of a decison releasing a deposit and hence recovery of that deposit subject to the discretion of the intervention agency compatible with Community law?

4. If either the first or the second question is answered in the affirmative: What is the nature of the claim secured by the deposit referred to in Article 4 of Regulation (EEC) No 1071/68?

5. If the answer to the fourth question is that the claim secured by the deposit is a claim for a penalty: Do Article 4 of Regulation (EEC) No 1071/68 and the penalty provided for therein infringe superior rules of Community law?"

1.5. The rest of my Opinion will take the following form:

In Section 2 I shall consider the Community rules applicable in the present case, so far as they are relevant.

In Section 3 I shall briefly summarize the relevant facts.

In Section 4 I shall consider in greater detail the questions put by the national court, including its comments thereon, and at the same time examine the several points of view expressed during the proceedings.

In Section 5 I shall suggest the answers which the Court might, in my opinion, give to the questions raised.

1 — At the hearing the Commission cited as a second example Article 10 of Commission Regulation No 798 of 31 March 1980 (Official Journal 1980, L 87, p. 42). In that case however reference is made expressly to the refund of the whole or part of a sum equal to the deposit.

2. The applicable Community legislation

2.1. The basic regulation

The intervention measures which are relevant in the present case have their basis in Regulation (EEC) No 989/68 of the Council (Official Journal, English Special Edition 1968 (I), p. 264). That regulation provides for the possibility of intervention in the beef and veal sector in the form of aid for private storage of fresh beef and veal originating in the Community. Article 1 (3) provides that aid shall be granted for private storage "in accordance with the terms of contracts concluded with intervention agencies; such contracts shall express the reciprocal obligations of the contracting parties in standard terms for each product".

The final sentence of the third recital in the preamble to the regulation shows that the requirement of uniformity arises from the need that "the granting of aid should be so effected as not to discriminate between applicants established in the Community". It is clear from Article 3 and the third subparagraph of Article 4 (2) of the regulation that the storage contracts must fix, *inter alia*, the duration of the storage. The second subparagraph of Article 4 (2) states that "only applicants who have given security for 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 conclude such contracts" (the italics and omissions are mine).

2.2. The implementing regulation

Detailed rules for implementing the Council regulation which I have just dealt with were laid down in Regulation (EEC) No 1071/68 of the Commission of 25 July 1968 (Official Journal, English Special Edition 1968 (II), p. 354). Article 3 thereof gives a detailed summary of the matters, obligations and rights which storage contracts must in all cases provide for. Article 3 (4) provides "the obligation to store the agreed quantity shall be considered as fulfilled if not less than 90% and not more than 110% of that quantity has been taken in store and stored". The fifth recital in the preamble to the regulation shows that that provision is not an expression of the principle of proportionality with regard to the forfeiture of the deposit, as the Commission suggested at the hearing, but that "to take account of commercial practice" it was thought proper that "certain margins of variation of the agreed quantity for storage should be allowed".

The contractual obligations defined in Article 3 (2) of the regulation do *not* include the obligation to lodge a deposit. It is true that, under Article 3 (1) (e), the "particulars" in the contract must include "the form and amount of the security". The storer's obligation to lodge a deposit is however governed separately by Article 4 of the regulation. Article 4 (1) states: "When a contract is concluded a deposit in an amount not exceeding 50% of the amount of aid specified in the contract shall be lodged by the storer in cash or in the form of a guarantee issued by a credit institution meeting the requirements of each Member State." If I may anticipate my more detailed examination of the legal nature of the deposit I should like to observe here that such construction makes the Commission's view (advanced at great length at the hearing) that this is

in fact a case of a contractual penalty seem somewhat doubtful. However, Article 3 of the regulation does not seem to exclude the insertion of such a penalty clause in the storage contract. The obligation to lodge a deposit laid down in Article 4 may however also relate to another pecuniary obligation, perhaps one arising under administrative law. For the determination of the legal nature of the deposit paragraphs (3) and (4) of Article 4 are also important. Article 4 (3) reads as follows: "The deposit shall be forfeited in full if the obligations imposed by the contract are not fulfilled; however, if less than 90% of the quantity agreed in the contract has been taken in store and stored within the time-limits laid down, the deposit shall be forfeited proportionately to the missing part of the quantity referred to in Article 3 (1) (a)." Only to a limited extent may the latter passage be regarded as recognition of the applicability of the principle of proportionality. The Commission expressly admits as much in the first complete paragraph on page 15 of its written observations. Article 4 (4) is worded as follows: "The deposit shall not be forfeited if through *force majeure* a storer is unable to fulfil the above-mentioned obligations."

2.3. Some conclusions

From the above examination it is possible straight away to draw certain preliminary conclusions which are of importance in answering the questions raised:

(a) In the first place, one need only look at the basic regulation in order to see that the rules on storage must be uniformly applied in all the Member States. In view of the second paragraph of Article 40 (3) of the EEC Treaty that principle of non-discrimination must also be observed in relation to the system of deposits.

(b) In the second place, it appears both from the aforesaid Article 4 (2) of the basic Council regulation and from Article 4 of the Commission regulation, which is even clearer in that respect, that the deposit does not represent, from the point of view of Community law a necessary component of the contractual obligations of the storer. Rather, it is a distinct obligation on the storer which stands outside the contract and is to be enforced by the intervention agencies; it may be satisfied either by a payment in cash or by lodging a bank guarantee. On the other hand, the Commission regulation does not seem to *exclude* the possibility of an intervention agency's making more detailed provisions concerning deposits in the storage contracts which it concludes.

(c) In the third place, it is clear both from the second paragraph of Article 4 (2) of the basic regulation and from Article 4 of the Commission regulation that the deposit cannot be regarded as a guarantee ensuring the repayment of aid wrongly paid. To start with, it is insufficient to represent such a guarantee since it may amount at most to 50% of the aid. Further, it appears from the rules on forfeiture in Article 4 (2) of the basic regulation and Article 4 (3) and (4) of the Commission regulation that forfeiture is regarded as an incidental distinct legal consequence of the storer's failure to fulfil his obligations under the contract. That legal consequence does not affect the possibility, in the

event of non-observance of the contract, of reclaiming the aid contractually agreed. Conversely, the repayment of such aid in the event of non-observance of the contractual obligations does not affect the possibility of declaring the deposit forfeit as an additional measure.

(d) Neither the basic Council regulation nor the Commission regulation provides for the situation which is central to the present case. This is a case where the deposit has been released but it has subsequently become apparent that the intervention agency wrongly thought that the obligations under the storage contract had been performed. The question then arises whether on the basis of the general tenor of the regulations the amount of the deposit may nevertheless be recovered. I shall consider that question only in the fourth section of my Opinion.

3. The relevant facts

For the purpose of the answers to the questions raised, the particular obligations in the storage contract which the plaintiff in the main action did not fulfil are not of crucial importance. It appears however from the judgment of 24 November 1980 of the Principal Criminal Chamber of the Landgericht [Regional Court] Bremen of 24 November 1980, which was submitted to the Court at the hearing, that obligations under 13 different contracts made between 17 May 1974 and 17 September 1975 were not honoured in relation to the nature and origin of the meat stored. Furthermore, incorrect statements were made to the intervention agency so that the persons concerned were, according to the judgment, charged *inter alia* with "fraud in relation to aid".[1] In view of the considerable quantities of meat for which the plaintiff undertaking had wrongly received aid, Mr Könecke, the sole proprietor of the undertaking, received a suspended prison sentence of two years and had to pay a fine of DM 216 000.

Of greater significance for the present case however is that according to page 45 of its judgment the Landgericht in calculating the fine took account *inter alia* of the fact that Könecke had in the meantime repaid the aid received in so far as it had been claimed by the intervention agency. Further, according to page 45 of its judgment, the Landgericht also took account of the fact that the intervention agency had still not done anything after Könecke refused to repay the wrongly released deposits. The question of the possible application of the principle *ne bis in idem* thus remains of importance in a claim for repayment of the deposits, in so far as the criminal court could not and did not take into account any repayment of the deposits as a sum to be deducted in calculating the fine imposed. It appears however from the judgment that the criminal court took into account in favour of Könecke the fact that the intervention agency had failed properly to check that Könecke's undertakings had been observed and also to act diligently after discovering

1 — According to the judgment, the fraud was much more serious than appears from the Report for the Hearing, which was based on the order referring the case to the Court.

breaches. The serious and repeated failure to observe those undertakings and the Community rules in relation to the storage of fresh beef and veal originating in the Community did not appear as the result of any initiative by the intervention agency but as a result of inspection by the customs. Partly on grounds of general prevention (page 47 of the judgment), the Landgericht then imposed the penalties mentioned above in respect of the serious frauds against the rules of the common agricultural policy which were thus discovered by chance.

However, according to the order of the Verwaltungsgericht Frankfurt am Main, the intervention agency issued two decisions on 26 May 1976 whereby it revoked the aid and the release of the deposits.

The action brought by the plaintiff is concerned solely with the revocation of the release of the deposits. The Verwaltungsgericht regards that revocation, which was accompanied by a demand for repayment of the amount released, as an administrative decision against which an appeal lies. According to the sentence at the foot of page 3 of its order, the Verwaltungsgericht considers that the central issue in the action is the question whether the revocation of the release of a deposit is at all possible. The questions asked by the Verwaltungsgericht are all connected with that central question.

4. The questions

4.1. An answer to the central question raised by the Verwaltungsgericht requires first of all a clear definition of the legal nature and status of the deposit and the debt which it is intended to guarantee. The fourth question asked by the national court refers to that aspect. Basically, I share the Commission's view that it is clear beyond doubt from Article 4 (2) of the basic regulation and from Article 4 (1) and (3) of the Commission regulation that the system of deposits is of a dual nature. It is intended to provide security for the performance of an ancillary pecuniary obligation or a "penalty" in the event of a breach of the contractual obligations. In that respect I refer to my previous examination of the two regulations. However, contrary to the Commission, I think that on the basis of that previous examination the ancillary "penalty" which the surety provides is not necessarily in the nature of a contractual penalty. The operation of the system also take place, on the basis of the wording of the regulation, by means of administrative decisions. Such a decision may *inter alia* determine the amount of the deposit to be lodged on the basis of the relevant provisions. Pursuant to Article 3 (1) of the regulation, only the result of such a decision has to be mentioned as a "particular" in the contract. Since the manner of applying the said provisions is left to the discretion of the Member States the provisions may be regarded, in relation to the deposit, as imposing an obligation to achieve a particular result. The same is true, in my opinion, as regards forfeiture of the deposit. If in a particular Member State the deposit system, including the penalty clause, is incorporated into storage contracts and elaborated upon, the deposit may (where it has not yet been released) be declared forfeit or (where the deposit has already been

released) the penalty may be recovered in the competent court. If the system of deposits is applied by means of an administrative decision, the administration may, on subsequently discovering a breach of the contractual obligations, choose — according to the terms of the national implementing decision and according to whether the deposit has already been released or not — one of the following solutions. If the deposit has not yet been released it will of course normally be declared forfeit. If however the deposit has already been released, then — depending on the terms of the decision implementing the deposit system — either the penalty secured by the deposit may be imposed or the decision releasing the deposit may be revoked. In the latter case the deposit may be declared forfeit either in whole or in part. That follows, in my opinion, from the fact that the deposit system, including the rules on forfeiture, must clearly be seen as an obligation to achieve a particular result. That the deposit system is also regarded by the Member States as an obligation to achieve a result, the detailed rules being left to the discretion of the Member States, is clearly confirmed, in my opinion, by the information supplied by the Commission in writing at the hearing in answer to a question put by the Court on the very diverse practices of the Member States.

For the sake of completeness I should nevertheless qualify that preliminary opinion by pointing out that the phenomenon of a contractual penalty secured by a deposit is not by any means to be encountered in all of the many cases I have found in which deposits are applied. In many such instances (for example, deposits guaranteeing observance of conditions laid down in import or export certificates or deposits in connection with advance payment of export refunds and positive monetary compensatory amounts such as referred to in Regulation (EEC) No 798/80) there is no contractual relationship and it is solely a question of a statutory obligation which, as with many statutory revenue obligations must be further defined and applied by the authorities by means of an administrative decision. Let me cite by way of example Articles 7 to 10 of Commission Regulation No 798/80. Another example (the lodging of a deposit guaranteeing the carrying out of transactions covered by import or export licences) was the subject of the judgment of 17 December 1970 in Case 11/70 (*Internationale Handelsgesellschaft* v *Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1970] ECR 1125).

4.2. To answer the fifth question raised by the national court it is necessary to say something further in relation to the nature of the "penalty" the enforcement of which is guaranteed by the deposit. From the explanations which the national court provided in relation to its fourth and fifth questions it appears that it is not a question here in its view either of damages or of a "Reugeld" [penalty] within the meaning of the judgment of the Bundesverfassungsgericht which it cites.[1] In its view, it is rather a question in the present case of a fine of a criminal nature which must be considered under the general principles of criminal law which it refers to. It thus appears that the national court is not yet convinced by the denial of that criminal nature in

1 — Bundesverfassungsgericht 37, p. 288.

paragraph 18 of the aforesaid judgment in Case 11/70, a case referred to the Court of Justice by the same national court. That view is confirmed by the extra-judicial commentary on the questions asked in this case which one of the judges of the Verwaltungsgericht has somewhat unusually published in the Neue Juristische Wochenschrift (1983 pp. 2727-2730). Therefore, in order to encourage the fruitful dialogue between national courts and the Court of Justice which we are endeavouring to achieve in references for a preliminary ruling, and because of the special features of the present case, I think that, in spite of the judgment which I have just cited, it is desirable to give a more detailed consideration to the legal nature of the pecuniary obligation in question.

The fact that the Community has no power at present to apply criminal measures is now generally recognized. It would be necessary for a Community "code of criminal law" to be adopted by means of a regulation, although the Treaties give the Community institutions no power for that purpose. It is equally clear, in my opinion, that it is not possible either to speak in the present case of administrative penalties of entirely the same nature as the fines made possible by Article 87 (2) of the EEC Treaty and various articles of the ECSC Treaty. When imposing the fines provided for in the Treaties, for which the Treaties — or, in the case of Article 87 of the EEC Treaty, the implementing provisions — merely lay down maximum amounts, it is necessary, according to the Court, to take account *inter alia* of the seriousness and duration of the infringements in question. The provisions in issue here refer, however, to an amount to be fixed in each case, but basically identical for each contract, which may not exceed half the aid granted. The fixed amount is forfeited in the event of a breach of the contractual storage obligations voluntarily assumed. I again refer on that matter to my previous analysis of the relevant provisions. Moreover, I have already observed that the provisions do not prevent the deposit system from being implemented by means of a penalty clause in the contract. In that respect also the present penalty is not necessarily in the nature of an administrative fine. On the contrary, it supplements the positive "incentive" arising from the grant of aid with the (lesser) negative "discouragement" intended to ensure achievement of the aim of storage, namely to avoid costly intervention agencies.[1] Finally, the nature of the deposit (certainly if a bank guarantee is lodged) implies that if the contractual obligations are not honoured the whole of the deposit is in principle forfeited.

4.3. The fact that it is not possible to speak in the present case either of a penal measure or an administrative fine within the meaning of the Community treaties does not however mean that the "penalty" consisting in forfeiture of the deposit may escape being tested against the overriding princples of Community law.

That the Community institutions have power to fix such a pecuniary penalty *sui*

1 — The same view is, in my opinion, expressed in paragraph 6 of the judgment in Case 26/70 *Einfuhr- und Vorratsstelle* v *Henck* [1970] ECR 1183.

generis has already been recognized by the Court in a similar case in the aforementioned judgment given in Case 11/70 (paragraph 12). In the judgment in Case 240/78 *(Atalanta Amsterdam BV* v *Produktschap voor Vee en Vlees* [1979] ECR 2137) the Court confirmed that the principle of proportionality is applicable to such deposit systems, as had already been recognized in paragraphs 14 to 16 of the judgment in Case 11/70.

In paragraph 15 of the decision in Case 240/78 the Court held that the provision on forfeiture in the Commission regulation which was in question in that case was, by reason of its absolute nature, "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". On my analysis, the provisions at issue in the present case are of a similarly absolute nature. In the present case, as in Case 240/78, recourse may be had to a provision in the relevant Council regulation (Article 4 (2)) which allows forfeiture in whole or in part and thus makes possible full application of the principle of proportionality. However, in view of the nature of the deposit, which may be in the form of a bank guarantee, the undertaking in question will normally have to plead special circumstances justifying only a partial forfeiture. In that respect I will remind the Court that in its decisions on the policy in relation to fines in the steel industry it has held that even as regards the genuine administrative penalties which were in question there it was lawful for the Commission to proceed on the basis of fines generally fixed in advance. In that area also it will be necessary for those concerned to plead special circumstances justifying a reduction in a particular case.

4.4. A special problem arises in the present case because there have already been fines imposed in the aforementioned criminal proceedings. Although the penalties secured by the deposits in question are not completely analogous, as I have already said, to the fines provided for in Article 87 of the EEC Treaty, the specific problem may nevertheless be resolved here in my opinion by applying *mutatis mutandis* the view expressed by the Court at paragraph 11 of the judgment in Case 14/68 *(Walt Wilhelm* v *Bundeskartellamt* [1969] ECR 1). There the Court stated as follows:

"The possibility of concurrent sanctions need not mean that the possibility of two parallel proceedings pursuing different ends is unacceptable. Without prejudice to the conditions and limits indicated in the answer to the first question, the acceptability of a dual procedure of this kind follows in fact from the special system of the sharing of jurisdiction between the Community and the Member States with regard to cartels. If, however, the possibility of two procedures being conducted separately were to lead to the imposition of consecutive sanctions, a general requirement of natural justice, such as that expressed at the end of the second paragraph of

Article 90 of the ECSC Treaty, demands that any previous punitive decision must be taken into account in determining any sanction which is to be imposed. In any case, so long as no regulation has been issued under Article 87 (2) (e), no means of avoiding such a possibility is to be found in the general principles of Community law; this leaves intact the reply given to the first question."

To justify the application of that view by analogy I would make the following observations. The possibility of overlapping between a criminal penalty imposed under domestic criminal law and a pecuniary penalty imposed under Community law does not seem to me to be excluded in principle in the present case, since, in this case too, the two parallel proceeedings in respect of largely or entirely identical facts pursue different ends. In the present case, as in the previous one, the possibility of parallel proceedings is the result of the division of powers between the Community and the Member States. Under that division the power to take criminal proceedings in respect of fraud in connection with the common agricultural policy is reserved to the Member States. Although, as I see it, the penalty in issue is less in the nature of a truly criminal measure than the fines provided for in Article 87 of the EEC Treaty, it accords, in my view, with the philosophy underlying the passage cited to apply, in the present case too, the principle that in determining the later penalty account should be taken of previous penalties imposed under criminal law. It is clear that the decision of the criminal court which I examined earlier did not take account of the claim for repayment of the deposit then pending and the subsequent declaration that it was forfeited. The previous penalties imposed should therefore be taken into account in applying the provisions on deposits which are now in issue. In my opinion, that must be regarded as a special application of the principle of proportionality which has been recognized in the cases concerning intervention in agricultural matters and not an application of the principle of criminal law *ne bis in idem.* Nor are the other principles of criminal law to which the national court refers in its comments on the fifth question applicable as such, in my opinion, to deposits such as those in issue here.

4.5. The first three questions put by the national court may be best considered together in my opinion. They all relate directly to the central issue for the national court of whether a decision to release a deposit may be revoked (last paragraph of its general comments on those questions).

For two reasons I think that those questions should be answered to the effect, contrary to the views of the German Government and the Commission, that the national authorities in principle are not only entitled but also obliged to claim back and declare forfeit in whole or in part deposits which have been wrongly released or equivalent sums. In the first place, that follows, in my opinion, from the tenor of Article 4 (2) of the Council regulation. That paragraph states that the deposit "shall

be forfeited in whole or in part if these [their contract obligations] are not fulfilled or are only partially fulfilled". Apart from *force majeure*, which is not in issue here, Article 4 (3) of the Commission regulation is to the same effect. As I have said, those provisions must be interpreted, in my opinion, as laying down an obligation to achieve a particular result so that in the event of the wrongful release of a deposit the detailed rules for achieving that result are irrelevant. In the second place, the principle of non-discrimination, which was expressly cited as a basis of the Council regulation, argues against any different interpretation. Any different interpretation would inevitably lead to legal inequality among those concerned in the various Member States and would consequently conflict with Article 40 (3) of the EEC Treaty.

5. Conclusion

On the basis of the foregoing considerations I propose the following answers to the questions put by the national court.

1, 2 and 3: Pursuant to Article 4 of Regulation (EEC) No 989/68 of the Council and Article 4 of Regulation (EEC) No 1071/68 of the Commission, in conjunction with the prohibition of discrimination laid down *inter alia* in Article 40 (3) of the EEC Treaty, the national authorities responsible for the implementation of those regulations are required to claim repayment of deposits wrongly released or equivalent amounts and to declare them forfeit in whole or in part, applying if necessary their national law in order to fulfil those obligations.

4: The deposits referred to in Article 4 of Regulation No 1071/68 is a guarantee for the financial consequences which that article and the corresponding article of Regulation No 989/68 implicitly prescribe for breaches of the contractual obligations pertaining to storage by individuals of beef and veal in respect of which aid has been granted under the aforesaid regulations.

5: Article 4 of Regulation No 1071/68 does not exclude partial forfeiture, pursuant to Article 4 (2) of Regulation No 989/68 and in accordance with the principle of proportionality, which the Court has held to apply to such deposits.[1] It is however necessary to take account of the rule arising from the nature of the deposits to the effect that, in the absence of special circum-

1 — Cf. paragraph 2 of the Court's answer to the questions raised in Case 240/78, [1979] ECR 2152.

stances pleaded by the person concerned, the whole of the deposit is to be forfeited.[1] When the seriousness of the breach of the contracts concerned has been recognized in a judgment in previous criminal proceedings and when heavy penalties have been imposed as a result, the principle of proportionality also implies that account should be taken of the judgment in the previous criminal proceedings in determining the extent to which the deposit should be forfeited.[2]

1 — That observation seems to me necessary now in the light of the judgments given by the Court since the judgment in Case 240/78. Since in the cases on the policy in relation to fines in the steel industry the Court has held that the Commission is entitled to proceed on the basis of fixed amounts even in respect of genuine administrative penalties such as those expressly provided for in the Treaties, that applies *a fortiori* by reason of their nature to deposits such as those in issue here.

2 — Cf. the third sentence of paragraph 11 (quoted above) of the judgment in Case 14/68.