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## Information and Notices

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<u>Notice No</u>	Contents	Page
	I <i>Information</i>	
	<b>Commission</b>	
89/C 330/01	Six annual report to the European Parliament on Commission monitoring of the application of Community law — 1988 .....	1

I

*(Information)*

# COMMISSION

**Sixth Annual Report**

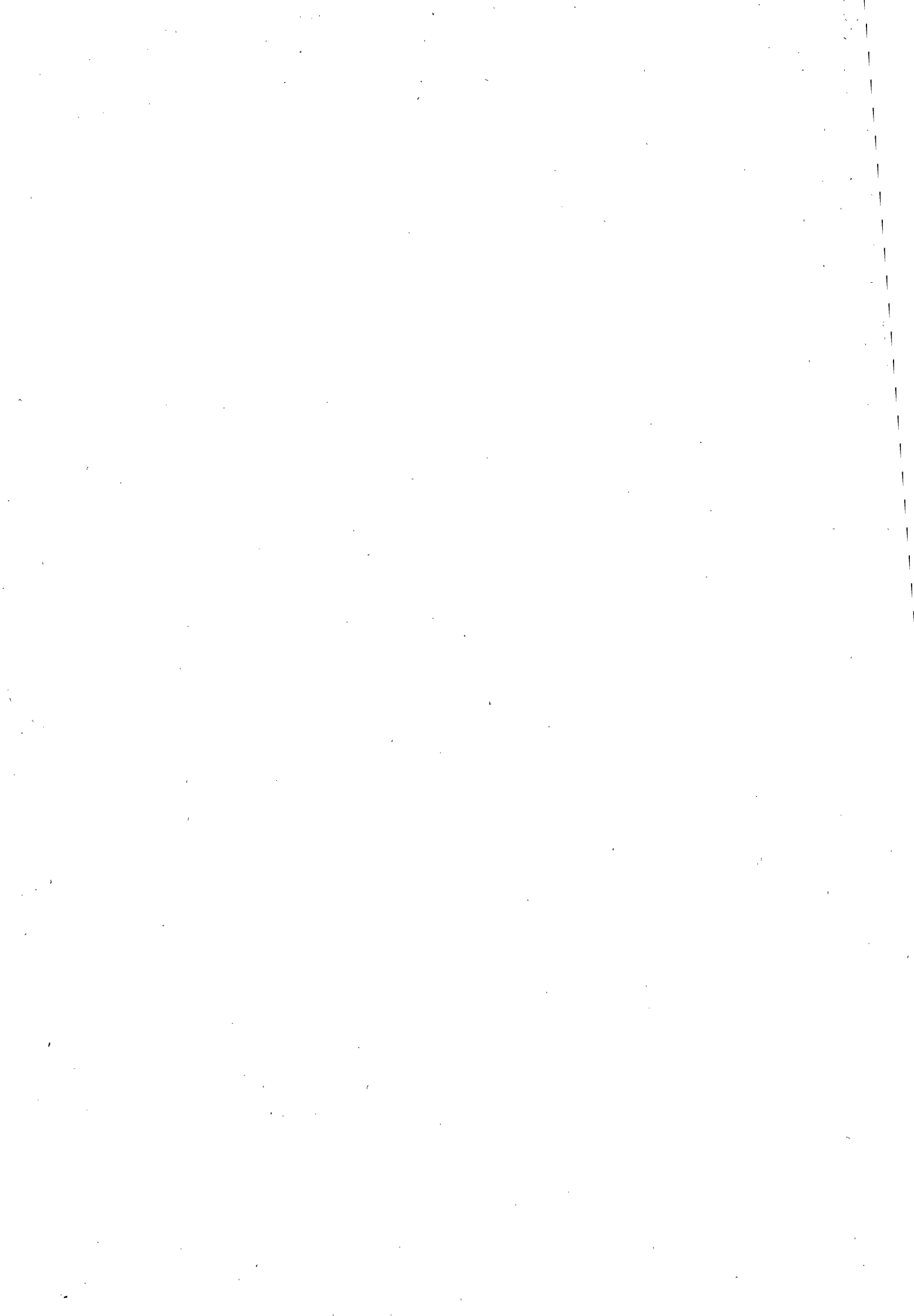
**to the European Parliament**

**on Commission monitoring of the application of Community law**

**1988**

*COM(89) 411 final*

*(89/C 330/01)*



## CONTENTS

	Page
INTRODUCTION .....	5
<b>SECTOR-BY-SECTOR ANALYSIS</b>	
<b>I. AN AREA WITHOUT FRONTIERS</b>	
<i>The single market</i>	
Removal of physical frontiers .....	7
Customs union .....	7
Free movement of goods .....	8
Article 30 .....	8
Article 95 .....	9
Abolition of animal and plant health controls .....	10
Abolition of tax controls .....	10
Removal of technical frontiers .....	11
Free movement of goods .....	11
Principles governing freedom of movement .....	11
Article 30 .....	11
Mutual recognition of national rules .....	13
Technical regulations .....	14
Miscellaneous products .....	14
Motor vehicles .....	14
Foodstuffs .....	14
Pharmaceutical products .....	14
Chemical products .....	15
Energy-generating products .....	15
Opening-up of public procurement .....	15
Free movement of workers and of members of the professions .....	16
Services .....	16
Financial services .....	16
New technologies and related services .....	17
Capital movements .....	17
Rules applying to businesses .....	18
Company law .....	18
Intellectual and industrial property .....	18
<i>A People's Europe</i>	
Free movement of persons .....	19
The right to cross borders freely .....	19
Taxation and the citizen .....	19
Right of establishment and recognition of qualifications .....	20
Discrimination on grounds of nationality .....	20
Other questions: driving licences .....	21
Employment, social policy and education .....	21
Consumer protection .....	22

## II. OTHER QUESTIONS

Statistical matters .....	22
Community staff .....	23
Budgetary matters .....	23
Environment policy .....	24
Competition policy .....	25
Agricultural policy .....	25
Fisheries .....	27
Transport policy .....	27
Energy policy .....	28
External relations .....	28
Development cooperation policy .....	28

## TABLES, CHARTS AND SUMMARIES

	Page
No 1 Infringement proceedings initiated since 1981 classified by stage of proceedings and Member State .....	29
No 2 Number of letters of formal notice, 1985 to 1988, classified by sector .....	30
No 3 Number of reasoned opinions, 1985 to 1988, classified by sector .....	31
No 4 Number of references to the Court of Justice, 1985 to 1988, classified by sector .....	32
No 5 Infringement proceedings initiated since 1981 classified by stage of proceedings and sector ...	33
No 6 Infringement proceedings initiated since 1981 classified by sector and legal basis .....	34
No 7 Number of infringement proceedings initiated since 1982 classified by legal basis and stage of proceedings .....	35
No 8 Number of infringement proceedings initiated since 1985 classified by Member State, legal basis and stage of proceedings .....	36
No 9 References to Court and judgments since 1981 .....	37
No 10 Court of Justice judgments delivered up to 31 December 1988 not complied with .....	41
No 11 Review of significant judgments of national courts of final instance .....	53
No 12 Statistics on complaints and infringements detected by the Commission's own inquiries .....	56

## ANNEXES

A — Infringements of the Treaties and of Regulations .....	59
B — Infringement of directives .....	82

APPENDIX .....	146
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## INTRODUCTION

1. The sixth annual report on the application of Community law by the Member States deals with the monitoring of the application of Community law during 1988. Like its predecessors <sup>(1)</sup> it represents a response to the desire expressed by the European Parliament in its resolution of 9 February 1983 <sup>(2)</sup>.

2. The report comprises:

- a summary of infringements of the Treaties and of secondary legislation as at 31 December 1988 and of the infringement proceedings terminated during 1988 (Annex A), and
- a review showing the stage reached in the application of directives as at 31 December 1988 (Annex B).

These are preceded by a sector-by-sector analysis, various tables and graphs and a commentary on the main judgments delivered by the highest courts of law in the Member States.

3. The presentation of the report is essentially similar to that of last year. However some innovations have been made in response to a request by the European Parliament:

- (a) in the sector-by-sector analysis, the chapter on the single market has been drafted in such a way as to follow the structure of the Commission's White Paper on the internal market and the chapter on a citizens' Europe has been amplified. Among other questions, there is now an analysis of external relations;
- (b) in response to the interest by the European Parliament in the attitude of national courts towards Community law, the annual review of important judgments of national courts is supplemented this year by a study of how their decisions have developed. This study, which was already foreshadowed in the fifth report, is published as an appendix to the present report.

4. The summaries and tables in the sixth annual report call for the following comments:

- (a) As regards the means of detecting infringements
  - (i) Complaints are a primary source of information for the Commission. The number of complaints registered continues to grow significantly (1 137 in 1988), thus showing that citizens are assuming an increasingly active role in the effective

creation of a Community based on law. The Commission makes every effort — as was indicated in the fifth report — to give a decision as quickly as possible (see table 12);

- (ii) As regards cases detected by the Commission's own enquiries there is an increase (307), contrary to the situation noted in 1987. A number of such cases originate from parliamentary questions or petitions. In these cases also the Commission tries to ensure that they are dealt with as rapidly as possible (see table 12);

- (b) The number of letters of formal notice has fallen slightly in comparison with the previous year. The internal market and industrial affairs, agriculture and the environment are the main areas in which infringement procedures have been commenced. In comparison with 1987 there is a sharp increase in relation to agriculture but a fall in the number of cases concerned with the environment, employment and social affairs (see tables 1 and 5, graph 2);

- (c) The number of reasoned opinions, on the other hand, has increased in 1988 thus continuing the increase noted in 1987. The sectors to which this increase relates are chiefly the environment, transport and agriculture. There has been a fall in the number of cases concerned with the customs union, taxation and the internal market and industrial affairs (see tables 1 and 5, graph 3);

- (d) The number of actions brought before the Court of Justice has increased slightly in comparison with 1987 (see tables 1 and 5, graph 4);

- (e) The number of judgments of the Court of Justice which have not yet been complied with rose considerably, thus aggravating the trend criticized in 1987 (see table 9 and summary 10).

5. These facts call for the following comments:

- (a) Letters of formal notice:
  - (i) The largest number of letters of formal notice relate to the internal market and industrial affairs. This is due to the Commission's intensified monitoring of the observance of Articles 30 to 36 of the EEC Treaty and of the implementation of the directives concerned with the achievement of the single market;
  - (ii) Agriculture comes second. The relative increase noted in comparison with 1987 arises particularly from delay in the adoption of national measures implementing harmonization directives (plant health sector, seeds and plants, animal feeding-stuffs and veterinary law);

<sup>(1)</sup> First annual report COM (84) 181 final, 20. 4. 1984, Second annual report COM (85) 149 final, 23. 4. 1985, Third annual report COM (86) 204 final, 3. 6. 1986, published in OJ No C 220, 1. 9. 1986, Fourth annual report COM (87) 250 final, 24. 8. 1987, published in OJ No C 338, 16. 12. 1987 and Fifth annual report COM (88) 425 final, 13. 9. 1988, published in OJ No C 310, 5. 12. 1988.

<sup>(2)</sup> OJ No C 68, 14. 3. 1983.

- (iii) Next comes the environment. The considerable fall in the number of letters of formal notice no doubt reflects the fact that the Member States are paying greater attention to observance of their obligations in this field;
- (iv) Social questions have also seen a substantial fall in the number of letters of formal notice. This is due to better application by the Member States of the directives concerning equality between men and women, those relating to safety and protection of health in the work place and the provisions on non-discrimination in access to public employment;
- (b) Reasoned opinions:
- (i) The environment is the sector giving rise to the largest number of reasoned opinions. This is partly due to the continuation of the numerous infringement procedures initiated in the previous years. It must not, however, obscure the fact that a large number of cases have been terminated because they have been regularized. It must be emphasized that public opinion has played a major part in safeguarding the environment. Thus, the pressure exerted in relation to the Karin B case encouraged the implementation of the directive on the cross-frontier transport of dangerous waste in Italian law, and consequently the regularization of the existing situation of infringement;
- (ii) Contrary to what has been noted in relation to letters of formal notice, the number of reasoned opinions concerning the internal market and industrial affairs has fallen during 1988, although it is still substantial;
- (iii) As regards agriculture, the number of reasoned opinions has doubled in comparison with 1987, and this is true also of letters of formal notice;
- (iv) Finally, the customs union and indirect taxation have shown a decline comparable to that of 1986;
- (c) The increase in the number of actions brought before the Court of Justice relates particularly to the environment and social questions. This slight increase does not, however, affect the general tendency noted in the fifth report (paragraph 5 (c)).
6. In conclusion, the commission wishes to draw the attention of the European Parliament to the following points:
- (a) The objectives to be attained before the end of 1992 require increased attention to the implementation of Community law by the Member States and particularly the directives. Among the directives relating to the single market which are already in force, there are few that have been incorporated into the law of all the Member States. The Commission's action pursuant to Article 169 of the EEC Treaty is essential in this connection<sup>(1)</sup>. But it must be supplemented by a constant effort to increase public awareness. The Commission is making this effort. A development of the relations between the European Parliament and the national parliaments could contribute to increasing the awareness of the latter where the intervention of the national legislature is necessary.
- (b) In view of the importance of its task, the Commission attaches great value to parliamentary questions, petitions and complaints by the public. These initiatives enable the Commission to exercise more extensive control and for this reason the Commission makes a point of examining them as quickly as possible.
- (c) The Commission expresses its concern regarding the judgments of the Court of Justice that have not yet been complied with, although it is certain that cases of a lack of political will are rather rare. It is nevertheless true that this situation undermines the fundamental principle of a Community based on law. The rules must be observed without exception or ambiguity. As regards remedies, the only one available under the system created by the Treaty is a power on the part of the Court of Justice to find that the necessary measures to comply with its judgment have not been taken (Article 171 of the EEC Treaty). In the absence of any further legal means of strengthening the authority of the Court's judgments, the grave problem of failure to comply with its judgments can be dealt with only by political action: making both governments and individuals more aware of the situation, increased measures of publicity, information and encouragement of references for preliminary rulings, etc. In this context the Commission is pleased to observe initiatives such as Law No 86 of 9 March 1989 in Italy, known as the La Pergola law, intended to accelerate the process of implementing Community law. Such initiatives are particularly encouraged by the Commission since, more often than not, cases where judgments have not been complied with are concerned with the implementation of directives and are due to the slowness of domestic legislative procedures.
- (d) In this context and also more generally, the Commission draws the attention of the European Parliament to its practice of giving suitable publicity to cases where infringements are found, and to their regularization, so as to inform the public of their rights and encourage any indirect checks on the
- (1) In general, the Commission, following the suggestion of the European Parliament (see point 5 of the resolution on the fifth annual report), systematically includes in its new proposals for directives a provision requiring the Member States to refer explicitly to the directives in the national instruments implementing them. This facilitates the Commission's task of verification and can at the same time contribute to better legal protection for citizens.

observance of Community law by means of actions before national courts, which may in appropriate cases refer questions for preliminary rulings.

- (e) As regards the place of the preliminary rulings procedure in the monitoring of the application of Community law, the Commission examines, in each case where a preliminary ruling is sought, whether there is a need to commence infringement proceedings. However, the observations made in the fifth report regarding the implementation of Article 177 of the EEC Treaty still remain valid. Thus, the Commission takes the view that the problem of the costs involved in the procedure can be resolved only in a context of harmonization. As regards the

problems raised by the attitude of national courts of last instance to the question of references for a preliminary ruling the Commission refers to the contents of table 11 in the present report, which deals specifically with this question.

- (f) Like the European Parliament, the Commission considers it important to promote wider knowledge of Community law, which can only make the monitoring of its application more effective. For this purpose the Commission is increasing its efforts to encourage a wider knowledge of Community law, particularly among those most concerned (lawyers, judges, national officials, consumers' associations, etc.).

## SECTOR-BY-SECTOR ANALYSIS

### I. AN AREA WITHOUT FRONTIERS

#### THE SINGLE MARKET

##### 1. Completing the internal market involves:

- organizing the mutual recognition of national rules, a process which is already well under way in the field of the free movement of goods and which has been extended to cover freedom to provide services,
- adopting some 300 measures set out in the Commission's White Paper of June 1985 which, despite their number, merely define essential requirements and general principles; these measures are designed to harmonize national rules only to the extent that is strictly necessary in order to protect health, safety or the environment.

2. Updates on the implementation of the White Paper appear in the Commission's progress reports. Following publication in November 1988 of the report required by Article 8b of the Treaty (COM(88) 650), in June 1989 the Commission published its fourth annual report on the White Paper's implementation.

3. It is not enough, however, simply for the measures to be adopted; they must also be effectively implemented by the Member States. In its November 1988 report, the Commission welcomed the fact that almost half of its programme had been the subject of Council decisions. But it also expressed concern about the incorporation of the measures into national law. Of the 112 measures adopted, 77, including 65 directives, were to have been transposed by the Member States by 1 January 1989. However, only two of those 65 directives have been implemented throughout the Community, some Member States having by that date taken none of the other measures necessary.

4. It is therefore important that the Commission should keep a very close watch on progress in implementing those measures which have been adopted so as to make sure that Member States' dilatoriness does not call the 1992 deadline in question by allowing the retention of barriers which the Community has decided to eliminate.

#### *Removal of physical frontiers*

5. Article 8a of the Single European Act, sets the Community a clear objective, namely the creation by 31 December 1992 of 'an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured'. The Commission's internal market White Paper contains a timetable for achieving this objective. It is important that the Council should keep to schedule in adopting the necessary measures so as to permit their timely implementation.

#### *Customs union*

6. The judgments delivered by the Court of Justice in 1988 in the customs union field concern *charges having an effect equivalent to customs duties* applied in trade between Member States (Articles 9 *et seq.* of the EEC Treaty).

7. In connection with the creation of a single market by the end of 1992, it is worth mentioning the judgments delivered in Cases 18/87 and 104/86.

8. In its judgment in Case 18/87, the Court held that a fee whose sole purpose was to provide compensation, in a manner which was justified from both a financial and an economic point of view, in respect of an



inspection obligation imposed uniformly by Community law could not be equated with a charge having an effect equivalent to a customs duty because the harmonization of inspections is likely to favour the free movement of goods.

9. The Court also stated that the adverse effects on the free movement of goods within the Community to which such a fee may give rise may be set aside only on the basis of Community provisions providing either for the harmonization of the fees, or for the expenses incurred in respect of the inspections to be borne by the Member States or, finally, for the cost of the inspections to be included in the Community budget.

10. In its judgement in Case 104/86, the Court reaffirmed its previous case law according to which the primacy and direct effect of Community law do not release the Member States from the obligation to eliminate from their internal legal system provisions incompatible with Community law.

11. As regards the infringement proceedings concerning the duty-free importation of *military equipment*, the political solution announced by the Commission in its fifth report (page 13, point 32) has been embarked upon by the presentation to the Council of a proposal for a Regulation based on Article 28 of the EEC Treaty (see proposal for a Council Regulation (EEC) temporarily suspending import duties on certain weapons and military equipment, OJ No C 265, 12. 10. 1988).

12. On the question of *directives*, it should be noted that all the infringement proceedings relating to mutual assistance have been terminated, the Member States concerned having complied with Community law. On the other hand, other proceedings against Italy concerning the release of goods for free circulation and export procedures have not had the desired effect despite the Court's rulings, so fresh proceedings have been initiated against Italy pursuant to Article 171 of the EEC Treaty for its failure to comply with those rulings. This is a worrying situation as it calls into question the credibility of the Court's judgments.

13. The Commission has had to bring an action before the Court of Justice for a declaration that Belgium does not duly enter agricultural levies in the accounts or calculate periods of deferment in accordance with the Directive on the harmonization of provisions concerning deferred payment of import duties or export duties.

#### *Free movement of goods*

14. The abolition of frontier controls is achieved through the direct application of the Treaty and through harmonization measures. Such harmonization measures concern the free movement of agricultural products and the elimination of tax checks at frontiers (see points 34 *et seq.*).

#### *Article 30*

15. Article 30 of the Treaty prohibits, between Member States, quantitative restrictions on imports and measures having equivalent effect. The provision enables action to be taken against import formalities which are not justified by compelling reasons such as health protection or safety considerations.

16. The Commission has thus called in question a number of rules introducing unjustified formalities in the movement of industrial and agricultural products.

17. In the field of *industrial products*, the following measures have been modified following the Commission's intervention:

- (i) in France, the monopoly held by the *Caisse des monnaies et médailles* (Coins and Medals Office), which had the effect of preventing imports of medals into France, has been ended; following amendment of the relevant rules (see Official Journal of the French Republic for March 1988), medals manufactured and marketed in other Member States may henceforth be imported freely into France;
- (ii) the restrictions placed in Portugal on the importation of pleasure boats, in the form of a document certifying that the imported boat was not built in Portugal or could be bought there at a comparable price, have been lifted;
- (iii) the rule that prior authorization must be obtained to import and place on the market alcoholic beverages in Greece has been abolished, and the Greek customs authorities have been instructed no longer to require the production of certificates of origin on the importation of such products. The requirement that individuals wishing to clear through customs goods intended for personal use must be in possession of a residence permit and convert into drachmas twice the value of the goods has likewise been abolished;
- (iv) a large number of Spanish rules governing the type-approval of industrial products have been amended following the Commission's intervention. Cutlery, taps and fittings, decorative items and photovoltaic equipment — products whose placing on the market used to be subject to prior type-approval — may henceforth enter Spain without restriction;

18. With regard to origin marking, the Commission has pressed ahead with its action against Italy, the United Kingdom and France aimed at preventing those countries' rules on corrective origin marking from having the effect of unjustifiably hindering trade. Such is the case with the indication of the geographical origin of an imported product where that product has been worked or processed in another Member State at a trader's request and that trader's name or trade-mark is affixed to the product (a widespread practice, notably in the textile industry).

19. In relation to *agricultural products*, the following import formalities, which have been the subject of Commission scrutiny, may be mentioned:

- (i) the requiring of certificates, to be issued by the producer Member State, attesting to the conformity of the products in question with the standards of the importing Member State; this requirement is imposed by Greece, Luxembourg and Germany in respect of pasteurized butter, and by Greece alone in respect of numerous foodstuffs, on grounds of radioactivity;
- (ii) the requiring of a licence or prior authorization to import sheep into Germany, sperm intended for artificial insemination into France, and live animals and fresh meat into Belgium;
- (iii) measures restricting trade based on the existence of a national market organization, such as the arrangements applicable to bananas in Greece;
- (iv) measures prohibiting exports or rendering them impossible, such as those affecting olive oil or maize in Greece.

#### Article 95

20. This provision makes it possible to prohibit tax controls and formalities which are out of proportion to the objective of combating fraud.

21. In this respect, 1988 was a particularly successful year for the Community as far as the monitoring of Community tax law is concerned, both in view of the large number of judgments delivered by the Court of Justice, which in almost every case endorsed the Commission's point of view, and because of the steps taken by the Member States to regularize the infringement situation in which they found themselves.

22. As in previous years, the Commission's efforts were directed at ensuring both observance of Article 95 and the conformity of national legislation with Community directives. It is with regard to the latter aspect that the case-load was the heavier, especially in relation to compliance with the Sixth VAT Directive.

The Commission notes with satisfaction, however, that the Member States are resorting less and less to taxation as a means of protecting their domestic industries — a highly encouraging sign in the run-up to 1992. As regards the former aspect, it should be pointed out that the regulatory tax introduced against the background of the negotiations on the Greek memorandum of 23 March 1982<sup>(1)</sup> was abolished on 31 December 1988. This will make it possible to terminate two sets of proceedings connected with the introduction of the tax, one concerning the taxation of cheeses and the other that of plastic decorating materials<sup>(2)</sup>.

23. It should be noted that Ireland has aligned the excise duty on table waters imported from other Member States on that on domestic products, as a result of which the Commission has withdrawn its court action<sup>(3)</sup>.

24. By contrast, despite the Court's judgment in Case 257/86, Italy has not yet put an end to the discriminatory VAT treatment of medical samples, nor has it taken any steps to comply with the judgments in cases 184/85 and 193/85 concerning the consumption tax on bananas originating in other Member States, as a result of which the Commission has initiated the procedure provided for in Article 171 of the EEC Treaty.

25. Several new reasoned opinions were issued, of which the following are among the most significant: firstly, that served on the United Kingdom in respect of the parafiscal charge levied by the Sea Fish Industry Authority on domestic and imported fishery products, United Kingdom fishermen being the main beneficiaries of that body's spending; and secondly, that served on Greece in respect of the differential taxation of imported spirituous beverages (gin, whisky, rum), these being subject to a VAT rate of 36 % whereas domestic products (ouzo, liqueurs) bears a rate of only 18 %.

26. Among the proceedings previously instituted which have led to a reference to the Court, mention may be made of those brought against Denmark and Greece in the field of motor vehicle taxation. In those countries, the swingeing taxes are reflected in higher car prices, which put consumers there at a considerable disad-

<sup>(1)</sup> COM (82) 348 final.

<sup>(2)</sup> Fifth Report, point 38.

<sup>(3)</sup> Case 202/87, removed from the Court register on 27 April.

vantage compared with other Community citizens, as well as constituting an artificial brake on imports of such goods. In Denmark the vehicle registration tax is so high that it affects the number of cars on the roads, while in Greece the tax arrangements are particularly unfavourable to vehicles of over 1 800 cc, of which there is no domestic production.

#### *Abolition of animal and plant health controls*

27. The White Paper proposes that harmonization measures be taken in order to remove the justification for certain controls. As indicated in the Article 8b report (referred to above), despite the Commission's repeated expressions of dissatisfaction at the delays within the Council, the only measures to have been adopted so far in the field of frontier controls concern the abolition of animal and plant health checks. In this sphere, 22 directives in the White Paper programme entered into force on 31 December 1988, although none of them has as yet been incorporated into national law throughout the Community.

For each of these measures, the Commission will therefore have to initiate the procedures provided for in the Treaty with particular diligence in view of the link between them and the 1992 deadline. It must also ensure that all the relevant legislation, most of which predates the White Paper programme or relates to the administration of existing law, is applied. Thus in 1988 the Commission commenced 130 fresh infringement proceedings pursuant to Article 169 of the EEC Treaty for failure to communicate national measures implementing directives in the above fields.

#### *Abolition of tax controls*

28. Monitoring the correct application of the Sixth VAT Directive<sup>(1)</sup>, which makes provision for a uniform basis of assessment of VAT, is a particularly important aspect of the Commission's taxation programme for 1993. It is essential that the provisions of the Sixth Directive are applied absolutely correctly in order to avoid distortions of competition, the severity of which will be even greater once VAT rates are approximated.

29. Following the initiation of proceedings by the Commission, the Court of Justice has handed down a large number of judgments the importance of which is considerable, not only because they regularize several infringements, but also because they help clarify the meaning of certain provisions of the directive in question.

30. Of the more significant judgments, it is worth mentioning those censuring Ireland and the United Kingdom<sup>(2)</sup> for maintaining a system of zero rating for

certain categories of goods and services (in particular, the construction of buildings and the supply of water, energy and fuel) incompatible with Article 28 (2) of the Sixth Directive.

Also worthy of note is the judgment given against Belgium<sup>(3)</sup> in which the Court held that, in its Law of 31 July 1984 on the list price as the basis for the taxation of new saloon cars and estate cars, that Member State had failed to take the measures necessary to give effect to the Court's Judgment in Case 324/82.

31. By its judgment in Case 50/87 the Court established an important principle in regard to the right to deduct VAT when it declared that the maintenance in force in France of that right in the case of enterprises which let buildings which they had purchased or built was contrary to the Sixth Directive.

32. Lastly, in connection with Article 25 of the Sixth Directive, the Court censured Italy for over-compensating flat-rate farmers in the beef, pigmeat and milk sectors in respect of goods delivered and services supplied to them.<sup>(4)</sup>

33. The Commission is monitoring the correct implementation of these judgments in the Member states concerned, and as a result it has felt obliged to initiate proceedings against the Netherlands for failure to comply to date with the judgment in case 235/85 concerning the exemption from VAT in that country of the official functions performed by notaries and bailiffs<sup>(5)</sup>.

34. On the other hand, the Commission notes with satisfaction that the United Kingdom has complied with the Judgment in Case 353/85 censuring that country for exempting from VAT the supply of certain goods (e.g. corrective spectacles made by approved opticians) in so far as such goods do not form an integral part of the services provided. Moreover, it withdrew its action against Italy in connection with the exemption of credit cards<sup>(6)</sup>.

35. However, the year under review saw the institution of fresh proceedings against Spain for introducing a zero rate of VAT for services provided by lawyers and for sports associations and sports events,

<sup>(1)</sup> OJ No L 145, 13. 6. 1977.

<sup>(2)</sup> Cases 415/85 and 416/85.

<sup>(3)</sup> Case 391/85.

<sup>(4)</sup> Case 3/86.

<sup>(5)</sup> Fifth report, point 37.

<sup>(6)</sup> Case 103/87, removed from the Court register on 27 October.

and the referral to the Court of two cases on which the file had been opened prior to 1988, one concerning Germany following the exemption of travel agencies in respect of journeys to Spain, and the other France, in connection with the tax arrangements applicable to gaming machines<sup>(1)</sup>.

36. France was censured in 1983 in Case 90/82 for infringing article 5 (1) of Directive 72/464/EEC<sup>(2)</sup> which provides that the retail selling price of tobacco products is to be determined freely by the manufacturers or importers and not by the public authorities, as was the case in France. The Commission considered the measures taken by the French authorities to be inadequate, so it referred the matter once more to the Court pursuant to Article 171 of the EEC Treaty. In its judgment in Case 169/87, the Court upheld the Commission's view and again censured France for failing to take the measures necessary to comply with its previous judgment.

37. It should be noted, finally, that in 1988 a reasoned opinion had to be served on Spain, where the authorities also fix the retail selling price of tobacco in breach of the directive.

#### *Removal of technical frontiers*

38. 70 % of the progress made with the White Paper programme has taken place in the field of technical frontiers; in other words, it is there that the first difficulties in implementing the provisions adopted will arise.

#### *Free movement of goods*

39. The free movement of goods is hindered not only by import formalities (see above), but also by different rules governing the placing of products on the market.

#### *Principles governing freedom of movement*

40. The elimination of non-tariff barriers to intra-Community trade in goods is a cornerstone of the completion of the internal market. To that end, the Commission has at its disposal two basic instruments, namely *the prohibition of any measure having an effect*

*equivalent* to quantitative restrictions (Articles 30 to 36 of the EEC Treaty) and *the approximation of national laws*.

#### *Article 30*

41. Article 30 of the EEC Treaty prohibits, between Member States, quantitative restrictions on imports and measures having equivalent effect. The very wide interpretation given to this latter concept, which covers — in the words of the Court of Justice itself — 'all trading rules which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade', enables the Commission as 'guardian of the Treaties' to act with a view to eliminating obstacles to trade of the most diverse kinds.

42. Action is usually taken in response to complaints lodged with the Commission by business people or private individuals. The Commission's departments are also expanding their own monitoring operations (own-initiative enquiries) based on information either communicated by Parliament (parliamentary questions) or gathered by themselves (e.g. from Member States' official gazettes).

43. In the field of *industrial products* the monitoring activity is steadily gathering pace, as can be seen both from the number of new complaints lodged in 1988 (518) and from that of own-initiative enquiries (46, including six as a result of parliamentary questions).

44. To this should be added the number of technical regulations notified under Directive 83/189/EEC and scrutinized in the light of Articles 30 and 36 of the Treaty (see below).

45. In view of the ever-increasing number of cases brought to their attention, the Commission's departments have found it necessary to stop dealing with them on an individual basis and adopt a global approach, and this on two levels.

46. From the substantive point of view, the problems encountered are in fact similar from one Member State to another (e.g. type-approval of industrial products, indications of origin on imported goods, importers' liability, prices of medicinal products, etc.).

47. As far as investigations are concerned, the Commission's departments have tried to settle as many cases as possible at the pre-hearing stage. With this end in view, the practice has arisen of holding package meetings at regular intervals in each Member State with representatives of the government departments concerned. At such meetings, all the cases involving a

(1) Fifth report, point 38.

(2) OJ No L 303, 31. 12. 1972, p. 1.

Member State are discussed. Pragmatic solutions in keeping with Community law can thus be sought jointly as early as the complaint stage. The results of this practice were particularly encouraging in relation to those Member States (Italy, France, Portugal and Greece) with which meetings were held in 1988. This can be illustrated with the help of the following examples:

(i) Italy (22 cases discussed):

- imported television sets may henceforth enter Italy accompanied by a manufacturer's self-issued safety certificate, as provided for in Directive 73/23/EEC;
- certain labelling requirements — indication of the name of the importer in addition to that of the foreign manufacturer — have been abolished by means of an interpretative circular;
- on the *Cassis de Dijon* principle, several cases were settled in such a way as to ensure free access for products lawfully manufactured and marketed in other Member States. The example may be given of alcoholic beverages of an alcoholic strength of less than 9 % which could not be marketed as such in Italy. Another case concerned potable spirits the importation of which was made subject to prior authorization so as to enable checks to be carried out on the product's conformity with Italian law.

(ii) France:

- some long-standing infringements were settled: for example, postal franking machines made by the United Kingdom firm Pitney-Bowes were at last given type-approval by the competent authorities as a result of proceedings following upon a Court judgment;
- another infringement dating from 1985 involving foodstuffs (*charcuterie*) was resolved satisfactorily by the issuing of a circular which stated that imported products could continue to be known as *charcuterie* despite the fact that they were not made using traditional French methods;
- the pharmacists' monopoly over the sale of artificial sweeteners, granted under a 1902 act, was abolished;
- the prohibition on the importation by private individuals of medicinal products intended for their personal use but not authorized in France was also abolished.

(iii) Portugal:

- the principle of one-off certification was introduced in cases of compulsory certification of agricultural and forestry machinery and has now been embodied in a statute.

(iv) Greece:

- one case worthy of note involved lightning conductors, which had by law to meet domestic technical standards if they were to be used in public works. This requirement was amended by a circular sent to the various government departments concerned.

48. In the field of the free movement of goods, 1988 saw the emergence of restrictive measures whose justification lies in the protection of the environment. For example, in Case 302/86 *Commission v. Denmark*, the Court of Justice held that a compulsory deposit-and-return system for beer and soft drink containers was not only lawful but necessary to attain the environmental protection objective pursued.

49. This objective was described by the Court as 'one of the Community's essential objectives which may... justify certain limitations on the principle of the free movement of goods. That view is moreover confirmed by the Single European Act' (Ground of judgment 8).

50. Of the new laws scrutinized by the Commission, mention should be made of the German legislation — enacted by six *Länder* — providing that, when smog occurs, traffic, with the exception of emergency vehicles (ambulances, etc.), may be prohibited.

51. In the *foodstuffs* sector, the Court of Justice delivered several important judgments in 1988 which reaffirmed its previous rulings and upheld the Commission's views on, among other things, the reserving of names and descriptions for products which meet domestic requirements and the prohibiting of the importation or sale of products which do not comply with national regulations.

52. Thus, in giving judgment against France in Case 298/87 *deep-frozen yoghurt* and Case 286/86 *Edam*, the Court again condemned the practice of reserving names and descriptions where the product's characteristics are not substantially different and where appropriate labelling suffices to ensure that consumers are properly informed.

53. In its judgments in Cases 90/86 *Zoni* and 407/85 *Drei Glocken* (pasta products), 216/84 *Commission v. France* (milk substitutes) and 261/85 *Commission v. United Kingdom* (pasteurized milk and unfrozen pasteurized cream), the Court held respectively that prohibitions on the sale of pasta made from common wheat or a mixture of common wheat and durum wheat,

the importation of powdered milk substitutes and the importation of pasteurized milk and unfrozen pasteurized cream were neither compatible with Article 30 of the EEC Treaty nor justifiable pursuant to Article 36.

54. The Court thus confirmed once more that, in the absence of any considerations of public health, the only compelling reason that might justify the banning of a foodstuff made in another Member State according to quality standards applicable there is, therefore, the need to protect consumers against fraud and producers against unfair competition. In general, the existing Community rules on labelling ensure the provision of proper information and help guard against error. Obstacles to the free movement of foodstuffs due to the application of quality standards to imported products can, therefore, be removed on the basis of Articles 30 and 36. In 1989 the Commission will publish a commentary on the Court's judgments on foodstuffs.

55. In relation to *agricultural products*, i.e. the products listed in Annex II to the EEC Treaty, it should be stressed that Articles 30 and 34 of the Treaty (on the elimination of quantitative restrictions on imports and exports and of all measures having equivalent effect) form an integral part of common market organizations (see judgment of the Court of Justice in Case 83/78 *Pigs Marketing Board v. Redmond* (1978) ECR 2347, Ground 55) and that obstacles to trade in products covered by such organizations affect the normal functioning of those organizations. The obstacles in respect of which the Commission initiated proceedings were many and varied, as the following examples illustrate:

- (i) technical requirements relating to the presentation, quality or packaging of products, having the effect of limiting or discouraging imports: the Commission took action against this type of measure in the case of restrictions imposed in Italy on the marketing or importation of fats and oils (obligatory presence of a tracer) and of cheeses (minimum fat content), and in that of the German legislation reserving the use of a given bottle shape for certain national producers (*Bocksbeutel*);
- (ii) national measures to do with human, animal or plant health or with additives, prohibiting imports or making them impossible, such as measures concerning pasteurized milk in the United Kingdom, certain meat preserves in Germany and cheeses in Italy and Greece (maximum nitrate content);

- (iii) the fixing of maximum prices having the effect of discouraging and restricting imports, as practised in Greece in the olive oil trade;

- (iv) measures restricting the advertising of imported products, such as the refusal by Greek publicly owned radio and television stations to broadcast advertisements promoting foodstuffs from various Member States.

#### *Mutual recognition of national rules*

56. In accordance with the strategy it outlined in its internal market White Paper, the Commission is treating as a matter of priority the application of the EEC Treaty's rules on the free movement of goods (Articles 30 to 36) and is endeavouring to ensure that the principle of mutual recognition is systematically incorporated in national law. According to this principle, any product lawfully manufactured and marketed in one Member State must have free access to the markets of the other Member States, provided it does not endanger health and safety.

57. In the latter event, the measures taken must nevertheless be strictly proportionate to the objectives pursued. This strategy has made it possible to put an end to the compulsory type-approval of industrial products in Spain and to ensure acceptance there of the principle of the recognition of products providing an equivalent level of protection where such recognition is justified. It has also helped bring about greater flexibility in the approval procedures to which telecommunications terminal equipment is subject in Portugal. Also worthy of mention are certain cases concerning domestic appliances such as gas cookers and refrigerator-freezers, which were subject in France to compliance with national standards.

The importation into Germany and the marketing there of building materials (chipboard) manufactured, tested and marketed in France has been made possible through the application of Article 30. The German authorities now grant such panels type-approval on the strength of the results obtained in France using that country's testing methods, without systematically subjecting the panels to fresh tests.

Lastly, mention may be made of the United Kingdom rules whereby all imported gas and electric cookers had to comply with national surface temperature requirements.

58. To this *ex post facto* monitoring activity must be added, in the case of industrial products, the prior monitoring carried out by the Commission pursuant to

Directive 83/189/EEC. This directive obliges the Member States to submit draft technical regulations for prior vetting as part of an information procedure. This obligation — which in the past did not cover the agricultural, foodstuffs, pharmaceuticals and cosmetic sectors — has been extended to cover all technical regulations as from 1 January 1989.

59. In 1988, 157 draft technical regulations and standards were thus scrutinized in the light of the Treaty and secondary legislation. Following such scrutiny the Commission sought, in 64 cases, amendments designed to ensure that their adoption did not create new obstacles to the free movement of goods. In four cases, the Commission announced the presentation of a draft Community directive the provisions of which are to replace the national measures.

#### *Technical regulations*

60. Twenty-four measures of the White Paper programme have entered into force, to which should be added 50 other directives adopted prior to the White Paper or as part of the administration of existing law. Of these 24 measures, only one, on pharmaceutical products (Directive 87/21/EEC), had by 31 December been transposed throughout the Community, allowing for the derogations enjoyed until 31 December 1992 by Spain, Greece and Portugal. Other major directives, such as those on car exhaust emissions, which were to have been transposed by 1 July (Directives 88/76/EEC and 88/77/EEC) or 1 October (Directive 88/436/EEC) were transposed in only a small number of Member States. 50 or so infringement proceedings are still under way.

#### *Miscellaneous products*

61. A large number of proceedings, 51 to be precise, concern failure to notify implementing measures. As in the past, they stem as a rule from the slowness of national procedures for amending legislation. 41 cases were, however, regularized by the Member States concerned in 1988, a distinct improvement on the previous year. Nevertheless, two sets of proceedings instituted against Italy still remain open (medical thermometers). The Court of Justice gave judgment against Italy in one case and an action has been brought in the other. As regards the stage reached in the application by Spain and Portugal of the directives covering these areas of activity, contact has been maintained with the competent government departments with a view to quickly making up for time lost in transposing the directives into Spanish and Portuguese law.

62. As to the non-conformity of national laws with Community directives or the incorrect application of

such laws, the infringement proceedings currently under way, namely one action against the United Kingdom and another against Spain, are a leftover from 1987. Both sets of proceedings concern Directive 73/23/EEC, otherwise known as the low voltage directive. The relevant United Kingdom legislation is currently undergoing amendment. In Spain, despite the entry into force on 1 December of Royal Decree 7/1988 incorporating the directive into national law, obstacles to trade in products falling within the directive's scope remain, according to complaints recently received by the Commission. The Commission is continuing its investigation into these cases, which are apparently due to a misinterpretation of the Community directive. Meanwhile, the Court of Justice remains seized of the matter.

#### *Motor vehicles*

63. Implementation of the directives on motor vehicles, agricultural tractors and motor cycles continued normally in the Member States, 124 of them having now been transposed. In the course of the year, four infringement proceedings for failure to transpose directives were commenced.

The infringements are all due to administrative delays in certain Member States in incorporating Community directives into their national law.

#### *Foodstuffs*

64. The proceedings initiated in respect of directives concern only instances of failure to communicate national implementing measures. The file was closed on 43 infringements, 19 cases are at the formal notice stage and three are at the reasoned opinion stage.

65. The Commission brought actions against France and the Netherlands for failure to transpose Directive 83/417/EEC (lactoproteins) and against France for failure to transpose Directive 83/635/EEC (preserved milk).

#### *Pharmaceutical products*

66. Proceedings were commenced in respect of the medicinal products directives against Italy alone. In particular, the Commission brought an action before the Court for that country's failure to comply with the

judgment in Case 145/82 on the non-transposition of two basic directives on proprietary medicinal products (65/65/EEC and 75/319/EEC).

#### *Chemical products*

67. While some Member States have transposed a good many directives in this field, there remains much leeway to be made up. In view of the large number of directives (31) and their technical complexity, Spain and Portugal have been given more time in which to translate them into national law.

68. During the year under review, 22 instances of implementation of chemicals directives were notified to the Commission. The main products concerned are asbestos, paints and varnishes.

69. The Commission brought an action before the Court against Germany in respect of PCBs/PCTs. Belgium and Italy have still not implemented the two directives on detergents despite being censured by the Court.

Letters of formal notice have been sent in this connection. Of the nine letters of formal notice sent to Member States, eight have been acted upon.

#### *Energy-generating products*

70. In connection with the proceedings mentioned in the fifth annual report, the following developments have taken place.

71. After having taken Belgium to court for failing to provide statistical information on the prices of crude oil and petroleum products, the Commission withdrew its action as the Member State had complied in the meantime.

72. As to implementation of the directives on the performance of heat generators, the Commission is continuing its comparative evaluation of the national implementing measures. The work should be completed in the course of 1989.

73. In 1988 the Commission embarked upon only one new study, aimed at verifying the conformity of Member States' national laws with the provisions of Directive 85/536/EEC on the use of substitute fuels. The laws of four Member States (Denmark, Germany, Luxembourg and Spain) are in keeping with the Community directive. A fifth Member State (France) has written the directive into national law. The Commission has requested more explicit and detailed information on certain aspects of the French legislation. Under the Accession Treaty, Portugal has been awarded an extension to the time limit for bringing its legislation into line with Community law. The Commission sent the six remaining Member States a

letter on 28 September reminding them of their obligation to notify national measures implementing the directive. By the end of the year the Commission had received replies from two of the letter's recipients (the Netherlands and the United Kingdom), in which it was stated that work on transposing the directive should be completed by early 1989.

#### *Opening-up of public procurement*

74. The opening-up of public procurement is one of the keys to completion of the internal market. In 1988, as in 1987, the Commission attached great importance to the correct implementation of the Community directives coordinating the procedures for the award of public works and public supply contracts, and satisfied itself that the 'Treaties' rules on freedom to provide services and the free movement of goods were being made full use of.

75. The infringements concerned mainly:

- (i) the choice of award procedure and the obligation on contract-awarding authorities to advertise tenders in the *Official Journal of the European Communities*: for example, in Italy the call for tenders for the construction of an urban solid waste incineration plant in La Spezia was made without any prior publication of a tender notice, the contract-awarding authority having invited directly certain Italian firms to submit bids. Thanks to the measures adopted by the Commission in 1987 to speed up the handling of infringements, this case, which came to the Commission's notice in January, was brought before the Court in time (in July) for it to order the contract's suspension pending delivery of judgment;
- (ii) interpretation of the scope of the directives and of the sectors excluded: for example, a reasoned opinion was served on Portugal because the public enterprise which runs Lisbon airport had not put out to Community-wide competitive tender, by publishing a notice in the *Official Journal of the European Communities*, a contract for the supply and assembly of a telephone exchange;
- (iii) the criteria for selecting bidders or applicants to bid: for example, a reasoned opinion was served on Germany because, for the construction of a purifying plant in Duisburg, the contract-awarding authority had stipulated that contractors must be affiliated to a German quality assurance body and that the contract guarantee must be provided by a credit insurance institution licensed by the Germany authorities. A reasoned opinion was also served on Italy because the tender notice for a construction contract published by the University of Pavia stipulated that, to qualify, tenderers must have approved contractor status in Italy and be listed in the Italian trade register;



- (iv) the technical specifications for products: in the year under review the Court gave judgment in an action brought by the Commission in 1987 against Ireland in respect of the call for tenders for work on the Dundalk Water Supply Augmentation Scheme: contract No 4 (Case 45/87). The Court, while finding that the contract-awarding authority was a body outside the scope of Directive 71/305/EEC, nevertheless held that Ireland had infringed Article 30 of the EEC Treaty. The authority had insisted on the use of materials certified as complying with a national standard and had ruled out the possibility of taking into consideration any tender based on another Member State as affording equivalent safeguards;
- (v) the contract award criteria: for example, in connection with a public works contract, about which a reasoned opinion has been served on the Netherlands, the Local Committee for Land Consolidation applied, in awarding the contract, criteria which had not been laid down beforehand and on which it could therefore not rely. The contract gave rise to a reference by the Arrondissementsrechtbank (District Court), The Hague for a preliminary ruling by the Court of Justice (Case 31/87). The judgment in this case is of special importance as far as the opening-up of public procurement is concerned for the way in which the Court interpreted the concept of contract-awarding authority within the meaning of Directive 71/305/EEC. The Court held that a body such as the Local Committee for Land Consolidation is bound by the directive as the purpose of the directive, namely the bringing about of freedom of establishment and freedom to provide services in the public works field, would be defeated if the directive were to be declared inapplicable solely because a public works contract had been awarded by a body which, though set up to carry out tasks conferred on it by law, was not formally part of the State. The judgment is also significant in that the Court recognized the direct effect of Articles 20, 26 and 29 of the directive.

76. As far as monitoring the incorporation of directives into national law is concerned, the Commission served a reasoned opinion on Greece for its failure to transpose Directive 71/305/EEC correctly.

77. Although the increase in the number of complaints bears witness to a greater awareness on the part of European business people of their rights under the Community's public procurement rules, there is nevertheless still a certain reluctance to complain for fear of retaliation when tendering for a new contract.

78. The Commission has therefore injected some vigour into its own-initiative enquiries by introducing measures which are to become operational in 1989. Firstly, it has adopted a new system of monitoring compliance with the public procurement rules in the case of projects and programmes financed by the Structural Funds and other Community financial instruments<sup>(1)</sup>. Monitoring has now been extended to cover all the different forms of Community financing and stepped up inasmuch as not only the rules on advertising and the exceptions thereto but also compliance with procedural requirements are subject to vetting. Secondly, it has concluded a study contract with a firm of consultants with a view to examining systematically, over several periods during 1989, tender notices published both in the *Official Journal of the European Communities* and in the press in the various Member States. At the same time, the firm has been instructed to gather all the information it can on privately negotiated public contracts and public contracts awarded in excluded sectors.

79. Other steps have been taken to improve the investigation of infringement cases through a deeper knowledge of the facts and of the rules and practices existing in each Member State. The Commission has concluded a study contract to that end.

80. In parallel with the closer monitoring of compliance with the Community procurement rules, the Commission has continued its awareness campaign aimed at preventing infringements. The campaign has included the holding of numerous seminars and conferences for the benefit of existing contract-awarding authorities and other entities equated therewith in the proposed works and excluded sectors directives. This has been coupled with a major programme of training Euro-info-centres and informing potential tenderers.

*Free movement of workers and of members of the professions*

See chapter entitled 'A people's Europe'.

*Services*

*Financial services*

81. Although the advent of the single market has given fresh impetus to the work on freedom to provide financial services and enabled a number of directives to

<sup>(1)</sup> See Commission Notice in OJ No C 22, 28. 1. 1989.

be adopted on banking, insurance and securities transactions, none of these measures has yet been implemented in the Member States.

82. The Commission has received numerous letters from members of the public in response to its request for copies of correspondence with banks concerning the charging of commissions on *Eurocheques* cashed abroad. It now has a wealth of information on specific problems encountered by Eurocheque users. With regard to the charging of stamp duties on cheques cashed in Italy, the Commission, in deference to Member States' fiscal sovereignty, has refrained from calling for the abolition of such duties as long as they are not charged in a discriminatory manner. It has therefore made a finding of incompatibility with Community law only in the case of the Lit 500 stamp duty systematically charged on cheques involving a currency transaction, notably Eurocheques drawn on a foreign bank.

83. Several letters have been received in which the writer complains about *charges for transferring* money from one Community country to another. The Commission is aware of this unsatisfactory situation, but it can remedy it only by means of a specific initiative which it proposes to launch in connection with the transparency of banking conditions.

84. A reasoned opinion was served on Italy for the failure of the Italian police to respect the obligation no longer to require production of the *green card* as proof of the fact that a car is insured. The Community system is based on an agreement between the various national insurers' bureaux to compensate the victims of accidents caused abroad by a vehicle registered in another Member State, by virtue of such registration alone. The requirement of the production of a green card has, in a number of cases, had quite unacceptable and disproportionate consequences (for example, seizure of the vehicle, involuntary prolongation of a stay pending the dispatch of a green card from the country of origin).

85. Only Denmark has amended its legislation following the Court's judgments on *co-insurance*. Pending formal amendment of their laws, the French and Irish authorities have simply issued administrative instructions to the effect that the leading insurer should no longer be required to have an establishment in France or Ireland, while the German government, which is in the process of drawing up amending legislation, has not considered it necessary to take interim measures. The Commission will return to this problem in the context of monitoring the implementation of the second non-life insurance directive of 22 June 1988 (Directive 88/357/EEC).

#### *New technologies and related services*

86. The means provided by the EEC Treaty of ensuring the free movement of radio and television broadcasts within the Community are twofold: firstly, the coordination of national laws, and secondly, the direct application of the Treaty's provisions, and in particular Articles 59 and 62.

87. As regards the first aspect, following the delivery by Parliament of its opinion on the proposal for a directive on the pursuit of broadcasting activities (OJ No C 49, 22. 2. 1988), the Commission transmitted to the Council on 6 April 1988 its amended proposal for a directive (OJ No C 110, 27. 4. 1988).

88. As regards the direct application of the Treaty, the proceedings initiated in 1987 have had a favourable outcome. The Commission terminated the proceedings brought against Germany, as the retransmission by cable of programmes from other Member States can no longer be restricted owing to application of the requirements of pluralism imposed on broadcasters established in the *Land* of Bremen and the other *Länder*.

89. In Case 352/85 *Vereniging Bond van Adverteerders and Others v. The Netherlands State* the Court gave a preliminary ruling on the interpretation of the Dutch rules on the *distribution by cable of foreign television programmes* (the *Kabelregeling*). In its judgment, the Court held that the prohibition contained in the *Kabelregeling* on the cable distribution in the Netherlands of programmes transmitted by satellite from other Member States with Dutch sub-titles and containing advertising aimed specifically at the Dutch public entailed restrictions on freedom to provide services contrary to Article 59 of the Treaty.

90. Lastly, the Commission's attention was drawn to the fact that in Belgium private individuals are forbidden to possess *satellite dishes* capable of picking up television broadcasts transmitted via telecommunications satellites. The Commission commenced proceedings pursuant to Article 169 of the Treaty in respect of this prohibition.

91. It should be pointed out in this context that the deadline for incorporating into national law Directive 87/372/EEC *on the frequency bands to be reserved for the pan-European system of cellular mobile telephony* was 25 December 1988.

#### *Capital movements*

92. In the field of capital movements (Articles 67 *et seq.* of the EEC Treaty), the improvement in Ireland's external payments situation induced the Commission not to extend the term of validity of the decision authorizing

that Member State, pursuant to Article 108 (3) of the EEC Treaty, to maintain until 31 December 1988 restrictions on certain capital movements liberalized under Community law <sup>(1)</sup> Ireland thus had to take the necessary measures to fulfil as from 1 January 1989 all its Community obligations in relation to the free movement of capital. The Commission's November 1985 decision to support a programme aimed at restoring Greece's balance of payments was also revised in such a way as to relax considerably the restrictions on capital movements authorized at that time. The improvement in Greece's external equilibrium justified this move but did not permit at that stage the removal of all the protective measures originally authorized. The authorization in respect of some of those protective measures was thus renewed until 31 December 1989 <sup>(2)</sup>. Spain and Portugal may also maintain certain restrictions on capital movements until 1990 and 1992 respectively under the transitional arrangements laid down in the Act of Accession.

93. Following the Court's judgment in Case 194/84 on funds blocked in Greece, the Greek authorities have taken steps to comply therewith. However, the steps are in some respects inadequate and the Commission has brought a fresh action against Greece.

#### *Rules applying to businesses*

94. In the White Paper programme, only some of the measures planned in the fields of company law and industrial property have been adopted and have entered into force.

#### *Company law*

95. In this field, 1988 saw a series of transposals of directives by the Member States. The Third and Sixth Directives, on mergers (78/855/EEC) and demergers (82/891/EEC) respectively, were transposed by Greece, the United Kingdom, France, Luxembourg and Ireland. The Seventh Directive, on consolidated accounts (83/349/EEC), was transposed by Luxembourg, and the Eighth Directive, on auditors' qualifications (84/253/EEC), was transposed by Spain. On the other hand, despite the judgment of the Court of Justice in Case 17/85, Italy has not yet transposed the Fourth Directive on company accounts (78/660/EEC). More specifically:

(i) the *Fourth Council Directive* (78/660/EEC) of 25 July 1978 on the annual accounts of certain types of company has been transposed in all Member States except Italy, Spain and Portugal. Italy was censured by the Court of Justice in its judgment in Case 17/85 for its failure to transpose the Directive. As Italy has not complied with the judgment, the Commission has commenced fresh infringement proceedings pursuant to Article 171 of the Treaty;

(ii) as regards the transposal of the *Third Council Directive* (78/855/EEC) of 9 October 1978 on mergers and the *Sixth Council Directive* (82/891/EEC) of 17 December 1982 on demergers, the Commission terminated the proceedings against France, the United Kingdom, Greece, Ireland and Luxembourg after those Member States had brought their legislation into line with Community law. On the other hand, the Commission brought actions before the Court of Justice against Belgium and Italy for their failure to transpose the two directives;

(iii) with respect to the incorrect implementation of the company law directives by the Member States, the Commission closed the file on two cases, one against Belgium in connection with the *Second Council Directive* (77/91/EEC) of 13 December 1976, and the other against the Netherlands in connection with the *Seventh Council Directive* (83/349/EEC) of 13 June 1983. On the other hand, the Commission commenced two new sets of proceedings against Germany in respect of the implementation of the *First Council Directive* (68/151/EEC) of 9 March 1968 and the *Seventh Council Directive*.

96. The Commission received complaints from Community nationals about restrictions in various Member States on the acquisition of shareholdings in companies. Most of these cases were brought to a satisfactory conclusion.

#### *Intellectual and industrial property*

97. Of the two measures adopted, only the directive on the legal protection of microcircuits has entered into force; it has been transposed by eight Member States, the others being the subject of infringement proceedings.

#### A PEOPLE'S EUROPE

98. Most of the measures taken in the drive towards the single market are of direct concern to the ordinary citizen, either because they help to protect his entit-

<sup>(1)</sup> Decision 85/15/EEC, as amended by Decision 88/12/EEC (OJ No L 5, 8. 1. 1988).

<sup>(2)</sup> Decision 85/594/EEC, as amended by Decision 88/600/EEC (OJ No L 325, 29. 11. 1988).

lement to travel and to establish himself anywhere in the Community or because they enable him to make use of goods and services whose movement has been liberalized.

99. As examples there are the steps already referred to aimed at

- solving difficulties with the registration of motor cars,
- ensuring freedom to import medicines for personal use,
- securing the right to use dish aerials to receive satellite television broadcasts in Belgium.

100. There are measures which have been taken specifically to protect the rights of private individuals which can also be considered here. But it must be borne in mind that many other measures taken in this sphere have no binding force: examples are the introduction of the European passport, the health card, and the abolition of customs signs.

#### *Free movement of persons*

101. At the Community's internal borders there are still immigration controls and customs formalities as a constant public reminder of the extent to which the Community is still partitioned. The removal of these barriers is one of the most immediate and visible benefits which the Community can achieve for the individual European. It will be a first step towards a People's Europe, a positive Europe which helps its people in their daily lives rather than a Europe of rules and regulations. It must not be forgotten, though, that obstacles to the free movement of persons are not confined to difficulties at borders; they can arise out of national rules which have nothing to do with border controls and nevertheless constitute tangible barriers to the development of the business activities of nationals of other Member States.

#### *The right to cross borders freely*

102. The Commission receives many complaints and protests at red tape encountered when crossing borders, involving inspections of goods or identity checks. Too often airports and border posts are prey to queues caused by inadequate organization, and the image of the Community suffers as a result. These difficulties will also be apparent from the petitions received by the relevant Committee of Parliament.

103. In many cases the Commission finds itself with no legal redress; the only legal instruments available are Article 7 of the Treaty and the movement and residence

directive. Very frequently neither of these can be applied, either because it cannot be shown that there was discrimination or because the controls have been carried out in accordance with the wording of the directive.

104. The Commission is nevertheless developing a dynamic approach to the application of existing Community law, illustrated for example in its challenge to systematic checks on the residence permits of travellers crossing the border between Germany and Belgium. The Court has now confirmed that there are limits to the national authorities' discretion here, without however curbing the inspection of residence permits as the Commission had hoped.

105. After infringement proceedings had been initiated against Greece and Portugal, the two countries followed the other Member States in ending the practice of stamping the passports of Community nationals entering or leaving their territory.

106. Denmark and Germany have dropped the rules which prevented other Community nationals from crossing the border at minor border posts.

107. Lastly, the Commission brought an action before the Court of Justice to settle its difference of principle with the Netherlands over the extent of the powers of officials checking travellers at its borders.

#### *Taxation and the citizen*

108. The previous report<sup>(1)</sup> discussed the elimination of *double taxation* on the importation of second-hand goods bought by private individuals in another Member State, in accordance with the principles developed in the *Gaston Schul* judgments<sup>(2)</sup>, which have now been confirmed by the Court's preliminary ruling in *Drexel*<sup>(3)</sup>.

109. Proceedings against the Netherlands were terminated in 1987, and 1988 saw the termination of proceedings against other Member States which now apply the rules correctly (Denmark, Germany, Ireland, Luxembourg and the United Kingdom). In the case of France there were points of detail which still required study. Reasoned opinions were sent to two more recent Member States, Greece and Spain.

<sup>(1)</sup> Fifth report, point 58.

<sup>(2)</sup> Cases 15/81 and 47/84: OJ No C 13, 21. 1. 1986, p. 2.

<sup>(3)</sup> Case 299/86.

110. As regards the proper application of *tax-free allowances* for Community travellers, the Commission terminated proceedings against the United Kingdom, which has now amended the legislation which required presentation of a special form in order to qualify for tax-free treatment, whereas the directive requires only the invoice or an equivalent document. But in four cases Member States did not comply with a reasoned opinion and the Commission referred the matter to the Court. The Member States involved are Denmark and Ireland; the cases concern restrictions imposed by both Member States since April 1987 on the granting of tax-free allowances to short-term visitors, and quantitative limits on beer <sup>(1)</sup>.

111. In two cases proceedings were brought against Italy pursuant to Article 171 of the EEC Treaty <sup>(2)</sup>, for failing to take steps to comply with Council Directive 83/181/EEC, which concerns exemption from VAT on the final importation of certain goods, notably samples, and Council Directive 83/183/EEC, which deals in particular with tax-free allowances for removals.

112. Reasoned opinions were also sent to Greece and Spain in connection with the same removals directive. Greece does not apply the tax-free allowance to motor cars acquired by way of inheritance, and limits the amount of the allowance for motor cars with a cylinder capacity of over 1 800 cc; Spain requires payment of VAT if the rate in force in the country of origin is less than that applied by the Spanish authorities, whereas the directive calls for completely tax-free importation.

#### *Right of establishment and recognition of qualifications*

113. Of five measures adopted by the Council since the White Paper three have reached the date by which they must have been transposed into national law; these deal with recognition of the qualifications of pharmacists, general practitioners, and architects; the other two concern the general system for the recognition of higher-education diplomas, which is to apply by January 1991, and the equivalence of vocational training qualifications, whose implementation depends on the publication by the Commission of lists of qualifications in a

<sup>(1)</sup> Fifth report, point 58.

<sup>(2)</sup> Earlier judgments in Cases 124/86 and 125/86 *Commission v. Italy*.

number of fields. There is delay in implementing the directives on the qualifications of pharmacists in one Member State, while in the case of general practitioners there are delays in five Member States.

114. The Commission also had to ensure the implementation of other directives dating from before the White Paper, which concerned the professions and other occupations. The Court delivered three judgments in 1988: in Case 427/85 *Commission v. Germany*, for failure properly to implement the lawyers' directive, and in Case 283/86 *Commission v. Belgium* and Case 310/86 *Commission v. Italy*, which concerned the free movement of persons supplying services ancillary to transport. At the end of 1988 proceedings were at the reasoned opinion stage in two cases, France as regards the lawyers' directive and Greece in the case of the directive on services ancillary to transport. This number may well grow in 1989 if letters of formal notice for failure to implement or failure properly to implement the pharmacists' and architects' directives, which were to have been transposed by October 1987 and August 1988 respectively, are not followed by measures to regularize the position in the Member States concerned.

115. For regulated occupations to which Community directives do not apply or do not yet apply the Commission is seeking to ensure that Member States comply with the principles set out by the Court of Justice in Case 222/86 *Heylens* (not yet reported). The Court there held that even in the absence of harmonization of the conditions of access to a particular occupation, Member States are required to assess the equivalence of a foreign diploma 'exclusively in the light of the level of knowledge and qualifications which its holder can be assumed to possess in the light of that diploma, having regard to the nature and duration of the studies and practical training which the diploma certifies that he has carried out' (Ground 13).

#### *Discrimination on grounds of nationality*

116. The Commission continued to follow up complaints lodged with it in the field of the professions and other occupations; it also took fresh steps to challenge discrimination in the national public services, along the lines indicated in its published notice on the application of Article 48 (4), (OJ No C 72, 18. 3. 1988, p. 2).

117. During the year, actions brought by the Commission ended with Court judgments censuring Greece in two cases, for allowing only its own nationals to practise as teachers (Case 47/86) and lawyers, architects, civil engineers or surveyors (Case 38/87), and one judgment against Italy for allowing only Italian citizens to benefit under an assisted mortgage scheme for housing built by the public authorities (Case 63/86). The Commission brought a Court action in a case of discrimination by France against Community nationals in certain overseas territories (Case 263/88). A case of discrimination by Greece concerning the purchase of real property in certain regions of the country had been referred to the Court in 1987 (Case 305/87). These two cases were pending before the Court at the end of 1988.

118. The Commission initiated proceedings against Italy pursuant to Article 171 of the Treaty in view of its failure to comply with the 1986 judgment in Case 168/85, which concerned nationality requirements for a number of occupations (journalists, pharmacists etc.).

119. The Commission continued to pay careful attention to cases brought to its notice in parliamentary questions, both written and oral, and sent reasoned opinions to France, Greece and Italy for discrimination on grounds of nationality in the granting of authorization to practise as a tourist guide.

#### *Other questions: driving licences*

120. Italy complied with the Court's 1987 judgment in Case 419/85 by taking the national measures necessary to incorporate Directive 80/1263/EEC into national law; the Community-model driving licence will be available in the course of 1989. Belgium has taken the necessary legislative measures following the Court's judgment of 1987 in Case 9/86, and the Community model driving licence has been available there since 1 January 1989. After infringement proceedings were initiated against France it too implemented the directive, and the new model has been available since 6 February 1989. Although the United Kingdom and Ireland have transposed most of the provisions of the directive they have not yet introduced a Community-model driving licence. It is expected to be adopted in September 1989 in Ireland and 1 January 1990 in the United Kingdom.

121. This question continues to excite considerable attention on the part of individuals affected, which is reflected in the number of complaints to the Commission and petitions to Parliament. The bulk of these complaints

arise out of an insufficient knowledge of the rules in Directive 80/1263/EEC. The Commission has been able to settle most cases. It sent Germany a reasoned opinion for faulty interpretation of the concept of normal residence referred to in Article 8 of the Directive as it applies to students.

#### *Employment, social policy and education*

122. The Commission made strenuous efforts to ensure observance of the Treaty (Article 48 on the free movement of workers, Article 119 on equal pay for men and women) and the regulations adopted by the Council (e.g. regulations on the free movement of workers and the application of social security schemes to migrant workers). The Commission also continued proceedings against certain Member States which have still to incorporate directives into their national law: these directives concern the movement and residence within the Community of workers from Member States, equal treatment for men and women as regards employment and social security, and the protection of workers at the workplace.

123. As regards the observance of the *articles of the Treaty and the provisions of the regulations*, the Commission commenced two actions in 1988 before the Court of Justice, one against France and one against Belgium. One other case is still pending before the Court. Two fresh infringements (France) formed the subject of reasoned opinions, one of which was followed by the commencement of an action before the Court. Two infringements, one on the part of Ireland and one on the part of Italy, were brought to an end, and the Commission closed these cases.

124. As regards the *failure to comply with Directives or their incorrect application*, 11 infringements, relating in particular to the equal treatment of men and women, were brought to an end, and the cases were closed.

125. The following points should be mentioned in this connection:

- as regards entry controls and the residence permit or establishment permit for Community citizens enjoying the right of freedom of movement (Directives 63/360/EEC and 73/148/EEC) the Commission withdrew an action brought before the Court against Belgium (Case 23/88); another case is still before the Court,

- in the field of Directive 76/207/EEC on equal treatment for men and women as regards access to employment, infringement proceedings were settled to the Commission's satisfaction in eight cases, which were consequently closed,
- a reasoned opinion was sent to Greece for infringement of Directive 77/187/EEC; this case was subsequently referred to the Court,
- a reasoned opinion was sent to Belgium for incorrect application of Directive 79/7/EEC concerning equal treatment of men and women as regards social security,
- a court action was brought against Greece (Case 53/88) for incorrect application of Directive 80/987/EEC on protection of employees in the event of the insolvency of their employer; an action against Italy is still before the Court.

126. As regards the *failure to notify national measures implementing directives*, the Commission terminated infringement proceedings in ten cases concerning Belgium, France, Greece, Ireland, Luxembourg, the Netherlands and the United Kingdom, all regarding health and safety at work. The Commission brought a Court action against Italy for failure to implement Directive 82/605/EEC concerning the protection of workers exposed to metallic lead; and neither Italy nor the Netherlands has yet notified national measures implementing Directive 83/477/EEC concerning the protection of workers exposed to asbestos. The Commission is particularly concerned that Italy has still not incorporated into its domestic law Directive 75/129/EEC on collective redundancies, despite two Court judgments against it, in Cases 91/81 and 131/84.

#### Consumer protection

127. There were no major developments as compared with the previous year. Consumers, who ought to be the first to benefit from a single Community market, continued to make little use of the legal remedies which Community law offers them to defend their rights, such as the complaint to the Commission. There were only eleven complaints to be investigated in the course of 1988. Commission monitoring of the application of Community law was therefore confined mainly to checking that the Community directives had been formally incorporated into the law of the Member States.

128. The Court's judgment in Case 152/84 *Marshall* confirmed that where a Member State fails to incorporate a directive into national law the directive can be relied upon before the courts by a private person against

that state, but not against another (directives have no horizontal direct effect). We have already seen that consumers make little use of the other remedies open to them.

129. The situation may be due in part to the fact that in Member States where consumers are well aware of their rights, domestic law provides a large measure of protection and redress, and Community directives have generally been properly transposed. There are other Member States where the transposal of the directives is less satisfactory, but in those countries consumers are not well informed about their rights. Then again, a barrier to trade within the Community may be a constant difficulty to a businessman, who may thus have an interest in taking action against some national rule, but a violation of an individual consumer's rights will affect the consumer only from time to time unless the article concerned is one he buys regularly. The consumer may therefore be unwilling to take steps to defend his rights.

130. It should be pointed out here that the interests of consumers are also taken into account in monitoring the application of the law on the free movement of goods and services, the agricultural rules, the competition rules and the environmental rules (see the relevant sections of this report).

## II. OTHER QUESTIONS

### *Statistical matters*

131. Quite specific features attach to the implementation of Community law governing a given statistical field since, where a Member State is obliged to supply figures at stated intervals and in accordance with a pre-established procedure, if the obligation is repetitive in nature its fulfilment may be called in question whenever any due date is reached. Moreover, where the Community provisions are enacted in the form of directives, their formal incorporation into national law is not an essential requirement for their implementation since such implementation may simply derive from the requisite data being supplied by the competent authorities.

132. In the final analysis, it is clear that failure to comply with the law in regard to statistics is relatively rare and that an occasional delay does not constitute, *ipso facto*, and in the absence of additional adverse factors, a breach which justifies initiating an infringement procedure. Nevertheless, virtually all the situations brought to light or in respect of which the Member States were censured have to do with unacceptable delays and less often with the conditions under which data were compiled.

133. The infringement referred to in the preceding report has still not been brought to an end by the Member State concerned. Italy is still in breach of its obligations under Council Directive 78/564/EEC on the carriage of goods by road. It was censured by the Court in 1985 for failing to supply a complete statement regarding the carriage of goods by road by Italian carriers and proceedings have now been brought against Italy for its failure to implement a judgment of the Court.

134. Apart from that case, the Commission had to examine various possible offences during the year under review and in three cases it initiated the infringement procedure by sending a letter of formal notice. In two of those cases, since no reply was received, the Commission's decision to send a reasoned opinion was taken at the end of 1988. In the third case, the answer to the letter of formal notice led to further requests for information which resulted in commencement of the subsequent stage of the procedure being deferred.

#### *Community staff*

135. On the question of pension rights, following the Court's judgment in Case 315/85 *Commission v. Luxembourg*, in which the Court rejected the Commission's argument that an official was in all cases entitled to require the transfer of the actuarial equivalent even if the national scheme provided only for the transfer of the contributions repaid, the Commission decided to withdraw that proceedings in respect of Germany (Case 146/86) and France (Case 303/85) which were essentially based on the same ground of complaint. The legislation in the Netherlands has been amended so as to permit the relevant transfer. This will, however, still require the conclusion of a formal agreement with the Commission. The negotiations with Belgium are close to a successful conclusion.

136. On the question of overlapping family allowances, following the judgments in Cases 186/85 and 189/85 in which it was held that Community family allowances are supplementary to national ones, negotiations are under way with the Federal Republic of Germany aimed at determining the detailed arrangements for implementing the said judgments as far as the past is concerned. In the case of Belgium, the relevant arrangements have been agreed and they are being implemented.

137. The various infringement procedures initiated in respect of Belgium in cases concerning the position of Community officials employed in Belgium were terminated in 1988. The agreement concluded with the Belgian authorities in April 1987 concerning *inter alia* recording the particulars of Community staff under a special heading in the municipal population registers

made it possible to resolve the various problems which had arisen such as the tax on secondary residences, refusals to grant premiums in connection with the purchase and renovation of immovable property, and 'non-resident' charges for sports and cultural clubs and for water consumption.

138. Pursuant to Article 12 (e) of the Protocol on Privileges and Immunities, officials and other servants of the Communities enjoy the right, only upon transfer or termination of duties, to import (transfer) and reexport (termination of duties) a motor car with exemption from VAT. On account of difficulties encountered in connection with duty-free importation into Portugal of motor cars by former officials or servants of the Commission, a reasoned opinion was sent to the Portuguese authorities. In the case involving Belgium, the procedure initiated concerning the requirements laid down for exemption from VAT in connection with the importation of motor cars was terminated since the Commission's principal ground of objection did not appear well-founded.

139. With regard to the procedure concerning the 50 % reduction in the emoluments paid by the Belgian authorities to Belgian teachers seconded to the European schools, the Commission decided to bring proceedings in the Court of Justice.

#### *Budgetary matters*

140. The Commission terminated an infringement procedure concerning the non-payment of customs duties since Belgium paid the sums reclaimed.

141. As regards default interest on late payment of own resources, the Commission brought proceedings in the Court in respect of one case involving Italy and, in regard to another case concerning that Member State, it delivered a reasoned opinion. An infringement procedure initiated on the same grounds was terminated as Greece paid the sums claimed.

142. With a view to recovering unpaid VAT own resources, and default interest on the sums owing, resulting from infringements of Directive 73/388/EEC and Regulation (EEC) No 2892/77, as amended, the Commission delivered a reasoned opinion in respect of France and brought proceedings in the Court of Justice in respect of Germany. In this field, the Commission terminated three infringement procedures since the Member States in question (Ireland, the Netherlands and the United Kingdom) paid the VAT resources concerned and the default interest due.



*Environment policy*

143. The fourth Community action programme on the environment <sup>(1)</sup> stipulates that implementation of environment law is one of the priorities for the years to come. This priority was expressly reaffirmed in the Council Resolution of 19 October 1987 <sup>(2)</sup> and was also acknowledged by the European Parliament.

144. In 1988 the Court of Justice delivered a considerable number of judgments which will have a positive impact on the protection of the environment. Thus, for example, in Cases 227 to 230/85, the Court censured Belgium for the second time for its failure to take the measures necessary to implement the Council directives on waste (78/176/EEC, 75/442/EEC, 75/439/EEC and 76/403/EEC). Faced with this totally unacceptable situation, the Commission will have to take all the steps that are necessary, within the scope of its powers, and will, in particular, examine the funding of Community projects on the environment in Belgium. In Case 322/86 the Court delivered a judgment adverse to Italy on the ground of its incomplete implementation of Directive 78/659/EEC (fresh waters needing protection or improvement in order to support fish life). This judgment provides the Commission with a sound footing in its endeavours to secure implementation of this directive in the 12 Member States. Lastly, in Case 302/86 involving Denmark, the Court reaffirmed its ruling in Case 240/83, namely that the protection of the environment is an important matter of common concern which may justify certain limitations of the principle of the free movement of goods.

145. In 1988, as in 1987, action taken by the Commission was marked by an increase in activity regarding partial compliance with and incorrect implementation of Community environmental legislation.

146. The Member States are continuing to fail to transpose the directives on the environment into national law by the stipulated date and the Commission has had to send a considerable number of letters of formal notice to them for failure to communicate national measures implementing such directives. Special mention must be made of Directive 85/337/EEC on the assessment of the effects of certain projects on the environment. Despite their having had three years to incorporate this directive into national law, on the date on which it came into force (4 July 1988) only five Member States had informed the Commission of their national implementing measures. As far as waste is concerned, the result of the late incorporation of Community directives into their national law by a considerable number of Member States was that in the summer of 1988 public opinion in Europe and the third world became extremely agitated about the transport of toxic waste both within the EEC and to third world countries. Comprehensive and effective implementation of the existing Community directives, in

particular Directives 84/631/EEC and 86/279/EEC, could have prevented the unlawful operations.

147. With regard to the incomplete implementation of directives on the environment, attention must be directed primarily at national and regional legislation on hunting since in many Member States it is not in conformity with the provisions of the directive on the conservation of wild birds (79/409/EEC). In 1988 the Commission brought proceedings in the Court of Justice in the case of two Member States (Germany (Case 88/288) and the Netherlands (Case 87/399)) and sent a number of letters of formal notice and reasoned opinions. It has to report that, at present, the Member States, some of whose practices in regard to hunting or trapping wild birds were declared unlawful in judgments delivered by the Court in 1987 and 1988, have still not amended their legislation. The Commission has accordingly had to initiate new procedures against certain Member States.

148. Probably the most serious situation concerns the failure to apply effectively existing Community and national legislation. It has to be recognized that the environment throughout the Community would be in a far better state if existing legislation were, in fact, applied in all EEC countries. This applies to all environmental sectors — water, the atmosphere, waste, chemicals and chemical plant, the countryside and noise. Many Member States appear to experience special difficulties where a Community rule requires them to draw up and implement remedial projects and programmes. Likewise, the designation of special areas and the remedial, conservation or supervisory measures which have to be taken frequently run into difficulties. In this regard mention must again be made of Directive 79/409/EEC where roughly one half of the special conservation areas for wild birds were designated and the Commission has found it necessary, on account of the management or business activities carried on within the habitats in question, to initiate a whole series of infringement procedures. It is to be feared that harm done to the habitats of wild birds will continue to pose a serious threat to the efforts to protect the countryside within the EEC.

149. As far as waste is concerned, the Member States are all considerably behind in making public and forwarding to the Commission their plans for the disposal of toxic and dangerous waste. In 1988 the Commission reminded the Member States of their obligations under Directive 78/319/EEC and drew their attention to the impact that completion of the internal market will have on policies for the disposal of waste.

150. In the case of water, the effective implementation of a number of directives, namely 75/440/EEC (surface water), 76/160/EEC (bathing water), 80/68/EEC (groundwater), 80/778/EEC (drinking water) and 78/659/EEC (fresh waters needing protection or improvement in order to support fish life) is far from satisfactory. In 1988 the Commission concentrated primarily on the directives on bathing water in regard to

<sup>(1)</sup> OJ No C 328, 7. 12. 1987, p. 1

<sup>(2)</sup> OJ No C 328, 7. 12. 1987, p. 2

which it decided to initiate infringement procedures in respect of all the Member States and on the directive on drinking water. As far as the latter is concerned, the failure by a considerable number of Member States to comply with the values indicated for nitrates and pesticides is giving rise to serious problems. It is difficult for the Commission to monitor implementation of the legislation as Directive 80/778/EEC contains no provision requiring information to be supplied to the Commission on implementation of the directive.

151. There is scant monitoring of the implementation of the provisions of international conventions on water to which the EEC is party. Thus, Community maritime waters are not subject to monitoring by the Commission which is a shortcoming from the standpoint of the need to protect the Community environment effectively.

152. The number of complaints further increased in 1988 and reached almost 200. Most of them deal with protection of the countryside followed by water and atmospheric pollution. The Commission is pleased to note that complaints regarding the environment are lodged with it not only by private individuals and environmental protection associations but also by political parties, political groupings in national parliaments and municipal authorities and embassies. The Commission considers that this trend is an expression of the fact that protection of the environment is of common concern. It regards the formal complaint as a valuable instrument in ensuring efficient monitoring of the effective implementation of Community environment law.

153. At the end of 1988, following a complaint lodged by a private individual, the Commission brought proceedings in the Court of Justice aimed at bringing to an end an infringement concerning the treatment and disposal of dangerous waste in Spain (Case 21/89). The Commission takes the view that Spain has breached a number of directives on hexachlorocyclohexane; furthermore, the Spanish authorities are failing to cooperate as far as on-the-spot checks are concerned.

#### *Competition policy*

154. As regards the adjustment of national monopolies of a commercial character, the Commission had to deal with two cases, in particular. With regard to the Greek monopoly in petroleum products, the Commission was obliged to find that the adjustment measures proposed by Greece to bring it in line with the provisions of Article 40 of the Act of Accession were unacceptable and it therefore decided, on 8 June 1988, to bring proceedings in the Court of Justice. With regard to the Spanish monopoly in petroleum products which must be adjusted in accordance with the provisions of Article 48 of the Act of Accession and Articles 30 and 37 of the EEC Treaty, the Commission took note of the undertakings given by the Spanish Government on 25 January 1988 regarding prompt compliance with the Commission's reasoned opinion of 22 December 1987.

155. With regard to measures taken by the State within the meaning of Article 90 of the EEC Treaty, particular mention must be made of the following cases:

- by its judgment in Case 226/87 the Court of Justice censured the Hellenic Republic for its failure to adopt the measures necessary to comply with Commission Decision 85/276/EEC<sup>(1)</sup> concerning the insurance in Greece of public property and loans granted by Greek State-owned banks. Since the Greek Government has still not communicated the measures necessary to comply with the decision in question, the Commission is considering initiating a further procedure under Article 169 of the EEC Treaty on the ground of Greece's failure to comply with its obligations under Article 171 of the Treaty;
- following adoption of Commission Decision 87/359/EEC pursuant to Article 90(3) of the EEC Treaty<sup>(2)</sup>, concerning reductions in air and sea transport fares available only to Spanish nationals resident in the Canary Islands and the Balearic Islands, Spain took measures designed to extend eligibility for the said reductions to nationals of other Member States resident in the islands with effect from 1 January 1988. A similar solution was adopted in 1988 by Portugal with regard to its system of concessionary air fares. From now on, nationals of other Member States resident in the Azores and Madeira are eligible for the fare reductions that were formerly available only to resident Portuguese nationals.

156. The Commission also examined the refusal of the German Government to assist Commission officials in the enforcement of the competition rules. A reasoned opinion was sent on 4 June 1987 and the Commission decided to defer consideration of this matter pending the judgment in the *Hoechst* case.

#### *Agricultural policy*

157. Infringements of specific market organization measures intended to achieve the objectives laid down in Article 39 of the EEC Treaty are of two kinds: either there is delay in applying the Community rules (which have to be applied promptly if they are to attain the effects desired by the Community legislature), or they are implemented incorrectly.

158. The Commission took action against delays in the application of the supplementary milk levy scheme in Italy, in the payment of abandonment premiums in respect of wine-growing areas in Italy, in the devel-

(<sup>1</sup>) OJ No C 152, 11. 6. 1985, p. 25.

(<sup>2</sup>) OJ No L 194, 15. 7. 1987, p. 28.

opment of a computerized register of olive-growing data in Italy and Greece, and in the adoption of measures providing for penalties for infringements of the olive oil production aid scheme in France.

159. Incorrect application of Community rules affected the operation of the common organizations of the following markets:

- cereals and olive oil, in Greece, by reason of State measures relating to Community prices and the buying-in of cereals which do not meet the criteria laid down in the Community rules and, in particular, national measures regarding management of the cereals market that are contrary to the rules governing the common organization of the market through action taken by the KYDEP organization, set up by the Greek State, which covers the deficits of that body;
- fruit and vegetables, milk and wine, in Italy, by reason of the absence of quality controls for fruit and vegetables, the setting of milk prices at a stage within the exclusive competence of the Community, and the unjustified inclusion of certain wine-growing areas in the Lago di Caldaro region;
- wine, in Germany, by reason of the unlawful increase in the natural alcoholic strength of Moselle wines, the acceptance of quality wines psr from outside the specific regions, the ban on the use of rectified concentrated grape must in the preparation of local wines and quality wines psr and the failure to adopt legislation imposing penalties under the common organization of the market in wine to ensure that compulsory distillation measures are implemented;
- wine, in Portugal, by reason of the incorrect implementation (e.g. failure to lay down supplementary requirements) of the Community rules on premiums for grubbing-up areas under vines;
- eggs and poultry, in the Netherlands, by reason of the requirement that Netherlands' exporters established outside Netherlands territory must, *inter alia*, indicate the number of an approved Netherlands' packing centre on egg packagings.

160. As regards harmonization, the fields covered are: phytosanitary rules, seeds and plants, and animal feedingstuffs and veterinary law.

161. The Commission initiated 130 new infringement procedures pursuant to Article 169 of the EEC Treaty in 1988 for failure to inform the Commission of national measures implementing directives in the abovementioned fields.

162. Although this figure represents a considerable increase, it is apparent that the Member States adopt national implementing measures without the Commission having to refer the matter to the Court of Justice. In 1988 in 17 cases out of 19 the Member States complied with reasoned opinions delivered by the Commission before the month of December of that year. Proceedings were brought in the Court in one case only (furthermore, the infringement was brought to an end shortly after the matter was referred to the Court).

163. As far as implementation of the Court's judgments in concerned, Italy (the only Member State concerned) adopted measures incorporating 11 directives (out of 16) into national law on the basis of an enabling law<sup>(1)</sup>, in the case of the five remaining directives, the Commission initiated proceedings pursuant to Article 171 of the Treaty.

164. As far as the characteristic features of the infringements committed by Member States are concerned, the observations contained in previous reports are still valid<sup>(2)</sup>. The absence of any significant changes in this regard makes it pointless to repeat them.

165. In its last report<sup>(3)</sup>, the Commission drew attention to the worrying failure on the part of Italy to comply with the judgment of the Court of Justice in Case 69/86, in which the Court censured Italy under Article 171 for failing to comply with its judgment in Case 322/82, holding that Italy was infringing the rules governing the monitoring of quality standards in regard to fruit and vegetables.

166. That observation remains valid also since despite the Commission's many representations, Italy has still not complied with the two rulings delivered by the Court of Justice. The Commission must denounce such conduct which is detrimental to the proper functioning of the Community, which is founded on respect for the law.

(1) The Enabling Law of 16 April 1987 (Official Gazette of the Italian Republic of 13 May 1987, No 109) conferred, for a period of one year, power upon the Italian Government to incorporate a number of Community directives into national law. In the meanwhile that law has ceased to have effect.

(2) See, *inter alia*, the Fifth annual report to the European Parliament on Commission monitoring of the application of Community law, 1987. Document COM(88)425 final, 13. 9. 1988, p. 42.

(3) Fifth report to the European Parliament, *op. cit.*, p. 47.

*Fisheries*

167. With regard to the Community arrangements for the conservation and management of fish stocks, stringent monitoring by the Commission in previous years led most Member States to introduce stricter measures aimed at securing compliance with technical conservation measures and catch quotas. The Commission is continuing to take action where catch quotas are exceeded; overfishing is an indication of inaction on the part of the Member States concerned as regards fishery inspections. Reasoned opinions were delivered in this connection to the United Kingdom (overfishing in 1985), the Netherlands (overfishing in 1986) and France (overfishing in 1985 and 1986). The case brought against the Netherlands in 1987 on the question of overfishing in 1983, 1984 and 1985 is still pending before the Court of Justice.

168. As regards compliance with the inspection procedures which Member States are required to establish, a procedure initiated in respect of Belgium was terminated. Another case that was examined, concerning France, involving unsatisfactory monitoring of compliance with technical conservation measures resulted, in the end, in the matter being referred to the Court of Justice. A reasoned opinion was sent to Spain on the same subject establishing a breach of the requirement to record catches of species subject to TACs or quotas; the said breach is liable to call in question the Commission's ability to ensure that the Member State concerned does not exceed its quotas.

169. Application by Member States of the Community rules requiring the data specified under the common organization of the markets to be supplied to the Commission improved considerably. The Commission terminated the procedures in respect of Denmark, the Netherlands and the United Kingdom. France, Italy, Ireland and Greece continued to breach the abovementioned requirement and proceedings were brought in the Court of Justice regarding the latter three Member States.

170. Lastly, as in the past, the Commission insists that each Member State must notify it of the national measures that it adopts on fisheries in accordance with the procedures and by the time-limits laid down. It can then monitor the conformity of such measures with Community law and is better able to ensure the consistency of Community policy. The last procedure initiated in this regard in respect of the Netherlands was formally terminated in 1988.

171. The Commission continues to carry out routine monitoring of Member States' national legislation concerning fisheries in order that it may assess whether they are in conformity with the Community rules and prerogatives in force. In this connection the Commission decided to bring proceedings in the Court regarding Irish legislation which makes the granting of fishing licences subject to a nationality requirement, thus restriction freedom of establishment. The Commission

also decided to bring proceedings in the Court in regard to a case concerning an extension of United Kingdom territorial waters which entails restrictions on certain specific rights vested in fishermen from other Member States that are laid down in the Act of Accession and basic Regulation (EEC) No 170/83.

*Transport policy*

172. Most of the measures adopted in the field of transport by road, air and sea take the form of directly applicable regulations and decisions; thus, three measures came into force in 1988 concerning, on the one hand, air services (Decision 87/602/EEC on the sharing of passenger capacity and access to the market and Regulation (EEC) No 3975/87 on the application of Articles 85 and 86 of the Treaty), and on the other hand, the carriage of goods by road (Regulation (EEC) No 1841/88 on the Community quota). Only fares for scheduled air services between Member States were covered by a directive (Directive 87/601/EEC), which had been in force since 31 December 1987 and had still not been incorporated into national law by most of the Member States one year later.

173. Italy has still not complied with judgments by the Court of Justice concerning its failure to incorporate into national law three directives on admission to the occupations of road haulage operator and road passenger transport operator and on the mutual recognition of qualifications for those occupations despite further Court judgments against Italy pursuant to Article 171 of the Treaty as far as the first two directives are concerned and a further reference to the Court on the basis of that same Article in the case of the last mentioned directive. The proceedings brought against Greece for failure to incorporate the same directives into national law are still pending before the Court.

174. However, Italy adopted legislation concerning the tax reductions provided for in Directive 82/603/EEC concerning certain types of combined road-rail carriage of goods in compliance with the Court's judgment in Case 420/85.

175. As regards Directive 86/544/EEC which concerns the same field, it has now been implemented by all Member States.

176. At present Belgium is the only country which has failed to incorporate into its national law Directive 82/714/EEC on technical requirements for inland waterway vessels. The Court has delivered judgment against it.

177. In the important field of the weights and dimensions of road vehicles covered by Directive 86/364/EEC, two countries complied with the Community legislation following letters of formal notice sent by the Commission. Measures still have to be taken

two other Member States as is the case with the Directive on facilitating the crossing of frontiers (Directive 87/53/EEC).

178. With the exception of the United Kingdom, which submitted draft legislation to the Commission, all the Member States incorporated into their national law the two directives concerning inter-regional air services. In the case of the directive on fares for scheduled air services between Member States, included in the air transport package enacted in December 1987, infringement procedures were initiated in respect of two Member States. An important case concerning implementation of Decision 87/602/EEC on capacity and access to the market, also included in the air transport package, arose during 1988. The Italian authorities refused Aer Lingus fifth freedom rights (the right to carry cargo and passengers between airports situated in States other than that in which the airline is registered) in respect of flights between Manchester and Milan on the Dublin/Manchester/Milan route. The Commission referred the matter to the Court of Justice and particular attention was devoted by the press to this case.

179. Another important infringement procedure was the subject of considerable comment by the media, namely that initiated in respect of Portugal concerning the implementation of Regulation (EEC) No 4055/86 on freedom to provide services to maritime transport (included in the maritime transport package of December 1986). At the beginning of 1987 Portugal adopted new rules governing the carriage of goods reserved for vessels flying the national flag, which increased the scope of the preference already enjoyed by such vessels and which extended it to vessels chartered by national shipowners, something clearly contrary to the derogations still allowed by the regulation. It would appear that this infringement may shortly be brought to an end through the promulgation of a new decree-law the text of which was approved by the Commission.

#### *Energy policy*

180. On 27 April 1988 the Commission adopted a Working Document on the internal energy market (COM(88) 238 final of 2 May 1988) which it sent to the Council and the European Parliament. The document sets out a list which is as exhaustive as possible of the obstacles which exist to completing the internal market in energy, and proposes four sets of measures which should enable the said obstacles to be removed. One of these sets of measures concerns the application of Community law. The Commission has, in essence, four sets of legal instruments at its disposal: those which ensure the free movement of goods and services; those which relate to State monopolies and exclusive rights; those governing the conditions of competition; lastly, those applicable to State aids.

181. In parallel with the adoption of its Working Document, the Commission entrusted its staff with the task of examining ways in which the legal instruments at its disposal could be rendered more stringent, with a view to securing compliance with Community law in the energy field. In carrying out this task, Commission staff have begun to examine, *inter alia*, the problems raised, in regard to intra-Community trade in electricity, by the German system of indirect aid in respect of coal used in electricity generating stations. They also commenced inquiries in five Member countries (Belgium, Germany, Spain, France, United Kingdom) intended to determine whether the terms and conditions of the contracts concluded by the coal mining and electricity industries are, *inter alia*, acceptable having regard to Articles 85 and 86 of the EEC Treaty.

182. On completion of this work, the Commission will decide in 1989 on the overall approach to be adopted. The measures which the Commission is to propose with a view to removing the obstacles to cross frontier purchases of electricity, as foreshadowed in its communication on a Community régime for procurement in the excluded sectors: water, energy, transport and telecommunications (COM(88) 376 final, 11 October 1988, p. 97, paragraph 408) will be included in this general picture.

#### *External relations*

183. Pursuant to Council Decision 74/393/EEC establishing a consultation procedure for cooperation agreements between Member States and third countries, the Commission sent Greece a reasoned opinion on the ground of its failure to comply with the abovementioned obligations before negotiating a cooperation agreement.

184. In another connection, the Commission decided in 1988 to send a reasoned opinion to France on account of the obstacles placed in the way of imports of fertilizers from Hungary.

#### *Development cooperation policy*

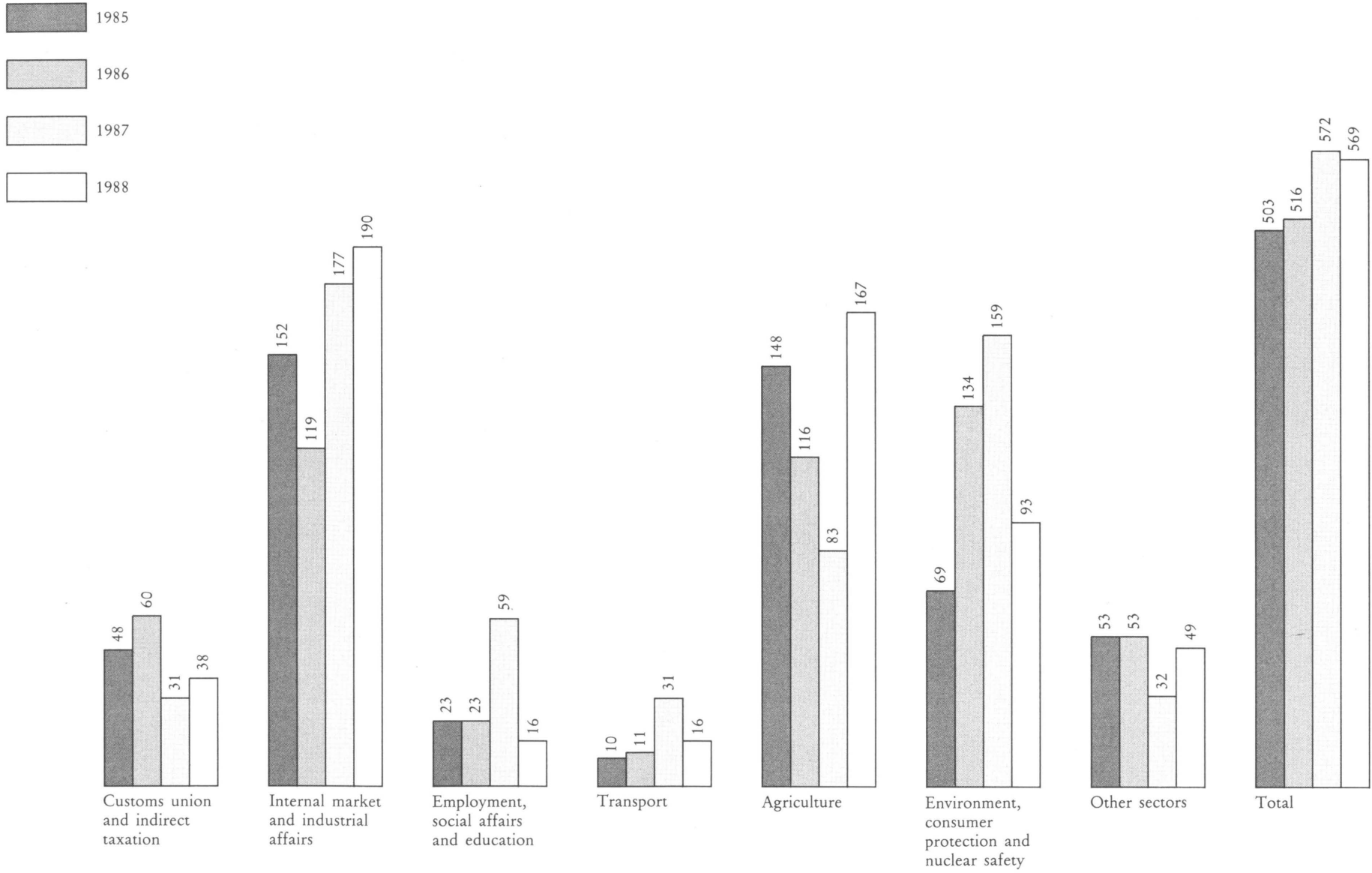
185. In this sphere, the Commission's monitoring of the application of Community law is essentially designed to ensure observance by the Member States of various protocols concluded in the context of the Lomé Convention and of the Community acts arising from certain international agreements relating to products.

186. Furthermore, in the context of EEC/OCT relations, the French authorities sent the Commission on 22 January 1988 an affirmative answer indicating that the law in New Caledonia and French Polynesia is being amended in order to ensure respect for the principle of freedom of establishment for persons as regards the pursuit of five occupations in the field of health care.

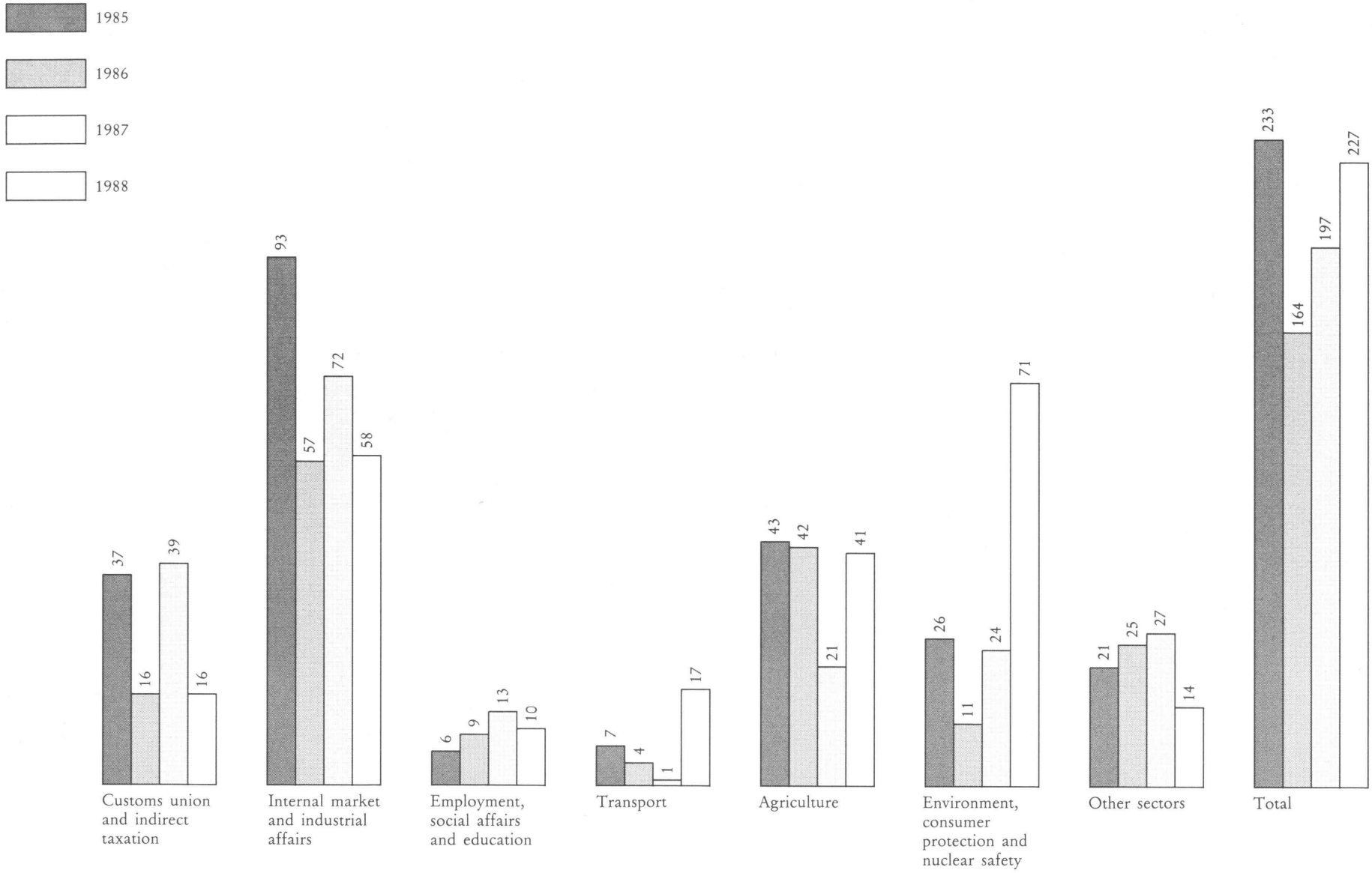
## Infringement proceedings initiated since 1981 classified by stage of proceedings and Member State

	Letter of formal notice								Reasoned opinion								Reference to the Court of Justice							
	1981	1982	1983	1984	1985	1986	1987	1988	1981	1982	1983	1984	1985	1986	1987	1988	1981	1982	1983	1984	1985	1986	1987	1988
B	29	27	34	55	68	56	55	52	26	18	8	17	37	25	28	23	9	8	4	4	23	15	7	10
D	22	26	16	36	29	40	65	58	14	15	8	13	17	17	17	24	2	4	4	7	9	11	2	8
DK	21	16	13	21	27	26	36	29	6	10	3	3	4	3	6	6	2	1	3	1	2	1	—	3
EL	—	8	26	60	69	106	77	64	—	2	4	27	30	24	28	32	—	—	2	4	10	11	11	14
E	—	—	—	—	—	22	32	31	—	—	—	—	—	—	8	11	—	—	—	—	—	—	1	1
F	39	68	55	92	93	69	66	58	22	33	21	29	36	30	29	27	5	8	12	14	14	8	8	10
IRL	28	30	16	33	33	44	46	41	4	17	6	12	10	8	24	10	3	3	1	3	9	2	3	8
I	64	66	69	67	70	61	73	107	41	34	21	26	61	31	27	52	20	14	12	12	31	18	21	14
L	17	30	24	28	37	43	26	36	19	8	2	6	16	12	10	8	2	3	—	3	6	4	2	2
NL	16	32	16	28	48	30	41	42	7	16	3	5	11	9	11	12	5	2	3	2	4	—	4	3
P	—	—	—	—	—	2	11	18	—	—	—	—	—	—	—	7	—	—	—	—	—	—	—	—
UK	20	32	20	34	29	37	44	33	8	4	7	10	11	5	9	15	2	2	1	4	5	1	2	—
Total	256	335	289	454	503	516	572	569	147	157	83	148	233	164	197	227	50	45	42	54	113	71	61	73

Number of letters of formal notice, 1985 to 1988, classified by sector

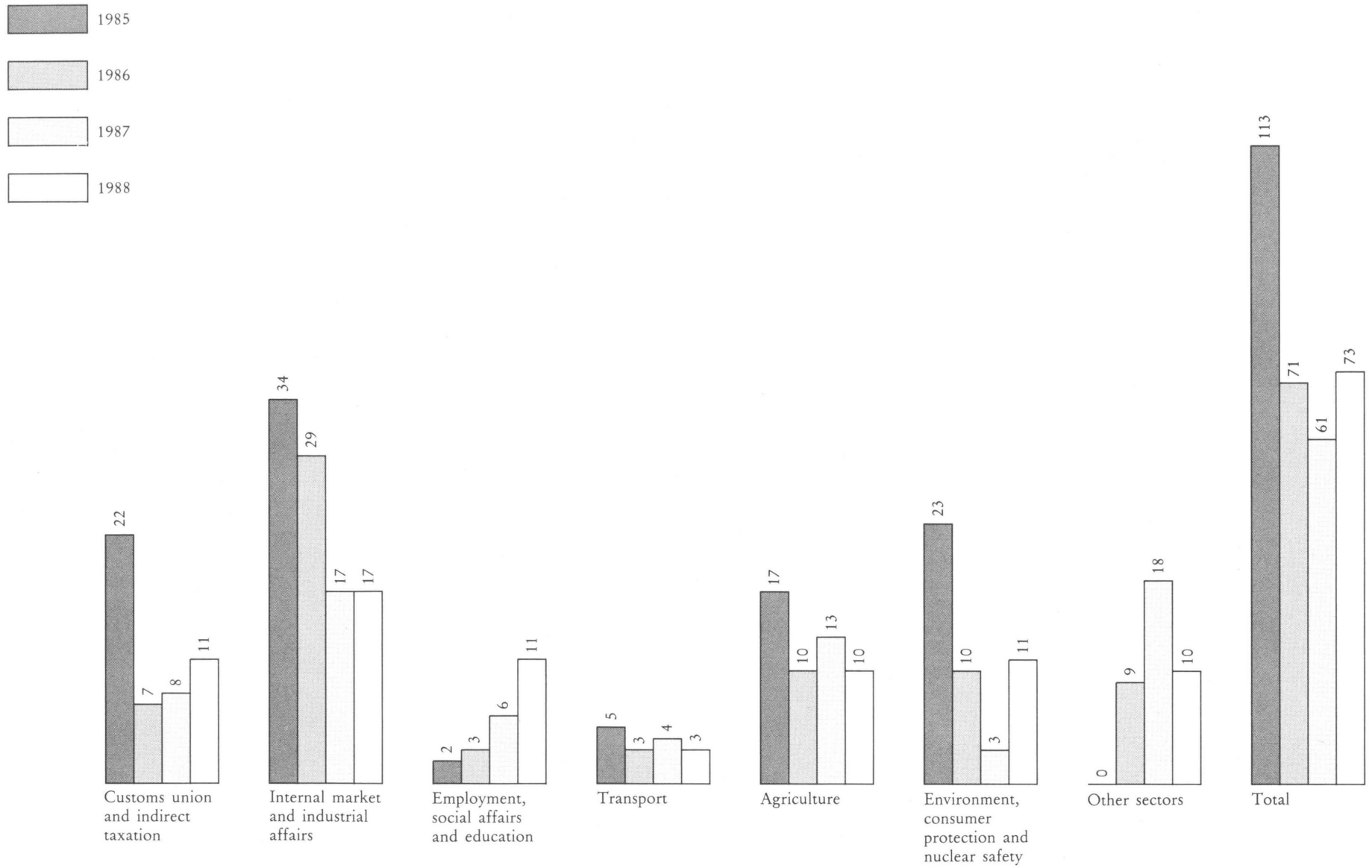


Number of reasoned opinions, 1985 to 1988, classified by sector





Number of references to the Court of Justice, 1985 to 1988, classified by sector



## Infringement proceedings initiated since 1981 classified by stage of proceedings and sector

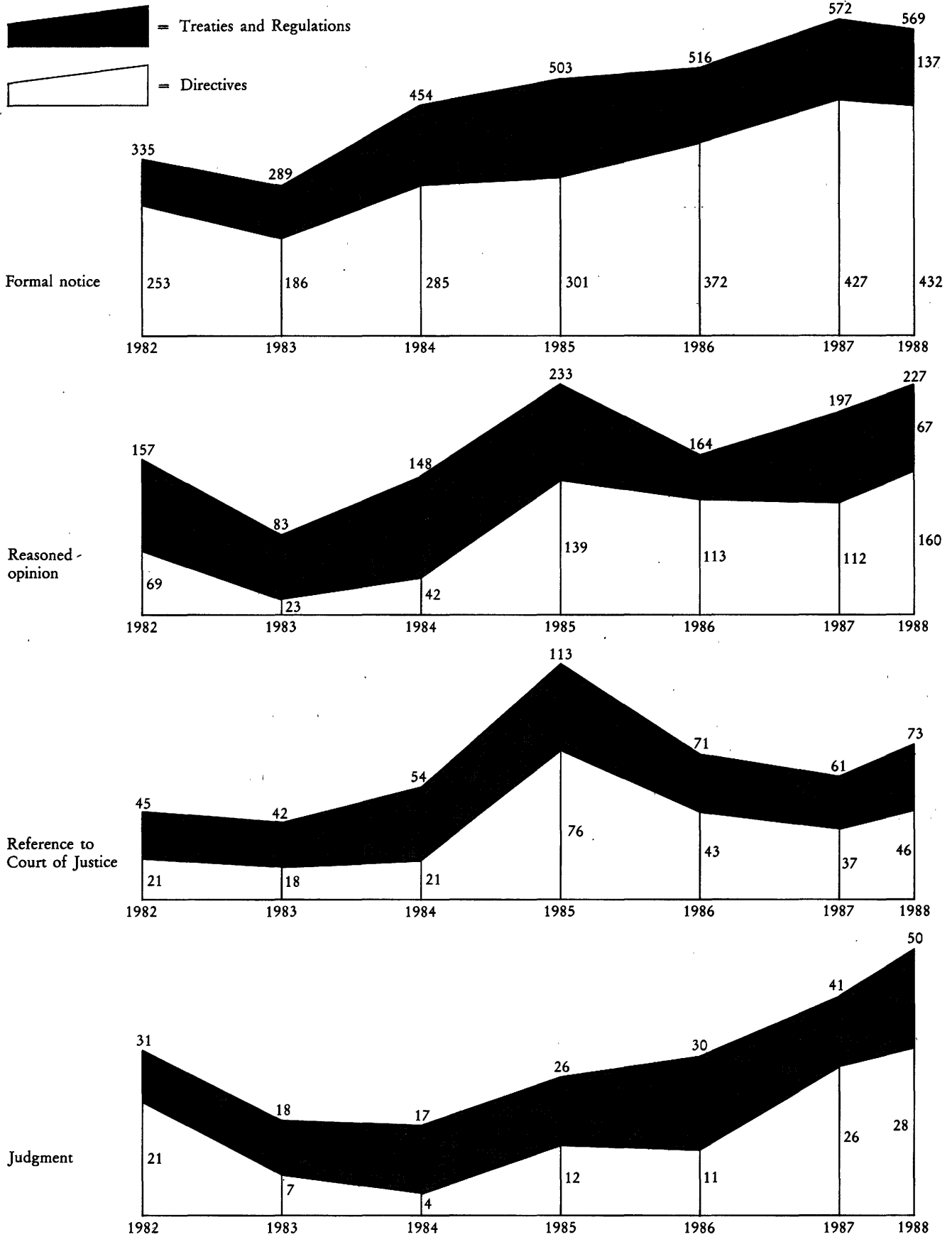
		Statistical questions	Customs union indirect taxation	Commercial policy	Economic and financial policy	Internal market & industrial affairs	Competition	Employment and social affairs	Agriculture	Transport	Development	Administrative questions	Environment and consumer protection	Fisheries	Financial control	Energy	Budgets	Legal Service	Financial institutions	Total
1981	Letter of formal notice		38	3		92	3	16	67	5			27				5			256
	Reasoned opinion		10	1		79		18	31				3				5			147
	Reference to the Court of Justice		6			22		4	1		1	1	12							50
1982	Letter of formal notice	3	29			97	1	10	164	9			16	5		1				335
	Reasoned opinion	1	25			92	1	10	20	1			7							157
	Reference to the Court of Justice		9			21	3	3	8	1										45
1983	Letter of formal notice		31	1	2	111	9	9	75	5	1	2	35	4		1	2			289
	Reasoned opinion	1	16			40	3	6	14	2			1							83
	Reference to the Court of Justice		7			21	3	6	3	2										42
1984	Letter of formal notice		64	11		172	6	15	91	7	2	4	65	13		1	3			454
	Reasoned opinion	1	25	2	2	46	3	4	25	1		3	33			1	2			148
	Reference to the Court of Justice	1	11	1	1	23		3	7	3			2			1	1			54
1985	Letter of formal notice	1	48	2		152	7	23	148	10	1	5	69	4		6	24	2		503
	Reasoned opinion		37			93	9	6	43	7	1	5	26				2	2		233
	Reference to the Court of Justice		22		1	34	1	2	17	5	1	6	23				1			113
1986	Letter of formal notice		60	1		119	2	23	116	11			134	25		3	5	2	15	516
	Reasoned opinion		16			57		9	42	4		5	11	3		3	10		4	164
	Reference to the Court of Justice	1	7			29		3	10	3		4	10			1	2	1		71
1987	Letter of formal notice		31	4		177	5	59	83	31		1	159	11	1	1	6		3	572
	Reasoned opinion		39	1		72	5	13	21	1			24	6	1		5		9	197
	Reference to the Court of Justice		22			17	1	6	13	4			3	1			2			69
1988	Letter of formal notice	4	38	4	1	190	8	16	167	16		3	93	9			6	12	2	569
	Reasoned opinion		16	1		58		10	41	17		2	71	8			2		1	227
	Reference to the Court of Justice		11			17	1	11	10	3			11	4	1		2		2	73

## Infringement proceedings initiated since 1981 classified by sector and legal basis

		Statistical questions	Customs union indirect taxation	Commercial policy	Economic and financial policy	Internal market & industrial affairs	Competition	Employment and social affairs	Agriculture	Transport	Development	Administrative questions	Environment and consumer protection	Fisheries	Financial control	Energy	Budgets	Legal Service	Financial institutions	Subtotal	Total	
1981	No measures notified		17			69		6	45				27							164	256	
	Not properly incorporated					5		1	1											7		
	Not properly applied		13			1		7	2	2										25		
	Treaty/Regulations		8	3		17	3	2	19	3							5			60		
1982	No measures notified					48			142				15			1				206	335	
	Not properly incorporated		1			5				3			1							10		
	Not properly applied	1	16			5		9	3	3										37		
	Treaty/Regulations	2	12			39	1	1	19	3				5						82		
1983	No measures notified		9			56		2	45	4			23			1				140	289	
	Not properly incorporated		2			3		3		1			10							19		
	Not properly applied		8		1	6			9				2							27		
	Treaty/Regulations		12	1	1	46	9	3	22		1	2		4			2			103		
1984	No measures notified		34			83		7	43				48							222	454	
	Not properly incorporated		6			24			1				15							46		
	Not properly applied		7			1	2	2	3				2							17		
	Treaty/Regulations		17	11		64	4	6	44		2	4		13		1	3			169		
1985	No measures notified		13			87		5	80	8			58			6				257	503	
	Not properly incorporated		3			5		7	5				10							30		
	Not properly applied	1	9					2	1				1							14		
	Treaty/Regulations		23	2		60	7	8	63	2	1	6		4			24	2		202		
1986	No measures notified		20			73		2	68	9			84			3			9	268	516	
	Not properly incorporated					3		11	1				32						4	51		
	Not properly applied		13			18		3	4	1			9				4		2	54		
	Treaty/Regulations		27	1		25	2	7	43	1			9	25			1	2		143		
1987	No measures notified		5			78		28	58	17			68			1			5	260	572	
	Not properly incorporated					1		3	6				30						2	42		
	Not properly applied		15			30		8	9	2			58				2		1	125		
	Treaty/Regulations		11			68	5	20	16	6		1	2	11	1		4			145		
1988	No measures notified		3			101			130	11			36						1	282	569	
	Not properly incorporated	1				7		1					24							33		
	Not properly applied	3	13			49	1	5	14	1			30				1			117		
	Treaty/Regulations		22	4	1	33	7	10	23	4		3	3	9			5	12	1	137		

No 7

Number of infringement proceedings initiated since 1982 classified by legal basis and stage of proceedings



## Number of infringement proceedings initiated since 1985 classified by Member State, legal basis and stage of proceedings

Member State	Stage of the infringement proceeding (1)	1985				1986				1987				1988			
		Directives			Treaties and Regulations	Directives			Treaties and Regulations	Directives			Treaties and Regulations	Directives			Treaties and Regulations
		No measures notified	Not properly incorporated	Not properly applied		No measures notified	Not properly incorporated	Not properly applied		No measures notified	Not properly incorporated	Not properly applied		No measures notified	Not properly incorporated	Not properly applied	
B	FN	33	5	1	29	39	4	6	7	22	6	13	14	30	4	7	11
	RO	17	5	—	15	13	3	1	8	12	1	6	9	5	5	6	7
	RCJ	8	7	2	6	6	2	2	5	4	—	1	2	4	—	3	3
D	FN	11	—	2	16	14	6	5	15	23	5	21	16	27	3	12	16
	RO	5	3	—	9	8	—	2	7	2	4	2	9	4	2	12	6
	RCJ	2	3	1	3	2	1	1	7	—	—	—	2	1	3	2	2
DK	FN	15	4	—	8	13	4	2	7	22	1	10	3	20	1	6	2
	RO	—	2	—	2	1	2	—	—	1	1	2	2	—	1	2	3
	RCJ	—	2	—	—	—	—	—	1	—	—	—	—	—	—	2	1
EL	FN	35	1	—	33	63	6	1	36	46	5	8	18	37	2	11	14
	RO	8	—	—	22	7	—	2	15	13	1	—	14	12	6	3	11
	RCJ	4	—	—	6	4	—	1	6	3	—	—	8	5	2	0	7
ES	FN	—	—	—	—	—	—	1	21	21	—	10	22	—	3	3	15
	RO	—	—	—	—	—	—	—	—	—	—	3	5	—	—	5	6
	RCJ	—	—	—	—	—	—	—	—	—	—	1	—	—	—	—	1
F	FN	42	3	5	43	19	9	7	34	19	9	12	26	22	1	19	16
	RO	17	4	3	12	11	4	6	9	7	—	4	18	8	5	3	11
	RCJ	4	2	2	6	3	2	—	3	2	—	3	3	3	1	1	5
IRL	FN	21	1	1	10	31	8	13	9	29	6	5	6	27	3	4	7
	RO	6	1	—	3	10	4	6	11	9	—	8	7	6	4	—	—
	RCJ	4	1	1	3	8	2	2	6	1	—	1	1	4	2	1	1
I	FN	35	6	1	28	26	3	8	7	32	5	19	17	53	6	23	25
	RO	30	4	3	24	6	—	—	2	14	—	4	9	17	7	19	9
	RCJ	17	3	3	8	2	—	—	2	9	1	5	6	5	2	1	6
L	FN	29	4	—	4	35	2	2	4	18	—	6	2	28	2	3	3
	RO	13	—	—	3	10	2	—	—	7	—	—	3	5	1	1	1
	RCJ	4	—	—	2	3	1	—	—	2	—	—	—	2	—	—	—
NL	FN	21	4	2	21	15	2	4	9	22	1	6	12	22	4	6	10
	RO	6	3	—	2	6	—	2	1	4	1	—	6	3	1	4	4
	RCJ	1	1	1	1	—	—	—	—	—	1	1	1	2	—	—	1
P	FN	—	—	—	—	—	—	—	—	3	—	5	3	—	1	4	13
	RO	—	—	—	—	—	—	—	—	—	—	—	—	—	—	3	4
	RCJ	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
UK	FN	15	2	2	10	13	7	5	12	20	4	10	10	16	3	9	5
	RO	4	—	5	2	1	1	2	1	2	2	2	3	1	6	3	5
	RCJ	—	—	2	3	—	1	—	—	1	—	1	—	—	—	—	—

(1) FN = Formal notice.  
RO = Reasoned Opinion.  
RCJ = Reference to the Court of Justice.

## References to Court and judgments since 1981

Sector	Member State	Reference to the Court								Judgment for the Commission								Judgment for the Member State							
		1981	1982	1983	1984	1985	1986	1987	1988	1981	1982	1983	1984	1985	1986	1987	1988	1981	1982	1983	1984	1985	1986	1987	1988
Administrative questions	B					3	1			1					1	1	1								
	D					1	2									1									
	F						1																		
	L					1																		1	
	NL					1									1										
Internal market and industrial affairs Economic and financial policy	B		3	2		3	5	1	3			1				1	1								
	D	2	1		2	1	4	1	1			1		1	1	1									
	DK	1				1											1			1					
	F	3	4	4	9	3	2	3	4		1	1		4			1				1		1		
	UK	1	1	1	1		1	1			1	1		1			1								
	GR			2	2	2	4		3				1	1	1	1	2								
	I	6	6	3	3	6	1	4	4	6	2	1	2	2	1	3	5						2		
	IRL	2	2	1	1	2		1	1	1	1						1								
	L		2			3	2	1																	
	NL	1	1						1			1													
E							1																		
Economic and financial policy	GR				1	1	1																		
State monopolies and competition	F			1																					
	I		1			1										1				1					
	GR							1	1								1								
	B																1								
Budget	D				1		1		1						1										
	UK					1									1										
	I							1	1																
	NL							1																	
	GR															1									
Development	GR					1	1										1								
Contrôle financier	GR							1																	



Sector	Member State	Reference to the Court								Judgment for the Commission								Judgment for the Member State							
		1981	1982	1983	1984	1985	1986	1987	1988	1981	1982	1983	1984	1985	1986	1987	1988	1981	1982	1983	1984	1985	1986	1987	1988
Statistics	B				1																				
	I				1		1							1											
Fisheries	GR								1																
	F								1																
	I								1																
	UK																								
	IRL								1																
	NL							1																	
Customs union	B		1						1			1	1												
	DK		1			1						1													
	E								1																
	F	1	1			1	1	1																	
	I					2	1	1							1		1	1							
	L		1									1													
	UK				1			1						1											
	GR					1		1										1							
	D							1																	1
Financial institutions	B	1				1			1			1				1									
	D				1	1																			
	F			2																					
	I	1				1			1			1													
	IRL				1																				
	NL		1			1						1													
External relations	F				1																				
Indirect taxation	B		1			2						1					1						1	1	
	D		1		1	1	1		1				1	1											
	DK				1				3						1										
	F		1	1	1	2		2	1			1						2					1		
	UK				1	2						1						2							
	I	2	1	4	2	2	4	6	1		1	1	2	2		3	3					1			
	IRL				1	3		1	2								1					1			
	NL				1	1										1						1			
	GR								1								1								





## Court of Justice judgments delivered up to 31 December 1988 not complied with

*Judgments delivered since 1 July 1988*

## BELGIUM

27. 9. 1988      Case 42/87      Discrimination in respect of public financing: higher education not of university level      (A 435/85)

## DENMARK

20. 9. 1988      Case 302/86      Containers for beers and soft drinks      (A 268/81)  
(A 266/84)

## FRANCE

13. 7. 1988      Case 169/87      Retail selling price of tobacco products      (A 271/85)

21. 9. 1988      Case 50/87      Restriction of the right to deduct VAT      The French Government has drawn up a draft Decree amending the Decree found wanting by the Court. The draft will be submitted to the Conseil d'État in the near future with a view to its adoption around March 1989.  
(A 76/85)

25. 10. 1988      Case 312/86      Equal treatment; access to employment      (A 144/85)

## GREECE

14. 7. 1988	Case 38/87	Requiring of Greek nationality for access to the professions of — lawyer — architect, civil engineer and surveyor	(A 264/85) (A 265/85)	Fresh infringement proceedings
22. 9. 1988	Case 272/86	— Olive oil in bulk of the extra and fine virgin type — Edible olive oil and lamp-oil	(A 142/85) (A 108/86)	
15. 11. 1988	Case 229/87	Bank charge for checking the prices of imported goods	(A 229/86)	

## IRELAND

22. 9. 1988	Case 45/87	Contract for the construction of a pipeline at Dundalk	The infringement has been gone through with and cannot be remedied (A 407/86)	
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## ITALY

12. 7. 1988	Case 310/86	Services incidental to transport	The Commission's staff are looking into the situation in Italy (A 126/85)	
12. 7. 1988	Case 322/86	Quality of fresh waters capable of supporting fish life	(A 71/85)	
12. 7. 1988	Case 326/87	Thermometers	(A 199/86)	

## UNITED KINGDOM

12. 7. 1988	Case 60/86	Lighting and light-signalling devices on motor vehicles	New draft regulations are under discussion (A 232/84)	
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*Judgments delivered prior to 1 July 1988*

*Cases where the Commission has been informed that measures are being taken (to end January 1989)*

GERMANY

18. 9. 1986	Case 116/82	Wine Law 1971	Compliance with this judgment requires that production of several quality wines in Germany should cease. Talks have been going on with the German authorities for a year and a half in order to determine the details and to establish whether Community legislation should be enacted to allow a transitional period (A 212/72)	Fresh infringement proceedings
18. 9. 1986	Case 48/85	Ban on the use of rectified grape must concentrate	A Bill regularizing the infringement has passed the Bundestag and, on first reading, the Bundesrat. The Federal Government is trying to speed up the legislative process and expects the Bill to become law before the summer recess. (A 30/83)	Fresh infringement proceedings
4. 12. 1986	Case 179/85	Bottling of pétillant de raisin	Legislative amendment in progress. (A 183/83)	
12. 3. 1987	Case 178/84	Ban on the sale of beers not made from malted barley	Pending the Commission's decision on the draft order submitted by Germany, beers from other Member States are provisionally allowed in (cf. Finance Ministry circular of 29 September 1988). They must nevertheless have a label affixed to them showing their alcoholic strength and indicating the category to which they belong under German law ('Schankbier', etc.). Only the additives generally permitted in all foodstuffs may be used, otherwise prior authorization is needed. The Commission has reservations about the draft order, particularly as regards the labelling requirement. The Court's judgment has not been fully complied with. (A 5/82)	
7. 5. 1987	Case 189/85	Overlapping family allowances	The reimbursement procedure is under way. (A 65/83)	

26. 4. 1988	Case 74/86	Increase in the alcoholic strength of German Mosel wines	A Bill was tabled in May 1988. Parliament's approval is awaited.	
BELGIUM				
19. 10. 1981	Case 137/80	Transfer of pension rights	The fresh infringement proceedings (Case 383/85) have been suspended with the Commission's agreement with a view to coming to a satisfactory arrangement (A 303/84)	
4. 6. 1987	Case 134/86	Non-ionic surfactants	The process of transposing the directives is under way but is not yet complete (A 374/84, A 375/84)	Fresh infringement proceedings have been initiated. On 6 January 1989 the Commission decided to send a reasoned opinion (A 183/88 and A 184/88)
17. 6. 1987	Case 1/86	Protection of groundwater against pollution	The Royal Order of 17 September 1987 is not considered satisfactory by the Commission (A 291/84)	Fresh infringement proceedings (A 291/88)
GREECE				
12. 3. 1987	Case 176/84	Provisions laying down that only malt-based beers may be sold	Formal adoption of the new rules is expected (A 4/82)	Fresh infringement proceedings
3. 12. 1987	Case 194/84	Refusal to authorize transfer of funds in blocked accounts belonging to EC residents	(A 39/83)	Fresh infringement proceedings for partial failure to implement the judgment (A 480/88)
ITALY				
10. 11. 1981	Case 28/81	Admission to the occupation of road haulage operator	(A 85/79)	Fresh infringement proceedings (A 175/83)
10. 11. 1981	Case 29/81	Admission to the occupation of road passenger transport operator	(A 113/79)	Fresh infringement proceedings (A 176/83)
8. 6. 1982	Case 91/81	Collective redundancies	(A 45/78)	Fresh infringement proceedings (A 102/83)

15. 3. 1983	Case 145/82	Three directives on proprietary medicinal products	(A 29/80)		Fresh infringement proceedings: see Annex B (A 53/85)
11. 10. 1983	Case 273/82	Recognition of qualifications of goods haulage and road passenger transport operators	(A 141/80)		Fresh infringement proceedings: see Annex B (A 17/85 — Case 71/88)
7. 2. 1984	Case 166/82	Fixing the price of milk	Bill before Parliament (A 59/77)		
17. 6. 1985	Case 394/85	Additional milk levy	The national measures are being studied. (A 387/84)		Fresh infringement proceedings
6. 11. 1985	Case 131/84	Collective redundancies	The Italian Senate approved at the end of 1988 a legislative proposal transposing <i>inter alia</i> the provisions of the directive in question. The proposal still has to be approved by the Chamber of Deputies (A 102/83)		
28. 6. 1988	Case 3/86	Flat-rate reimbursement of farmers, beef and pigmeat	The Italian Government is drawing up measures for incorporation in the draft 1989 Tax Act, which is to be presented to the Italian Parliament before the end of January. The measures will amend the tax arrangements which the Court of Justice has found to be unlawful. Technically, the amendments give rise to difficulties in calculating the costs actually incurred by farmers subject to VAT on a flat-rate basis. (A 262/81)		
10. 3. 1987	Case 386/85	Meat products Swine fever Swine vesicular disease	(A 236/83) (A 254/83) (A 260/83)	Terminated on 6. 1. 1989 Terminated on 6. 1. 1989	Fresh infringement proceedings (A 450/88)
7. 7. 1987	Case 420/85	Combined road/rail carriage of goods	(A 82/84)	Terminated on 6. 1. 1989	
23. 2. 1988	Case 429/85	Dangerous substances	(A 290/83)	Terminated on 6. 1. 1989	

## NETHERLANDS

20. 3. 1986	Case 72/85	Transfer of pension rights	The Dutch legislative proposal is being studied (A 8/78)	
26. 3. 1987	Case 235/85	Tax status of notaries and sheriffs' officers	The decision has been taken to initiate fresh infringement proceedings. On 9 December 1988 the Dutch Government answered the letter of formal notice of 10 October 1988. The answer is now being studied. (A 153/83)	Fresh infringement proceedings (A 337/88)

## UNITED KINGDOM

8. 11. 1983	Case 165/82	Equal treatment of men and women as regards access to employment	The UK authorities have adopted certain measures, notifying them on 15 December 1986. These are acceptable on the whole, although one point is still undergoing scrutiny. The situation seems to be satisfactory, however, and it should be possible to terminate the proceedings shortly. (A 131/80)	
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*Other cases (to end January 1989)*

## GERMANY

14. 2. 1984	Case 325/82	Exemptions from turnover tax and excise duties on imports (butter-buying cruises)		Fresh infringement proceedings (A 320/85)
4. 12. 1986	Case 205/84	Community co-insurance		Fresh infringement proceedings
17. 9. 1987	Case 412/85	Wild birds	(A 119/84)	Fresh infringement proceedings (A 48/89)
25. 2. 1988	Case 427/85	Lawyers; freedom to provide services	(A 56/83)	Fresh infringement proceedings

BELGIUM

2. 2. 1983	Cases 68 to 71/81	Failure to transpose four environmental directives: titanium dioxide waste	(A 98/79, A 102/78, A 94/79, A 135/79) The Court delivered a second judgment on 14 January 1988 (Cases 227 to 230/85). (A 169/84 to 172/84)	
10. 4. 1984	Case 324/82	Retaining the list price as the basis for charging VAT on cars		Fresh infringement proceedings. Judgment of the Court of 4 February 1988 in Case 391/85. Belgium was censured for failing to take the measures necessary to comply with the judgment in Case 324/82. The Belgian authorities are holding discussions with the Commission's departments with a view to complying with the judgment
2. 12. 1986	Case 239/85	Toxic waste	(A 169/83)	Fresh infringement proceedings
12. 2. 1987	Case 390/85	Securities	(A 9/84 to A 11/84)	Fresh infringement proceedings
12. 3. 1987	Case 9/96	Driving licences	(A 150/84)	Fresh infringement proceedings. On 6 January 1989 the Commission decided to stay the proceedings with a view to terminating them
8. 7. 1987	Case 247/85	Wild birds	(A 118/84)	Fresh infringement proceedings
14. 1. 1988	Case 227/85	Titanium dioxide waste	(A 169/84)	
14. 1. 1988	Case 228/85	Waste	(A 171/84)	
14. 1. 1988	Case 229/85	Waste oils	(A 170/84)	
14. 1. 1988	Case 230/85	Disposal of PCBs and PCTs	(A 172/84)	



24. 5. 1988	Case 307/86	Technical requirements for inland waterway vessels	(A 202/85)	Fresh infringement proceedings
21. 6. 1988	Case 283/86	Services incidental to transport	(A 123/85)	Fresh infringement proceedings
DENMARK				
4. 12. 1986	Case 252/83	Community co-insurance	(A 57/82)	Fresh infringement proceedings
14. 10. 1987	Case 278/85	Dangerous substances	(A 38/84)	Fresh infringement proceedings (A 52/89)
FRANCE				
30. 4. 1986	Case 96/85	Replacement of doctors; dual practices	(A 267/83)	Fresh infringement proceedings
3. 6. 1986	Case 307/84	Discrimination against foreign nurses in access to public hospitals	The requirement that a person must be of French nationality if he is to be appointed a nurse in a public hospital, as laid down, at the time the action was brought, in Article 809 of the Public Health Code (repealed in January 1986), has been reintroduced into the Law of July 1983 (new general staff regulations of officials, which apply also to hospital staff) which has not been amended since in this respect. The Commission's departments have written to the French authorities with a view to ensuring compliance with the judgment. No reply has been forthcoming (A 324/82)	
4. 12. 1986	Case 220/83	Community co-insurance	(A 265/81)	Fresh infringement proceedings
27. 4. 1988	Case 252/85	Wild birds	(A 121/84)	

30. 6. 1988	Case 318/86	Equal treatment of men and women as regards access to employment	The national rules authorizing separate recruitment according to sex for appointment to various civil services corps <i>have not been amended</i> , but there is no evidence to suggest that, since the judgment, government departments have in general continued to recruit men and women separately <sup>(1)</sup> . The Commission's departments wrote to the French authorities on 1 December 1988 with a view to ensuring compliance with the judgment. No reply has been forthcoming (A 312/84)	
GREECE				
15. 3. 1988	Case 147/86	Teaching ban	(A 388/84)	Fresh infringement proceedings (A 265/85)
30. 6. 1988	Case 226/87	Insurance of public property	(A 111/86)	Fresh infringement proceedings (A 47/89)
IRELAND				
4. 12. 1986	Case 206/84	Community co-insurance	(A 127/83)	Fresh infringement proceedings
21. 6. 1988	Case 415/85	Zero rating	The judgment will be complied with when the new Finance Act is adopted before the end of March 1989 (A 202/81)	
ITALY				
15. 11. 1983	Case 322/82	Fruit and vegetables quality control		Fresh infringement proceedings (A 68/85, Case 69/86, judgment of 12 February 1987)

<sup>(1)</sup> Two competitions (one external and the other internal) for the recruitment of police inspectors, to be held at the beginning of March 1989, have just been announced in the *Revue de la Préfecture de Police de Paris*: in the external competition notice, 44 posts are advertised, including 11 for women, and in the internal competition notice 20 posts are advertised (including 5 for women). This proves that, despite the judgment, the system of separate recruitment has been maintained for access to the corps of police inspectors.

28. 3. 1985	Case 2/84	Authorization required for combined road/rail carriage of goods	Compliance partial and insufficient. (A 56/86)	Fresh infringement proceedings (A 490/87)
11. 7. 1985	Case 101/84	Statistics on domestic goods carried by road	(A 74/82)	Fresh infringement proceedings (A 216/88)
20. 3. 1986	Case 17/85	Annual accounts of companies	(A 306/82)	Fresh infringement proceedings (A 433/88)
30. 4. 1986	Case 158/85	Export procedures for Community goods	(A 162/83) (A 168/83)	Fresh infringement proceedings (A 502/87 — A 503/87)
12. 7. 1986	Case 235/84	Employees' rights in the event of transfer of businesses	(A 24/82)	Fresh proceedings, for infringement of Article 171 of the EEC Treaty: failure to comply with the Court's findings on the Commission's second claim (absence of domestic legislation requiring employers to inform and consult workers affected by a transfer) (A 462/87)
15. 10. 1986	Case 168/85	Nationality requirements (tourist guides, journalists, licensed pharmacists)	(A 36/84)	Fresh infringement proceedings (A 373/88)
5. 11. 1986	Case 160/85	Admission to the occupation of road haulage operator and road passenger transport operator	(A 175/83) (A 176/83)	
27. 1. 1987	Case 275/85	Release of imported goods in stages	(A 183/84)	Fresh infringement proceedings (A 240/88)
29. 1. 1987	Case 364/85	Tuberculosis and brucellosis; Swine vesicular disease and classical swine fever; Enzootic bovine leukosis	(A 256/83) (A 258/83) (A 262/83)	Fresh infringement proceedings (A 453/88 — A 454/88 — A 455/88)
12. 2. 1987	Case 69/86	Fruit and vegetables quality control	Action brought under Article 171	
10. 3. 1987	Case 386/85	Swine vesicular disease and classical swine fever	(A 259/83)	Fresh infringement proceedings (A 456/88)
7. 5. 1987	Case 184/85	Consumption tax on bananas	the tax is still being charged both on bananas originating in the Community and on those originating in non-member countries and in free circulation in the Community (A 136/83)	Fresh infringement proceedings (A 300/88)

7. 7. 1987	Case 49/86	Mutual recognition of doctor's qualifications	(A 6/84)	Fresh infringement proceedings (A 112/88)
8. 7. 1987	Case 262/85	Wild birds	(A 124/84)	Fresh infringement proceedings (A 49/89)
24. 11. 1987	Case 124/86	Tax exemptions for permanent imports of personal property	(A 421/84)	Fresh infringement proceedings (A 445/88)
25. 11. 1987	Case 125/86	Exemption from VAT on final importation of certain goods	(A 422/84)	Fresh infringement proceedings (A 446/88)
14. 1. 1988	Case 63/86	Access to mortgage credit and rented accommodation	(A 325/84)	Fresh infringement proceedings
2. 3. 1988	Case 309/86	Non-ionic and anionic surfactants	(A 378/84) (A 379/84)	Fresh infringement proceedings
3. 3. 1988	Case 116/86	Brucellosis	(A 316/84)	Fresh infringement proceedings (A 463/88)
24. 3. 1988	Case 104/86	Rules of evidence making it impossible to secure repayment of national charges having an effect equivalent to customs duties	(A 438/84)	
24. 5. 1988	Case 122/87	Exemption from VAT of the services provided by veterinary surgeons	(A 209/85)	
9. 6. 1988	Case 56/87	Prices of pharmaceutical products	By letter dated 12 December 1988, the Commission requests communication of the measures taken (A 28/85)	
21. 6. 1988	Case 257/86	Importation of medical samples	(A 188/84)	

## NETHERLANDS

17. 9. 1987      Case 291/84      Protection of groundwater      (A 71/83)      Fresh infringement proceedings  
(A 532/88)

13. 10. 1987      Case 236/85      Wild birds      (A 125/84)      Fresh infringement proceedings  
(A 60/89)

## UNITED KINGDOM

21. 6. 1988      Case 416/85      Zero rating      The judgment will be complied with when the  
new Finance Act for 1989 is adopted  
(A 203/81)

## No 11

## Review of significant judgments of national courts of final instance

In the fifth report, the Commission informed Parliament that it had carried out an in-depth study of the attitude of national supreme courts to Community law and that the study would be published.

The Commission has decided, in the interests of keeping Parliament fully informed, to publish the study as an appendix to the present report.

The approach adopted by Member States' supreme courts to the problems posed by conflicts between Community law and national law and the application by those courts of three basic principles of Community law (its primacy over subsequent national law, the direct effect of directives and the uniformity of judicial decisions) are analysed country by country with an indication of how the situation has changed over time.

The conclusion drawn is that supreme courts are adopting non-conformist positions less and less frequently and are collaborating effectively in the implementation of Community law.

The influence of the case law of the Court of Justice is making itself increasingly felt. In its judgment in Case 283/81 CILFIT<sup>(1)</sup>, the Court gave a definitive interpretation of the third paragraph of Article 177: a court or tribunal against whose decisions there is no judicial remedy under national law is required, where a question of Community law is raised before it, to comply with its obligation to bring the matter before the Court of Justice, unless it has established that:

- the question raised is irrelevant;
- or
- the Community provision in question has already been interpreted by the Court;
- or
- the correct application of Community law is so obvious as to leave no scope for any reasonable doubt; the existence of such a possibility must be assessed in the light of the specific characteristics of Community law, the particular difficulties to which its interpretation gives rise and the risk of divergences in judicial decisions within the Community.

As far as 1988 is concerned, the Commission finds that the comments made in the fifth report still hold true.

Generally speaking, the courts and tribunals of the various Member States apply Community law in full. They themselves give judgment on questions of Community law which have already been settled, where these arise, and they are increasingly referring matters to the Court of Justice for a preliminary ruling pursuant to Article 177 of the EEC Treaty. This is true on the whole as much of the lower courts as of courts of final instance.

Thus, the number of references made rose from 144 in 1987 to 179 in 1988. For 1988, they may be broken down by Member State and by court as follows<sup>(2)</sup>:

Member State	Total	References by courts of final instance
Germany	34 (32)	8 (10)
Belgium	32 (15)	1 (3)
Denmark	4 (5)	2 (2)
Spain	1 (1)	— (—)
France	37 (36)	4 (3)
Greece	— (17)	— (—)
Ireland	— (2)	— (—)
Italy	28 (5)	— (—)
Luxembourg	2 (3)	2 (3)
Netherlands	25 (19)	16 (14)
Portugal	— (—)	— (—)
United Kingdom	16 (9)	2 (1)

As in 1987, the Commission has carried out a review of the judgments of courts of final instance which highlight the problems that remain.

In fact, with the limited resources at its disposal the Commission has unearthed only three cases worthy of mention, and these concern the Italian Consiglio di Stato and the French Conseil d'État (see below). The three judgments in question are particularly significant inasmuch as (a) no reference was made to the Court of Justice and (b) the two courts misinterpreted Community law.

In line with the suggestion made at point 4 of Parliament's resolution on the fifth report, the Commission is studying the possibility of introducing a system whereby it would be sent annual digests of all judgments delivered by national supreme courts.

In view of the complexity of the undertaking and the organizational difficulties involved, the Commission is in favour of conducting a pilot experiment with the help of one or two Member States in order to gain the necessary experience before extending the system to all twelve.

As regards, more particularly, cases in which national courts fail to appreciate the scope and terms of Article 177, the Commission has initiated infringement proceedings against France in connection with the judgment of the Cour de Cassation referred to at A.1. on page 44 of the fifth report.

As already indicated in the course of the discussions on the latter, the Commission hesitates, given the universal principle of the independence of the judiciary, to find fault with a Member State on grounds of the conduct of one of its courts.

<sup>(1)</sup> 1982 ECR 3415.

<sup>(2)</sup> The figures in brackets relate to 1987.

In the case in point, the Commission took the view that, having made a mistake in prosecuting a firm for a crime which it had not in fact committed, the French authorities were not justified, under Community law, in relying on the judgment delivered in their favour, this being based on the same manifest error of application of Community law.

The proceedings are currently at the reasoned opinion stage.

1. *Italian Consiglio di Stato. Sixth Chamber, — Judgment of 2 December 1988, — Cooperativa Carrettieri la Rinascita*

This judgment is noteworthy both for the unjustified omission to make a reference to the Court of Justice and for the misapplication of Community law.

The Consiglio di Stato had to rule on an appeal lodged by three Italian companies against a judgment of the Latium regional administrative court dismissing an action brought by the companies against a Ministry of Transport circular revoking all the measures taken pursuant to Law No 815/1980 on aid for the purchase of vehicles by road haulage operators.

The purpose of the circular was to implement the Commission decision of 20 July 1983 declaring the aid incompatible with Article 92 (1) of the Treaty. Since the repeal of the law to which the Commission objected called for the adoption of a new law, the Italian Government had therefore temporarily discharged its Community obligations by means of an administrative provision permanently freezing all awards of the aid in question.

The Consiglio di Stato reversed the lower court's decision and declared the circular void on the ground that, as long as Law No 815/1980 was in force, the Italian authorities could not lawfully revoke the measures implementing it. According to the Consiglio di Stato, such revocation should have followed, and not preceded, the repeal of the 1980 law, the only measure capable of implementing correctly the Commission decision of 20 July 1983.

The Consiglio di Stato thus dismissed, without valid reason, the Italian Government's argument that the conflict which that court had to settle was not between the Italian law and the Commission's Article 93 (2) decision, but between that law and Article 92 (1) of the Treaty itself.

That argument was, moreover, entirely in keeping with the well-established case law of the Court of Justice on the subject (Case 77/72 *Capolongo*).

As regards the legal effects of the Commission decision, the Consiglio di Stato stated that:

— '... decisions, which — unlike regulations — do not have general application, have the same binding force as

directives, which are addressed to States, do not have general application, are not specific and are not, therefore, as such directly applicable (in the Member States).'

Moreover,

— '... decisions of the Community institutions are ... concrete and selective measures which, although binding on the State to which they are addressed as regards the obligations they impose, cannot be directly applicable in the national legal order as they do not contain provisions having general application.'

These statements stand in sharp contrast with a long line of rulings by the Court of Justice on the legal effects of decisions.

The position is, therefore, that the Consiglio di Stato omitted to make a reference to the Court of Justice for a preliminary ruling despite the fact that all the parties to the action had advanced arguments based on Community law and despite its being expressly requested by the Italian Government to refer to the Court a question on the interpretation of Article 92 of the Treaty. In addition, it misinterpreted the Court's pronouncements on the Community rules on State aids and proved incapable of resolving correctly, along the lines set out both by the Court of Justice and by the Italian Constitutional Court in its landmark judgment in Case 170/1984 *Granital*, conflicts between domestic and Community law. As in its Judgment No 504 of 6 May 1980 concerning the effects of a directive in the domestic legal order, the Consiglio di Stato persists in refusing to recognize the direct effect of the acts of the Community institutions in national law.

2. *French Conseil d'État — Judgment of 27 April 1988 — 9th and 10th sub-sections sitting together — 63.772 — Société Bernard Carant*

In this case, the Conseil d'État not only omitted to make a reference to the Court of Justice but also adopted an unorthodox position with regard to the relationship between Community law and subsequent national law.

The plaintiff company had sought the annulment of an Order of 31 August 1984 suspending for one year the manufacture, exportation, importation and placing on the market of india rubbers which by their shape, presentation and smell were suggestive of foodstuffs and which could easily be ingested.

A question of Community law having been expressly raised, the Conseil d'État asserted that 'the plaintiff company cannot validly claim that the contested Order infringes Articles 30 and 34 of the Treaty of Rome when it was issued under the abovementioned law of 21 July 1983, which was adopted after the said Treaty entered into force.'

The ignorance of the principle of the primacy of Community law (in this case the Treaty itself, no less) is manifest.

3. *French Conseil d'État — Judgment of 2 March 1988 — Association Club de chasse du Vert Galant — Req. Nos 25275, 25276 and 57837*

This judgment highlights another strong point of the Conseil d'État as regards the exercise of its judicial function, namely the refusal to recognize what is known as the direct effect of directives.

The dispute between the plaintiff association and the tax authorities was over the question whether the association's operating costs, which were covered mostly by flat-rate contributions from huntsmen, constituted income subject to VAT.

Under national law the answer to this question was in the affirmative, but the plaintiff association maintained that imposition of the tax infringed the Sixth Council VAT Directive of 17 May 1977. The Conseil d'État, omitting once more to make a reference to the Court, asserted that, pursuant to Article 189 of the EEC Treaty, the national authorities were alone competent to decide on the appropriate means of enabling directives to take effect in domestic law. Thus, in its view, whatever they contain in the way of provisions addressed to the Member States, directives cannot be relied upon by nationals of those States in support of a claim in fields such as taxation. It found that, during the tax period in question, the measures needed to enable the Sixth Directive to take effect in domestic French law had not yet been taken: that being so, the directive had no bearing on the legislative provisions applicable in the present case.



## Statistics on complaints (C) and infringements detected by the Commission's own inquiries (I)

		B		D		DK		E		F		GB		GR		IRL		IT		L		NL		P		Total		
		C	I	C	I	C	I	C	I	C	I	C	I	C	I	C	I	C	I	C	I	C	I	C	I	C	I	
Secretariat-General	1982	—	—	1	—	—	—	—	—	—	—	1	—	—	—	—	—	—	—	—	—	—	—	—	—	2	—	
	1988	—	—	—	—	—	—	—	—	1	—	—	—	—	—	—	—	—	—	—	—	—	1	—	—	1	1	
Legal service	1983	—	—	—	—	1	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1	—	
	1984	—	—	—	—	—	—	—	—	1	—	1	—	—	2	—	—	—	—	1	—	—	—	—	—	3	2	
	1985	—	—	1	1	—	—	—	—	—	—	—	—	—	1	—	—	—	—	—	—	—	—	—	—	1	2	
	1986	—	—	—	2	—	1	—	—	—	1	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	4
	1987	—	—	1	—	—	—	—	—	—	—	—	1	—	1	—	—	—	1	—	—	—	—	—	—	1	4	
	1988	—	1	—	1	—	—	—	—	1	—	2	—	1	—	1	—	1	—	2	—	1	—	—	1	—	—	13
	Statistical Office	1984	—	2	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
1985		—	—	—	—	—	—	—	—	—	—	—	1	—	—	—	—	—	1	—	—	—	—	—	—	—	—	2
1987		—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	3	—	—	—	—	—	—	1	4
1988		—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
External relations	1982	—	—	—	—	—	—	—	—	4	2	—	—	2	—	—	2	1	—	—	—	—	1	—	—	4	8	
	1983	—	—	—	—	—	1	—	1	6	1	2	—	2	—	1	2	1	—	—	—	—	—	—	—	4	13	
	1984	—	—	—	—	—	—	—	—	2	—	—	—	5	—	—	1	2	—	—	—	—	—	—	—	1	9	
	1985	—	2	—	1	—	—	—	1	—	—	—	—	1	—	1	—	3	—	2	—	—	—	—	—	1	10	
	1986	1	1	—	—	—	—	1	—	1	—	—	—	2	1	—	—	6	—	—	—	—	1	—	—	11	3	
	1987	1	—	—	—	—	—	—	1	—	—	—	—	1	1	—	—	4	—	—	—	—	2	—	—	7	3	
	1988	—	1	—	2	—	—	1	—	1	—	—	—	1	—	—	—	1	1	—	1	—	—	—	—	—	3	6
Economic and financial affairs	1982	—	—	—	—	—	—	—	—	—	—	—	—	3	—	—	—	—	—	—	—	—	—	—	—	—	—	3
	1983	—	—	—	—	—	—	—	—	—	1	—	—	2	—	—	—	—	—	—	—	—	—	—	—	—	2	1
	1984	—	—	—	—	—	—	—	—	—	—	—	—	2	1	—	1	—	—	—	—	—	—	—	—	—	2	2
	1985	—	—	—	—	—	—	—	—	1	—	—	—	1	—	—	—	1	—	—	—	—	—	—	—	—	3	—
	1986	—	1	—	—	—	—	—	1	—	—	—	—	1	—	—	—	1	—	—	1	—	—	—	—	—	3	2
	1987	—	—	—	—	—	—	—	—	—	1	—	—	1	—	—	—	1	—	—	—	—	—	—	—	—	3	—
	1988	—	—	—	—	1	—	—	2	—	—	—	—	3	—	—	—	—	—	—	—	—	—	—	1	2	7	2
Internal market and industrial affairs	1982	12	2	11	4	4	—	—	—	69	13	18	6	31	5	10	1	27	7	4	—	11	3	—	—	—	197	41
	1983	13	5	13	5	2	—	—	—	67	21	14	7	47	11	11	—	22	14	—	3	8	4	—	—	—	197	70
	1984	5	5	11	7	6	1	—	—	53	14	14	3	64	10	4	—	65	7	1	1	3	3	—	—	—	226	51
	1985	13	3	30	6	10	—	—	—	56	11	22	4	123	2	6	3	62	6	2	3	4	6	—	—	—	328	44
	1986	13	8	31	4	5	2	106	7	61	18	10	4	57	2	7	—	35	6	3	2	12	4	18	3	—	358	60
	1987	5	4	75	10	5	—	93	6	64	18	12	6	23	4	11	3	46	3	2	1	9	6	14	5	—	359	66
	1988	18	4	52	7	9	6	289	10	86	22	15	10	29	5	5	3	60	20	3	5	9	2	22	3	—	597	97
Competition	1982	5	2	3	—	1	1	—	—	4	2	2	1	—	—	1	2	—	1	—	—	—	1	—	—	—	17	9
	1983	2	2	1	—	—	—	—	—	4	6	1	—	2	—	—	—	—	—	—	—	—	7	—	—	—	18	8
	1984	1	—	3	1	—	—	—	—	3	1	—	—	1	2	—	1	—	—	—	—	—	—	—	—	—	9	7
	1985	2	—	—	—	—	—	—	—	—	—	—	—	2	2	—	—	—	—	—	—	—	—	—	—	—	5	4
	1986	2	1	2	—	—	—	—	2	—	2	2	1	—	2	—	—	—	1	1	—	1	—	—	—	—	11	7
	1987	—	—	—	2	—	1	1	2	3	1	1	—	1	—	—	—	—	—	2	—	—	—	—	—	—	9	8
	1988	—	2	2	—	—	—	—	2	1	2	1	—	1	5	1	—	—	1	—	—	—	—	—	2	2	9	15



		B	D	DK	E	F	GB	GR	IRL	IT	L	NL	P	Total
		P CDO	P CDO	P CDO	P CDO	P CDO	P CDO	P CDO	P CDO	P CDO	P CDO	P CDO	P CDO	P CDO
Financial institutions and taxation (direct and indirect)	1982	— —	1 —	1 —		4 1	2 —	11 9	2 1	—	1 —	— —		25 11
	1983	— —	2 1	1 2		5 2	— 1	2 1	— 2	—	1 —	— 2		11 11
	1984	2 4	5 1	1 —		9 2	— 3	3 —	2 1	4 1	— —	1 1		27 13
	1985	2 1	— 2	1 1		10 8	3 5	5 5	4 4	1 8	1 1	2 1		29 36
	1986	— 1	1 3	1 —	— —	1 1	— —	— 2	— —	— 2	1 —	— 2	— —	4 11
	1987	— —	2 1	— —	— —	— —	2 1	— 1	— —	2 1	— —	1 —	— —	8 4
	1988	— —	5 —	1 —	2 2	5 1	— 1	— —	3 —	— —	1 —	1 —	1 —	19 4
Energy	1982	— —	— —	— —		2 —	— —	— —	— —	— —	— —	— —		2 —
	1983	— —	— —	— —		— 1	— —	— —	— —	— 1	1 —	— —		1 2
	1984	— 1	— —	— —		— —	— 2	— —	— —	— —	— —	— —		— 3
	1985	— 1	— —	— —		— —	— —	— —	— —	— —	— —	— —		— 1
Budgets	1983	— —	— 1	— —		— 1	— 1	— —	— 1	— —	— —	— —		— 4
	1984	— —	— 1	— —		— —	— —	— 1	— —	— 1	— —	— —		— 3
	1985	— 1	— 1	— 1		— 1	— 3	— —	— —	— 5	— —	— 2		— 14
	1986	— 1	— 3	— —	— —	— 1	— 1	— —	— 1	— 2	— —	— —	— —	— 9
	1987	— —	— —	— —	— 1	— 1	— —	— —	— —	— 2	— —	— —	— 1	— 5
	1988	— —	— 1	— —	— 1	— —	— 2	— —	— 2	— 3	— —	— —	— —	— 9
Customs union	1982	— —	6 1	— —		2 —	— 1	4 —	— —	— —	— —	— —		12 2
	1983	— 1	— —	— —		5 3	— 1	8 1	— 1	1 1	— —	1 1		15 9
	1984	— —	— —	— —		1 1	— —	3 —	— —	1 1	— —	— —		5 2
	1985	3 2	1 3	6 1		3 1	1 3	3 2	1 1	1 2	— 2	— 2		13 19
	1986	3 —	4 3	3 1	10 3	26 2	3 2	5 6	2 1	8 —	5 —	— —	2 1	71 19
	1987	6 3	4 3	5 2	11 6	16 3	4 3	8 8	1 5	31 1	— 1	3 3	4 6	93 44
	1988	12 3	1 3	11 1	6 6	10 4	4 6	10 5	1 1	11 7	1 2	1 3	8 3	76 38
Company taxation and capital movements	1982	22 10	31 12	7 2		106 25	39 10	59 30	17 4	53 13	5 1	13 5		352 112
	1983	24 12	31 15	9 9		117 50	29 23	94 23	19 9	51 28	3 8	21 15		399 192
	1984	14 21	34 14	13 4		102 30	36 12	144 26	9 6	102 21	3 4	19 7		476 145
	1985	28 31	45 24	14 12		106 41	55 26	200 22	16 18	104 38	3 13	14 19		585 244
	1986	35 31	68 38	13 13	135 13	163 73	57 11	154 23	12 16	92 33	10 10	20 24	32 8	791 293
	1987	28 15	121 32	16 9	153 27	142 36	64 23	81 21	38 14	141 27	4 11	22 26	40 19	850 260
	1988	49 27	116 36	35 12	373 30	173 48	71 26	107 22	27 12	111 44	6 14	26 23	43 13	1 137 307

## ANNEX A

## Infringements of the Treaties and of Regulations

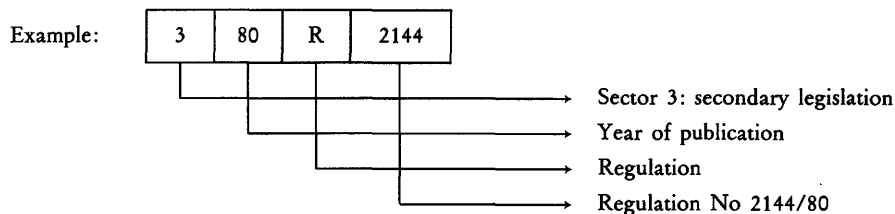
## Contents

	Page
External relations .....	62
Economic and monetary policy .....	62
Internal market and industrial affairs .....	62
Competition .....	69
Employment, social affairs and education .....	69
Agriculture .....	70
Transport .....	74
Development .....	75
Administrative questions .....	75
Environment .....	76
Fisheries .....	76
Budgetary questions .....	78
Customs union .....	78
Indirect taxation .....	80

## Legal basis

The indication of the legal basis provided here is derived from the document number in the Celex data base, which is itself derived from the act's own original number; it is made up as follows:

- one figure identifying the documentary sector (e.g. 1 = Treaties establishing the Communities, etc.),
- two figures identifying the reference year (year of publication, signature, etc.),
- one or two letters identifying the legal form (e.g. E (in sector 1) = EEC Treaty),
- a serial number representing the number given to the document on publication or the article number.



Sector	Form	
1	A B E F H K R G	<b>TREATIES ESTABLISHING THE COMMUNITIES;            AMENDING AND ACCESSION TREATIES</b> Euratom Treaty Accession Treaties for Denmark, Ireland, Norway and the United Kingdom EEC Treaty Merger Treaty Treaty amending certain budgetary provisions Accession Treaty for Greece ECSC Treaty Treaty amending certain financial provisions Treaty amending certain provisions of the statute of the EIB Greenland Treaty
2	A	<b>LAW RESULTING FROM COMMUNITY EXTERNAL RELATIONS</b> Agreements with non-member countries
3	B C D L R X Y	<b>SECONDARY LEGISLATION</b> Budget Censure Decisions (except ECSC Decisions of general scope) EEC and Euratom Directives ECSC recommendations EEC and Euratom Regulations ECSC Decisions of general scope Other acts (resolutions, opinions, etc.), published in OJ 'L' series (or old single series) Other acts published in OJ 'C' series
4	A D X Y	<b>COMPLEMENTARY LEGISLATION</b> Intra-Community Agreements Decisions (of the representatives of the Governments of the Member State) Other acts published in OJ 'L' series (or old single series) Other acts published in OJ 'C' series
5	PC AP IP AC IC CC BP	<b>PREPARATORY DOCUMENTS</b> Commission proposals EP Opinions (consultation) EP Opinions (own-initiative) ESC Opinions (consultation) ESC Opinions (own-initiative) Opinions of the Court of Auditors Acts preparatory to the budget

Sector	Form	
6		CASE-LAW OF THE COURT OF JUSTICE
	B	Observations
	C	Opinions of the Advocate-General
	J	Judgments
	O	Orders
	S	Attachment orders
	T	Third party proceedings
	V	Opinions of the Court of Justice
X	Other acts	
9		PARLIAMENTARY QUESTIONS
	E	Written questions
	H	Questions arising during Question Time
	O	Oral questions
	P	Petitions

*Note:* Sectors planned:

7 — National implementing measures.

8 — National case-law.

10 — Academic writing.

Sector	Legal basis	Inf. No.	Member State	Subject	Stage of proceedings
External relations	157E113; 383R1226; 272A1219	A 482/85	Ireland	EEC-Cyprus agreement; restrictions on the importation of potatoes originating in Cyprus	Terminated
	382R0288; 383R3420	A 330/86	Greece	Fat glass — restrictions on importation ('Delta list')	Terminated
	382R0288; 383R3420	A 243/87	Greece	Bulgarian honey — restrictions on importation ('Delta list')	Terminated
Economic and monetary policy	180H052	A 39/83	Greece	Refusal to authorize transfer of sums credited to blocked accounts of residents of Member States	Reference to the Court of Justice (Case 194/84) Judgment 3. 12. 1987
	180H052; 157E17	A 480/88	Greece	idem	Letter of formal notice
Internal market and industrial affairs	157E030	A 9/80	France	Marketing of an artificial milk powder	Terminated
	157E030	A 252/81	France	Exclusion from the French market of postal franking machines manufactured by Pitney-Bowes Ltd	Terminated
	157E030	A 268/81	Denmark	Packaging for beer and soft drinks	Reference to the Court of Justice (Case 302/86) Judgment of 20. 9. 1988
	157E030	A 4/82	Greece	Provisions establishing that only malt-based beers may be sold	Reference to the Court of justice (Case 176/84) Judgment 12. 3. 1987
	157E030	A 5/82	Germany	Ban on the sale of beers not brewed solely from malted barley	Reference to the Court of Justice (Case 178/84) Judgment 12. 3. 1987
	157E030	A 51/82	Germany	Restrictions on imports of vermouth	Reasoned opinion
	157E030	A 316/82	Belgium	Refusal to grant import licences for codeine	Reasoned opinion

Sector	Legal basis	Inf. No.	Member State	Subject	Stage of proceedings
Internal market and industrial affairs (cont'd)	157E030	A 320/82	United Kingdom	Refusal to grant import licences for codeine	Reasoned opinion
	157E030	A 21/83	Italy	Restrictions on beer imports	Reasoned opinion
	157E030	A 43/83	Greece	Limitation of profit margins on certain products	Reference to the Court of Justice (Case 325/86)
	157E030	A 67/83	France	New definitions of rum	Terminated
	157E030	A 101/83	Belgium	Prices of pharmaceutical products	Reference to the Court of Justice (Case 249/88)
	157E030; 157E037; 157E095	A 103/83	Greece	Pharmaceutical products	Terminated
	157E030	A 110/83	Greece	Discrimination in the award of loans for the purchase of tractors and other agricultural machinery	Terminated
	157E030	A 172/83	Italy	Grants for the purchase of buses and trams	Reference to the Court of Justice (Case 263/85)
	157E030	A 173/83	Germany	Particle board	Terminated
	157E030	A 183/83	Germany	Packaging of 'pétillant de raisin'	Reference to the Court of Justice (Case 179/85) Judgment 4. 12. 1986
	157E030	A 224/83	France	Restrictions on the import of machinery and equipment: health and safety rules	Reference to the Court of Justice (Case 180/85)
	157E030	A 200/84	France	Imports of corsetry articles: use of lead salts in imitation pearls	Terminated
	157E030	A 256/84	France	Import declaration required for certain products	Reference to the Court of Justice (Case 75/87)



Sector	Legal basis	Inf. No.	Member State	Subject	Stage of proceedings
Internal market and industrial affairs (cont'd)	157E030	A 258/84	Belgium	Reimbursement of the cost of proprietary medicinal products	Reference to the Court of Justice (Case 249/88)
	157E030	A 266/84	Denmark	Packaging of beer and non-alcoholic beverages	Reference to the Court of Justice (Case 302/86) Judgment 20. 9. 1988
	157E030	A 351/84	Italy	Origin marking on textile product labels	Terminated
	157E030	A 354/84	Germany	Marketing of milk substitutes	Reference to the Court of Justice (Case 76/86)
	157E030	A 9/80	France	Refusal to market milk powder substitute	Terminated
	157E030	A 371/84	France	Rules on public contracts	Terminated
	157E030	A 385/84	Germany	Protection of legitimate exportations: deep-frozen poultrymeat inspection measures	Terminated
	157E030	A 28/85	Italy	Prices of pharmaceutical products and medicines	Reference to the Court of Justice (Case 56/87) Judgment 9. 6. 1988
	157E030	A 119/85	Italy	Difficulties in importing Belgian beer	Reasoned opinion
	157E030	A 138/85	Belgium	Obstacles to the import of liquid manure	Reasoned opinion
	157E030	A 146/85	France	Parallel imports of antiparasitics	Reasoned opinion
	157E030	A 211/85	Italy	Marketing of beer	Reasoned opinion
	157E030; 157E052; 157E059	A 230/85	France	Preferences given to SFP television productions	Reasoned opinion
	157E030; 157E095	A 263/85	France	Seizure of a Cartier watch at customs	Terminated

Sector	Legal basis	Inf. No.	Member State	Subject	Stage of proceedings
<b>Internal market and industrial affairs</b> <i>(cont'd)</i>	157E030	A 269/85	France	Refusal to grant import licences for codeine	Reasoned opinion
	157E030; 157E005; 157E085	A 272/85	France	Book prices	Reasoned opinion
	157E030; 157E059	A 291/85	Germany	Inland waterway scrapping premiums	Reasoned opinion
	157E030	A 357/85	Belgium	Registration of imported vehicles (certificate of conformity and roadworthiness tests)	Reasoned opinion
	157E030	A 367/85	Italy	Denaturing of oilseed refining by-products	Reasoned opinion
	157E030	A 447/85	Belgium	Restrictions on the use of gelatin in certain food products	Reference to the Court of Justice (Case 52/88)
	157E030	A 449/85	France	Restrictions on the use of gelatin in certain food products	Terminated
	157E052; 157E059; 157E030; 157E086; 157E090; 157E092; 377L0062	A 466/85	Italy	Installation of data-processing systems reserved for Italian state-owned companies	Reference to the Court of Justice (Case 3/88)
	157E030; 157E059	A 479/85	United Kingdom	Buy British campaign; preferential credit terms for shipowners building in UK shipyards	Terminated
	157E030	A 500/85	Germany	Difficulties in the import of pâté	Reference to the Court of Justice (Case 274/87)
	157E030	A 6/86	France	Obstacles to the import of soft drinks	Reasoned opinion
	157E030	A 40/86	Belgium	Pharmaceutical prices; government/industry agreements	Reference to the Court of Justice (Case 249/88)
157E034	A 103/86	France	Rules on the disposal of waste oils	Reasoned opinion	

Sector	Legal basis	Inf. No.	Member State	Subject	Stage of proceedings
Internal market and industrial affairs (cont'd)	157E030	A 104/86	United Kingdom	Obligation to indicate the opinion of imported products	Reasoned opinion
	157E030	A 234/86	Belgium	Import licence for lubricants originating in Germany	Reasoned opinion
	157E030	A 408/86	Germany	Difficulties in importing home brewing kits	Terminated
	157E030	A 467/86	Ireland	<i>Buy Irish campaign</i> : certificates of conformity with Irish standards for cement	Terminated
	157E030	A 518/86	Germany	Amendment of the German law on food-stuffs following the <i>Cassis de Dijon</i> judgment	Reasoned opinion
	157E030	A 46/87	Germany	Introduction of standards for asphalt membranes	Reasoned opinion
	157E030	A 49/87	Spain	Registration of imported second-hand vehicles	Reasoned opinion
	157E030	A 54/87	France	Imported TV sets required to have Peritel socket	Reasoned opinion
	157E030	A 55/87	Italy	Ban on the use of methanol as a solvent	Reasoned opinion
	157E030	A 99/87	Italy	Marketing of butter: packaging	Reasoned opinion
	157E030	A 152/87	Belgium	Prolonged delays to customs clearance of small consignments and express consignments	Terminated
	157E030	A 153/87	Spain	Ban on the sale of <i>pétillant de raisin</i> in champagne-type bottles	Terminated
	157E030	A 154/87	Italy	Ban on the sale of <i>pétillant de raisin</i> in champagne-type bottles	Reasoned opinion

Sector	Legal basis	Inf. No.	Member State	Subject	Stage of proceedings
<b>Internal market and industrial affairs</b> <i>(cont'd)</i>	157E030	A 165/87	Greece	Profit margins for office equipment and supplies	Terminated
	157E030	A 215/87	Greece	Import of lubricants: discriminatory profit margins	Terminated
	157E030; 186I042	A 220/87	Spain	Decree 2698/86 on the import of cutlery, dinnerware and plumbing fittings	Terminated
	157E030	A 297/87	Germany	German rules on <i>Leichtmofo</i> (light mopeds)	Reasoned opinion
	157E030	A 311/87	Spain	Obstacles to the import of biscuit and chocolate products	Reasoned opinion
	157E030	A 319/87	United Kingdom	Special UK standards for steel	Reason opinion
	157E030	A 326/87	Spain	Approval procedure for ceramic sanitary ware	Terminated
	157E030	A 360/87	Italy	Labelling of manufactured or imported toys	Terminated
	157E030	A 454/87	France	Bicycle brakes	Reasoned opinion
	157E030	A 499/87	Belgium	Obstacles to the import of telecommunications equipment (broadcast receiving aerials)	Reasoned opinion
	157E030	A 500/87	Belgium	Fixing minimum prices for manufactured tobacco	Reasoned opinion
	157E030	A 61/88	Germany	Personal inputs of medicines	Reasoned opinion
157E030	A 214/88	Spain	Rules amending certain items in specifications: hydrocarbon binders	Reasoned opinion	

Sector	Legal basis	Inf. No.	Member State	Subject	Stage of proceedings
Internal market and industrial affairs (cont'd)	156E030; 157E100; 371L030	A 470/87	Denmark	Measures concerning motor vehicles and dangerous substances	Terminated
	157E052; 157E059	A 267/83	France	Replacement of doctors: dual practices	Reference to the Court of Justice (Case 96/85) Judgment 30. 4. 1986
	157E052; 157E059	A 36/84	Italy	Nationality requirement (guides, journalists, licensed pharmacists)	Reference to the Court of justice (Case 168/85) Judgment 15. 10. 1986
	157E007; 157E048; 157E052; 157E059	A 182/84	Greece	Laws relating to frontier areas	Reference to the Court of Justice (Case 305/87)
	157E052	A 325/84	Italy	Access to real-estate loans and renting of housing	Reference to the Court of Justice (Judgment 63/86) Judgment 14. 1. 1988
	157E048; 157E052; 157E059	A 388/84	Greece	Requirement of Greek nationality for teaching	Reference to the Court of Justice (Case 147/86) Judgment 15. 3. 1988
	157E052; 157E059	A 264/85	Greece	Nationality requirement for lawyers	Reference to the Court of Justice (Case 38/87) Judgment 14. 7. 1988
	157E052; 157E059	A 265/85	Greece	Nationality requirement for architects, engineers and land surveyors	Reference to the Court of Justice (Case 38/87) Judgment 14. 7. 1988
	380D1186; 386D0283	A 499/85	France	Freedom of establishment and freedom to provide services in overseas territories	Reference to the Court of Justice (Case 263/88)
	157E052; 157E059	A 45/86	France	Nationality requirement for registration as a land surveyor and valuer	Withdrawn
	157E059	A 432/86	France	Restrictions on freedom to supply services as a tourist guide	Reasoned opinion
	157E059	A 71/87	Italy	Restrictions on freedom to supply services as a tourist guide	Reasoned opinion

Sector	Legal basis	Inf. No.	Member State	Subject	Stage of proceedings
<b>Internal market and industrial affairs</b> <i>(cont'd)</i>	157E059	A 113/87	Greece	Restrictions on freedom to supply services as a tourist guide	Reasoned opinion
	157E059	A 463/85	Netherlands	Restrictions on freedom to supply television services	Reference to the Court of Justice (Case 370/87)
	157E059; 157E007	A 52/87	Germany	Restrictions on freedom to supply television services in Bremen	Terminated
<b>Competition</b>	385D0276	A 111/86	Greece	Insurance of public property	Reference to the Court of Justice (Case 226/87) Judgment 30. 6. 1988
	157E030; 157E034; 157E037	A 138/86	Greece	Petroleum products monopoly	Reference to the Court of Justice (Case 347/88)
	157E005; 362R0017	A 72/87	Germany	Refusal to give assistance to Commission staff	Reasoned opinion
	186I048; 157E030	A 361/87	Spain	Adjustment of petroleum monopoly	Reasoned opinion
<b>Employment, Social Affairs and Education</b>	371R1408	A 131/79	France	Supplementary allowance from the Fonds national de solidarité — refusal to export a social security benefit	Reference to the Court of Justice (Case 236/88)
	157E048; 368R1612	A 313/84	Italy	Discrimination against research workers from the Member States	Terminated
	368R1612; 157E048	A 336/84	Germany	Concept of normal housing	Reference to the Court of Justice (Case 249/86)
	371R1408	A 210/85	France	Calculation of unemployment benefits for frontier workers	Reasoned opinion
	157E007; 157E128	A 256/85	Belgium	Enrolment fee for students	Terminated
	157E007; 157E048; 157E128; 368R1612	A 435/85	Belgium	Discrimination in public financing; non-university higher education	Reference to the Court of Justice (Case 42/87) Judgment 27. 9. 1988

Sector	Legal basis	Inf. No.	Member State	Subject	Stage of proceedings
<b>Employment, Social Affairs and Education</b> ( <i>cont'd</i> )	157E007; 371R1408	A 468/85	France	Refusal to grant allowances from the Fonds national de solidarité to nationals of other Member States	Reasoned opinion
	365R0109	A 249/86	France	Social security entitlements of nationals employed in Algeria	Reasoned opinion
	371R1408	A 56/87	France	Grant of widow's pension	Reasoned opinion
	157E007; 371R1498	A 57/87	Belgium	Discrimination in the settlement of old-age pension requirements	Reference to the Court of Justice (Case 185/88)
	368R1612; 157E007; 157E048; 157E052	A 70/87	Germany	Equal treatment in respect of access to vocational training courses	Reasoned opinion
	157E048; 368R1612	A 160/87	Ireland	Nationality requirement for teachers' posts	Terminated
	371R1408; 372R0574; 684I0041	A 239/87	France	Family allowances granted under legislation on residential status of a worker's family	Reference to the Court of Justice (Case 371/88)
<b>Agriculture</b>	157E030; 370R1698	A 212/72	Germany	Wine law 1971	Reference to the Court of Justice (Case 116/82) Judgment 18. 9. 1986
	368R0804; 378R1422; 379R1565	A 78/82	United Kingdom	<i>Milk Marketing Boards</i> : dual pricing system for butter, cream and skimmed milk	Terminated
	379R0337; 379R0338	A 30/83	Germany	Ban on the use of rectified grape must concentrate	Reference to the Court of Justice (Case 48/85) Judgment 18. 9. 1986
	378R1422; 379R1565; 157E030	A 61/83	United Kingdom	<i>Milk Marketing Boards</i> : dual pricing system for milk according to destination	Withdrawn
	380R0456	A 79/83	Italy	Delays in the payment of premiums for the abandonment of areas under vines	Terminated
	157E030; 181H065	A 85/83	Greece	Ban on import of bananas from ACP countries	Reference to the Court of Justice (Case 194/85)

Sector	Legal basis	Inf. No.	Member State	Subject	Stage of proceedings
Agriculture (cont'd)	379R0338	A 115/83	Italy	Lago di Caldaro wine	Reference to the Court of Justice (Case 141/87)
	157E030	A 1/84	Belgium	National rules on the marketing of fruit and vegetables	Terminated
	368R0804; 379R0262	A 85/84	Italy	Marketing of fractionated concentrated butter	Reference to the Court of Justice (Case 67/88)
	157E030; 157E036, 157E0171	A 105/84	United Kingdom	Pasteurized milk	Terminated
	375R2782; 377R1868	A 309/84	Italy	Forwarding of hatching statistics	Terminated
	368R0805; 375R2759; 157E030	A 327/84	Germany	Export of agar-preserved meat	Reference to the Court of Justice (Case 148/86)
	157E030; 157E106; 375R2727	A 341/84	Greece	Currency authorization required for importation of wheat	Terminated
	157E189; 157E005; 379R0337	A 358/84	Germany	Increase in alcoholic strength of Moselle wines	Reference to the Court of Justice (Case 74/86) Judgment 26. 4. 1988
	379R0337; 157E030	A 360/84	Germany	Protection of the Bocksbeutel bottle	Reference to the Court of Justice (Case 87/86)
	157E030; 368R0805; 375R2759; 380R1837	A 384/84	Greece	Closure of the ports of Patras and Igoumenitsa for unloading livestock	Terminated
	384R0857	A 387/84	Italy	Milk levy	Reference to the Court of Justice (Case 394/85) Judgment 17. 6. 1987
	379R337; 157E030	A 16/85	Germany	Sparkling wines	Reasoned opinion
157E171; 372R1035; 369R2638; 380R2150	A 68/85	Italy	Quality standards for fruit and vegetables	Reference to the Court of Justice (Case 69/86) Judgment 12. 2. 1987	



Sector	Legal basis	Inf. No.	Member State	Subject	Stage of proceedings
Agriculture (cont'd)	157E030	A 73/85	France	Difficulties in selling the product yogho-yogho	Terminated
	380R1837; 382R0019; 383R0020; 157E113	A 101/85	Greece	Prices for sheep and goats imported from Hungary	Reference to the Court of Justice (Case 127/87)
	366R0136; 157E030; 157E034	A 142/85	Greece	Obstacles to trade in olive oil	Reference to the Court of Justice (Case 272/86) Judgment 22. 9. 1988
	157E171; 368R0804	A 242/85	Italy	Selling price for milk	Terminated
	368R0827; 377L0504; 157E030	A 275/85	France	Rules on artificial insemination	Reasoned opinion
	375R2744; 382D0495; 382R2029; 382R3383; 157E005; 377R2891	A 258/85	Netherlands	Release for free circulation of 50 000 tonnes of basic product transported by the vessel Equinox and coming from Thailand	Reasoned opinion
	157E030; 157E034	A 283/85	Netherlands	Law on the destruction of poultry offal	Terminated
	385D0341	A 292/85	Italy	Protection against swine fever	Reference to the Court of Justice (Case 11/86)
	384R2261; 157E040; 375R2727	A 413/85	Greece	Recognition of olive oil producer organizations: recognition of cooperatives only	Reference to the Court of Justice (Case 128/87)
	157E030; 157E106; 375R2727	A 430/85	Greece	Import of wheat: revoking of authorizations and insistence on re-export	Terminated
	375R2727; 157E005; 157E093	A 480/85	Greece	Importation of feed grain, maize and barley; management of markets by Kydep	Reference to the Court of Justice (Case 35/88)
	375R2727	A 25/86	Greece	Purchase of substandard durum wheat from 1982 harvest	Reference to the Court of Justice (Case 281/87)
	366R0136; 157E034	A 108/86	Greece	Barriers to trade in olive oil	Reference to the Court of Justice (Case 272/86) Judgment 22. 9. 1988

Sector	Legal basis	Inf. No.	Member State	Subject	Stage of proceedings
<b>Agriculture</b> <i>(cont'd)</i>	387R0823	A 136/86	Germany	National alcohol strenghts for quality wines psr	Terminated
	368R0234; 371R2358; 157E034; 157E030	A 137/86	Netherlands	Compulsory registration of exporters of agricultural products with a supervisory body	Reference to the Court of Justice (Case 43/88)
	368R0805; 157E113	A 144/86	France	Credit agreement with Egypt, export subsidies for beef	Terminated
	157E030; 366R0136	A 215/86	Italy	Restrictions on the marketing of oils and fats	Reference to the Court of Justice (Case 67/88)
	384R3061; 384R2261	A 216/86	Greece	Computerized data files for olive oil	Reference to the Court of Justice (Case 286/87)
	384R3061; 384R2261	A 217/86	Italy	Computerized data files for olive oil	Reference to the Court of Justice (Case 294/87)
	157E030; 157E036	A 263/86	Greece	Obstacles to the import of chesse (H)	Reasoned opinion
	380R1837; 157E030	A 329/86	Germany	Obstacles to the import of live sheep and lambs	Reasoned opinion
	368R0804; 384R1371	A 333/86	France	Additional levy — national implementing measures	Terminated
	366R0136; 157E030	A 403/86	Greece	Ban on the import and sale of soya oils	Terminated
	375R2727; 157E034	A 422/86	Greece	Refusal to grant export licences for maize	Reasoned opinion
	366R0136; 157E030	A 444/86	Greece	Maximum prices in olive oil trade	Reference to the Court of Justice (Case 205/88)
	368R0804; 157E030	A 468/86	Germany	Health control certificates required for the import of pasteurized butter	Terminated
	157E030; 368R0804	A 469/86	Luxembourg	Health control certificates required for the import of pasteurized butter	Reasoned opinion

Sector	Legal basis	Inf. No.	Member State	Subject	Stage of proceedings
<b>Agriculture</b> <i>(cont'd)</i>	157E005; 157E155	A 471/86	Belgium	Export credits for agricultural products qualifying for official support	Terminated
	157E005; 157E155	A 473/86	Italy	Export credits for agricultural products qualifying for official support	Terminated
	381R1371; 385R3154; 157E005	A 512/86	Greece	Obstacles to the payment of monetary compensatory amounts	Reasoned opinion
	157E030	A 513/86	Greece	Ban on all collective advertising for products imported from other Member States	Terminated
	387R0822; 157E005	A 102/87	Germany	Non-compliance with obligation to deliver wine for compulsory distillation	Reasoned opinion
	384R2262	A 199/87	France	Penalties for infringements of the rules on aid towards the production of olive oil	Reference to the Court of Justice
	375R2727	A 385/87	Greece	Kydep monopoly — intervention by the central government in the cereals sector	Reasoned opinion
	375R2771; 375R2772	A 455/87	Netherlands	Export of eggs in shell	Reasoned opinion
	157E036; 157E030	A 564/87	Greece	Radioactivity certificate requirement for imports: level of radioactivity in food (H)	Reference to the Court of Justice (Case 335/88)
	368R0804; 157E030	A 18/88	Italy	Fat-content of cheese (L)	Reasoned opinion
	386R2239	A 44/88	Portugal	Misapplication of Community rules on grubbing premiums	Reasoned opinion
<b>Transport</b>	370R1108; 370R2598	A 476/86	France	Failure to provide statistics on transport infrastructures	Reasoned opinion
	370R1108	A 244/87	Belgium	Failure to provide statistics on expenditure relating to transport infrastructures	Terminated

Sector	Legal basis	Inf. No.	Member State	Subject	Stage of proceedings
<b>Transport</b> <i>(cont'd)</i>	378R1108	A 245/87	Luxembourg	Failure to provide statistics on transport infrastructures	Terminated
	370R1108	A 260/87	Netherlands	Failure to provide statistics on transport infrastructures	Terminated
	157E059; 157E048	A 351/87	Greece	Discrimination on the ground of nationality as regards entry to museums	Reasoned opinion
	157E059; 157E048; 157E052	A 352/87	Spain	Discrimination on the ground of nationality as regards entry to museums	Reasoned opinion
	386R4055	A 74/88	Portugal	Measures favouring vessels flying the Portuguese flag	Reasoned opinion
	387D0602	A 281/88	Italy	Refusal to give authorization for an air link between Manchester and Milan	Reference to the Court of Justice (Case 352/88)
<b>Development</b>	Convention de Lomé	A 392/84	Greece	Ban on the import of bananas originating in ACP countries	Terminated
<b>Administrative affairs</b>	Staff Regulations	A 8/78	Netherlands	Transfer to Community pension scheme	Reference to the Court of Justice (Case 72/85) Judgment 20. 3. 1986
	157E005; 165F/PRO/PRI	A 19/83	Belgium	Family allowances from more than one source	Terminated
	165F/PRO/PRI	A 65/83	Germany	Family allowances from more than one source	Reference to the Court of Justice (Case 189/85) Judgment 7. 5. 1987
	157F/PRO/PRI; 157E171	A 303/84	Belgium	Transfer to Community pension scheme	Reference to the Court of Justice (Case 383/85)
	165F/PRO/PRI	A 304/84	Germany	Transfer to Community pension scheme	Withdrawn
	165/PRO/PRI	A 305/84	France	Transfer to Community pension scheme	Withdrawn

Sector	Legal basis	Inf. No.	Member State	Subject	Stage of proceedings
<b>Administrative affairs</b> <i>(cont'd)</i>	165F/PRO/PRI	A 306/84	Luxembourg	Transfer to Community pension scheme	Terminated
	165F/PRO/PRI	A 46/85	Belgium	Tax on secondary residences	Terminated
	165F/PRO/PRI	A 64/85	Belgium	Levying of property tax on EC officials	Terminated
	165F/PRO/PRI	A 191/85	Belgium	Grants for the acquisition and renovation of buildings	Terminated
	165F/PRO/PRI	A 212/85	Belgium	Charges for non-residents at sports and cultural centres	Terminated
	165F/PRO/PRI	A 213/85	Belgium	Water consumption tariff for non-residents	Terminated
	165F/PRO/PRI	A 50/88	Portugal	Difficulties concerning import of cars by officials or servants of the Commission	Reasoned opinion
	157E005	A 65/88	Belgium	50 % reduction in the salaries paid by the Belgian authorities to Belgian teachers on secondment	Reasoned opinion
<b>Environment</b>	382R3626; 157E005	A 225/86	France	Rules on international trade in wild animal and plant species in danger of extinction	Reasoned opinion
<b>Fisheries</b>	383R0170; 382R2057; 383R0098; 383R3624; 384R0320; 385R0001	A 404/84	Netherlands	Overfishing 1983 and 1984	Reference to the Court of Justice (Case 290/87)
	382R2057; 383R0171	A 445/84	France	Fisheries: inadequate compliance with technical conservation measures	Reference to the Court of Justice (Case 64/88)
	383R0170; 382R2057; 383R0098; 383R3624; 384R0320; 385R0001	A 354/85	Netherlands	Overfishing 1985	Reference to the Court of Justice (Case 290/87)
	157E052	A 394/85	Ireland	Lack of conformity with Community law of the <i>Fisheries Amendment Act</i> 1983	Reasoned opinion

Sector	Legal basis	Inf. No.	Member State	Subject	Stage of proceedings
Fisheries (cont'd)	381R3796; 382R3191	A 188/86	Italy	Failure to provide information in connection with the common organization of the market in the fisheries sector	Reference to the Court of Justice (Case 209/88)
	381R3796; 383R3598	A 189/86	France	Failure to provide information in connection with the common organization of the market in the fisheries sector	Reasoned opinion
	376R0101	A 218/86	Netherlands	Failure to notify information required by Regulation (ECC) No 171/83	Terminated
	381R3796; 382R3191; 383R3598	A 360/86	Denmark	Failure to provide information in connection with the common organization of the market in the fisheries sector	Terminated
	381R3796; 383R3598	A 362/86	Ireland	Failure to provide information in connection with the common organization of the market in the fisheries sector	Reference to the Court of Justice (Case 39/88)
	381R3796; 383R3598	A 363/86	Netherlands	Failure to provide information in connection with the common organization of the market in the fisheries sector	Terminated
	381R3796; 382R3191	A 364/86	United Kingdom	Failure to provide information in connection with the common organization of the market in the fisheries sector	Terminated
	385R0001	A 368/86	United Kingdom	Overfishing 1985	Reasoned opinion
	385R3721	A 370/86	Netherlands	Overfishing 1986	Reasoned opinion
	381R3796; 383R3598; 382R3191; 383R3599	A 391/86	Greece	Failure to provide information in connection with the common organization of the market in the fisheries sector	Reference to the Court of Justice (Case 200/88)
	382R2057	A 393/86	Belgium	Inspection procedures	Terminated
	385R0001; 385R0006	A 255/87 A 396/87 A 405/87 A 520/87	France	Overfishing 1985	Reasoned opinion

Sector	Legal basis	Inf. No.	Member State	Subject	Stage of proceedings
<b>Fisheries</b> <i>(cont'd)</i>	385R3721; 385R3730; 385R3732; 383R0170; 382R057	A 396/87	France	Overfishing 1986	Reasoned opinion
	382R2057; 385R3777; 386R4034	A 405/87	Spain	Failure to fulfil obligation to record catches (ICES divisions)	Reasoned opinion
	172B100; 383R0170	A 520/87	United Kingdom	Extension of territorial waters	Reasoned opinion
<b>Budgetary questions</b>	377R2891	A 362/84	Greece	Refusal to pay interest charges	Terminated
	377R2891	A 355/85	Italy	Refusal to pay interest charges	Reference to the Court of Justice (Case 54/87)
	377R2892; 377R2891	A 60/87	Germany	Own resources from VAT: calculation of compensation for exemption of telecommunications	Reference to the Court of Justice (Case 251/88)
	377R2891	A 61/87	Belgium	Failure to pay over customs duties on the import into Italy of consignments of non-Community butter	Terminated
	377R2891	A 98/87	Italy	Interest on payment of own resources from customs duties	Reasoned opinion
	375R2727; 377R2891; 379R1697; 157E005	A 358/87	Greece	Own resources; interest on late payments; Yugoslav maize presented as being of Greek origin	Reference to the Court of Justice (Case 105/86)
<b>Customs union</b>	383R1226	A 79/84	Ireland	Import of new potatoes originating in Cyprus	Terminated
	682J0199	A 437/84	France	Repayment of national charges having equivalent effect	Reference to the Court of Justice (Case 105/86)
	682J0199	A 438/84	Italy	Repayment of national charges having equivalent effect	Reference to the Court of Justice (Case 104/86) Judgment du 24. 3. 1988

Sector	Legal basis	Inf. No.	Member State	Subject	Stage of proceedings
Customs union (cont'd)	377R1535	A 126/84	United Kingdom	Civil aircraft exempted from customs duties and subsequently used as military aircraft	Reasoned opinion
	157E009; 157E028; 368R0950	A 342/84	Belgium	Duty-free importation of military equipment	Reasoned opinion
	157E009; 157E028; 368R0950	A 343/84	Denmark	Duty-free importation of military equipment	Reasoned opinion
	157E009; 157E028; 368R0950	A 344/84	United Kingdom	Duty-free importation of military equipment	Reasoned opinion
	157E009; 157E028; 368R0950	A 345/84	Italy	Duty-free importation of military equipment	Reasoned opinion
	157E009; 157E028; 368R0950	A 346/84	Luxembourg	Duty-free importation of military equipment	Reasoned opinion
	157E009; 157E028; 368R0950	A 347/84	Netherlands	Duty-free importation of military equipment	Reasoned opinion
	157E009	A 38/85	Germany	Special levy on the import of livestock	Terminated
	157E009; 181H029	A 229/86	Greece	Bank charge for checking imported products	Reference to the Court of Justice (Case 229/87) Judgment 15. 11. 1988
	186I035	A 62/87	Spain	Payment of Mozos de Aduana taxes	Reference to the Court of Justice (Case 307/88)
	157E009	A 151/87	Greece	Customs duties on exports to non-Community countries	Terminated
	157E009; 157E012	A 158/87	Italy	Telegrams sent by veterinary services charged to importers of livestock	Reasoned opinion
	157E009; 57E095	A 283/87	Denmark	Tax on agricultural products (dried fruit, chocolate-based products and sugar)	Reasoned opinion



Sector	Legal basis	Inf. No.	Member State	Subject	Stage of proceedings
<b>Customs union</b> <i>(cont'd)</i>	186I035; 186I036; 186I054	A 367/87	Spain	Charge for issuing health certificates in respect of imports and exports	Terminated
<b>Indirect taxation</b>	157E095	A 136/83	Italy	Consumption tax on bananas	Reference to the Court of Justice (Case 184/85) Judgment 7. 5. 1987
	157E095; 157E096	A 157/83	Ireland	Excise duty on beer	Terminated
	157E095; 157E096	A 158/83	Italy	Excise duty on beer	Reasoned opinion
	157E095; 157E096	A 187/83	Belgium	Excise duty on beer	Reasoned opinion
	157E095; 157E096	A 188/83	Luxembourg	Excise duty on beer	Reasoned opinion
	157E095; 157E096	A 189/83	Netherlands	Excise duty on beer	Reasoned opinion
	157E095; 157E096	A 190/83	United Kingdom	Excise duty on beer	Terminated
	157E095	A 215/85	Ireland	Excise duty on table waters	Reference to the Court of Justice (Case 202/87)
	157E095	A 329/85	Denmark	Taxation of imports of second-hand goods having the effect of double taxation	Terminated
	157E095	A 330/85	Germany	Taxation of imports of second-hand goods having the effect of double taxation	Terminated
	157E095	A 331/85	France	Taxation of imports of second-hand goods having the effect of double taxation	Reasoned opinion
	157E095	A 332/85	Ireland	Taxation of imports of second-hand goods having the effect of double taxation	Terminated
	157E095	A 333/85	Italy	Taxation of imports of second-hand goods having the effect of double taxation	Reference to the Court of Justice (Case 120/88)
	157E095	A 334/84	Luxembourg	Taxation of imports of second-hand goods having the effect of double taxation	Terminated
	157E095	A 335/85	United Kingdom	Taxation of imports of second-hand goods having the effect of double taxation	Terminated

Sector	Legal basis	Inf. No.	Member State	Subject	Stage of proceedings
Indirect taxation (cont'd)	157E095	A 503/85	Denmark	Motor vehicles	Reference to the Court of Justice (Case 47/88)
	157E095; 157E171	A 36/86	Italy	Differential rates of duty on sparkling wines	Terminated
	157E095	A 78/86	Greece	Differential rates of tax on imports of decorative articles made of ordinary plastic	Reasoned opinion
	157E095	A 80/86	Greece	Tax on imports of powdered cheese	Reasoned opinion
	157E095	A 83/86	Italy	Excise duties on rum	Reference to the Court of Justice (Case 323/87)
	157E095	A 219/86	France	Parafiscal charge on imports of forestry products	Reasoned opinion
	157E095	A 340/86	Greece	Discriminatory treatment of motor vehicles imported from other Member States	Reference to the Court of Justice (Case 132/88)
	157E095	A 399/86	United Kingdom	Parafiscal charge levied by the Sea Fish Industry Authority	Reasoned opinion
	157E095	A 308/87	Spain	Taxation of imports of second-hand goods having the effect of double taxation	Reasoned opinion
	157E095	A 325/87	Greece	Taxation of imports of second-hand goods having the effect of double taxation	Reasoned opinion
	157E095	A 341/87	Greece	Higher VAT on imported spirituous beverages than on national products	Reasoned opinion
	157E095	A 77/88	Portugal	Administrative charge for the inspection of fruit and vegetables	Reasoned opinion
	157E095	A 300/88	Italy	Taxation of bananas	Reasoned opinion

## ANNEX B

## Infringement of directives

## Contents

	Page
Statistical questions .....	83
Internal market and industrial affairs .....	83
Competition .....	99
Financial institutions and company law .....	99
Employment, social affairs and education .....	101
Environment, consumer protection and nuclear safety .....	103
Agriculture .....	117
Transport .....	135
Energy .....	139
Budgets .....	139
Customs union and indirect taxation .....	139
Telecommunications, information industries and innovation .....	145

## Explanation of entries

78/546	= number of directive
(31. 12. 1980)	= deadline for incorporation of directive into national law
blank	= no measures notified by 31 December 1988 although measures may in fact have been taken/measures notified by MS currently under study/infringement proceedings decided by not yet initiated
yes	= national implementing measures notified
n.m.n.	= proceeding initiated or pursued on the grounds that no measures have been notified
n.p.i.	= proceedings pursued on the ground that the directive has not been properly incorporated into national law
n.p.a.	= proceedings pursued on the grounds that the directive is not being properly applied
1. 1. 1984	= deadline for incorporation by the particular Member State
A/74/82	= infringement number ( /82 = year in which proceedings were initiated)
Case 171/84	= number of case on Court of Justice register
Judgment 18. 3. 1980	= date of Court judgment
r.o.	= reasoned opinion

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
<b>Statistical questions</b>													
78/546 (31. 12. 1980)	Statistical returns — carriage of goods by road	yes	yes	yes		yes	yes	yes	A 74/82 n.p.i. Judgment 11. 7. 1985 Case 101/84	yes	yes	yes	
									A 216/88 n.p.i. 169 letter (Article 171)				
<b>Internal market and industrial affairs</b>													
64/54 (1. 1. 1981)	Preservatives	yes	yes	yes		yes	yes	yes	A 278/84 n.p.a. r.o.	yes	yes	yes	
65/65 (4. 8. 1966)	Proprietary medicinal products		yes	yes		yes	yes	yes	yes	yes	yes	yes	1. 1. 1991
71/305 (29. 7. 1972)	Public works contracts	yes	A 398/86 n.p.a. r.o.			yes	yes	A 110/88 n.p.i. r.o.	A 591/88 n.p.a. reference Case 194/88	A 407/87 n.p.a. reference Case 45/87	yes	A 406/87 n.p.a. r.o.	A 573/87 n.p.a. r.o.
			A 409/87 n.p.a. r.o.	yes					A 163/88 n.p.a. r.o.				
71/320 (30. 1. 1973)	Motor vehicles	yes	yes	A 470/87 n.p.i. r.o.	yes	yes	yes	yes	yes	yes	yes	yes	yes

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
72/277 (1. 1. 1981)	Public works contracts	yes	yes	yes		yes	yes	A 110/88 n.p.i. r.o.	yes	yes	yes	yes	
73/23 (21. 8. 1974)	Low voltage equipment	yes	yes	yes	A 339/86 n.p.a. reference Case 243/87	yes		A 22/86 n.p.a. r.o.	yes	yes	yes	yes	yes
73/148 (23. 11. 1973)	Movement and residence	A 219/85 n.p.a. reference Case 23/88  A 145/86 n.p.a. reference Case 321/87  A 373/86 n.p.a. r.o.	yes	A 313/87 n.p.a. r.o.		yes	yes	yes	yes	yes	yes	A 382/87 n.p.a. r.o.	
73/350 (1. 1. 1981)	Motor vehicles	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
73/361 (1. 1. 1981)	Marking of wire-ropes and chains	yes	yes	yes		yes	yes	yes	yes	yes	yes		
75/34 (18. 12. 1975)	Right to remain	A 373/86 n.p.a. r.o.	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
75/318 (22. 11. 1976)	Proprietary medicinal products	yes	yes	yes		yes	yes		yes	yes	yes	yes	1. 1. 1991
75/319 (22. 11. 1976)	Proprietary medicinal products	yes	yes	yes		yes	yes		yes	yes	yes	yes	1. 1. 1991
75/324 (1. 1. 1981)	Aerosols	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
75/363 (20. 12. 1976)	Doctors	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
76/434 (1. 1. 1981)	Marking of wire-ropes and chains	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
76/756 (1. 10. 1977)	Motor vehicles	yes	yes	yes		yes	A 232/84 n.p.i. reference Case 60/86 Judgment 12. 7. 1988	yes	yes	yes	yes	yes	
76/767 (1. 1. 1981)	Pressure vessels	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
76/891 (1. 1. 1981)	Electrical energy meters	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
77/62 (22. 6. 1978)	Public supply contracts	yes	yes	yes		yes	yes	A 382/84 n.p.a. reference Case 84/86	A 466/85 n.p.a. reference Case 3/88	yes	yes	yes	A 422/87 n.p.a. r.o.
								A 257/86 n.m.n. r.o.					
77/212 (1. 1. 1981)	Motor vehicles	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	yes
77/249 (24. 3. 1979)	Lawyers	yes	A 56/83 n.p.i. Judgment 25. 2. 1988 Case 427/88	yes	yes	A 450/84 n.p.i. r.o.	yes	yes	yes	yes	yes	yes	yes
77/536 (30. 12. 1978)	Tractors	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	yes
78/669 1. 1. 1981	Public works contracts	yes	yes	yes		yes	yes	A 110/88 n.p.i. r.o.	yes	yes	yes	yes	
78/686 (28. 1. 1980)	Dentists	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
78/1015 (1. 1. 1981)	Motor vehicles	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	yes
78/1027 (21. 12. 1980)	Veterinary surgeons	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	yes
80/720 (27. 12. 1981)	Tractors	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	yes
80/767 (1. 1. 1981)	Public supply contracts	yes	yes	yes		yes	yes	A 257/86 n.m.n. r.o.	yes	yes	yes	yes	
81/487 (1. 7. 1983/ 1. 7. 1984)	Fruit juice	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
81/851 (9. 10. 1983)	Veterinary medicinal products	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
81/852 (9. 10. 1983)	Veterinary medicinal products	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	yes
82/76 (31. 12. 1982)	Doctors	yes	yes	yes		yes	yes	yes	A 6/84 n.p.i. Judgment 7. 7. 1987 Case 49/86  A 88/112 n.p.i. 169 letter	yes	yes	yes	





Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
82/621 (1. 1. 1983)	Electrical energy meters	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
82/806 (25. 11. 1983)	Dangerous substances	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
82/890 (21. 6. 1984)	Tractors	yes	yes	yes	yes	yes	yes	A 435/86 n.m.n. reference Case 868/88	yes	yes	yes	yes	yes
82/953 (30. 9. 1983)	Tractors	yes	yes	yes		yes	yes	A 436/86 n.m.n. reference Case 253/88	yes	yes	yes	yes	yes
83/128 (1. 1. 1986)	Clinical thermometers	yes	yes	yes		yes	yes	yes	A 194/86 n.m.n. reference Case 99/88	yes	yes	yes	
83/189	Technical standards	yes	A 341/88 n.p.a. r.o.	yes	A 214/88 n.p.a. r.o.	A 404/87 n.p.a. r.o.	yes		A 383/87 n.p.a. r.o.	yes	yes	A 238/87 n.p.a.	
83/190 (30. 9. 1983/ 1. 10. 1983)	Tractors	yes	yes	yes		yes	yes	A 437/86 n.m.n. reference Case 368/88	yes	yes	yes	yes	yes

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
83/229 (1. 1. 1986)	Materials and articles in contact with foodstuffs	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
83/417 (1. 8. 1985)	Lactoproteins	yes	yes	yes		A 61/86 n.m.n. reference Case 313/88	yes	yes	yes	yes	yes	A 67/86 n.m.n. reference Case 298/88	
83/478 (21. 3. 1986)	Dangerous substances	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
83/575 (31. 12. 1984)	Measuring instruments	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
83/635 (1. 1. 1986/ 1. 1. 1987)	Preserved milk	yes	yes	yes		A 381/86 n.m.n. reference Case 312/88	yes	yes	yes	yes	yes	yes	
84/47 (1. 1. 1985)	Electrical equipment	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
84/291 (30. 4. 1985)	Pesticides	yes	yes	yes		A 161/86 n.m.n. reference Case 45/88	yes	yes	yes	yes	yes	yes	
84/372 (1. 10. 1984)	Sound level of motor vehicles	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
84/414 (1. 1. 1986)	Thermometers	yes	yes	yes		yes	yes	yes	A 199/86 n.m.n. Judgment 12. 7. 1988 Case 326/87	yes	yes	yes	
84/500 (17. 10. 1987)	Ceramic articles in contact with foodstuffs	A 460/88 n.m.n. 169 letter	yes	yes		yes	A 462/88 n.m.n. 169 letter	yes	yes	yes	yes	A 461/88 n.m.n. 169 letter	
84/525 (26. 3. 1986)	Seamless steel gas cylinders	A 7/87 n.m.n. r.o.	A 3/87 n.m.n. 169 letter	yes		yes	yes	yes	yes	A 26/87 n.m.n. r.o.	A 35/87 n.m.n. r.o.	yes	
84/526 (26. 3. 1986)	Aluminium gas cylinders	A 8/87 n.m.n. r.o.	A 4/87 n.m.n. 169 letter	yes		yes	yes	yes	yes	A 27/87 n.m.n. r.o.	A 278/87 n.m.n. r.o.	yes	
84/527 (26. 3. 1986)	Welded unalloyed steel gas cylinders	A 9/87 n.m.n. r.o.	A 5/87 n.m.n. 169 letter	yes		yes	yes	yes	yes	A 28/87 n.m.n. r.o.	A 279/87 n.m.n. r.o.	yes	
84/528 (26. 9. 1986)	Lifting and mechanical handling appliances	yes	yes	yes	yes	A 17/87 n.m.n. r.o.	yes	yes	yes	A 280/87 n.m.n. 169 letter	A 36/87 n.m.n. r.o.	yes	
84/529 (26. 9. 1986)	Lifts	yes	yes	yes	yes	yes	yes	yes	yes	A 29/87 n.m.n. r.o.	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
84/532 (26. 9. 1986)	Construction plant and equipment		yes	yes		yes	yes	yes	yes	A 30/87 n.m.n. r.o.	yes	yes	
84/539 (26. 9. 1986)	Electro-medical equipment used in medicine	A 12/87 n.m.n. r.o.	yes	yes		yes	yes	yes	yes	yes	yes	A 41/87 n.m.n. r.o.	
85/1 (1. 7. 1985)	Units of measurement	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	yes
85/146 (1. 1. 1986)	Measures of length	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
85/205 (1. 10. 1985)	Motor vehicles	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
85/374	Defective products						yes	yes	yes				
85/384 (5. 8. 1987)	Architects	A 506/88 n.m.n. 169 letter	A 390/88 n.m.n. 169 letter	yes		yes	yes	A 387/88 n.m.n. 169 letter	A 507/88 n.m.n. 169 letter	A 384/88 n.m.n. 169 letter	A 393/88 n.m.n. 169 letter	yes	
85/432 (1. 10. 1987)	Pharmacists	yes	A 250/88 n.m.n. 169 letter	A 251/88 n.m.n. 169 letter		A 252/88 n.m.n. 169 letter	yes	yes	A 253/88 n.m.n. 169 letter	yes	yes	A 254/88 n.m.n. 169 letter	yes
85/433 (1. 10. 1987)	Pharmacists	A 255/88 n.m.n. 169 letter	yes	yes		yes	yes	yes	A 258/88 n.m.n. 169 letter		A 259/88 n.m.n. 169 letter	yes	yes

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
85/467 (30. 6. 1986)	Dangerous substances	yes	A 389/87 n.m.n. reference Case 325/88	yes		yes	yes	yes	yes	yes	yes	yes	
85/503 (1. 5. 1987)	Caseins and caseinates	yes	yes	yes		yes	A 268/88 n.m.n. 169 letter	yes	yes	yes	yes		A 271/88 n.m.n. 169 letter
85/573 (1. 1. 1987)	Coffee and chicory extracts	yes	yes	yes		A 40/88 n.m.n. 169 letter	yes	yes	yes	yes	yes	yes	
85/584 (1. 10. 1987)	Pharmacists	A 260/88 n.m.n. 169 letter	yes	A 262/88 n.m.n. 169 letter		yes	yes	yes	A 263/88 n.m.n. 169 letter	yes	A 264/88 n.m.n. 169 letter	yes	yes
85/585 (1. 12. 1985)	Preservatives	yes	A 512/87 n.m.n. 169 letter	yes		yes	yes	yes	yes	A 517/87 n.m.n. 169 letter	yes	yes	
85/591 (23. 12. 1987)	Foodstuffs intended for human consumption												
85/610 (31. 12. 1987)	Dangerous substance	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	yes
85/614 (5. 8. 1987)	Architects	A 508/88 n.m.n. 169 letter	A 391/88 n.m.n. 169 letter	yes		yes	yes	A 388/88 n.m.n. 169 letter	A 509/88 n.m.n. 169 letter	A 385/88 n.m.n. 169 letter	A 394/88 n.m.n. 169 letter	yes	



Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
86/415 (1. 10. 1987)	Tractors	yes	yes	yes	yes	yes	yes	A 204/88 n.m.n. r.o.	A 78/88 n.m.n. 169 letter	yes	yes	yes	
86/424 (15. 1. 1988)	Caseins and caseinates — analysis			yes	yes					yes	yes	yes	
86/457 (1. 1. 1988 — 1. 1. 1990)	Training in general medical practice	yes					yes	yes		yes	yes	yes	
86/508 (1. 9. 1987)	Paints, varnishes etc.	yes	yes	yes		yes	yes	yes	yes	yes	A 231/88 n.m.n. 169 letter	yes	
86/562 (31. 12. 1986)	Motor vehicles	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
86/604 (1. 1. 1988)	Preservatives used in foodstuffs intended for human consumption	yes		yes		yes			yes		yes		
87/19 (1. 7. 1987)	Proprietary medicinal products	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	1. 1. 1991
87/20 (1. 7. 1987)	Veterinary medicinal products	yes	yes	yes		yes	yes	yes	A 94/88 n.m.n. 169 letter	yes	yes	yes	yes
87/21 (1. 7. 1987)	Proprietary medicinal products	yes	yes	yes	1. 1. 1992	yes	yes	1. 1. 1992	yes	yes	yes	yes	1. 1. 1992



Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
87/22 (1. 7. 1987)	High-technology medicinal products	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
87/54 (7. 11. 1987)	Legal protection of semi-conductor topographies		yes	yes	yes	yes	yes			yes		yes	
87/56 (1. 1. 1988)	Sound level of motorcycles	yes	yes	yes	yes	yes	yes	yes	yes	yes		yes	
88/76 (1. 7. 1988)	Motor vehicles — air pollution	yes	yes	yes		yes	yes		yes				
88/77 (1. 7. 1988)	Gaseous pollutants from diesel engines	yes	yes	yes		yes	yes						
87/94 (31. 12. 1987)	Straight fertilizers											yes	
87/250 (1. 5. 1988/ 1. 5. 1989)	Labelling of alcoholic beverages	yes	yes	yes							yes		
87/308 (31. 12. 1988/ 31. 12. 1989)	Radio interference												

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
87/310 (31. 12. 1988/ 31. 12. 1989)	Suppression of radio interference — flourescent lights												
87/354 (31. 12. 1987)	Industrial products — indications of Member States	A 396/88 n.m.n. 169 letter	A 398/88 n.m.n. 169 letter	A 400/88 n.m.n. 169 letter		A 402/88 n.m.n. 169 letter	yes	yes	A 403/88 n.m.n. 169 letter	yes	yes	yes	
87/355 (31. 12. 1987)	Measuring instruments	A 397/88 n.m.n. 169 letter	A 399/88 n.m.n. 169 letter	A 401/88 n.m.n. 169 letter		yes	yes	yes	A 404/88 n.m.n. 169 letter	yes	yes	yes	
87/356 (30. 6. 1988)	Prepackaged products			yes			yes						
87/358 (1. 10. 1988)	Motor vehicles — type-approval	yes	yes	yes	yes	yes	yes		yes			yes	
87/403 (1. 10. 1988)	Motor vehicles — type-approval	yes	yes	yes	yes	yes	yes		yes			yes	
87/566 (31. 10. 1988)	Fertilizers — sampling and analysis											yes	
88/194 (1. 10. 1988)	Motor vehicles — braking devices	yes	yes	yes		yes	yes			yes		yes	
88/195 (1. 4. 1988)	Motor vehicles — engine power	yes	yes	yes		yes	yes		yes	yes		yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
88/297 (31. 12. 1988)	Tractors — type approval	yes		yes			yes						
88/316 (30. 6. 1988)	Prepackaged liquids	yes											
88/366 (1. 10. 1988)	Motor vehicles — field of vision		yes	yes		yes	yes					yes	
88/410 (30. 9. 1988)	Tractors		yes	yes		yes				yes			
88/411 (30. 9. 1988)	Tractors — steering equipment		yes	yes		yes				yes			
88/412 (30. 9. 1988)	Tractors — speed		yes	yes		yes				yes			
88/413 (30. 9. 1988)	Tractors — roll-over protection		yes	yes		yes				yes			
88/414 (30. 9. 1988)	Tractors		yes	yes		yes				yes			
88/77 (1. 7. 1988)	Diesel engines — air pollution			yes			yes						

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
88/465 (30. 9. 1988)	Tractors		yes	yes		yes				yes			
<b>Competition</b>													
88/301 (31. 12. 1988)	Telecommunications terminal equipment												
<b>Financial institutions and company law</b>													
73/239	Taking up of business of direct insurance	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
77/91 (16. 12. 1978)	Company law	A 404/86 n.p.a. r.o.	yes	yes		yes	yes	yes	yes	yes	yes	yes	yes
78/473 (2. 12. 1979)	Community co-insurance	A 106/86 n.p.a. reference Case 266/88	A 126/83 n.p.i. Judgment 4. 12. 1986 Case 205/84	A 57/82 n.p.i. Judgment 4. 12. 1986 Case 252/83	1. 1. 1989	A 265/81 n.p.i. Judgment 4. 12. 1986 Case 220/83	yes	yes	yes	A 127/83 n.p.i. Judgment 4. 12. 1986 Case 206/84	yes	yes	
78/660 (31. 1. 1982)	Annual accounts of companies	yes	yes	yes		yes	yes	yes	A 306/82 n.m.n. Judgment 20. 3. 1986 Case 17/85  A 433/88 n.m.n. 169 letter (Article 171)	yes	yes	yes	yes

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
78/855 (12. 10. 1980)	Mergers	A 129/86 n.m.n. reference Case 46/88	yes	yes		yes	yes	yes	A 133/86 n.m.n. reference Case 90/88	yes	yes	yes	yes
79/279 (30. 6. 1983)	Admission to official listing	A 9/84 n.m.n. Judgment 12. 2. 1987 Case 390/85	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
80/390 (30. 6. 1983)	Listing particulars for admission to official listing	A 10/84 n.m.n. Judgment 12. 2. 1987 Case 390/85	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
82/121 (30. 6. 1983)	Regular information to be published by companies	A 11/84 n.m.n. Judgment 12. 2. 1987 Case 390/85	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
82/891 (1. 1. 1986)	Division of public limited liability companies	A 129/86 n.m.n. reference Case 46/88	yes	yes		yes	yes	yes	A 133/86 n.m.n. reference Case 90/88	yes	yes	yes	yes
83/349 (1. 1. 1988)	Consolidated accounts		yes			yes		yes			yes	yes	



Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
5/129 (19. 2. 1987)	Collective redundancies	yes	yes	yes		yes	yes	yes	A 45/78 n.m.n. Judgment 8. 6. 1982 Case 91/81  A 102/83 n.m.n. Judgment 6. 11. 1985 Case 131/84	yes	yes	yes	yes
76/207 (12. 8. 1978)	Equal treatment for men and women	yes	yes	yes		A 144/85 n.p.i. Judgment 25. 10. 1988 Case 312/86  A 312/84 n.p.i. Judgment 30. 6. 1988 Case 318/86	A 131/80 n.p.i. Judgment 8. 11. 1983 Case 312/82  A 84/82 n.p.i. r.o.  A 143/85 n.p.i. r.o.	yes	yes	yes	yes	yes	yes
77/187 (16. 2. 1979)	Transfers of businesses	yes	yes	yes		yes	yes	A 58/87 n.p.i. reference Case 261/88	A 24/82 n.p.i. Judgment 10. 7. 1986 Case 235/84	yes	yes	yes	
79/7	Equal treatment for men and women	A 324/87 n.p.a. r.o.	yes	yes		yes	yes	yes	yes	yes	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
80/987 (22. 10. 1983)	Protection of employees in the event of the insolvency of the employer	yes	yes	yes		yes	yes	A 116/86 n.p.i. reference Case 53/88	A 118/85 n.p.i. reference Case 22/87	yes	yes	yes	
80/1107 (4. 12. 1983/ 4. 12. 1984)	Protection of workers — chemical, physical and biological agents	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
82/605 (1. 1. 1986)	Protection of workers from exposure to metallic lead	yes	yes	yes	yes	yes	yes	yes	A 66/87 n.m.n. reference Case 290/88	yes	yes	yes	yes
83/477 (1. 1. 1987)	Protection of workers from exposure to asbestos	yes	yes	yes		yes	yes	yes	A 459/87 n.m.n. r.o.	yes	yes	A 461/87 n.m.n. r.o.	yes
88/35 (1. 1. 1988)	Electrical equipment for use in mines susceptible to firedamp	yes	yes										
<b>Environment, consumer protection and nuclear safety</b>													
71/307 (29. 1. 1973/ 1. 7. 1973)	Textile names	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	



Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
75/439 (18. 6. 1977)	Disposal of waste oils	A 98/79 n.m.n. Judgment 2. 2. 1982 Case 70/81  A 170/84 n.m.n. Judgment Case 229/85  A 108/876 n.p.a. r.o.	yes	yes		yes	yes		A 419/86 n.p.a. r.o.	yes	yes	yes	1. 1. 1984
75/440 (18. 6. 1977)	Surface water	A 345/87 n.p.i. r.o.	A 372/87 n.p.a. r.o.	yes	A 81/88 n.p.a. r.o.	A 349/87 n.p.i. r.o.	yes	A 347/87 n.p.i. r.o.	yes	yes	yes	yes	1. 1. 1989
75/442 (18. 7. 1977)	Waste	A 102/78 n.m.n. Judgment 2. 2. 1982 Case 69/81  A 171/84 n.m.n. Judgment 14. 1. 1988 228/85  A 109/87 n.p.a. r.o.  A 71/88 n.p.a. r.o.	yes	yes	yes	yes	yes	yes	A 284/87 n.p.a. r.o.	yes	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
76/160 (10. 12. 1977)	Bathing water	yes	A 393/87 n.p.a. r.o.	yes		yes	A 84/86 n.p.a. r.o.	A 315/87 n.p.a. r.o.	A 356/87 n.p.i. r.o.	yes	yes	yes	1. 1. 1989
							A 214/86 n.p.a. r.o.						
76/403 (9. 4. 1978)	Disposal of PCBs and PCTs	A 94/79 n.m.n. Judgment 2. 2. 1982 Case 71/81	yes	yes	yes	yes	yes	yes	A 285/87 n.p.a. r.o.	yes	yes	yes	
		A 172/84 n.m.n. Judgment 24. 1. 1988 Case 230/85											
		A 110/87 n.p.a. r.o.											
76/768 (31. 12. 1980)	Cosmetics	yes	yes	yes	A 371/87 n.p.a. r.o.	A 328/84 n.p.i. r.o.	yes	A 421/86 n.p.i. r.o.	yes	yes	yes	yes	yes
						A 390/86 n.p.i. r.o.							

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
78/176 (22. 2. 1979)	Waste from the titanium dioxide industry	A 135/79 n.m.n. Judgment 2. 2. 1982 Case 68/81  A 169/84 n.m.n. Judgment 14. 1. 1988 227/85	yes	yes		yes	yes	yes	yes	yes	yes	yes	
78/319 (22. 3. 1980)	Toxic and dangerous wastes	A 169/83 n.p.i. Judgment 2. 12. 1986 Case 239/85  A 111/87 n.p.a. r.o.	yes	yes	A 81/88 n.p.a. r.o.	yes	yes	yes	A 286/87 n.p.a. r.o.	yes	yes	yes	1. 1. 1989
78/659 (20. 7. 1980)	Quality of fresh waters	yes	yes	yes		yes	yes	yes	A 71/85 n.p.i. Judgment 12. 7. 1988 Case 322/86	yes	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P.
79/112	Labelling of foodstuffs	yes	yes	yes	yes	yes	yes	yes	A 101/87 n.p.a. r.o.	yes	yes	yes	yes
									A 466/86 n.p.a. r.o.				
79/409 (6. 4. 1981)	Conservation of wild birds	A 118/84 n.p.i. Judgment 8. 7. 1987 Case 247/85	A 119/84 n.p.i. Judgment 17. 9. 1987 Case 412/85	yes		A 121/84 n.p.i. Judgment 27. 4. 1988 Case 252/85	A 187/87 n.p.a. r.o.	yes	A 124/84 n.p.i. Judgment 13. 10. 1987 Case 262/85	yes	yes	A 125/84 n.p.i. Judgment 13. 10. 1987 Case 236/85	
			A 222/86 n.p.i. reference Case 288/88						A 501/87 n.p.a. r.o.			A 400/85 n.p.i. reference Case 339/87	
			A 246/87 n.p.a. r.o.										
			A 362/87 n.p.a. r.o.										
79/581 (20. 6. 1981)	Prices of foodstuffs	A 306/86 n.p.i. r.o.	yes	yes	yes	yes	A 332/86 n.p.i. r.o.	yes	yes	yes	yes	yes	yes

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
79/831 (18. 9. 1981/ 18. 9. 1983)	Dangerous substances	yes	A 339/87 n.p.a. r.o.	A 38/84 n.p.i. Judgment 14. 10. 1987 Case 278/85		yes	yes	yes	yes	yes	yes	yes	
79/869 (11. 10. 1981)	Analysis of surface water	A 346/87 n.p.i. r.o.	A 372/87 n.p.a. r.o.	yes		A 350/87 n.p.i. r.o.	yes	A 348/87 n.p.i. r.o.	yes	yes	yes	yes	1. 1. 1989
80/68 (19. 12. 1981)	Protection of groundwater	A 281/84 n.p.i. Judgment 17. 6. 1987 Case 1/86	A 121/86 n.p.i. reference Case 131/88	yes	A 81/88 n.p.a. r.o.	yes	yes	yes	A 86/86 n.p.a. reference Case 360/87	yes	yes	A 71/83 n.m.n. Judgment 17. 9. 1987 Case 291/84  A 532/88 n.m.n. 169 letter (Art. 171)	
80/778 (17. 7. 1982)	Water for human consumption	A 221/86 n.p.i. r.o.  A 506/87 n.p.i. r.o.	yes	yes	A 81/88 n.p.a. r.o.	A 224/86 n.p.i. reference Case 287/88	yes	yes	A 363/87 n.p.a. r.o.	yes	yes	yes	1. 1. 1989
80/779 (18. 7. 1982)	Air quality	yes	A 119/86 n.p.i. r.o.	yes	yes	yes	A 211/86 n.p.i. r.o.	yes	A 120/86 n.p.i. r.o.	yes	yes	yes	yes

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
80/863 (3. 12. 1982)	Health protection against ionizing radiation (Euratom)	A 481/88 n.p.i. 169 letter	A 482/88 n.p.i. 169 letter	A 483/88 n.p.i. 169 letter	A 484/88 n.p.i. 169 letter	yes	yes	A 485/88 n.p.i. 169 letter	A 225/87 n.m.n. reference Case 246/88	A 486/88 n.p.i. 169 letter	A 487/88 n.p.i. 169 letter	A 488/88 n.p.i. 169 letter	A 489/88 n.p.i. 169 letter
80/1335 (31. 12. 1982)	Cosmetics	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
82/147 (31. 12. 1982)	Cosmetics	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
82/176 (25. 3. 1984)	Mercury discharges	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
82/368 (31. 12. 1983)	Cosmetics	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
82/434 (31. 12. 1983)	Analysis of cosmetic products	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
82/501 (8. 1. 1984)	Major-accident hazards	yes	yes	yes	yes	yes	yes	yes	A 447/86 n.p.i. r.o.  A 368/87 n.p.a. r.o.	yes	yes	A 457/86 n.p.i. r.o.	
82/883 (9. 12. 1984)	Waste from the titanium dioxide industry		yes	yes		yes	yes	yes	yes	yes	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
82/884 (9. 12. 1984)	Limit value for lead in the air		A 36/88 n.p.i. r.o.	yes		A 510/87 n.p.i. r.o.	A 212/86 n.p.i. r.o.	yes	yes	yes	yes	yes	
83/191 (31. 12. 1984)	Cosmetics	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
83/206 (26. 4. 1984)	Noise emissions of aircraft	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
83/341 (31. 12. 1984)	Cosmetics	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
83/467 (1. 1. 1985)	Dangerous substances	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
83/496 (31. 12. 1984)	Cosmetics	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
83/513 (28. 9. 1983)	Cadmium discharges	yes	A 223/86 n.p.i. r.o.	yes		yes	A 168/87 n.p.i. r.o.	yes	A 369/87 n.p.i. r.o.	yes	yes	yes	
83/514 (31. 12. 1984)	Cosmetics	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
83/574 (31. 12. 1984)	Cosmetics	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes

Directive	Objet	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
83/623 (29. 11. 1985)	Textile names	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	yes
84/156 (12. 3. 1986)	Mercury discharges	yes		yes		yes		yes	yes	yes	yes	yes	
84/360 (30. 6. 1987)	Air pollution	yes	yes	yes		yes	yes	A 212/88 n.m.n. 169 letter	yes	yes	yes	yes	yes
84/449 (1. 7. 1985)	Dangerous substances			yes		yes	yes	yes	yes	yes		yes	
84/450 (1. 10. 1986)	Misleading advertising	A 488/86 n.m.n. reference Case 360/88	yes	yes		yes	yes	A 499/86 n.m.n. reference Case 329/88	A 54/88 n.m.n. r.o.	yes	yes	yes	yes
84/456 (1. 1. 1986)	Radiation protection	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
84/467 (5. 4. 1986)	Health protection	A 481/88 n.p.i. 169 letter	A 482/88 n.p.i. 169 letter	A 483/88 n.p.i. 169 letter	A 484/88 n.p.i. 169 letter	yes	yes	A 485/88 n.p.i. 169 letter	A 233/87 n.m.n. reference. Case 246/88	A 486/88 n.p.i. 169 letter	A 487/88 n.p.i. 169 letter	A 488/88 n.p.i. 169 letter	A 489/88 n.p.i. 169 letter
84/491 (1. 4. 1986)	Hexachlorocyclo- hexane discharges	yes	yes		A 81/88 n.p.a. r.o.	yes	A 169/87 n.p.i. r.o.		A 129/87 n.m.n. r.o.	yes	yes		



Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
84/631 (1. 10. 1985)	Transfrontier shipment of hazardous waste	A 71/88 n.p.a. r.o.	yes	yes		A 241/86 n.m.n. r.o.	yes	yes	yes	yes	yes	yes	
								169 letter					
84/533 (26. 3. 1986)	Sound power level of compressors	yes	yes	yes		yes	yes	A 490/86 n.m.n. r.o.	yes	A 139/87 n.m.n. reference Case 238/88	A 502/86 n.m.n. reference Case 226/88	yes	
84/534 (26. 3. 1986)	Sound power level of tower cranes	yes	yes	yes		yes	yes	A 492/86 n.m.n. r.o.	yes	A 141/87 n.m.n. reference Case 238/88	A 504/86 n.m.n. reference Case 226/88	yes	
84/535 (26. 3. 1986)	Sound power level of welding generators	yes	yes	yes		yes	yes	A 493/86 n.m.n. r.o.	yes	A 142/87 n.m.n. reference Case 238/88	A 505/86 n.m.n. reference Case 226/88	yes	
84/536 (26. 3. 1986)	Sound power level of power generators	yes	yes	yes		yes	yes	A 495/86 n.m.n. r.o.	yes	A 144/87 n.m.n. reference Case 238/88	A 507/86 n.m.n. reference Case 226/88	yes	
84/537 (26. 3. 1986)	Sound power level of powered hand-held concrete-breakers and picks	yes	yes	yes		yes	yes	A 497/86 n.m.n. r.o.	yes	A 146/87 n.m.n. reference Case 238/88	A 509/86 n.m.n. reference Case 226/88	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
84/538 (1. 7. 1987)	Sound power level of lawnmowers	yes				yes			yes	A 279/88 n.m.n. 169 letter	yes	yes	
85/203 (1. 1. 1987)	Air quality standards for nitrogen dioxide	yes	yes	yes		A 511/87 n.p.i. r.o.	yes	yes	yes	yes	yes	yes	yes
85/210 (1. 1. 1986)	Lead content of petrol	A 565/87 n.p.i. r.o.	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
85/337 (1. 7. 1988)	The effects of public and private projects on the environment					yes	yes		yes	yes		yes	
85/339 (3. 7. 1987)	Containers of liquids for human consumption	A 330/87 n.p.a. r.o.	A 329/87 n.p.a. r.o.	yes	yes	yes	yes	A 351/88 n.m.n. 169 letter	yes	yes	A 334/87 n.p.a. r.o.  A 157/88 n.m.n. r.o.	yes	yes
85/391 (31. 12. 1986)	Cosmetics	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
85/405 (26. 3. 1986)	Noise emission of construction plant and equipment	yes	yes	yes		yes	yes	A 464/87 n.m.n. 169 letter	yes	A 292/88 n.m.n. 169 letter	A 24/88 n.m.n. 169 letter	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
85/406 (26. 3. 1986)	Sound power level of compressors	yes	yes	yes		yes	yes	A 491/86 n.m.n. r.o.	yes	A 140/87 n.m.n. reference Case 238/88	A 503/86 n.m.n. reference Case 226/88	yes	
85/407 (26. 3. 1986)	Sound power level of welding generators	yes	yes	yes		yes	yes	A 494/86 n.m.n. r.o.	yes	A 143/87 n.m.n. reference Case 238/88	A 506/86 n.m.n. reference Case 226/88	yes	
85/408 (26. 3. 1986)	Sound power level of power generators	yes	yes	yes		yes	yes	A 496/86 n.m.n. r.o.	yes	A 145/87 n.m.n. reference Case 238/88	A 508/86 n.m.n. reference Case 226/88	yes	
85/409 (26. 3. 1986)	Sound power level of powered hand-held concrete-breakers and picks	yes	yes	yes		yes	yes	A 498/86 n.m.n. r.o.	yes	A 147/87 n.m.n. reference Case 238/88	A 510/86 n.m.n. reference Case 226/88	yes	
85/411 (31. 7. 1986)	Conservation of wild birds	A 172/87 n.m.n. 169 letter	yes	yes		A 174/87 n.m.n. 169 letter	yes	yes	A 175/87 n.m.n. 169 letter	A 217/87 n.m.n. 169 letter	yes	A 176/87 n.m.n. 169 letter	
85/469 (1. 10. 1985)	Transfrontier shipment of hazardous waste	yes	yes	yes		A 256/86 n.m.n. r.o.	yes	yes	yes	A 374/87 n.p.i. r.o.	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
85/490 (31. 12. 1986)	Cosmetics	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
85/577 (23. 12. 1987)	Consumer protection	A 490/88 n.m.n. 169 letter	yes	yes		A 491/88 n.m.n. 169 letter	yes	A 492/88 n.m.n. 169 letter		A 378/88 n.m.n. 169 letter	yes	A 377/88 n.m.n. 169 letter	yes
86/179 (31. 12. 1986)	Cosmetics	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	yes
86/197 (1. 8. 1988)	Labelling of foodstuffs		A 528/88 n.m.n. 169 letter	A 527/88 n.m.n. 169 letter			yes	A 493/88 n.m.n. 169 letter	yes	A 432/88 n.m.n. 169 letter	yes	yes	yes
86/199 (31. 12. 1986)	Cosmetics	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
87/279 (1. 1. 1987)	Transfrontier shipment of hazardous waste	yes	yes	yes		yes	yes	yes	yes	yes		yes	
86/280 (1. 1. 1988)	Discharges of dangerous substances	yes	yes	yes		yes	yes	A 529/88 n.m.n. 169 letter	yes		yes	yes	
86/431 (1. 7. 1987)	Dangerous substances	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
86/662 (29. 12. 1988)	Noise emitted by hydraulic excavators, etc.												
87/18 (30. 6. 1988)	Chemical substances — verification of application of principles of good laboratory practice			yes			yes	yes	yes		yes		
87/112 (1. 1. 1987)	Transfrontier shipment of hazardous waste			yes						A 376/87 n.p.i. r.o.		yes	
87/137 (31. 12. 1987)	Cosmetics	yes	yes	yes		yes	yes		yes	yes	yes	yes	yes
87/140 (1. 9. 1988)	Textile names		yes			yes	yes			yes			
87/143 (1. 7. 1988)	Cosmetics	yes	yes	yes		yes	yes		yes	yes	yes	yes	
87/184 (1. 7. 1988)	Textile names		yes			yes							
87/216 (24. 9. 1988)	Major-accident hazards	yes	yes	yes		yes		yes	yes		yes		
87/217 (31. 12. 1988)	Environmental pollution by asbestos												



Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
64/433 (1. 1. 1981)	Fresh meat	A 484/85	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
66/400 (31. 12. 1985)	Beet seed		yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
66/401 (31. 12. 1985)	Fodder plant seed		yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
66/402 (31. 12. 1985)	Cereal seed		yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
66/403 (31. 12. 1985)	Seed potatoes		yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
66/404 (31. 12. 1985)	Forest reproductive material		yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
68/89 (31. 12. 1985)	Classification of untreated wood		yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
68/193 (31. 12. 1985)	Material for the vegetative propagation of the vine		yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
69/60 (31. 12. 1985)	Cereal seed	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
69/71 (31. 12. 1985)	Beet seed	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
69/62 (31. 12. 1985)	Seed potatoes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
69/63 (31. 12. 1985)	Fodder plant seed	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
69/203 (31. 12. 1985)	Oil plant seed	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
70/457 (1. 7. 1972) (31. 12. 1985)	Agricultural plant catalogue	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
70/458 (31. 12. 1985)	Vegetable seed	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
70/524 (25. 11. 1972)	Additives in feedingstuffs	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	



Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
71/119 (1. 1. 1986)	Fresh poultrymeat	yes	A 281/87 n.p.a. reference Case 186/88	yes	yes	yes	yes	yes	yes	yes	yes	yes	
71/140 (31. 12. 1985)	Material for the vegetative propagation of the vine	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
71/161 (31. 12. 1985)	Forest reproductive material	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
71/162 (31. 12. 1985)	Seed	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
72/168 (31. 12. 1985)	Vegetable varieties	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
72/169 (31. 12. 1985)	Vine varieties	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
72/180 (31. 12. 1985)	Agricultural plant varieties	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
72/274 (31. 12. 1985)	Seed	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
73/418 (31. 12. 1985)	Seed	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
73/438 (31. 12. 1985)	Seed	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
74/13 (31. 12. 1985)	Forest reproduction material	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
74/63 (1. 1. 1976)	Undesirable substances — feedingstuffs	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
74/268 (31. 12. 1985)	' <i>Avena fatua</i> '	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
74/649 (31. 12. 1985)	Material for the vegetative propagation of the vine	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
75/444 (31. 12. 1985)	Seed	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
75/502 (31. 12. 1985)	Seed of smooth-stalk meadowgrass	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
76/331 (31. 12. 1985)	Beet seed	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
77/93 (1. 5. 1980)	Harmful organisms	yes	yes	yes	yes	yes	yes	yes	A 478/85 n.p.i. r.o.  A 323/87 n.p.a. r.o.	yes	yes	yes	
77/99 (1. 1. 1981)	Health problems	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
77/101 (1. 1. 1981)	Straight feedingstuffs	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
77/504 (1. 1. 1979)	Pure-bred breeding animals of the bovine species	yes	A 143/86 n.p.a. r.o.	yes	yes	A 275/85 n.p.a. r.o.	yes	yes	yes	yes	yes	yes	
79/109 (1. 4. 1979)	Brucellosis	yes	yes	yes	yes	yes	yes	yes	A 316/84 n.m.n. Judgment 3. 9. 1988 Case 116/86  A 463/88 n.m.n. 169 letter (Article 171)	yes	yes	yes	
79/372 (1. 1. 1981)	Straight feedingstuffs	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	El	I	IRL	L	NL	P
79/373 (1. 1. 1981)	Compound feedingsuffs	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
79/797 (1. 1. 1981)	Straight feedingsuffs	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
77/629 (31. 12. 1986)	Material for the vegetative propagation of the vine	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
78/386 (31. 12. 1985)	Fodder plant seed	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
79/387 (31. 12. 1985)	Cereal seed	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
78/388 (31. 12. 1985)	Oil plant seed	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
78/511 (31. 12. 1985)	' <i>Avena fatua</i> '	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
78/692 (31. 12. 1985)	Seed	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
79/641 (31. 12. 1985)	Seed	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
79/692 (31. 12. 1985)	Seed	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
80/214 (31. 12. 1980)	Health problems — meat products	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
80/219 (31. 12. 1980)	Tuberculosis and brucellosis	yes	yes	yes	yes	yes	yes		A 256/83 n.m.n. Judgment. 29. 1. 1987 Case 364/85  A 453/88 n.m.n. 169 letter (Article 171)	yes	yes	yes	
80/304 (31. 12. 1985)	Oil plant seed	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
80/502 (1. 7. 1981)	Undesirable products	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
80/509 (1. 1. 1981)	Compound feedingstuffs	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
80/510 (1. 1. 1981)	Straight feedingstuffs	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
80/511 (1. 1. 1981)	Compound feedingstuffs in packages	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
80/695 (1. 1. 1981)	Compound feedingstuffs	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
80/754 (31. 12. 1985)	Fodder plant seed	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
80/1098 (1. 7. 1981)	Swine vesicular disease and swine fever	yes	yes	yes	yes	yes	yes		A 258/83 n.m.n. Judgment 29. 1. 1987 Case 364/85  A 454/88 n.m.n. 169 letter (Article 171)	yes	yes	yes	
80/1099 (1. 7. 1981)	Swine vesicular disease and swine fever	yes	yes	yes		yes	yes		A 259/83 n.m.n. Judgment 10. 3. 1987 Case 386/85  A 456/88 n.m.n. 169 letter (Article 171)	yes	yes	yes	
80/1100 (1. 7. 1981)	Swine vesicular disease and swine fever	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
80/1102 (1. 1. 1981)	Enzootic bovine leukosis	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
81/602 (3. 11. 1981)	Substances having a hormonal or thyrostatic effect	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
82/287 (1. 1. 1982/ 1. 1. 1983)	Seed	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
82/331 (1. 7. 1982)	Propagation of vine	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
82/400	Eradication of brucellosis	yes	yes	yes	yes	yes	yes	yes	yes	A 200/87 n.p.a. r.o.	yes	yes	
82/475 (1. 1. 1985)	Compound feedingstuffs for pet animals	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
82/528 (1. 7. 1984)	Pesticide residues	A 49/86 n.m.n. reference Case 309/87	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
82/859 (1. 7. 1983)	Oil plant seed	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
2/937 (1. 7. 1983/ 1. 1. 1985)	Straight feedingstuffs	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
82/957 (1. 1. 1985)	Compound feedingstuffs	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
83/90 (1. 1. 1985)	Health problems — fresh meat	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
83/91 (1. 1. 1985)	Fresh meat	yes	yes	yes	yes	yes	yes	yes	A 349/85 n.m.n. reference Case 324/87	yes	yes	yes	
83/201 (1. 1. 1984)	Percentage of meat	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
84/319 (1. 1. 1985)	Trichinae	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
84/378 (1. 7. 1985)	Harmful organisms of plants	yes	yes	yes	yes	yes	yes	yes	yes	yes	A 539/87 n.m.n. 169 letter	yes	
84/587 (4. 12. 1986/ 4. 12. 1988)	Additives in feedingstuffs	yes	A 548/87 n.m.n. r.o.	yes	yes	A 549/87 n.m.n. r.o.	yes	yes	A 559/87 n.m.n. r.o.	yes	yes	yes	



Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
84/643 (31. 12. 1984)	Foot-and-mouth disease	yes	yes	yes	yes	yes	yes	yes	A 351/85 n.m.n. reference Case 328/87	yes	yes	yes	
84/644 (30. 8. 1985)	Brucellosis	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
84/645 (31. 3. 1985)	Swine fever	yes	yes	yes	yes	yes	yes	yes	A 352/85 n.m.n. reference Case 329/87	yes	yes	yes	yes
85/38 (1. 1. 1986)	Fodder plant seed	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
85/320 (1. 1. 1986)	Swine fever	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
85/321 (1. 1. 1986)	Swine fever	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
85/322 (1. 1. 1986)	Swine fever	yes	yes	yes		yes	yes	yes	A 321/86 n.m.n. r.o.	yes	yes	yes	
85/325 (1. 1. 1986)	Fresh meat	yes	yes	yes	yes	yes	yes	yes	A 323/86 n.m.n. r.o.	yes	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P	
85/326 (1. 1. 1986)	Fresh poultrymeat	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes		
85/327 (1. 1. 1986)	Meat products	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes		
85/328 (1. 1. 1986)	Meat products	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes		
85/358 (1. 1. 1987)	Substances having a hormonal or thyrostatic action	yes	yes	yes	yes	yes	yes	yes	yes	A 14/88 n.m.n. 169 letter	A 246/88 n.m.n. 169 letter	yes	yes	yes
85/429 (3. 12. 1986)	Additives in feedingstuffs	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes		
85/509 (30. 6. 1986)	Feedingstuffs	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes		
85/511 (1. 1. 1987)	Foot-and-mouth-disease	A 9/88 n.m.n. 169 letter	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
85/520 (3. 12. 1986)	Additives in feedingstuffs	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes		

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
85/574 (1. 1. 1987)	Harmful organisms	yes	yes	yes	yes	yes	yes	A 532/87 n.m.n. 169 letter	yes	yes	A 540/87 n.m.n. 169 letter	yes	
86/29 (3. 12. 1986)	Additives in feedingstuffs	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
86/109 (1. 7. 1987)	Fodder plant seed	yes	yes	yes	yes	yes	yes	yes	yes	yes	A 236/88 n.m.n. 169 letter	yes	
86/155 (1. 3. 1986/ 1. 7. 1987)	Seed and plants			yes	yes	yes		yes	yes	yes		yes	
86/174 (30. 6. 1987)	Compound poultryfeed	yes	yes	yes	yes	A 119/88 n.m.n. r.o.	yes	yes	yes	yes	yes	yes	
86/267 (1. 1. 1987)	Vine varieties	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	
86/299 (31. 12. 1987)	Undesirable products	yes	yes	yes	yes		yes	yes				yes	
86/300 (31. 12. 1987)	Additives in feedingstuffs	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
86/320 (1. 7. 1987)	Cereal seed					yes							
86/354 (3. 12. 1988)	Feedingstuffs	yes		yes					yes			yes	
86/355 (1. 7. 1987)	Plant protection products	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
86/362 (30. 6. 1988)	Pesticide residues in and on cereals		yes	yes			yes	yes		yes			
86/363 (30. 6. 1988)	Pesticide residues in and on foodstuffs of animal origin		yes				yes			yes			
86/403 (3. 12. 1986)	Additives in feedingstuffs	yes	yes	yes	yes	A 552/87 n.m.n. r.o.	yes	yes	yes	yes	yes	yes	
86/469 (1. 4. 1987)	Residues in animals and meat	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
86/525 (30. 11. 1987)	Additives in feedingstuffs	yes	yes	yes	yes	A 120/88 n.m.n. r.o.	yes	yes	yes	yes	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
86/530 (30. 6. 1988)	Products used in animal nutrition	yes		yes	yes	yes		yes		yes			
86/546 (1. 1. 1987)	Harmful organisms	A 523/87 n.m.n. 169 letter	yes	yes	yes	yes	A 530/87 n.m.n. 169 letter	A 533/87 n.m.n. 169 letter	yes	yes	A 541/87 n.m.n. 169 letter	A 545/87 n.m.n. 169 letter	
86/587 (30. 4. 1987)	Health problems — fresh meat	yes	yes	yes		yes	yes	yes	A 151/88 n.m.n. 169 letter	yes	yes	yes	
86/651 (1. 3. 1987)	Harmful organisms	yes	yes	yes	yes	yes	yes	A 534/87 n.m.n. 169 letter	yes	yes	A 542/87 n.m.n. 169 letter	yes	
87/64 (1. 1. 1988)	Health problems — fresh meat	yes	yes	A 500/88 n.m.n. 169 letter		yes	yes	yes	yes	yes	yes	yes	
87/120 (1. 5. 1988)	Marketing of vegetable seed				yes			yes		yes			
87/153 (31. 12. 1987)	Additives in animal nutrition	yes	yes	yes	yes		yes					yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
87/181 (1. 1. 1981)	Plant protection products	A 520/88 n.m.n. 169 letter	A 525/88 n.m.n. 169 letter	yes		A 524/88 n.m.n. 169 letter	A 536/88 n.m.n. 169 letter	yes	A 523/88 n.m.n. 169 letter	yes	A 522/88 n.m.n. 169 letter	yes	
87/234 (30. 11. 1987)	Straight feedingstuffs	yes	A 113/88 n.m.n. r.o.	yes		A 121/88 n.m.n. r.o.	yes	yes	A 135/88 n.m.n. r.o.	A 139/88 n.m.n. 169 letter	A 144/88 n.m.n. r.o.	yes	
87/238 (3. 12. 1988)	Undesirable products	yes			yes			yes				yes	
87/298 (1. 7. 1987)	Harmful organisms	yes	yes	yes		yes	yes	A 194/88 n.m.n. 169 letter	yes *	yes	A 196/88 n.m.n. 169 letter	yes	
87/316 (30. 11. 1987)	Additives in feedingstuffs	yes	A 115/88 n.m.n. r.o.	yes	yes	A 123/88 n.m.n. r.o.	yes	A 133/88 n.m.n. r.o.	A 137/88 n.m.n. r.o.	A 141/88 n.m.n. 169 letter	A 146/88 n.m.n. r.o.	yes	
87/317 (30. 11. 1987)	Additives in feedingstuffs	yes	A 116/88 n.m.n. r.o.	yes	yes	A 124/88 n.m.n. r.o.	yes	A 134/88 n.m.n. r.o.	A 138/88 n.m.n. r.o.	A 142/88 n.m.n. 169 letter	A 147/88 n.m.n. r.o.	yes	
87/477 (1. 1. 1988)	Plant protection products	A 521/88 n.m.n. 169 letter	yes	yes		yes	A 537/88 n.m.n. 169 letter	yes	yes	yes	yes	yes	
87/486 (31. 12. 1987)	Swine fever	A 502/88 n.m.n. 169 letter	yes	A 543/88 n.m.n. 169 letter	yes	yes	yes	yes	A 499/88 n.m.n. 169 letter	yes	A 503/88 n.m.n. 169 letter	yes	yes

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
87/489 (31. 12. 1988)	Swine fever												
87/491 (1. 1. 1988)	Meat products	yes	A 501/88 n.m.n. 169 letter	A 544/88 n.m.n. 169 letter	yes	yes	yes		A 542/88 n.m.n. 169 letter	A 498/88 n.m.n. 169 letter	yes	yes	
87/552 (30. 11. 1988)	Additives in feedingstuffs			yes	yes								
88/95 (1. 7. 1988)	Beet seed									yes			
88/146 (31. 12. 1988)	Prohibited substances having a hormonal action		yes		yes							yes	yes
88/166 (1. 7. 1988)	Protection of laying hens kept in battery cages	A 545/88 n.m.n. 169 letter	yes	yes	yes	yes	yes	yes	yes	A 541/88 n.m.n. 169 letter	yes	A 497/88 n.m.n. 169 letter	
88/228 (15. 5. 1988)	Additives in feedingstuffs				yes								
88/298 (1. 7. 1988)	Pesticide residues			yes			yes			yes	yes		

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
88/299 (31. 12. 1988)	Substances having a hormonal action — trade in animals												
88/406 (1. 9. 1988)	Enzootic bovine leukosis											yes	
<b>Transport</b>													
74/561 (31. 12. 1976)	Admission to the occupation of road haulage operator	yes	yes	yes	yes	yes	yes	A 317/85 n.m.n. reference Case 89/88	A 85/79 n.m.n. Judgment 10. 11. 1981 Case 28/81  A 175/83 n.m.n. Judgment 5. 11. 1986 Case 160/85	yes	yes	yes	yes
74/562 (1. 1. 1977)	Admission to the occupation of road passenger transport operator	yes	yes	yes	yes	yes	yes	A 318/85 n.m.n. reference Case 287/87	A 113/79 n.m.n. Judgment 10. 11. 1981 Case 29/81  A 176/83 n.m.n. Judgment 5. 11. 1986 Case 160/85	yes	yes	yes	



Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P	
75/130 (1. 10. 1975)	Combined road/rail carriage of goods	yes	yes	yes	yes	yes	yes	yes	A 99/82 n.p.a. Judgment 28. 3. 1985 Case 2/84  A 263/87 n.p.a. r.o.  A 490/87 n.p.a. r.o.	yes	yes	yes	yes	
77/796 (1. 1. 1979)	Recognition of qualifications	yes	yes	yes	yes	yes	yes	A 319/85 n.m.n. reference Case 282/87	A 141/80 n.m.n. Judgment 11. 10. 1983 Case 273/82  A 17/85 n.m.n. reference Case 71/88	yes	yes	yes		
80/1263 (30. 6. 1982)	Driving licence	yes	yes	yes		yes		A 121/87 n.p.i. r.o.	yes	A 123/87 n.p.i. r.o.	A 124/87 n.p.i. r.o.	yes	yes	yes

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
82/503 (1. 4. 1983)	Combined road/rail carriage of goods	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes		
82/714 (1. 1. 1985)	Technical requirements for inland waterway vessels	A 202/85 n.m.n. Judgment 24. 5. 1988 Case 307/86	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
83/416 (1. 10. 1984)	Authorization of air transport services	yes	yes	yes		yes	A 241/87 n.m.n. 169 letter	yes	yes	yes	yes	yes	yes
83/643 (31. 12. 1984/ 31. 12. 1986)	Inspections — carriage of goods		A 281/87 n.p.a. reference Case 186/88	yes		A 90/86 n.p.a. r.o.		A 475/86 n.p.a. r.o.	A 33/88 n.p.a. r.o.	yes	yes	yes	
									A 114/86 n.p.a. reference Case 340/87				
									A 366/87 n.p.a. r.o.				
84/647 (30. 6. 1986)	Hired vehicles for the carriage of goods	yes	yes	yes	yes	yes	yes	yes	yes	A 451/87 n.m.n. 169 letter	yes	yes	yes

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
85/3 (1. 7. 1986/ 1. 1. 1990)	Weights and dimensions of certain vehicles	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
85/347 (1. 10. 1985)	Duty-free allowance for fuel	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
85/505 (1. 1. 1987)	Authorization — carriage of goods	yes	yes	yes	yes	yes	yes	yes	yes	A 449/87 n.m.n. 169 letter	yes	yes	
86/216 (30. 6. 1986/ 1. 7. 1993)	Air transport of passengers	yes	yes	yes		yes	A 301/87 n.m.n. 169 letter	yes	yes	yes	yes	A 305/87 n.m.n. r.o.	yes
86/350 (1. 7. 1986/ 1. 1. 1990/ 1. 1. 1992)	Weights and dimensions of certain vehicles	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
86/364 (29. 7. 1987)	Weights and dimensions of certain vehicles	yes	yes	yes	yes	yes	yes	A 6/88 n.m.n. 169 letter	yes	A 7/88 n.m.n. 169 letter	yes	yes	
86/544 (1. 7. 1987)	Combined carriage of goods	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
87/53 (1. 1. 1987)	Physical inspections — carriage of goods	yes	yes	yes		yes	yes	A 352/88 n.m.n. 169 letter	A 353/88 n.m.n. 169 letter	yes	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
87/540 (30. 6. 1988)	Access to occupation of carrier of goods by waterway			yes			yes	yes	yes	yes			
87/601 (31. 12. 1987)	Fares for scheduled air services		yes	yes		yes		A 494/88 n.m.n. 169 letter	yes		A 495/88 n.m.n. 169 letter	yes	
<b>Energy</b>													
85/536 (1. 1. 1988)	Crude-oil savings		yes	yes	yes	yes					yes		yes
76/491 (1. 1. 1977)	Mineral-oil price	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
<b>Budget</b>													
77/388 (1. 1. 1978)	Sixth VAT Directive	yes	yes	yes		A 253/87 n.p.a. r.o.	yes	yes	A 208/86 n.p.a. r.o.	A 209/86 n.p.a. r.o.	yes	yes	
<b>Customs union and indirect taxation</b>													
69/73 (1. 10. 1969)	Provisions relating to free zones	yes	A 355/87 n.p.a. r.o.	yes		yes	yes	yes	yes	yes	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
75/349 (1. 1. 1976)	Inward processing	yes	yes	yes		A 231/85 n.p.a. reference Case 92/87	A 232/85 n.p.a. reference Case 93/87	yes	yes	yes	yes	yes	
78/453 (1. 1. 1979)	Payment of duties	A 106/86 n.p.a. reference Case 266/88	yes	yes		yes	yes	yes	yes	yes	yes	yes	
79/623 (1. 1. 1982)	Customs debt	yes	A 355/87 n.p.a. r.o.	yes		yes	yes	yes	yes	yes	yes	yes	
79/695 (1. 7. 1982)	Release for free circulation	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
81/177 (1. 1. 1983)	Procedures for the export of goods	yes	yes	yes		yes	yes	yes	A 168/83 n.m.n. Judgment 30. 4. 1986 Case 158/85  A 502/87 n.m.n. r.o.	yes	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
82/57 (1. 7. 1982)	Release for free circulation	yes	yes	yes		yes	yes	yes	A 183/84 n.p.a. Judgment 27. 1. 1987 Case 275/85  A 240/88 n.p.a. 169 letter (Article 171)	yes	yes	yes	
82/347 (1. 1. 1983)	Procedures for the export of goods	yes	yes	yes		yes	yes	yes	A 162/83 n.m.n. Judgment 30. 4. 1986 Case 158/85  A 503/87 n.m.n. r.o.	yes	yes	yes	
85/479 (1. 1. 1986)	Mutual assistance	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
86/489 (1. 1. 1987)	Mutual assistance	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
69/169 (1. 1. 1970)	Tax-free allowances in yes international travel		A 40/82 n.p.a. Judgment 14. 2. 1984 Case 325/82	A 248/87 n.p.a. reference Case 60/88	yes	yes	yes	yes	yes	A 96/86 n.p.a. reference Case 367/88	yes	yes	yes
			A 320/85 n.p.a. r.o. (Article 171)	A 329/87 n.p.a. reference Case 208/88						A 247/87 n.p.a. reference Case 158/88			
72/464 (1. 7. 1973)	Taxes on manufactured tobacco	yes	yes	yes	A 275/87 n.p.a. r.o.	A 271/85 n.p.a. Judgment 13. 7. 1988 Case 169/87	yes	yes	yes	yes	yes	yes	A 491/87 n.p.a. r.o.

Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
77/388 (1. 1. 1978)	Sixth VAT Directive	yes	A 341/86 n.p.a. reference Case 97/88	yes	A 408/87 n.p.a. r.o.	A 76/85 n.p.a. Judgment 21. 9. 1988 Case 50/87	A 203/81 n.p.a. Judgment 21. 6. 1988 Case 416/85		A 262/81 n.p.a. Judgment 29. 6. 1988 Case 3/86	A 202/81 n.p.a. Judgment 21. 6. 1988 Case 415/85	yes	A 153/83 n.p.a. Judgment 26. 3. 1987 Case 235/85	
						A 35/86 n.p.a. reference Case 105/88 r.o.			A 188/84 n.p.a. Judgment 21. 6. 1988 Case 257/85	A 97/88 n.p.a. r.o.		A 337/88 n.p.a. 169 letter (Article 171)	
						A 348/88 n.p.a. r.o.			A 209/85 n.p.a. Judgment 24. 5. 1988 Case 122/87				
									A 58/85 n.p.a. reference Case 203/87				
83/181 (1. 7. 1984)	Importation of goods	yes	yes	yes		yes	yes	yes	A 422/84 n.m.n. Judgment 24. 11. 1987 Case 125/86	yes	yes	yes	
									A 446/88 n.m.n. 169 letter (Article 171)				



Directive	Subject	B	D	DK	E	F	UK	EL	I	IRL	L	NL	P
83/182 (1. 1. 1984)	Temporary imports	yes	yes	A 127/86 n.p.a. r.o.		yes	yes	yes	yes	yes	yes	yes	
83/183 (1. 1. 1984)	Permanent imports	yes	yes	yes	A 402/87 n.p.a. r.o.	yes	yes	A 359/87 n.p.a. r.o.	A 421/84 n.m.n. Judgment 24. 11. 1987 Case 124/86  A 445/88 n.m.n. 169 letter (Article 171)	yes	yes	yes	
84/386 (1. 1. 1985)	Movable tangible property	yes	yes	yes	yes	yes	yes	yes	yes				A 37/86 n.m.n. reference Case 353/87
85/346 (1. 10. 1985)	Permanent imports	yes	yes	yes		yes	yes	yes	yes	yes	yes	yes	
86/247 (1. 1. 1987)	21st VAT Directive	yes	yes	yes	yes	yes	yes		yes	yes	yes	yes	
86/560 (1. 1. 1988)	VAT — refund to taxable persons not established in the Community	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	A 443/88 n.m.n. 169 letter



## APPENDIX

## The attitude of national supreme courts to Community law

## SUMMARY

The effectiveness of Community law depends to a great extent on national courts. The reason for this is that (subject to reference to the Court of Justice of preliminary questions on interpretation or validity) the application of Community law falls within the jurisdiction of national courts in all cases where the Community is not a party. Cases where the Community is a party are reserved for the Court of Justice.

This report examines the manner in which the supreme courts of the Member States, which have the last word in cases and whose judgments provide guidance for the lower courts, have carried out their task of ensuring that Community law is observed.

The report examines, State by State:

- 1) the solutions given by the supreme courts to the problems arising in cases of conflict between Community law and the national constitutions;
- 2) the implementation by such courts of three essential principles of Community law: primacy over subsequent national law, direct effect, particularly of certain directives, and unity of decisions (obligation to refer to the Court of Justice questions on interpretation of the provisions of Community law to be applied — unless the provision is clear beyond dispute or has already been interpreted by the Court — and the obligation to comply with the Court's ruling).

Examination of the situation shows that, despite the difficulty found at first in accepting the limitations of sovereignty imposed on the national legislature and national courts, the national courts have surmounted the initial difficulties and collaborate effectively in the implementation of Community law. There are however still some exceptions: the position of the French Conseil d'Etat, which considers that it cannot give primacy to Community law over subsequent national law, the reluctance of several courts to recognize the direct effect of directives, the abuse of the 'acte clair' theory and the failure to apply certain judgments of the Court of Justice.

## I. Introduction

1. The effectiveness of Community law depends to a very great extent on the work of national courts: its application falls within their jurisdiction in all cases where the Treaties have not conferred jurisdiction on the Court of Justice, which means practically all those in which the Community is not a party — in other words all litigation between individuals, and between individuals and a Member State. In the administration of justice, just as in the legislative and administrative spheres, national authorities are required to cooperate in implementing the action taken by the Community institutions. This cooperation, mentioned particularly in Article 5 of the EEC Treaty, is essential for the very existence of the Community.

A particularly important role is played by the supreme courts of the Member States, since their judgments not only amount to a final decision of the cases before them but also — by reason of their authority — provide guidance for the future decisions of the lower courts. This is why Articles 177 of the EEC Treaty and 150 of the Euratom Treaty, which authorize any national court to refer to the Court of Justice any question of interpretation or validity of Community law where a decision on that question is necessary to enable the court to give judgment, make this an obligation for those national courts 'against whose decisions there is no judicial remedy under national law ...'.

In response to a request by the Legal Service (COM(87) Min 856 of 7 January 1987), this report examines the manner in which the supreme courts have carried out their task of ensuring that Community law is observed.

2. The first question to be examined is how certain national courts have resolved the problems posed by the relationship between Community law and the national constitution.

— Were the limitations of powers for the benefit of the Community imposed by the Treaties of Paris and Rome, and by the acts which have amended or supplemented them, possible without a revision of the national constitution?

— Can the application of Community law be called into question if there is a conflict with the fundamental principles of the constitution?

It was certainly legitimate to pose the question of the constitutionality of the original Treaties and their subsequent amendments before the State, by means of its ratification, had assumed the obligations they imposed. Certain national courts were confronted with this question.

On the other hand, once they have been ratified, the Treaties should no longer be open to discussion. It would in any case be unacceptable for a State to remain a member of the Community, benefiting from the advantages implicit in such membership, and yet refuse to accept certain restrictions following from membership. In its judgment in *Costa v. Enel*<sup>(1)</sup> the Court of Justice declared that '... the law stemming from the Treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed...'. The ideal solution from the point of view of Community law would be that its primacy over national law was equally recognized as primacy over the constitution. Such a recognition cannot be found in any judgment of a supreme court, but when the question has been raised before them such courts have been able (apart from the exceptions to be considered) to hold that there was not in fact any conflict between the two legal orders; they have been assisted in reaching this conclusion by a provision which appears in the majority of the constitutions of the Member States providing expressly for the possibility of limiting the powers of the State for the benefit of an international organization.

In the German and Italian systems the examination of the constitutionality of the law ratifying the Treaties did not take place exclusively before the adoption of that law, as it did in France for example, but also after its adoption; normally it has taken place even a long time afterwards, as an incident arising in a particular case. Thus, the question of the constitutionality of the limitations of competence implicit in the original Treaties was formally put to the German and Italian constitutional courts after ratification of the Treaties. But in other Member States also, courts have been able to question the application of certain principles of Community law, such as its primacy over subsequent national law, by means of arguments based on their constitutions.

3. The next question to be examined will be how the supreme courts have applied the essential principles of Community law.

#### (a) *Primacy over national law*

Every Community rule which has direct effect must have that effect

— from its entry into force, despite the prior existence of any incompatible national law, and

— as long as it remains in force, despite the subsequent adoption of any incompatible national law.

National courts have had no hesitation in recognizing the primacy of Community law over pre-existing national laws. Primacy over subsequent laws, however, has given rise to difficulties, particularly in Italy: *Costa v. Enel* judgment of 7 May 1964 (see page 32, note 1). The Court of Justice enunciated the principle of this primacy in its judgment of 15 July 1964 between the same parties (see page 3, note 1). The Italian constitutional court then, in the ICIC judgment of 30 October 1975 (see page 32, note 2), accepted the necessity of according primacy to Community law, over subsequent incompatible national law, but claimed a monopoly of the power to remove this obstacle by a declaration of unconstitutionality, which it would adopt upon request by the court dealing with the main action. The Court of Justice in its *Simmenthal* judgment<sup>(2)</sup> ruled that the only solution compatible with Community law is that the court dealing with the main action should itself disregard the incompatible national law, even if adopted subsequently, 'and it is not necessary for the court to request or await the prior setting aside of such provisions by legislative or other constitutional means'.

#### (b) *Direct effect*

A considerable number of the rules in the Treaties and the acts adopted by the Community institutions have 'direct effect', that is to say they have direct legal effects on interested parties without requiring any intervention by the national legislature, and they create rights and obligations which the national courts must protect.

The Treaties laid down expressly the 'direct applicability' of regulations but the Court of Justice has held that certain provisions of directives have direct effect where they impose clear and unconditional obligations on the States, so that individuals may rely upon them against those States which have not incorporated, or have incorrectly incorporated, them in their legislation. This is a (vertical) direct effect, less extensive than that enjoyed by regulations since the latter may also form the basis of legal actions against other individuals.

National courts may thus be called upon:

— to annul or disregard incompatible national provisions,

<sup>(1)</sup> Case 6/64 (1964) ECR 585.

<sup>(2)</sup> Case 106/77 (1978) ECR 629.

- to the extent that the latter provisions have already been applied, to order the State, or other parties who have benefited from such provisions, either to repay the amounts wrongly received in application of the national provisions or to pay damages.

Whilst there is a substantial body of case law, both Community and national, on the repayment of sums improperly received, and the decisions of supreme courts are in conformity with those of the Court of Justice, relatively little has been said on the subject of damages. In the case of *Russo v. AIMA* <sup>(1)</sup> the Court of Justice ruled that if an individual 'has suffered damage as a result of the intervention of the Member State in violation of Community law it will be for the State, as regards the injured party to take the consequences upon itself in the context of the provisions of national law relating to the liability of the State.'

### (c) *Unity of decisions*

Within the States, unity of decisions is ensured by a supreme court with power to amend or to quash the judgments of the lower courts. In the Community the same objective is sought by the Court of Justice in another way: not by subordination of the national courts but by collaboration with them through the preliminary rulings procedure of Article 177 of the EEC Treaty and Article 150 of the Euratom Treaty.

- (aa) Supreme courts are obliged to refer a question to the Court of Justice if a question of interpretation of Community law or of validity of an act of Community secondary legislation has arisen and its solution is necessary to enable them to give judgment. It is well known that such courts frequently avoid referring a question on interpretation to the Court of Justice by holding that the Community provisions to be applied do not need interpretation because they are clear. In its *Cilfit* judgment <sup>(2)</sup> the Court of Justice took a cautious position on the *acte clair* theory, accepting that there is no obligation to refer a question
- if the provision to be interpreted has already been interpreted by the Court of Justice and the national court intends to apply that interpretation, or
  - if 'the correct application of Community is so obvious as to leave no scope for any reasonable doubt.'

- (bb) A distinction must be drawn between cases where the Community provision to be applied has not yet been interpreted by the Court of Justice and cases where the Court of Justice has already dealt with the point. In the first case the supreme court enjoys a measure of discretion: if it decides to interpret the provision itself, holding it to be clear, and not to refer a question to the Court of Justice, it will be difficult to find fault with this, even if on the first occasion it has the opportunity to do so the Court of Justice gives the provision a different interpretation. In the second case, on the other hand, the supreme court has merely the choice between complying with the interpretation already given by the Court of Justice or referring the question again and hoping to persuade the Court to change its mind. It would be a serious affront to the authority of the Court's decisions to refuse to refer a question to the Court and to give the provision an interpretation different from the one the Court has already given.

- (cc) When the Court gives a preliminary ruling, it is binding on the parties in the case and on the court concerned with the case: not simply the court which referred the question but any court which, for example on appeal, gives a judgment in the same case.

## II. Situation in the member states

### 1. BELGIUM

Recognition of the principles of primacy of Community law and its direct effect was confirmed by the Court of Cassation in its landmark judgment of 27 May 1971 (*Fromagerie Le Ski v. Belgian State*) <sup>(3)</sup>: 'Where a conflict exists between a rule of domestic law and a rule of international law having direct effect in the domestic legal order, the rule laid down by the treaty must prevail and the pre-eminence of that rule arises from the very nature of international treaty law.'

'This is so *a fortiori* where the conflict exists, as in the present case, between a measure of domestic law and a rule of Community law; the Treaties which created Community law established a new legal order for the benefit of which the Member States have limited the exercise of their sovereign powers in the areas fixed by the Treaties ...'

So far, these points have not again been raised before a court.

<sup>(1)</sup> Case 60/75 (1976) ECR 45.

<sup>(2)</sup> Case 283/81 (1982) ECR 3415.

<sup>(3)</sup> Rev. trim. droit européen 1971, p. 494.

Similarly, the use by the Belgian courts of the preliminary rulings procedure has not given rise to any specific problem. It should be mentioned however that in a case before the Conseil d'Etat, in which an infringement of Article 30 of the EEC Treaty was alleged, that court decided that it could resolve the dispute without referring a question for a preliminary ruling (*Mees v. Belgian State*)<sup>(1)</sup>. This attitude has been criticized by academic writers. It is not clear however whether this case was decided purely on its own facts or whether it involved a decision of principle.

## 2. DENMARK

Although there has been no express judicial decision on the matter, the principles of primacy of Community law and its direct effect have not given rise to any particular difficulty of application. Similarly, apart from an isolated case in which the Supreme Court in 1980<sup>(2)</sup> pronounced on the question whether the grounds given for the expulsion of a French national were sufficient without referring a question for preliminary ruling to the Court of Justice, the use by the Danish courts of the preliminary rulings procedure has not given rise to any specific problem.

## 3. GERMANY

1. Article 100 of the constitution or Grundgesetz (Basic Law) provides for the possibility of a review of the constitutionality of any legal rule enacted after the entry into force of the constitution.

The judgment of the Bundesverfassungsgericht (Constitutional Court) of 18 October 1967<sup>(3)</sup> rejected the possibility of such a review of Community regulations since the provisions enacted by the Community — to which Germany had transferred sovereign powers by virtue of Article 24 (1) of the constitution — were not acts of a German public authority. 'The Community ... is ... an inter-State organization within the meaning of Article 24 of the Basic Law, to which the Federal Republic of Germany and the other Member States have transferred certain sovereign powers. A new authority has thus been created, autonomous and independent in relation to the authority of the various Member States; its acts therefore need not be confirmed or ratified by the States and so cannot be annulled by them.'

The Constitutional Court had however left open the question whether Community law was in conformity with the fundamental rights guaranteed by the

constitution. This reservation was made explicit by the Constitutional Court in a judgment of 29 May 1974<sup>(4)</sup>: the protection of fundamental rights was (it held) an essential and irreducible element of the constitution, which could not be limited even by a constitutional law (Article 24). It was true that the Court of Justice also protected fundamental rights; but there was no precise catalogue of fundamental rights drawn up with the participation of a parliament elected by universal suffrage. So long as these conditions remained unchanged the judge might apply to the Constitutional Court, which, if it considered that a fundamental right had been violated, would declare the regulation inapplicable in Germany. (It should be noted that in the case in point the Constitutional Court rejected that contention.)

It was unacceptable that a national constitutional court should subject a Community regulation to review and declare it, if not invalid, at least inapplicable within the country. A Community act can be challenged only before the Court of Justice (Articles 164 *et seq.* EEC Treaty).

The German court thus placed in jeopardy the unity and indivisibility of Community law. However, doubtless in the light of the growing sensitivity to fundamental rights shown by the Court of Justice, the declaration of the three political institutions of the Community in favour of fundamental rights and the election of the European Parliament by universal suffrage, there was a complete change of attitude (judgment of the Federal Constitutional Court of 25 July 1979<sup>(5)</sup> and of the Federal Administrative Court of 1 December 1982<sup>(6)</sup> which found striking confirmation in the judgment of the Federal Constitutional Court of 22 October 1986<sup>(7)</sup>). The latter court then declared that as long as the European Communities, and more particularly the decisions of the Court of Justice, guarantee effective protection for fundamental rights, the Federal Constitutional Court will refuse to rule on the applicability of secondary Community legislation. This judgment is of considerable importance for the effectiveness of Community law in Germany.

2. As a corollary of Article 24 of the Constitution and because of the long standing familiarity of German lawyers with the federal system, the recognition of the primacy of Community law over any subsequent law, and of its direct effect, has been achieved with relative ease. Foreshadowed by the abovementioned judgment of the Federal Constitutional Court of 18 October 1967, the express recognition of the primacy of

<sup>(1)</sup> Journal des Tribunaux, 1987, p. 188

<sup>(2)</sup> UfR, 1980, p. 504.

<sup>(3)</sup> BverfGE, 22, 293; revue de droit européen, No 1/1968, 203.

<sup>(4)</sup> BVerfGE 37, S. 271.

<sup>(5)</sup> Europäische Grundrechte-Zeitschrift, 1979, p. 547.

<sup>(6)</sup> BVerwG 7 C 87.78.

<sup>(7)</sup> Europäische Grundrechte-Zeitschrift, 1987, p. 1

Community law was achieved by the important decision of that Court of 9 June 1971<sup>(1)</sup>. The Court based itself on Article 24 (1) of the Basic Law which, by permitting transfer of sovereign rights to an inter-State organization, enabled Germany to participate in the creation of a Community endowed with an autonomous legal order, whose 'acts must be recognized by the entity which originally was the exclusive holder of the sovereign power.'

The Court also recognized that it was not for it but for the court dealing with the main action, to disregard the subsequent law that was incompatible with Community law: 'the court must examine every rule to be applied to the particular case, above all from the point of view of its validity. In a case of contradiction between one rule and another that is superior, the court is bound not to apply the former rule to the case before it.' This is the only solution which is in full accord with the principles of direct effect and primacy, as the Court of Justice was to declare in the *Simmenthal* case on 9 May 1978.

3. As regards direct effect, reference should be made to the recent decisions (28 August 1984 and 5 June 1986)<sup>(2)</sup> of the Bundesverwaltungsgericht (Federal Administrative Court) given on certain provisions of directives. That Court based their direct effect on the principle of *Treu und Glauben* (good faith). Individuals are thus entitled to defend themselves against behaviour on the part of the Government which would be in contradiction with the obligations imposed on it by a Community directive.

It must be pointed out however, also in connection with the direct effect of directives, that the judgment of another court, the Bundesfinanzhof (Federal Finance Court), of 25 April 1985<sup>(3)</sup> disregarding the preliminary ruling given by the Court of Justice in *Case 70/83 Kloppenburg v. Finanzamt Leer*<sup>(4)</sup> refused to recognize that the provisions of directives can have direct effect. The Commission had initiated infringement proceedings against Germany on this matter (*Case B 117/85*), but was able to terminate the proceedings since the German administration gave instructions enabling all cases still open to be settled in conformity with Community law.

The applicant thereupon made a constitutional complaint based on the violation by the Federal Finance

Court of Article 101 of the Basic Law by failing to comply with the judgment of the Court of Justice, whereupon the Federal Constitutional Court, by a judgment of 8 April 1987, quashed the judgment of the Federal Finance Court of 25 April 1985<sup>(5)</sup>.

4. Article 101 of the Basic Law declares that nobody may be deprived of his lawful judge (*gesetzlicher Richter*).

By its judgment of 22 October 1986<sup>(6)</sup> already mentioned, the Federal Constitutional Court recognized the Court of Justice as a lawful judge within the meaning of Article 101. By doing so it reinforces the effectiveness of the procedure pursuant to Article 177 of the EEC Treaty: a national court which omitted in an arbitrary manner to make use of this procedure, or failed to comply with the ruling of the Court of Justice, would risk having its decision quashed by the Federal Constitutional Court for violation of Article 101 of the Basic Law. This is a striking development in giving concrete shape to the duty of collaboration between the Court of Justice and national courts.

The judgment of the Federal Constitutional Court of 8 April 1987 quashing the judgment of the Federal Finance Court given on 25 April 1985 in the *Kloppenburg* case is a first important application of this principle.

In another judgment, given on 9 November 1987, the Federal Constitutional Court gave further details of typical cases which might constitute a violation of Article 101<sup>(7)</sup>.

Referring to the Court's judgments on the interpretation of Article 177<sup>(8)</sup>, the Federal Constitutional Court regards as a violation of Article 101 of the Basic Law not only cases where a court deliberately disregards the decisions of the Court of Justice, as the Federal Finance Court did in *Kloppenburg*, but also cases where the court in an indefensible manner (in *unvertretbarer Weise*) disregards the obligation to refer a question for a preliminary ruling. In that case the civil courts had to consider the alleged impact of the agricultural regulations governing cereals on the patents held by the applicant. The Federal Constitutional Court ruled that the conditions for holding that Article 101 of the Basic Law had been violated were not satisfied.

#### 4. GREECE

The principle of the primacy of international treaties over national law is expressly laid down by the Greek

<sup>(1)</sup> BVerfG 31, 145.

<sup>(2)</sup> BVerwG 70, p. 41 and *Europarecht* 1986, p. 372 respectively.

<sup>(3)</sup> *Europarecht* 1985, p. 191.

<sup>(4)</sup> (1984) ECR 1075.

<sup>(5)</sup> *Europarecht* 1987, p. 333.

<sup>(6)</sup> BVerfGE 73, 336, 339.

<sup>(7)</sup> BVerfG, *Europarecht* 1988, p. 190.

<sup>(8)</sup> E.g. *Case 283/81 Cilfit* (1982) ECR 3415.

Constitution (Article 28); it is not expressly stated that this applies to the Constitution itself, but no particular difficulties have so far arisen on this point.

The principle of primacy and that of direct effect have been recognized in a particularly explicit manner by the Council of State since 1980 (Opinion 406/80 of the Administrative section). More recently the Council has confirmed this position in several decisions (Nos 1886/1983, 4190/1983 and 815/1984 for the principle of primacy and No 1258/1985 for direct effect).

As regards references for preliminary rulings the situation is more delicate.

There have been only three references for preliminary rulings, of which one is from the Council of State (plenary session, Case 254/86), which has so far been rather reticent towards the preliminary rulings procedure. It has had several occasions when it might have referred a question to the Court but declined to do so, basing itself at least tacitly on the 'acte clair' theory (see Decision of the Council of State No 815/84 on the prohibition on the import of bananas into Greece) or basing its reasoning exclusively on national law in cases where the application of national law would achieve the same result as the application of Community law, which it examined in passing (see Decision No 520/1983) <sup>(1)</sup> or even basing itself entirely on national law, the application of which just happened to attain the same result as Community law, which was not taken into consideration at all (see Decision No 1463/1986, where the question of Community law which was not raised related to Article 40 (3) of the Treaty in the context of the common organization of the olive oil market).

For a time the stumbling point in the relations between the Council of State and the Court of Justice as regards the proper operation of the Article 177 procedure was Greek Law No 1470/1984, Article 1 (5) of which provided:

'The reference of a case to the plenary session (of the Council of State) is ... mandatory when the chamber considers that the Court of Justice of the European Communities should be asked for a preliminary ruling.'

The fourth chamber of the Council of State applied this provision in its decision No 1258/1985 and referred the case to the plenary session, which, having decided that a preliminary ruling should be requested, referred questions to the Court of Justice for the first time (Case 254/86). At the request of the Commission, this provision has been repealed.

<sup>(1)</sup> See also Judgment No 348/1985 of the Supreme Court.

The prior obligation contained in Law No 1470/1984 is not considered by the Commission to be in conformity with the requirements of Article 177 of the EEC Treaty. This situation is the subject of internal infringement proceedings (Case B/85/140).

Furthermore, the special Supreme Court in one case, despite the questions of Community law arising, failed to seek a preliminary ruling and in another case did not even examine the solutions offered by Community law.

#### 5. SPAIN

1. There is a well established tradition among academic writers and the court in favour of the primacy of general international law over domestic law. This is also supported by the combined interpretation of Articles 96.1 and 9.3 of the 1978 Constitution. The same is true of the direct effect of rules of international law.

These principles have already been applied *a fortiori* to Community law.

Thus in an Order dated 24 May 1988 <sup>(2)</sup>, in the context of a case concerning the enforcement of a decision of the Commission requiring payment of ECSC levies by a Spanish firm, the Spanish court ruled, in reliance on the Court's judgment in Case 26/62 *Van Gend en Loos*, that the European Communities involve a new legal order in international law, for the benefit of which the Member States have limited their own sovereignty, and that this legal order is the source of rights and obligations not only for States but also for individuals.

2. No particular difficulty has come to light regarding references for preliminary rulings, a procedure which has already been used in several cases by Spanish courts <sup>(3)</sup>.
3. The existence of a constitutional court with sole power to review the constitutionality of laws (Article 163 of the Constitution) involves the risk that any conflict between Community law and a subsequent national law might be regarded as a question of constitutionality and considered as within the exclusive jurisdiction of that court. It has been seen (see introduction, point 3a) that such a view has been

<sup>(2)</sup> Order of 24 May 1988 of the judge of first instance of Almendralejo (Badajoz).

<sup>(3)</sup> See for example Cases 126/86 (*Zaera v. INSS*) and 170/88 (*Ford España v. Spanish State*).



rejected by the constitutional courts in the other Member States and by the Court of Justice in *Simmenthal* as contrary to the principles of primacy and direct effect. It is to be expected that the orthodox solution will be reached in Spain also. In any case it is useful to inform the Spanish judiciary of these decisions.

## 6. FRANCE

1. The Treaties of Paris and Rome were signed, ratified and published in accordance with the Constitution and cannot, therefore, be challenged in French courts on the ground of unconstitutionality<sup>(1)</sup>. This was affirmed by the Conseil Constitutionnel in two decisions of 30 December 1977<sup>(2)</sup>. With reference to provisions of finance acts applying Community regulations on isoglucose and milk, the Conseil Constitutionnel emphasized that the alleged infringements of parliamentary powers were but the consequence of international commitments made by France which have been absorbed into Article 55 of the Constitution. The Conseil also drew attention to Article 189 of the EEC Treaty and the force which it conferred on Community regulations: the binding force of such rules was not contingent upon action by the Member States.

Invited on two occasions to rule on laws introducing significant changes to the original Treaties — in 1970 the treaty which strengthened the budgetary powers of the European Parliament and the own resources decision<sup>(3)</sup>, and in 1976 the act concerning elections to the European Parliament on the basis of universal suffrage<sup>(4)</sup> — the Conseil Constitutionnel did not adopt an obstructive approach, although the grounds for the second of its decisions did contain reservations that future progress on European integration might give rise to objections on its part on constitutional grounds (national sovereignty).

2. Article 55 of the Constitution states that, once promulgated, treaties or agreements duly ratified or approved have ascendancy over laws, subject in each case to their being applied by the other parties.

This provision, which at first sight confirms the primacy of international law, was the subject of lively controversy. For a long time the French courts have confined themselves to applying this principle to conflicts between a treaty and an earlier law, though in such cases they could have arrived at the same result by arguing that the treaty abrogates the law. They have hesitated, however, to apply the principle to a subsequent law, since they are not prepared to defy the will of the legislative authority. They have, of course, tried to interpret subsequent laws in such a way that the scope of treaties is not restricted; where, in particular, a treaty is more restricted in scope than a domestic law, they have tried to reason as if the latter implicitly did not affect the application of the treaty. But such interpretation was not always possible.

The Cour de Cassation and the Conseil d'Etat have taken divergent views on this difficulty.

The primacy of the Treaty over domestic law, including subsequent laws, was recognized by the Cour de Cassation in *Administration des Contributions v. Ramel* (initial judgment of 22 October 1970)<sup>(5)</sup>. This position was confirmed and explained, on the grounds not only of Article 55 but of the special quality of Community law, in *Vabre* (judgment of 24 May 1975)<sup>(6)</sup> and, on the second ground only, in *Von Kempis* (judgment of 1 December 1975)<sup>(7)</sup>. The Conseil Constitutionnel in the meantime had, by its decision of 15 January 1975<sup>(8)</sup>, made it easier for courts having substantive jurisdiction to resolve conflicts between laws and treaties, by declaring that such conflicts did not constitute cases of unconstitutionality and need not be submitted to the Conseil Constitutionnel. The Cour de Cassation has not changed its thinking subsequently (for a recent example, see its decision of 15 May 1985 in *Leclerc v. Syndicat des Libraires de Loire-Océan*<sup>(9)</sup>).

By contrast, the Conseil d'Etat consistently refused to adopt this line — see *Syndicat Général des Fabricants de Semoule* (judgment of 1 March 1968)<sup>(10)</sup> and *Union Démocratique du Travail and Election des représentants de l'Assemblée des Communautés Européennes* (22 October 1979)<sup>(11)</sup>. As its

(1) The Conseil Constitutionnel was set up under the new Constitution of 4 October 1958. Thus it was not even possible to examine the Treaties for consistency with the French Constitution.

(2) *Journal Officiel de la République Française* (JORF), 31. 12. 1977, p. 6385.

(3) JORF, 21. 6. 1970, and corrigendum of 23. 6. 1970.

(4) JORF, 31. 12. 1976, p. 7651.

(5) *Gazette du Palais*, 1970, 6, No 343.

(6) *Cahiers de Droit Européen*, 1974, pp. 394 and, in particular, 411.

(7) *Bulletin Civil*, III, No 173, p. 282.

(8) JORF, 1. 6. 1976, p. 67.

(9) *Gazette du Palais*, 1985, No 359.

(10) *Recueil Dalloz-Sirey*, 1968, p. 285.

(11) *Actualités Juridiques de Droit Administratif* (AJDA), 1980, p. 40.

chief reason, the Conseil d'État adheres to the traditional domestic-law notion that it is not for it, when hearing a dispute, to decide actions that question the validity of legislation. Despite severe criticism of its reasoning by legal commentators, the Conseil d'État has consistently maintained this line in later decisions, whereby subsequent laws constitute a 'screen' blocking the exercise of judicial review, contrary to the principle of the primacy of Community law<sup>(1)</sup>, once the Court of Justice has ruled that the measures in question constitute infringements<sup>(2)</sup>.

Review by the administrative courts of compliance of national measures with Community law is thus limited to executive measures whether they be adopted by virtue of autonomous regulatory authority (Article 37 of the Constitution) or the regulatory authority to implement laws.

The Conseil d'État, however, has in part modified its position by stressing<sup>(3)</sup> that the law-as-screen theory is of limited application; thus, where a law enacted subsequent to the Treaty is simply a framework law attributing powers to the regulatory authority without laying down guidelines for their exercise, the court may, without ruling on the particular law itself, review an order to see if it is consistent with the Treaty<sup>(4)</sup>.

3. Attention must also be drawn to the Conseil d'État's negative attitude to the direct effect of provisions of directives that place specific, unconditional obligations on Member States. In *Cohn-Bendit* (Judgment of 22 December 1978)<sup>(5)</sup>, the supreme administrative court clearly took an opposite line to Court of Justice decisions by refusing to recognize the direct effect of Article 6 of the Council Directive of 25 February 1964. Relying solely on the

wording of Article 189 of the EEC Treaty, it concluded that the national authorities were alone competent to decide in what form directives were to be implemented and to determine themselves, subject to review by the national courts, the appropriate means of giving them effect in domestic law; consequently, whatever provisions they may contain concerning Member States, directives cannot be invoked by nationals of those States in support of an appeal against an individual administrative act.

By contrast, with regard to regulatory measures, the judgment in *Cohn-Bendit* admitted that the legality of such measures adopted by the French Government in order to comply with Community directives was open to challenge.

The Conseil d'État applied this principle in its judgment of 28 September<sup>(6)</sup> and 7 December 1984<sup>(7)</sup> which annulled an Article of a decree of 1 October 1980 and four ministerial orders of 20 April 1982, deemed to contradict the objectives of, respectively, the Council Directives of 18 July 1977 and 2 April 1979.

It was stated in the introduction that there have been few rulings by national courts or one of the consequences of the direct effect of Community law: the award of damages for injury arising from a national measure which infringes Community law and occurring before such a measure was abolished. This rarity is probably explained in part by the limitations placed by most Member States' legal systems on the award of damages against the State, especially where injury is attributable to an act of the legislative authority.

In French law, compensation for injury as a result of a regulatory measure is widely recognized, provided that it can be regarded as vitiated by illegality and fault.

The French administrative courts have had occasion to award damages for breach of Community rules. In *Alivar v. Ministère du Commerce Extérieur*, the Paris Administrative Court ordered the Government to pay FF 1 961 250 to an Italian firm adversely

<sup>(1)</sup> AJDA, 1986, p. 174.

<sup>(2)</sup> See *International Sales* (Judgment of 13 December 1985), REcueil Lebon, p. 377, after Case 90/82 *Commission v. France* (fixing of retail selling prices of manufactured tobacco) (1983) ECR 2011.

<sup>(3)</sup> Studies and documents by the Conseil d'État, June 1987, pp. 128 and 129.

<sup>(4)</sup> Conseil d'État, 19 November 1986, *Smanor*, AJDA, 1986, pp. 714 and 681.

<sup>(5)</sup> Dalloz, 1979, J 155. This position is now consistently adopted by the Conseil d'État: for the latest instance see *Société de Courtage d'Assurance Renouf* (Judgment of 10 June 1986) and *Cabinet Mantout* (16 June 1986).

<sup>(6)</sup> *Conférence Nationale des Sociétés de Protection des Animaux*, Revue Trimestrielle de Droit Européen, 1984, p. 759.

<sup>(7)</sup> *Fédération Française des Sociétés de Protection de la Nature*, Revue Trimestrielle de Droit Européen, 1985, p. 187.

affected by a ban on the export of potatoes, resulting from the procedure requiring a declaration to be made prior to actual export, which procedure the Court of Justice had meanwhile declared to be in breach of Article 34 of the EEC Treaty<sup>(1)</sup>. The Ministry appealed, and the Conseil d'État found that the measure had been taken for reasons of general interest based on the depressed state of the French potato market, and that consequently the Government was bound to compensate the company only if strict liability could be established and it could be shown that an extraordinary, specific loss had been incurred as a result of action by the French authorities.

It recognized, however, that such loss had been confirmed the amount of damages awarded by the court of first instance.

It is noteworthy, nevertheless, that in a case of this kind, the French administrative court did not apply the solutions generally valid for liability as a result of administrative acts, but the more restrictive rules concerning liability as a result of laws or international treaties; this enabled it to avoid ruling on the legality of the measure in question<sup>(2)</sup>.

- 4.1. As regards references to the Court of Justice for a preliminary ruling, the Cour de Cassation is careful to follow the letter and the spirit of Article 177 of the EEC Treaty which seeks to ensure uniformity of decisions in the Community.

Even if its criminal division seems somewhat reluctant to refer questions for a preliminary ruling — see *Burdet and Others*<sup>(3)</sup> and *Poupon* (judgments of 18 November 1986), and *Malagutti* (judgment of 8 January 1985)<sup>(4)</sup>,<sup>(5)</sup> — this supreme court, as a general rule, has readily resorted to the procedure provided for in Article 177 of the EEC Treaty and has always acknowledged the full binding force of the decisions of the Court of Justice. Recent examples include *Direction Générale des Impôts v.*

*Humblot* (judgment of 16 July 1983)<sup>(6)</sup> and *Administration des Douanes v. Roquette* (judgment of 10 December 1985)<sup>(7)</sup>.

- 4.2. The Conseil d'État, on the other hand, based itself on a particularly broad conception of the 'acte clair' so as not to invoke Article 177 of the EEC Treaty — on the first occasion in *Société de Pétroles Shell-Berre* (judgment of 19 June 1964)<sup>(8)</sup>, which was concerned with a particularly difficult provision of the EEC Treaty, namely Article 37. Commentators expressed reservations<sup>(9)</sup>. Since that judgment, the Conseil d'État has several times affirmed provisions to be clear, which are sufficiently controversial for the parties and the government advocate to press for interpretation<sup>(10)</sup>. The broad conception of 'acte clair' is not, however, limited solely to the French supreme administrative court.

A more serious breach of the principle of the uniformity of judicial decisions is that to be found in *Cobn-Bendit* and *Smanor* (judgments of 22 September and 19 November 1986 respectively), in which the Conseil d'État adopted solutions contrary to the Court's decisions, without first trying to secure modification of the line taken by the Court by asking it again to interpret the particular question.

Lastly, on other occasions, the Conseil d'État has not complied with the Court of Justice's judgment in the same case. In *ONIC v. Huileries de Pont-à-Mousson* (judgment of 9 May 1980)<sup>(11)</sup> and *ONIC v. Maiserie de la Beauce* (judgment of 26 July 1985)<sup>(12)</sup> the Conseil d'État refused to give effect to judgments of the Court, which, faced with a request for a preliminary ruling, had limited the consequences of the invalidity of Community regulations.

Although there are some slight signs of change, the Conseil d'État's attitude remains at variance with the decisions of the Court of Justice on several important points. The Commission, for its part, has

<sup>(1)</sup> Case 68/76 *Commission v. France* (1977), ECR 515.

<sup>(2)</sup> See *Droit Social* (DS), 1986, p. 24.

<sup>(3)</sup> *Bulletin Criminel*, 1986, No 9, p. 852.

<sup>(4)</sup> DS, 1985, p. 586.

<sup>(5)</sup> A few days after this judgment was delivered, the Dijon *tribunal de police* referred a similar problem to the Court of Justice for a preliminary ruling (Case 54/85 *M. P. v. Mirepoix*).

<sup>(6)</sup> *Bulletin*, 1985, No 213.

<sup>(7)</sup> DS, 1986, p. 250. This decision is particularly remarkable since the question referred to the Court concerned the consequences of the invalidity of Community regulations, as declared by the Court of Justice in its judgment of 15 October 1980 (preliminary ruling). The Cour de Cassation unreservedly complied with the Court's decision, unlike the Conseil d'État in a similar case (see below).

<sup>(8)</sup> *Revue du Droit Public et de la Science Politique*, 1964, p. 1018.

<sup>(9)</sup> See the critical analysis of the 'obscure clarity of Article 37 of the EEC Treaty' by M. le Doyen Colliard (*Recueil Dalloz*, 1964, report 263).

<sup>(10)</sup> See recent decisions by the Conseil d'État: *Consorts Genty* (7 October 1987) and *Griesmar* (23 December 1987).

<sup>(11)</sup> AJDA, 1980, p. 535.

<sup>(12)</sup> AJDA, 1985, p. 615.

approached the French Government with a view to averting at least the consequences of this inconsistency and, while recognizing the principle of separation of powers, has insisted that, at the very least, the government advocate in cases before the Conseil d'État should defend a position which is substantively consistent with the decisions of the Court of Justice.

## 7. IRELAND

1. Unlike most other European constitutions the Irish one does not provide for any limitation of sovereign powers to allow precedence to those of an international organization. In order to enable Ireland to accede to the Community, therefore, it was decided that a constitutional amendment would be necessary. A referendum held on 10 May 1972 approved the Third Amendment of the Constitution Act 1972, which inserted the following provision:

'No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State necessitated by the obligations of membership of the Communities, or prevents laws enacted, acts done or measures adopted by the Communities, or institutions thereof, from having the force of law in the State.'

When the Irish legislature, the Oireachtas, authorized ratification of the Single European Act, an ordinary citizen, Mr Crotty, succeeded in obtaining an interlocutory injunction preventing the deposit of the instrument of ratification; his main action was dismissed by the High Court, but on appeal the Supreme Court held that Title III of the Single Act, which committed the Member States to working in political cooperation in external relations, was incompatible with the Constitution. The obligation to consult and to try to reach a common position in this new field, outside the scope of the original Treaties, was held to be a limitation of sovereignty which was not covered by the 1972 amendment.

Ratification of the other provisions of the Single Act, however, was adjudged compatible with the Constitution.

On this latter point the Court had to consider the constitutionality of the European Communities Act 1986, the Act which set out to transpose into national law Article 3 (1), Title II, Article 31, Article 32 and parts of Article 33 and 34 of the Single Act. The Court concluded that there was no constitutional impediment to that legislation, as the 1972 amendment to the Constitution authorized the State

not only to accede to the Communities as they were in 1973 but also to accept amendments to the Treaties provided they did not substantially alter the scope or the objectives of the Communities.

But in view of the Supreme Court's ruling on Title III, a referendum had to be held to amend the Constitution to allow the Irish Government to ratify the Single Act. The referendum took place in May 1987; the amendment passed, enabling the Government to deposit the instrument of ratification on 24 June 1987.

2. The principles of *primacy* and *direct effect* have not been called into question since accession.
3. The use made\*by the Irish courts of the reference for a preliminary ruling has not given rise to any specific problem. The Supreme Court's 1983 judgment in *Campus Oil* is worth mentioning; the Supreme Court there held that a High Court order setting in motion the procedure laid down in Article 177 of the EEC Treaty was not open to appeal. This judgment is fully in accordance with the purpose of the procedure.

## 8. ITALY

1. In Italy, as in Germany, a law may be referred for consideration of its constitutionality even though a long time may have passed since it was adopted. This includes a law ratifying a Treaty. The Constitutional Court's Judgments No 98 of 27 December 1965 *Acciaierie S. Michele* <sup>(1)</sup> and No 183 of 27 December 1973 *Frontini* <sup>(2)</sup> were delivered on references from courts which had expressed doubts as to the constitutionality of provisions of the ECSC and EEC Treaties which conferred judicial power on the Court of Justice and legislative power on the Council and the Commission, and limited the powers of the Italian judiciary and parliament. The Constitutional Court held that the Treaties were compatible with the constitution, on two grounds:

— Article 11 of the Constitution states that Italy 'shall accept, on equal terms with the other States, the limitations of sovereignty necessary to a legal order which ensures peace and justice between the nations',

<sup>(1)</sup> *Foro it.* 1966, I, 8.

<sup>(2)</sup> *Foro it.* 1974, I, 314 and *Journal des Tribunaux* 1974, 409.

- the way in which the Community is structured and has organized the exercise of its own powers is part of the Community legal order, which is independent of and separate from the national legal order and thus falls outside the constitutional law of the State, including the rules which make the exercise of judicial and legislative powers a matter for the State only.

In *Acciaierie S. Michele* the Court left open the question whether the protection of certain fundamental values underlying the Constitution, and especially fundamental rights, might not restrict the scope of the transfer of sovereign rights to international organizations provided for in Article 11. In its later *Frontini* Judgment the Court said that there was indeed such a restriction, but nevertheless held:

- (a) that the Community legal order included a system of legal protection under which the Court of Justice has unrestricted judicial authority;
- (b) the sovereignty transferred to the Community in Rome Treaty, which was concluded by countries whose legal orders were all based on the rule of law and guaranteed the fundamental freedoms of the citizens, could not in any way whatsoever confer on the EEC institutions an inadmissible power of infringe fundamental principles or the inalienable rights of human beings;
- (c) that if ever Article 189 were to be given so aberrant an interpretation, the Constitutional Court's power of judicial review would remain, but would be exercised over the continuing compatibility of the Treaty with those fundamental principles; the Court could not review individual regulations.

This approach has been confirmed in Judgment No 170 of 8 June 1984 (see below), which rules out any difficulty as long as the Community legal order is based on respect for fundamental rights; it is comparable to the view prevailing in Germany since the Federal Constitutional Court's judgment of 22 October 1986.

2. In Italy the courts at first had great difficulty in accepting that Community law *took precedence* over subsequently enacted national law. After an initial hostile judgment, No 14 of 7 March 1964 *Costa v. Enel*<sup>(1)</sup> the Constitutional Court embarked on a

long march towards acceptance of the principle. Although it did not resolve all the problems, the judgment in *Frontini* (see point 1 above) laid the foundations for this recognition. It was followed by the same Constitutional Court's Judgment No 232 of 30 October 1975 *ICIC*<sup>(2)</sup>. The Court there held that a law incompatible with Community law was contrary to Article 11 of the Constitution, already referred to; such a law therefore could and must be held unconstitutional; but this also meant that the Court trying the case did not itself have power to set aside the national law in question, but had to refer the matter to the Constitutional Court for a ruling on its constitutionality.

This arrangement was cumbersome and, as the Court of Justice pointed out in Case 106/77 *Simmenthal*, ran counter to the principles of direct effect and primacy of Community law; it was finally abandoned in Judgment No 170 of 8 June 1984 *Granital*<sup>(3)</sup> which represents the last stage in the development of the case-law on this point. Basing it itself on the argument that the Community legal order was independent of and separate from the domestic legal order, the Court said it would not review the compatibility of a national law and a Community regulation. Domestic law could not encroach on the sphere governed by Community law; the Community regulation had always to be applied, whether its adoption followed or preceded that of an ordinary law which was incompatible with it; in the event of difficulty the national courts could avail themselves of the preliminary ruling procedure.

This shift in the Constitutional Court's attitude has been confirmed in later judgments.

The precedents set in more recent judgments of the Constitutional Court have been followed in a large number of judgments by the Corte di Cassazione, which has made constant use of its power to hold a national law incompatible with Community law and consequently to declare it inapplicable to the case before it<sup>(4)</sup>.

<sup>(1)</sup> *Foro it.* 1964, I, 465.

<sup>(2)</sup> *Foro it.* 1975, I, 2661 et *Revue trim. droit européen* 1976, 271.

<sup>(3)</sup> *Foro it.* 1984, I, 2063.

<sup>(4)</sup> See for example the judgments of the Corte di Cassazione settling in favour of Community law a conflict between Community law and Decree-Law No 688/1982: judgments No 5129, 18 October 1985; No 5235, 24 October 1985; No 2144, 26 March 1986; No 2145, same date; No 2339, 4 April 1986; No 2415, 7 June 1986; No 2425, same date; No 2717, 16 April 1986; No 3061, 7 May 1986; No 3339, 20 May 1986; No 4063, 18 June 1986; and No 4761, 25 July 1986.

3. There is still a great deal of hesitation regarding the direct effect of directives, notably on the part of the Corte di Cassazione (judgments of 21 July and 7 October 1981) <sup>(1)</sup> and of the Consiglio di Stato (judgment 6 May 1980) <sup>(2)</sup>.
4. As regards operation between the national courts and the Court of Justice, there appears to be some reluctance on the part of the Consiglio di Stato to make use of the preliminary ruling procedure.

The Constitutional Court on the other hand has reinforced the authority of Court of Justice precedent by holding, in Judgment No 113 of 23 April 1985 *BECA* <sup>(3)</sup> that the obligation on a court to give directly applicable Community law precedence over national law, even where the national law was adopted more recently, which was outlined in the Constitutional Court's judgment of 8 June 1984 *Granital* (see point 2 above), applied in the same way where the national law was contrary to a principle developed by the Court of Justice in preliminary rulings interpreting Community law.

#### 9. LUXEMBOURG

On the question of *primacy* the Luxembourg courts follow a precedent established in a judgment delivered by the Cour Supérieure de Justice on 14 July 1954 <sup>(4)</sup>, which accepted that a Treaty ranked higher than domestic law and that in the event of conflict between an international treaty and a more recent national law, international law had to prevail over domestic law (for Community law see Conseil d'État, Judgment of 21 November 1984 *Bellion v. Ministère de la fonction publique* <sup>(5)</sup>). The direct effect of Community law has been expressly accepted by the Luxembourg courts (Conseil d'État, Judgment of 21 November 1984 already referred to, and Cour d'Appel, Judgment of 2 May 1985, *BNP v. Stoffel* <sup>(6)</sup>). There has been no specific problem in the use made by Luxembourg courts of the *preliminary ruling* procedure.

<sup>(1)</sup> Judgments No 4686 and 5266. The Corte di Cassazione there held that directives bound only states, and had no direct effect within the domestic legal order. Any divergence between the national provision and the directive was a matter of the international responsibility of the state.

<sup>(2)</sup> Judgment No 504. The Consiglio di Stato said that jurisdiction in disputes concerning the obligation of a Member State to adapt its legislation to EEC Directives lay with the international courts (sic).

<sup>(3)</sup> *Foro it.* 1985, I, 1600.

<sup>(4)</sup> *Pas. Lux.* XVI, p. 150.

<sup>(5)</sup> *Pas. Lux.* XXVI, p. 174.

<sup>(6)</sup> *Pas. Lux.* XXVI, 273.

#### 10. NETHERLANDS

1. The principle of the *primacy* of international treaties and of decisions of international organizations over national law is expressly laid down in Article 94 of the Constitution (last revised 1983). Article 94 states that national law is not to apply if it is incompatible with provisions of a self executing nature in treaties or decisions of international organizations. Under Article 93 of the Constitution such provisions have binding force only after they have been published. For Community rules, publication in the Official Journal of the Communities is sufficient <sup>(7)</sup>.

The superior courts in the Netherlands have accepted the primacy of Community law on the basis either of its nature <sup>(8)</sup> or of Article 94 <sup>(9)</sup>. The primacy of Community law and the *direct effect* of secondary Community legislation, including directives, have not given rise to any great difficulty before the Dutch courts <sup>(10)</sup>.

2. The use made by the Dutch courts of the reference for a *preliminary ruling* has not raised any major problem from a European point of view. The Supreme Court (Hoge Raad) has applied the *acte clair* theory only very exceptionally <sup>(11)</sup>. It was a question referred by that Court which led to the first application of the *acte éclairé* theory <sup>(12)</sup>, according to which a national court is not bound to refer a question to the Court of Justice if the Court of Justice has already had occasion to rule on the point.

#### 11. PORTUGAL

Theoretically there is a danger in the fact that the Portuguese Constitution of 1976, revised in 1982, allows

<sup>(7)</sup> Article 7 of the Law of 22 June 1961, Stb. 207.

<sup>(8)</sup> Cass. crim. 18. 5. 1962 (Bosch) N.J. 1965, nr. 115; direct effect of Articles 85 and 86 of the EEC Treaty.

<sup>(9)</sup> Centrale Raad van Beroep, 19 November 1963, and Tariefcommissie, 21 December 1965, cited by G. Bebr, 'How supreme is Community Law?' in *Common Market Law Review* 1974, 3.

<sup>(10)</sup> The President of the Hague Gerechtshof, or Regional Court of Appeal, even ordered the national legislature to implement the Third Directive on social security (equal treatment of men and women) because it contained provisions having direct effect and the deadline for implementation had passed. This judgment was annulled on the ground that it disregarded the separation of powers: N.J. 1985, 262-263.

<sup>(11)</sup> H.R. 20 February 1985, BNB 1985/128. See further M.R. Mok, 'Experience of the Netherlands Courts in applying the preliminary proceedings of Article 177 EEC,' in *Papers of the Asser Institute Colloquium on European Law*, 15th session 1985.

<sup>(12)</sup> Cases 28, 29 and 30/62 *Da Costa & Schaaake* (1963) ECR 31.

*a posteriori* review of the constitutionality of provisions of internal treaties or conventions (Article 280). But it is reasonable to suppose that if any objection of unconstitutionality were to be raised before the Constitutional Court in respect of Community law the Court would dismiss it, as the Italian and German constitutional courts have done.

The Portuguese Constitution explicitly states that international law is to have direct effect (Article 8). And the courts have generally accepted the principle of the primacy of international law (cf. e.g. the Constitutional Court's judgment of 19 June 1984 in Case 107/83<sup>(1)</sup>).

The only judgment on a question of Community law so far delivered by a Portuguese court (the Coimbra Court of Appeal, 13 July 1986) confirmed the principles of *primacy* and *direct effect* without qualification<sup>(2)</sup>.

It would be premature to comment on the use made of the *preliminary ruling* procedure at this stage; no reference for a preliminary ruling has yet been made.

## 12. UNITED KINGDOM

1. The UK constitutional practice with regard to treaties is based on a rigorous separation between the powers of the executive and of the legislature. The conclusion of an international treaty is within the exclusive competence of the Crown, but without Parliamentary involvement a treaty has effect in international law only. To give effect to it in domestic law a specific Act of Parliament is required. In order to accede to the Communities, therefore, the Accession Treaty had first to be ratified by the Queen, and Parliament had then to pass the European Communities Act, which made the Treaties part of the domestic legal system. The Act sought to overcome difficulties in the implementation of Community law which derived from the dualist tradition and the principle that a parliament cannot bind a future one. Section 2 (1) of the European Communities Act affirms the principle of direct applicability. The principle of primacy is given effect in pragmatic terms by Section 2 (4), which obliges the authorities to construe and apply national legislation, even later legislation, in such a way that Community law has effect. Section 3 (1), which stipulates that questions of Community law must be determined in accordance with the judgments of the

Court of Justice, not only affirms the principle of the uniformity of judicial interpretation of Community law but also strengthens direct applicability and primacy, as principles laid down in the judgments of the Court. The only weak point in the structure is that the European Communities Act could itself be repealed or amended by Parliament.

In *Blackburn v. Attorney General* (1971)<sup>(3)</sup> and *McWhirter v. Attorney General* (1972)<sup>(4)</sup> the Court of Appeal dismissed two actions brought in respect of the accession procedure, the first one based on the partial but irreversible abandonment of sovereignty and the second on an alleged incompatibility with the 1688 Bill of Rights. In *Gibson v. Lord Advocate* (1975)<sup>(5)</sup> the Scottish Court of Session dismissed an action against the European Communities Act based on the intention that it was contrary to the Act of Union of 1707.

2. The *primacy* of Community law has been upheld by UK courts on the basis of the European Communities Act. The first such judgment was that of the Chancery Division of the High Court in *Aero Zipp Fasteners v. YKK Fasteners*, (1973)<sup>(6)</sup>. In the judgment of the Court of Appeal in *Shields v. Coombes* (1978)<sup>(7)</sup>, Lord Denning referred not to Section 2 (4) but rather to Section 3 (1), which obliges the courts to act in accordance with the principles laid down by the Court of Justice; these include direct applicability and primacy. In the judgment of the Court of Appeal in *Macarthys v. Smith* (1979)<sup>(8)</sup> Lord Denning reaffirmed the principle, but remarked *obiter* that if one day Parliament were deliberately to pass legislation with the intention of repudiating the Treaty, or any provision of it, and to say so in explicit terms, he would have taken the view that the duty of UK courts was to follow that legislation. This qualification appears primarily to be a mark of respect for the traditional principle of the sovereignty of Parliament. In any event the situation described has never yet arisen.

The House of Lords applied the EEC Treaty in a case of apparent conflict with a subsequent Act of Parliament in *Garland v. British Rail Engineering* (1982)<sup>(9)</sup>.

<sup>(1)</sup> D.R. II, 29 December 1984, p. 11.681.

<sup>(2)</sup> It is interesting to note that the Community legislation in question was a directive which had not yet been transposed into Portuguese law.

<sup>(3)</sup> *Common Market Law Reports* 1971, 784.

<sup>(4)</sup> *Ibid.* 1972, 882.

<sup>(5)</sup> *Ibid.* 1975, 563.

<sup>(6)</sup> *Ibid.* 1973, 819.

<sup>(7)</sup> (1978) 1 WLR 1408.

<sup>(8)</sup> (1979) 3 All ER 325; Case 129/79 (1980) ECR 1275; *The Times*, 18 April 1980.

<sup>(9)</sup> (1982) 2 WLR 918.

But the thinking in that decision was not in terms of primacy. Lord Diplock simply pointed out that legislation was as far as possible to be interpreted in accordance with international obligations (a principle which applied *a fortiori* in the case of obligations imposed by the Community Treaties referred to in Section 2 of the European Communities Act). And the disputed provision could be interpreted in accordance with the Treaty without unduly straining the ordinary meaning of the language used.

3. UK courts have not generally had any difficulty with the principle of *direct effect*.

But although they do accept the principle, the courts have not awarded damages for loss caused by an act of general scope which was contrary to the Treaties. In *Bourgoin v. Ministry of Agriculture, Fisheries and Food* (1985) <sup>(1)</sup> the Court of Appeal dismissed such a claim submitted by producers and importers of French turkeys who had suffered loss as a result of an import ban imposed by the Ministry of Agriculture which was stated to be necessary on health grounds but which was in reality contrary to Article 30 of the EEC Treaty. The Court said that domestic law did not attribute any liability to the Government in such circumstances, and observed that the Court of Justice itself limited the liability of the Community institutions. The applicants appealed to the House of Lords, but accepted compensation of about £ 3 500 000 in an out-of-court settlement.

4. Initially the UK courts were slow to make use of the reference for a *preliminary ruling*, but they have since come to use it very frequently, particularly in order to establish whether some Community provision has direct effect in cases where national law may be incompatible with it: they seek to rely on the Court's authority before declining to apply an act of Parliament.

As far as compliance with judgments of the Court of Justice is concerned there is one case of apparent incompatibility (*Santillo v. Home Secretary*, 1980) <sup>(2)</sup> but it seems that what happened here was rather that the national court was taking a position within a margin of discretion allowed it by the judgment of the Court of Justice.

### III. Conclusions

Without the loyal cooperation of the national courts, the Treaties and acts of the Community institutions would not have been satisfactorily applied. But if there were to be such cooperation on the part of an institution of the State as independent as the judiciary the judges had to understand the significance and purpose of the new Community reality and give their own assent to the changes it imposed.

The process was not an easy one. The Member States had never previously accepted such far-reaching limitations on their sovereignty. In countries with a dualist tradition such as Germany, Italy or the UK, but in others too, it was not easy at the outset to accept that Community law was to have direct effect and to prevail over national law. Supposedly supreme courts were everywhere unhappy at the obligation to seek an interpretation of the law from another court outside their own legal order which would then be binding on them.

This explains why there was some resistance: the German Constitutional Court claimed the authority to declare inapplicable Community acts which infringed fundamental rights; the Italian Constitutional Court initially refused to accept the primacy of Community law, and the French Conseil d'Etat still does so; the *acte clair* theory has been abused; there has been a reluctance to accept the direct effect of directives; the French Conseil d'Etat and the German Bundesfinanzhof have refused to recognize the binding character of some decisions of the Court of Justice.

Today most of these heterodox positions have been abandoned. Some less fundamental breaches persist such as the abuse of the *acte clair* theory; others, such as the Bundesfinanzhof's approach, are disappearing; and lastly there is the well-known refusal of the French Conseil d'Etat to allow Community law to prevail over more recent domestic law and to accept certain Court judgments.

The overall picture is thus a very positive one, particularly if the present situation is compared with the initial hesitant approaches; in retrospect one can see just how much progress has been made.

But worrying conflicts persist. This raises the question of the remedies available to the Commission.

In the positions it defends in relation to the Member States, even pursuant to Article 169 of the EEC Treaty,

<sup>(1)</sup> (1985) 3 WLR 1027.

<sup>(2)</sup> *Common Market Law Reports*, 7 October 1980, 212.



the Commission avoids any challenge to the independence of the judiciary. It confines itself to demanding that in court proceedings counsel for the government should defend positions in line with Community law, and that if the judgments of national courts depart from Community law governments should take all appropriate measures to eliminate any practical effects incompatible with Community law.

The Commission also encourages judicial interpretation in the Member States to develop in the right direction by

promoting studies, articles, lectures, seminars and debates aimed at informing and convincing judicial circles. Since 1986 the European Parliament has had significant judgments of national courts of final instance brought to its attention in this review of the subject in the annual monitoring report.

These efforts to improve the situation must be pursued unremittingly, particularly as the single market approaches; it is vital that Community rules be enforced in the national courts.

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