

JUDGMENT OF THE COURT  
5 JULY 1977 <sup>1</sup>

**Bela-Mühle Josef Bergmann KG  
v Grows-Farm GmbH & Co. KG  
(preliminary ruling requested  
by the Landgericht Oldenburg)**

**'Skimmed-milk powder'**

Case 114/76

1. *Agriculture — Common organization of the markets — Community arrangements — Burden of costs — Discriminatory distribution between the various agricultural sectors — Not permissible  
(EEC Treaty, Article 39 and second subparagraph of Article 40 (3))*
  2. *Agriculture — Common organization of the markets — Skimmed-milk powder held by intervention agencies — Compulsory purchase — Council Regulation (EEC) No 563/76 — Invalidity*
- 
1. Community arrangements which impose a discriminatory distribution of the burden of costs between the various sectors of agricultural production cannot be justified for the purpose of attaining the objectives of the common agricultural policy.
  2. Council Regulation No 563/76 of 15 March 1976 on the compulsory purchase of skimmed-milk powder held by intervention agencies for use in feeding-stuffs is null and void.

In Case 114/76

Reference to the Court under Article 177 of the EEC Treaty by the Landgericht Oldenburg for a preliminary ruling in the action pending before it between

BELA-MÜHLE JOSEF BERGMANN KG, Langförden (Germany),

and

GROWS-FARM GMBH & CO. KG, Langförden (Germany),

<sup>1</sup> — Language of the Case: German.

on the validity of Council Regulation (EEC) No 563/76 of 15 March 1976 on the compulsory purchase of skimmed-milk powder held by intervention agencies for use in feeding-stuffs (OJ L 67, p. 18),

## THE COURT

composed of: H. Kutscher, President, A. M. Donner and P. Pescatore, Presidents of Chambers, J. Mertens de Wilmars, M. Sørensen, Lord Mackenzie Stuart, A. O'Keefe, G. Bosco and A. Touffait, Judges,

Advocate-General: F. Capotorti

Registrar: A. Van Houtte

gives the following

## JUDGMENT

### Facts and issues

The facts, the procedure and the written 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

1. The common organization of the market in milk and milk products provides for a system of prices based *inter alia* on a target price for milk as well as on intervention prices fixed mainly for butter and skimmed-milk powder.

Despite this price system, the Community is experiencing a surplus of milk which takes the form, in particular, of the accumulation of considerable intervention stocks of skimmed-milk powder.

2. Among the measures which the institutions of the Community have adopted in order to reduce these stocks is Council Regulation (EEC) No 563/76 of 15 March 1976 on the compulsory purchase of skimmed-milk powder held by intervention agencies for use in feeding-stuffs (OJ L 67, p. 18).

That regulation imposed an obligation to purchase skimmed-milk powder held by intervention agencies for use in feeding-stuffs for animals other than young calves (Article 1).

In order to ensure compliance with this obligation, the grant of aid for certain vegetable foods (colza and rape seeds, soya beans etc.) is made subject to the provision of a security or the presentation of a document, of standard Community form, made out by the competent authority of the Member State

which is responsible for denaturing, hereinafter referred to as 'attestation of purchase and denaturation' (Articles 2 and 6).

Free circulation in the Community of imported vegetable foods (such as oil seeds, flour from these seeds, certain animal food preparations etc.), is subject to the presentation of a 'protein certificate' (Article 3 (1)).

This certificate is issued by Member States to any applicant. The issue thereof is conditional on the provision of a security or the submission of an 'attestation of purchase and denaturation' (Article 3 (2)).

In the case of contracts concluded before the date of entry into force of the regulation, the successive buyers of the products referred to in Articles 2 and 3 or of protein products processed therefrom are to bear the burden of the costs arising under the arrangements laid down in the regulation (Article 5).

The regulation, which entered into force on 15 March 1976, was applied until 31 October 1976 (Article 11).

3. The applicant in the main action runs a concentrated feeding-stuffs factory and obtains for the defendant in the main action, which operates a battery hen unit, the feeding-stuffs which the latter needs for its undertaking.

In their contracts the parties in the main action provided that the increase in the price of raw materials used in the composition of feeding-stuffs as a result of national or 'supranational' measures should be borne by the purchaser.

The raw materials which are mainly used in the composition of the product which the applicant in the main action delivers to the defendant in the main action are maize and soya meal. The applicant in the main action obtains these two main basic components from different

importers. In accordance with Regulation (EEC) No 563/76, the latter provided securities for the issue of 'protein certificates' and they passed on the amounts to the applicant in the main action, which in turn wishes to pass on to the defendant in the main action a total sum of DM 6 522'68.

The defendant refused to pay this amount and the applicant in the main action brought proceedings for its payment before the Landgericht (Regional Court) Oldenburg. The defendant in the main action contended that the application should be rejected on the ground that Regulation (EEC) No 563/76 was unlawful.

4. By order of 8 September 1976 the Landgericht stayed the proceedings and referred to the Court of Justice under Article 177 of the EEC Treaty for a preliminary ruling on the question 'whether Regulation (EEC) No 563/76 is valid in law'.

5. The *defendant in the main action* contended, *inter alia*, before the Landgericht that it must be denied that Regulation (EEC) No 563/76 increases agricultural productivity, ensures the rational development of agricultural production and is likely to stabilize markets (Article 39 (1) (a) and (c) of the Treaty). Skimmed-milk powder is approximately six times as expensive as soya meal as a source of protein. Because of the obligation to purchase skimmed milk the production of feeding-stuffs is made considerably more expensive. The victims are certain sectors of agriculture which are unable to pass on the increase in price of feeding-stuffs to their own prices.

The obligation to purchase skimmed milk creates disparities in the market. The feeding-stuffs industry is compelled to mix in expensive skimmed-milk powder although the protein requirements can be covered in the form of plant protein at incomparably lower costs.

Soya meal costs approximately DM 50 per 100 kg while the same quantity of skimmed-milk powder costs approximately DM 317. Taking into account an EEC subsidy skimmed-milk powder is sold for approximately DM 150. On the open market the only prices that could be obtained would be those for comparable plant protein, that is, about DM 50 per 100 kg. The intervention agencies would therefore have to bear a loss of approximately DM 100 per 100 kg. This loss is being saved by introducing compulsory mixture with skimmed milk. This method has the practical effect of introducing a European Communities' tax. This is contrary to the principles of the EEC Treaty, in particular the financial provisions contained therein (Article 199 *et seq.* of the EEC Treaty).

Regulation (EEC) No 563/76 also conflicts with the Grundgesetz (basic law), in particular Article 12. Laying down an obligation to purchase which was previously unknown in German economic law and in the common organization of the agricultural markets within the European Communities conflicts with the right to engage freely in an occupation. The imposition of demands on individuals is only permissible if the principle of proportionality is complied with and if there exists a factual connexion between those who benefit and those who bear the burden.

The principle of proportionality is only complied with if the objective pursued by Regulation (EEC) No 563/76, namely the reduction of the stocks of skimmed-milk powder, could not be achieved by other less burdensome measures. An obligation to purchase is not necessary in order to attain the objectives of the regulation. The stocks of skimmed-milk powder could also be reduced by offering them for sale at competitive prices which are in accordance with market conditions. This would necessarily entail financial losses

for the EEC which would have to be financed out of the common budget. It would then be a matter for the common budgetary policy to make the necessary funds available.

Furthermore no factual links exist between those who benefit and those who bear the burden. The persons benefited by an obligation to purchase skimmed-milk powder are milk producers who are guaranteed intervention prices for their products. In this way milk producers are given preferential treatment at the expense of feeding-stuff producers and livestock owners. There are no factual reasons for giving milk producers preferential treatment at the expense of livestock owners.

As Regulation (EEC) No 563/76 is illegal the claim based on it must be unsuccessful.

6. The validity of Regulation (EEC) No 563/76 is also the central issue in the applications for compensation which are the subject of Joined Cases 83 and 94/76 and 4 and 15/77, *Bayerische HNL Vermehrungsbetriebe GmbH & Co. KG and Others v Council and Commission*, and of the references for a preliminary ruling which gave rise to Case 116/76, *Granaria BV. v Hoofdproduktschap voor Akkerbouwprodukten and Produktschap voor Margarine, Vetten en Oliën* and of Joined Cases 119 and 120/76, *Kurt A. Becher v Hauptzollamt Bremen-Nord and Ölmühle AG v Hauptzollamt Hamburg-Waltershof*.

7. The order of the Landgericht Oldenburg was received at the Court Registry on 2 December 1976.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the Council, represented by its Legal Adviser, Bernhard Schloh, acting as Agent, and by the Commission, represented by its Legal Adviser, Peter Gilsdorf, also acting as Agent.

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

## II — Written observations submitted to the Court

Before commenting on the question referred to the Court for a preliminary ruling, the *Council* and the *Commission* refer to their observations in Joined Cases 83 and 94/76 and 4 and 15/77.

1. (a) The *Council* does not consider Regulation (EEC) No 563/76 to be contrary to the objectives of the common agricultural policy set forth in subparagraphs (a), (b) and (c) of Article 39 (1) of the Treaty. It is permissible for the Council to give temporary priority to one or more of the objectives listed. In the event the Council was right to grant priority to the objective laid down in subparagraph (c), namely 'to stabilize markets'. Moreover Regulation (EEC) No 563/76 must be viewed in the general context of the decisions on prices adopted by the Council for the 1976/77 agricultural year. When these considerations are taken into account the contested regulation is not, in the Council's view, contrary to Article 39 of the Treaty.

(b) Nor, according to the Council, does the regulation in question contravene the *prohibition of discrimination* laid down in Article 7 and the second subparagraph of Article 40 (3) of the Treaty. In principle, the obligation to purchase skimmed-milk powder covers all those who use protein for feeding-stuffs, namely poultry-farmers and swine- and cattle-breeders, the latter for example using protein foods as a supplement for cattle-feed.

(c) According to the Council there is, in this case, no question of creating a *Community tax* but of introducing a

security designed to ensure that the obligation to purchase skimmed-milk powder is complied with. The provision of a security serves to enforce this obligation. The Court has, in previous cases, already had to consider similar arrangements for security and has declared them to be lawful.

(d) As to the alleged infringement of Article 12 of the *German basic law*, the Council contends that the Court cannot rule on the compatibility or otherwise of Community measures with national law. The validity of measures adopted by the institutions of the Community can be appraised only on the basis of Community law: judgment of the Court of 17 December 1970 in Case 11/70, *Internationale Handelsgesellschaft* [1970] ECR 1125. The submissions made on this aspect by the defendant in the main action may however be interpreted as indicating its desire that the Court should consider whether the regulation at issue may not conflict with certain fundamental rights. These rights form an integral part of the general principles of law, the observance of which the Court ensures: judgment of 14 May 1974 in Case 4/73, *Nold v Commission* [1974] ECR 491.

However, the freedom to engage in an occupation is not protected 'on its own', regardless of any economic, legal or social context. On the contrary, it is subject to restrictions imposed in the general interest. Similarly, the principle of proportionality is not a purely abstract one. It leaves the legislature with plenty of room for manoeuvre in deciding whether the legislative measure concerned, viewed in its context, is in the circumstances proportionate to the objective pursued.

In the present case the contested regulation restricts neither the freedom to choose an occupation nor the freedom to engage in it. The obligation to purchase was, on the other hand, laid down by the legislature for reasons of public interest.

It was necessary to adopt rules of this kind in order to use up part of the 'mountain' of skimmed-milk powder which accumulated comparatively quickly. As regards, more particularly, the principle of proportionality, these rules are not only calculated to reduce the quantity of skimmed-milk powder available by about 300 to 400 000 metric tons but are also essential for this purpose since, if it had not been for the obligation laid down, it would have been impossible for the surplus to be absorbed. Accordingly, the object of the rules is proportionate to the means employed.

In consequence the Council does not consider that Regulation (EEC) No 563/76 has infringed fundamental rights.

(e) As regards the statement by the defendant in the main action that *additives of iron and copper* prescribed for the denaturing of skimmed-milk powder are contrary to German law, the Council again comments in this connexion that the Court cannot determine the compatibility of Community law with national law.

2. (a) As regards the alleged infringement of *Article 39 (1)* of the Treaty, the *Commission* states that, in view of the very wide wording of the objectives listed in this article and their relationship with each other, it is only in extreme cases that it is possible to establish that rules promulgated by a Community institution are clearly outside the scope of those objectives. The Court has already declared that those objectives cannot always in practice be pursued simultaneously and that the Community institutions may accordingly allow any one of them temporary priority.

The question whether the rules accord with the objective laid down in *Article 39 (1) (a)* involves a complicated economic value-judgment implying wide powers of discretion: for the purposes of

judicial review, there must have been at least a serious error in the assessment of the economic considerations. Furthermore, the rules which were introduced are merely a supplementary measure arising from the implementation of a market policy, which has for many years been based upon rationalization and improvement of organizational structures.

In any case, it is impossible to carry out an appraisal of the legality of general policy by virtue of which the contested measure was adopted on the basis of a retrospective review of the extent to which it was successful; in terms of the law, it is enough that when a measure is promulgated it does not appear manifestly unsuitable for the purpose of attaining the objective in view.

The rules at issue are the result of the price maintenance policy and accordingly help to increase the individual earnings of persons engaged in agriculture (*Article 39 (1) (b)*).

Above all, the contested measure accords with the object of stabilization of the market (*Article 39 (1) (c)*). Any consideration of it from this point of view must have regard to the market in milk as a whole. It is very difficult to restore a satisfactory balance between supply and demand. In consequence, the Community institutions must be able, on a provisional basis, to employ unorthodox measures in so far as they are essential for the improvement of outlets.

As regards the submissions based on *Article 39*, the *Commission* makes the general comment that the measure adopted under Regulation (EEC) No 563/76 falls within the general scope of the objective provided for in subparagraphs (a) to (c) of *Article 39 (1)* in so far as it is viewed in a more general context and attention is not confined to its isolated effect on the processing industry.

(b) As regards the alleged infringement of the *principle of non-discrimination*,

the Commission points out that the system in question affects practically the whole of the feeding-stuffs industry. Milk producers are also involved in the system at issue inasmuch as they use animal feed based on vegetable protein.

There is, moreover, no principle laying down that a particular industry must, on its own, bear the cost involved in solving its own problems. There must exist some connexion between the industry 'called upon to bear the cost' and the industry 'benefited'. Such a link does in fact exist between all sectors of agriculture and, in particular, between the vegetable protein and the animal protein sectors.

As there is no other less costly means of purchasing feeding-stuffs it may moreover be concluded that in principle the cost must be passed on to the purchaser and the ultimate consumer.

There is no legal principle which, in such circumstances, requires all taxpayers to pay the additional cost arising from the market policy. There can be even less question of special, arbitrary or discriminatory treatment of a particular group of traders.

(c) As regards the alleged *infringement of financing rules*, the Commission states that it is incorrect to compare the compulsory purchase arrangements with a Community tax because it enables economies to be made. The object of the arrangements is not in any event to increase the Communities' own resources but to absorb the skimmed-milk powder surpluses. Moreover, the Communities' own resources are used without discrimination to finance all expenditure entered in the budget: Article 5 of the Decision of 21 April 1970 on the Replacement of Financial Contributions from Member States by the Communities' own Resources (OJ, English Special Edition 1970 (I), p. 224). Nor is the security provided for under the regulation an end in itself but it is designed to ensure purchase. This case

is accordingly concerned with supplementary measures which are purely ancillary to the original measures.

Even if the provision on the security were regarded as having something in common with a tax this would not affect its validity. Under Article 43 of the Treaty the Community has power to impose taxes in a number of guises.

(d) With regard to the alleged infringement of Article 12 of the *German basic law* the Commission points out that this ground of complaint must be interpreted as though the defendant in the main action were claiming that Community rules are contrary to the fundamental rights inherent in Community law or contrary to safeguards treated on the same basis as fundamental rights.

As the Court held in Case 4/73, *Nold v Commission*, the right freely to engage in an occupation is protected in the Member States and consequently also in Community law 'subject always to limitations laid down in accordance with the public interest'.

In the present case the general principle of proportionality must be the only test in determining whether the infringement of this fundamental right serves a purpose which is in itself acceptable, whether it is such as to enable this objective to be attained and whether it does not constitute an arbitrary and intolerable burden.

Referring in this connexion to its observations on the principle of non-discrimination the Commission adds *inter alia* that, as regards the suitability and necessity for the system in question, it was designed to contribute substantially to the absorption of skimmed-milk powder surpluses by making it possible for large quantities of this product to be put to new uses.

The fact that the stocks continued to increase for a time after the entry into

force of the regulation in no way detracts from the efficacy of the regulation since the increase in stocks during that period was in any case less than the quantities which it was possible to dispose of as a result of the regulation.

The Commission states that the various formulae for denaturing provided for under Commission Regulation (EEC) No 753/76 of 31 March 1976 laying down detailed rules for the sale of skimmed-milk powder for use in animal feed pursuant to Regulation (EEC) No 563/76 (OJ L 88, p. 1), which has meanwhile been in part amended by Regulations (EEC) Nos 1131/76 of 14 May 1976 (OJ L 127, p. 42) and 1409/76 of 18 June 1976 (OJ L 158, p. 29), provide ample opportunities of carrying out denaturing operations in conformity with national provisions applicable to feeding-stuffs.

The compulsory purchase system was, moreover, also necessary because there was no other way of quickly achieving the desired result.

In conclusion, the Commission submits that the Court's reply to the court making the reference should be that consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Regulation (EEC) No 563/76.

### III — Oral procedure

The Council, represented by its Legal Adviser, B. Schloh, acting as Agent, and the Commission, represented by its Legal Adviser, Peter Gilsdorf, acting as Agent, submitted oral observations at the hearing on 3 May 1977.

The Court had invited the Commission and the Council to supply at the hearing information and suitable explanations concerning the costs of dehydrating skimmed milk and the costs of denaturing necessitated by the compulsory use of skimmed-milk powder in feeding-stuffs compared with the value of this milk as animal feed.

In Joined Cases 83 and 94/76 and 4 and 15/77, the *applicants* replied that the three factors, dehydration, storage and denaturing, represented a total of about 27 units of account or DM 95 per 100 kg, and that the value of 100 kg of skimmed-milk powder as animal feed was roughly between DM 50 and 65.

The *Commission* replied that the cost of manufacturing skimmed-milk powder was on average 15 u.a. per 100 kg. The denaturing costs involved in the scheme in question are between 1 and 3 u.a. per 100 kg according to the denaturing method. The value of skimmed-milk powder as animal feed varies according to whether the product is used for feeding calves or for swine and poultry. In the first case the supply price fixed by the Community for this type of use determines the price on the market. For the period in question the supply price was 52 u.a. per 100 kg of skimmed-milk powder. In the second case the market price of the product is fixed on the basis of its value as animal feed compared with substitute products and, in particular, of the price of soya oil cake. During the time when the contested regulation applied, the price of soya oil cake was about 18 u.a. per 100 kg. The price of soya at the present time is 25 u.a. per 100 kg.

The Advocate General delivered his opinion at the hearing on 7 June 1977.

## Decision

- 1 By order of 8 September 1976, which reached the Court on 2 December 1976, the Landgericht Oldenburg asked the Court under Article 177 of the EEC Treaty for a ruling on the validity of Council Regulation (EEC) No 563/76 of 15 March 1976 on the compulsory purchase of skimmed-milk powder held by intervention agencies for use in feeding-stuffs (OJ L 67, p. 18). The reference was made in connexion with civil proceedings concerning the performance of a contract for delivery of feeding-stuffs concluded between a producer of concentrated feeding-stuffs, the plaintiff in the main action, and the proprietor of a battery hen unit, the defendant in the main action. In addition to the price agreed under the contract the plaintiff in the main action asked for payment of a sum equivalent to the charge arising under Regulation (EEC) No 563/76 the validity of which is, however, contested by the defendant in the main action.
- 2 Regulation (EEC) No 563/76 was promulgated at a time when the stocks of skimmed-milk powder bought in by the intervention agencies pursuant to Regulation (EEC) No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products (OJ English Special Edition 1968, p. 176) had reached considerable proportions and were continuing to increase despite the measures adopted by the Community institutions to curb the tendency towards over-production of milk and to increase the sale of skimmed-milk powder. The system established by Regulation (EEC) No 563/76 the application of which was not extended beyond the end of the original period of application, which expired on 31 October 1976, was designed to reduce stocks through the increased use in feeding-stuffs of the protein contained in skimmed-milk powder. To this end the regulation made the grant of the aids provided for certain vegetable protein products as well as the free circulation in the Community of certain imported animal feed products subject to the obligation to purchase specified quantities of skimmed-milk powder. In order to ensure that this obligation was fulfilled the grant of aid and free circulation were subject to the provision of a security or the production, on the prescribed form, of evidence of the purchase and of the denaturing of the prescribed quantities of skimmed-milk powder.
- 3 Under Article 1 of Commission Regulation (EEC) No 753/76 of 31 March 1976 laying down detailed rules for the sale of skimmed-milk powder for

use in animal feed (OJ L 88, p. 1), skimmed-milk powder held by the intervention agencies was resold by them in fulfilment of the obligation to purchase at a price of 52.16 u.a. per 100 kg multiplied by a coefficient which, in the case of the Federal Republic of Germany, amounted to 0.8325. The denaturing costs to be borne by the purchaser were between 1 and 3 u.a. per 100 kg. During the period when Regulation (EEC) No 563/76 applied, the market price of soya oil cake, a vegetable product with a nutritional value comparable to that of skimmed-milk powder for use in animal feed other than that for young calves, varied between 13.30 and 20.40 u.a. per 100 kg, the average being about 18 u.a. per 100 kg. The compulsory purchase of skimmed-milk powder was, therefore, imposed at a price equal to about three times its value as animal feed. The security, which was released only on production of proof of the purchase of a specified quantity of powdered skimmed milk, was fixed at such an amount that, if it was forfeited, its effect on the prices of feeding-stuffs was slightly more than the increase due to the purchase of powdered skimmed milk.

- 4 Article 5 of the regulation laid down that, in the case of contracts concluded before the date of entry into force of the regulation, the burden of the costs arising under the arrangements was to be borne by the successive buyers of the products in question. The regulation did not contain any similar provision making it possible for consumers of feeding-stuffs, such as breeders of poultry and pigs, to incorporate the increase in the price of their products.
- 5 The validity of these arrangements has been contested on grounds of conflict in particular with the objectives of the common agricultural policy as defined in Article 39 of the Treaty, the prohibition of discrimination laid down in the second subparagraph of Article 40 (3) and the principle of proportionality between the means employed and the end in view. Because of the close connexion between these grounds of complaint, it will be appropriate to consider them together.
- 6 Under Article 39, the objectives of the common agricultural policy are to be the rational development of agricultural production, the assurance of a fair standard of living for the whole of the agricultural community, the stabilization of markets and the availability of supplies to consumers at reasonable prices. Although Article 39 thus enables the common agricultural policy to be defined in terms of a wide choice of measures involving guidance

or intervention, the fact nevertheless remains that the second subparagraph of Article 40 (3) provides that the common organization of the agricultural markets shall be limited to pursuit of the objectives set out in Article 39. Furthermore, the same subparagraph lays down that the common organization of the markets 'shall exclude any discrimination between producers or consumers within the Community'. Thus the statement of the objectives contained in Article 39, taken together with the rules in the second subparagraph of Article 40 (3), supplies both positive and negative criteria by which the legality of the measures adopted in this matter may be appraised.

- 7 The arrangements made by Regulation (EEC) No 563/76 constituted a temporary measure intended to counteract the consequences of a chronic imbalance in the common organization of the market in milk and milk products. A feature of these arrangements was the imposition not only on producers of milk and milk products but also, and more especially, on producers in other agricultural sectors of a financial burden which took the form, first, of the compulsory purchase of certain quantities of an animal feed product and, secondly, of the fixing of a purchase price for that product at a level three times higher than that of the substances which it replaced. The obligation to purchase at such a disproportionate price constituted a discriminatory distribution of the burden of costs between the various agricultural sectors. Nor, moreover, was such an obligation necessary in order to attain the objective in view, namely, the disposal of stocks of skimmed-milk powder. It could not therefore be justified for the purposes of attaining the objectives of the common agricultural policy.
- 8 In consequence, the answer must be that Council Regulation (EEC) No 563/76 of 15 March 1976 is null and void.

### Costs

- 9 The costs incurred by the Council and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable and as these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the national court, the costs are a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Landgericht Oldenburg by order of 8 September 1976, hereby rules:

**Council Regulation (EEC) No 563/76 of 15 March 1976 on the compulsory purchase of skimmed-milk powder held by intervention agencies for use in feeding-stuffs is null and void.**

Kutscher	Donner	Pescatore	Mertens de Wilmars	Sørensen
Mackenzie Stuart	O'Keefe	Bosco	Touffait	

Delivered in open court in Luxembourg on 5 July 1977.

A. Van Houtte

Registrar

H. Kutscher

President

**OPINION OF MR ADVOCATE-GENERAL CAPOTORTI  
DELIVERED ON 7 JUNE 1977<sup>1</sup>**

*Mr President,  
Members of the Court,*

1. The Community suffers chronically from an in-built surplus in milk and milk-products. This situation is the result of an over-abundant supply, the long-term increase in which is estimated to be in the region of about 1.7 % per year, compared with a demand which is stagnant. More specifically, in recent years, the consumption of butter has

fallen, that of liquid milk has been comparatively unchanged though showing a tendency to fall and only the consumption of cheese has increased. The surplus production of milk has been accompanied by a considerable extension of plant for its processing into skimmed-milk powder. There has, accordingly, been a rapid and very substantial increase in stocks of this product held by the intervention agencies. From approximately 160 000

<sup>1</sup> — Translated from the Italian.