

JUDGMENT OF THE COURT (FIFTH CHAMBER)
21 SEPTEMBER 1983 ¹

**Deutsche Milchkontor GmbH and Others
v Federal Republic of Germany
(reference for a preliminary ruling
from the Verwaltungsgericht Frankfurt am Main)**

(Recovery of aids unduly paid — Skimmed-milk powder)

Joined Cases 205 to 215/82

1. *Agriculture — Common organization of the markets — Milk and milk products — Aids for skimmed-milk powder — Skimmed-milk powder — Definition
(Regulation No 986/68 of the Council, Art. 1)*
2. *Member States — Obligations — Implementation of Community law — Application of procedural and substantive rules of national law — Conditions
(EEC Treaty, Art. 5)*
3. *European Communities — Own resources — Wrongly-paid Community aids — Recovery — Disputes — Application of national law — Conditions and limits
(Regulation No 729/70 of the Council, Art. 8 (1))*
4. *European Communities — Own resources — Wrongly-paid Community aids — Recovery — Disputes — Application of national law — Scope — Burden of proof
(Regulation No 729/70 of the Council, Art. 8 (1))*
5. *Agriculture — Common organization of the markets — Milk and milk products — Aids for skimmed-milk powder — Monitoring of compliance with Community regulations — Duty of the national authorities — Scope — Failure to fulfil duty — Consequences — Determination by the national court — Application of national law
(EEC Treaty, Art. 5; Regulation No 729/70 of the Council, Art. 8; Regulation No 990/72 of the Commission, Art. 10)*

¹ — Language of the Case: German.

1. A product consisting of a spray-dried mixture of skimmed milk and a powder composed of whey, sodium caseinate and lactose is not skimmed-milk powder for the purposes of the Community regulations governing aid for skimmed-milk powder and, more particularly, of Article 1 of Regulation No 986/68 even if its composition is the same as that of skimmed-milk powder made from cow's milk.

2. According to the general principles on which the institutional system of the Community is based and which govern the relations between the Community and the Member States, it is for the Member States, by virtue of Article 5 of the Treaty, to ensure that Community regulations, particularly those concerning the common agricultural policy, are implemented within their territory. In so far as Community law, including its general principles, does not include common rules to this effect, the national authorities when implementing Community regulations act in accordance with the procedural and substantive rules of their own national law; however, this rule must be reconciled with the need to apply Community law uniformly so as to avoid unequal treatment of producers and traders.

3. In the present state of Community law sums unduly paid by way of aids under the Community regulations are recovered by the national authorities according to the rules and procedures laid down by national legislation

subject to the limits imposed by Community law inasmuch as the rules and procedures laid down by national law must not have the effect of making it virtually impossible to implement Community regulations and national legislation must be applied in a manner which is not discriminatory compared to procedures for deciding similar but purely national disputes.

Community law does not prevent national law from having regard, in excluding the recovery of unduly-paid aids, to such considerations as the protection of legitimate expectation, the loss of unjustified enrichment, the passing of a time-limit or the fact that the administration knew, or was unaware owing to gross negligence on its part, that it was wrong in granting the aids in question, provided however that the conditions laid down are the same as for the recovery of purely national financial benefits and the interests of the Community are taken fully into account.

4. In referring to national law as regards the recovery of aids unduly paid Article 8 (1) of Regulation No 729/70 makes no distinction between the substantive conditions for their recovery and the rules of procedure and form which must be followed in recovering them. Those conditions and rules, including those allocating the burden of proof, are therefore all determined by national law, subject to the restrictions which may derive from Community law in this regard.

5. Member States must verify by means of appropriate controls that skimmed-milk powder complies with the relevant Community rules so as to ensure that Community aids are not paid in respect of products for which they ought not to be granted. It is for the national court to determine the controls necessary for this purpose

having regard in particular to the circumstances and techniques available.

It is for the national court to determine the consequences of any failure to fulfil that duty on the basis of the relevant national law.

In Joined Cases 205 to 215/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht [Administrative Court] Frankfurt am Main, for a preliminary ruling in the proceedings pending before that court between

DEUTSCHE MILCHKONTOR GMBH (205/82),
E. KAMPPMEYER (206/82),
SCHWARZWALDMILCH GMBH (207/82),
INNTALER MISCHFUTTER GMBH & Co. KG (208/82),
HELMUT BECKER GMBH & Co. KG (209/82),
PLANGE KRAFTFUTTERWERKE GMBH & Co. KG (210/82),
JOSERA-WERK (211/82),
FRISCHLI-MILCHWERKE HOLTORF + SCHÄKEL KG (212/82),
HEMO MOHR KG (213/82),
DENKAVIT FUTTERMILCH GMBH (214/82),
DMV LAGEREI- UND VERWALTUNGSGESELLSCHAFT MBH (215/82)

and

FEDERAL REPUBLIC OF GERMANY, represented by the Bundesamt für Ernährung und Forstwirtschaft [Federal Office for Food and Forestry],

on the interpretation of various principles of Community law relating to claims for the recovery of aids unduly granted for skimmed-milk powder which has been processed into animal feed,