Information on the Court of Justice of the European Communities

1977 – I

INFORMATION ON THE COURT OF JUSTICE

OF THE

EUROPEAN COMMUNITIES

No. I

1977

Information Office, Court of Justice of the European Communities,
B.P. 1406, Luxembourg.

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13, Bogaz Sokak
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INFORMATION ON THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

Complete list of publications giving information on the Court:

I - Information on current cases (for general use)

1. Hearings of the Court

The calendar of public hearings is drawn up each week. It is sometimes necessary to alter it subsequently; it is therefore only a guide. This calendar may be obtained free of charge on request from the Court Registry. In French.

2. Judgments and opinions of Advocates-General

Photocopies of these documents are sent to the parties and may be obtained on request by other interested persons, after they have been read and distributed at the public hearing. Free of charge. Requests for judgments should be made to the Registry. Opinions of the Advocates-General may be obtained from the Press and Information Branch. As from 1972 the London Times carries articles under the heading "European Law Reports" covering the more important cases in which the Court has given judgment.

II - Technical information and documentation

A - Publications of the Court of Justice of the European Communities

1. Reports of Cases before the Court

The Reports of Cases before the Court are the only authentic source for citations of judgments of the Court of Justice.

The volumes for the years 1954 to 1972 are published in Dutch, French, German and Italian; the volumes for 1973 onwards are also published in English and in Danish. An English edition of the volumes for 1954-72 will be completed by the end of 1977, the volumes for 1962-71 inclusive having already been published.

2. Legal publications on European integration (Bibliography)

New edition in 1966 and supplements.

3. Bibliography of European case-law

Concerning judicial decisions relating to the Treaties establishing the European Communities. 1965 edition with supplements.

4. Selected instruments on the organization, jurisdiction and procedures of the Court

1975 edition.

These publications are on sale at, and may be ordered from:

l'OFFICE DES PUBLICATIONS DES COMMUNAUTÉS EUROPÉENNES,
Rue du Commerce, Case Postale 1003, Luxembourg.

and from the following addresses:

Belgium:	Ets. Emile Bruylant, Rue de la Régence 67, 1000 BRUSSELS
Denmark:	J. H. Schultz' Boghandel, Møndergade 19, 1116 COPENHAGEN K
France:	Editions A. Pedone, 13, Rue Soufflot, 75005 PARIS
Germany:	Carl Heymann's Verlag, Gereonstrasse 18-32, 5000 KOLN 1
Ireland:	Messrs. Greene & Co., Booksellers, 16, Clare Street, DUBLIN 2
Italy:	Casa Editrice Dott. A. Milani, Via Jappelli 5, 35100 PADUA M. 64194
Luxembourg:	Office des publications officielles des Communautés européennes, Case Postale 1003, LUXEMBOURG
Netherlands:	NV Martinus Nijhoff, Lange Voorhout 9, 's GRAVENHAGE
United Kingdom:	Sweet & Maxwell, Spon (Booksellers) Limited, North Way, ANDOVER, HANTS, SP10 5BE

Other Countries: Office des publications officielles des Communautés européennes,
Case Postale 1003,
LUXEMBOURG

B - Publications issued by the Press and Legal Information service of the Court of Justice

1. Proceedings of the Court of Justice of the European Communities

Weekly summary of the proceedings of the Court published in the six official languages of the Community. Free of charge. Available from the Press and Information Branch; please indicate language required.

2. Information on the Court of Justice

Quarterly bulletin containing the heading and a short summary of the more important cases brought before the Court of Justice and before national courts.

3. Annual synopsis of the work of the Court of Justice

Annual booklet containing a summary of the work of the Court of Justice covering both cases decided and associated work (seminars for judges, visits, study groups, etc.).

4. General booklet of information on the Court of Justice

These four documents are published in the six official languages of the Community while the general booklet is also published in Spanish and Gaelic. They may be ordered from the information offices of the European Communities at the addresses given above. They may also be obtained from the Information Service of the Court of Justice, B.P. 1406, Luxembourg.

C - Compendium of case-law relating to the Treaties establishing the European Communities

Répertoire de la jurisprudence relative aux traités instituant les Communautés européennes

Europäische Rechtsprechung

Extracts from cases relating to the Treaties establishing the European Communities published in German and French. Extracts from national judgments are also published in the original language.

The German and French editions are available from:

Carl Heymann's Verlag,
Gereonstrasse 18-32,
D 5000 KÖLN 1,
Federal Republic of Germany.

As from 1973 an English edition has been added to the complete French and German editions. The first two volumes of the English series are on sale from:

ELSEVIER - North Holland -
Excerpta Medica,
P.O. Box 211,
AMSTERDAM,
Netherlands.

III - Visits

Sessions of the Court are held on Tuesdays, Wednesdays and Thursdays every week, except during the Court's vacations - that is, from 20 December to 6 January, the week preceding and the week following Easter, and from 15 July to 15 September. Please consult the full list of public holidays in Luxembourg set out below.

Visitors may attend public hearings of the Court or of the Chambers to the extent permitted by the seating capacity. No visitor may be present at cases heard in camera or during proceedings for the adoption of interim measures.

Half an hour before the beginning of public hearings a summary of the case or cases to be dealt with is available to visitors who have indicated their intention of attending the hearing.

* * *

Public holidays in Luxembourg

In addition to the Court's vacations mentioned above the Court of Justice is closed on the following days:

New Year's Day	1 January
Carnival Monday	variable
Easter Monday	variable
Ascension Day	variable
Whit Monday	variable
May Day	1 May
Luxembourg National Holiday	23 June
Assumption	15 August
"Schobermesse" Monday	Last Monday of August or first Monday of September
All Hallows' Day	1 November
All Souls' Day	2 November
Christmas Eve	24 December
Christmas Day	25 December
Boxing Day	26 December
New Year's Eve	31 December

* * *

IV - Summary of types of procedure before the Court of Justice

It will be remembered that under the Treaties a case may be brought before the Court of Justice either by a national court or tribunal with a view to determining the validity or interpretation of a provision of Community law, or directly by the Community institutions, Member States or private parties under the conditions laid down by the Treaties.

A - References for preliminary rulings

The national court or tribunal submits to the Court of Justice questions relating to the validity or interpretation of a provision of Community law by means of a formal judicial document (decision, judgment

or order) containing the wording of the question(s) which it wishes to refer to the Court of Justice. This document is sent by the Registry of the national court to the Registry of the Court of Justice, accompanied in appropriate cases by a file intended to inform the Court of Justice of the background and scope of the questions referred.

During a period of two months the Commission, the Member States and the parties to the national proceedings may submit observations or statements of case to the Court of Justice, after which they will be summoned to a hearing at which they may submit oral observations, through their Agents in the case of the Commission and the Member States or through lawyers who are entitled to practise before a court of a Member State.

After the Advocate-General has delivered his opinion, the judgment given by the Court of Justice is transmitted to the national court through the Registries.

B - Direct actions

Actions are brought before the Court by an application addressed by a lawyer to the Registrar (B.P. 1406, Luxembourg), by registered post.

Any lawyer who is entitled to practise before a court of a Member State or a professor occupying a chair of law in a university of a Member State, where the law of such State authorizes him to plead before its own courts, is qualified to appear before the Court of Justice.

The application must contain:

the name and permanent residence of the applicant;
the name of the party against whom the application is made;
the subject-matter of the dispute and the grounds on which the application is based;
the form of order sought by the applicant;
the nature of any evidence offered;
an address for service in the place where the Court of Justice has its seat, with an indication of the name of a person who is authorized and has expressed willingness to accept service.

The application should also be accompanied by the following documents:

the decision the annulment of which is sought, or, in the case of proceedings against an implied decision, by documentary evidence of the date on which the request to the institution in question was lodged;

a certificate that the lawyer is entitled to practise before a court of a Member State;

where an applicant is a legal person governed by private law, the instrument or instruments constituting and regulating it, and proof that the authority granted to the applicant's lawyer has been properly conferred on him by someone authorized for the purpose.

The parties must choose an address for service in Luxembourg. In the case of the Governments of Member States, the address for service is normally that of their diplomatic representative accredited to the Government of the Grand Duchy. In the case of private parties (natural or legal persons) the address for service - which in fact is merely a "letter box" - may be that of a Luxembourg lawyer or any person enjoying their confidence.

The application is notified to defendants by the Registry of the Court of Justice. It calls for a statement of defence to be put in by them; these documents may be supplemented by a reply on the part of the applicant and finally a rejoinder on the part of the defence.

The written procedure thus completed is followed by an oral hearing, at which the parties are represented by lawyers or agents (in the case of Community institutions or Member States)

After the opinion of the Advocate-General has been delivered, judgment is given. It is served on the parties by the Registry.

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COMPOSITION OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

for the judicial year 1976 to 1977

(order of precedence)

H. KUTSCHER, President

A. M. DONNER, President of First Chamber

P. PESCATORE, President of Second Chamber

J.-P. WARNER, First Advocate-General

J. MERTENS DE WILMARS, Judge

H. MAYRAS, Advocate-General

M. SØRENSEN, Judge

LORD MACKENZIE STUART, Judge

G. REISCHL, Advocate-General

A. O'KEEFFE, Judge

F. CAPOTORTI, Advocate-General

G. BOSCO, Judge

A. TOUFFAIT, Judge

A. VAN HOUTTE, Registrar

COMPOSITION OF CHAMBERS

First Chamber		Second Chamber	
President:	A. M. DONNER	President:	P. PESCATORE
Judges:	J. MERTENS DE WILMARS	Judges:	M. SØRENSEN
	A. O'KEEFFE		LORD MACKENZIE STUART
	G. BOSCO		A. TOUFFAIT
Advocates-General:	J.-P. WARNER	Advocates-General:	G. REISCHL
	H. MAYRAS		F. CAPOTORTI

D E C I S I O N S

of the

COURT OF JUSTICE

of the

EUROPEAN COMMUNITIES

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Case 80/76 - North Kerry Milk v Minister for Agriculture and Fisheries
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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

25 January 1977

W. J. G. Bauhuis v The Netherlands State

Case 46/76

1. Customs duties - Elimination - Charges having equivalent effect - Concept
(EEC Treaty, Arts. 9, 12, 13 and 16)

2. Free movement of goods - Restrictions - Elimination - Derogation within the meaning of Article 36 of the EEC Treaty - Strict interpretation

3. Free movement of goods - Restrictions - Elimination - Derogation within the meaning of Article 36 of the EEC Treaty - Fees for veterinary and public health inspection - Permissibility - Duties - Levy - Prohibition

4. Customs duties on exports - Charges having equivalent effect - Concept - Veterinary and public health inspections - Fees - Internal marketing and export (Art. 95)

5. Customs duties on exports - Charges having equivalent effect - Concept - Veterinary and public health inspections imposed by a provision of Community law - Fees - Imposition by exporting Member State - Permissibility
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6. Quantitative restrictions - Charges having equivalent effect - Bovine animals and swine - Export to another Member State - Veterinary and public health in addition to the exceptions laid down to Directive No. 64/432/EEC - Prohibition - Fees - Imposition - Incompatibility with Community law

1. Any pecuniary charge, whatever its designation and mode of application, which is imposed unilaterally on goods by reason of the fact that they cross a frontier and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect within the meaning of Articles 9, 12, 13 and 16 of the Treaty, even if it is not imposed for the benefit of the State. The position would be different only if the charge in question is the consideration for a benefit provided in fact for the exporter representing an amount proportionate to the said benefit or if it related to a general system of internal dues applied systematically in accordance with the same criteria to domestic products and imported products alike.

2. Article 36 is to be interpreted strictly since it constitutes a derogation from the fundamental principle of the elimination of all obstacles to the free movement of goods between Member States. It is not to be understood as authorizing measures of a nature different from those contemplated by Articles 30 to 34.

3. Article 36, in accordance with the conditions which it prescribes, does not prevent the retention of certain restrictions. In this respect it does not matter that the inspections carried out by importing States on the occasion of the crossing of the frontier are replaced by inspections initially carried out by the exporting Member State. However Article 36 does not permit the collection of duties charged on the goods subjected to these inspections since this collection is not necessary for the exercise of the process provided for by Article 36 and therefore constitutes an additional obstacle to intra-Community trade.

4. If the fees for veterinary and public health inspections are demanded in the case of internal marketing as well as in the case of exportation then they form part of a general system of domestic charges and are not charges having an effect equivalent to a customs duty on exports but fall within the prohibition of discrimination under Article 95 of the Treaty.

5. Fees charged for veterinary and public health inspections, which are prescribed by a Community provision, which are uniform and are required to be carried out before despatch within the exporting country do not constitute charges having an effect equivalent to customs duties on exports, provided that they do not exceed the actual cost of the inspection for which they were charged.

6. Apart from the exceptions laid down by the directive itself, any additional inspection of bovine animals or swine for export to another Member State imposed unilaterally by a Member State, whether on its own initiative or in order to meet the requirements of another Member State, which are no longer justified, would constitute a measure having an effect equivalent to a quantitative restriction and any fee charged on this occasion would, for that reason, be incompatible with Community law.

N o t e

The main action concerns a livestock dealer in the Netherlands, who, from 1966 to 1971, exported livestock to other Member States, and who claims the refund of fees paid by him for veterinary and public health inspections carried out by the Netherlands administration prior to those exports. He argues that those fees constitute charges having an effect equivalent to customs duties on exports, which have been prohibited since 1 January 1962 by Article 16 of the Treaty and which, therefore, were not payable.

The Arrondissementsrechtbank, The Hague, asked the Court of Justice to rule on the interpretation of Article 16 of the Treaty, and, in doing so, to answer the following questions:

> "Is the phrase 'charges having an effect equivalent to customs duties on exports' to be interpreted as including pecuniary charges which are imposed by a Member State in respect of the veterinary and public health inspection of livestock which is intended to be exported to another Member State in so far as such pecuniary charges suffice to cover, and do not exceed, the actual costs of a veterinary and public health inspection which is carried out by authority of the Government:
>
> (a) (as regards bovine animals and swine):
>
> in compliance with obligations imposed on the exporting Member State by the Council of the European Economic Community in its Directive No. 64/432/EEC of 26 June 1964; or
>
> (b) (as regards bovine animals and swine):
>
> in compliance with the obligations referred to at (a) above, and in addition to ensure that the bovine animals and swine concerned satisfy the particular conditions laid down for the importation thereof by the importing Member State; or
>
> (c) (as regards animals other than bovine animals or swine):
>
> in order to ensure that the animals concerned satisfy the conditions laid down for the importation thereof by the importing Member State?"

The Court, in answer to each of the questions referred to it, ruled:

1. Fees charged for veterinary and public health inspections which are prescribed by a Community provision, which are uniform and are required to be carried out before despatch within the exporting country, do not constitute charges having an effect equivalent to customs duties on exports, provided that they do not exceed the actual cost of the inspection for which they were charged.

2. Consequently, apart from the exceptions laid down by Directive No. 64/432/EEC itself, any additional inspection of bovine animals or swine intended for export to another Member State which is prescribed unilaterally by a Member State, either on its own initiative or in order to meet the requirements of another Member State which are no longer justified, constitutes a measure having an effect equivalent to a quantitative restriction and any fee charged on that occasion would, for that reason, be incompatible with Community law.

3. Fees charged by the exporting Member State for veterinary and public health inspections carried out by the authorities of that State, which are not required by a Community regulation or directive but which have been prescribed for the purpose of checking whether the conditions to which the Member State of destination has made the importation subject have been complied with, constitute charges having an effect equivalent to customs duties.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

25 January 1977

Openbaar Ministerie v Derycke

Case 65/76

Transport - Social legislation - Harmonization - Daily rest period - Individual control book - Obligation - Scope - Driver of vehicle - Independent trader

Articles 1, 2 and 4 of Regulation No. 543/69 of the Council of 25 March 1969 on the harmonization of certain social legislation relating to road transport must be interpreted as covering any carriage coming within the scope of the regulation irrespective of the status of the driver of the vehicle so that the provisions of the regulation are applicable to carriage effected both by an independent trader and by an employed driver.

N o t e

Is a stallholder subject to the provisions of the Council regulation which governs road transport conditions and which, inter alia, requires that drivers must be in possession of an individual control book? Mr Derycke, who is in business as a stallholder, argues that the said regulation is not applicable to independent traders but only to drivers in the service of an employer or undertaking while on duty.

The Correctionele Rechtbank, sitting at Oudenaarde (Belgium), before which the case had come, had doubts on the interpretation of the provisions determining the scope of the Council regulation having regard in particular to the fact that the regulation is of a "social" nature and that certain of its provisions, particularly the instructions in the annex laying down the model of the control book itself, use the concepts of "undertaking", "employer" and "worker". It therefore made a reference to the European Court for a preliminary ruling.

After analysing the preamble and several provisions of the regulation, the Court ruled that Articles 1, 2 and 4 of Regulation No. 543/69 of the Council of 25 March 1969 on the harmonization of certain social legislation relating to road transport must be interpreted as covering any carriage coming within the scope of the regulation irrespective of the status of the driver of the vehicle so that the provisions of the regulation are applicable to carriage effected both by a self-employed person and an employed driver.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

26 January 1977

Gesellschaft für Überseehandel mbH v Handelskammer, Hamburg

Case 49/76

1. Preliminary rulings - Jurisdiction of the Court - Limits (EEC Treaty, Art. 177)

2. Trade - Goods - Origin - Determination - Criteria (Regulation No. 802/68 of the Council)

3. Trade - Goods - Origin - Determination - Several countries concerned in production - Basic product - Substantial process - Concept (Regulation No. 802/68 of the Council, Art. 5)

4. Trade - Goods - Origin - Determination - Several countries concerned in production - Basic product - Cleaning and grinding - Substantial process - Not involved (Regulation No. 802/68 of the Council, Art. 5)

1. Although the Court has no jurisdiction under Article 177 of the EEC Treaty to apply the provisions of Community law to actual cases, it may nevertheless furnish the national court with the interpretative criteria necessary to enable it to dispose of the dispute.

2. In order to meet the purposes and requirements of Regulation No. 802/68, the determination of the origin of goods must be based on a real and objective distinction between raw material and processed product, depending fundamentally on the specific material qualities of each of those products.

3. The last process or operation referred to in Article 5 of the regulation is only "substantial" for the purposes of that provision if the product resulting therefrom has its own properties and a composition of its own, which it did not possess before that process or operation. Activities affecting the presentation of the product for the purposes of its use, but which do not bring about a significant qualitative change in its properties, are not of such a nature as to determine the origin of the said product.

4. The cleaning and grinding of a raw material together with the grading and packaging of the product obtained do not constitute a substantial process or operation for the purposes of Article 5 of Regulation No. 802/68 and do not confer a Community origin on the said product according to that regulation.

N o t e

The Gesellschaft für Überseehandel (G.U.H.) imports raw casein from the Soviet Union and from Poland. In its establishment at Hamburg, it mills the imported product to various degrees of fineness and proceeds to sort and pack the goods. From 1967 to 1972, the Chamber of Commerce, Hamburg, provided certificates of origin stating the Federal Republic of Germay as the country of origin of the casein treated by G.U.H.

The dispute arose from the refusal of the Chamber of Commerce to provide a certificate stating the Federal Republic of Germany as the country of origin on the ground that the washing, milling, sorting and packing of the raw casein do not constitute activities which confer a given origin on the product according to Article 5 of Regulation No. 802/68 of the Council, which provides:

> "A product in the production of which two or more countries were concerned shall be regarded as originating in the country in which the last substantial process or operation that is economically justified was performed, having been carried out in an undertaking equipped for the purpose, and resulting in the manufacture of a new product or representing an important stage of manufacture".

The question to be resolved is therefore whether activities involving a "substantial" process or operation for the purposes of Article 5 of the regulation mentioned above result "in the manufacture of a new product" or represent "an important stage of manufacture".

In its judgment the Court points out that although it does not have jurisdiction under Article 177 of the EEC Treaty to apply the provisions of Community law to actual cases, it may nevertheless furnish the national court with the interpretative criteria necessary to enable the latter to dispose of the dispute.

It did so by ruling that the washing and milling of a raw material, such as raw casein imported from a third country into a Member State, together with the sorting and preparing of the product obtained, do not constitute a substantial process or operation for the purposes of Article 5 of Regulation No. 802/68, and do not confer on the said product a Community origin within the meaning of the regulation.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

1 February 1977

A. and M. De Norre v N.V. Brouwerij Concordia

Case 47/76

1. Competition - Agreements - Exclusive purchase agreements concluded between two undertakings in a single Member State - Characteristics set out in Article 3 of Regulation No. 67/67 - Absence - Adverse effect on trade between Member States - Prohibition - Exemption by category
(Regulation No. 67/67 of the Commission, Art. 1 (2))

2. Competition - Network of agreements - Cumulative effect - Regulation No. 67/67 - Applicability

1. Agreements to which only two undertakings from one Member State only are party, under which one party agrees with the other to purchase only from that other certain goods for resale and which do not display the features set out in Article 3 of Regulation No. 67/67 of the Commission, qualify for the exemption by category provided for in that regulation if, failing exemption, they would fall under the prohibition contained in Article 85 (1) of the EEC Treaty.

2. Neither the spirit nor the objectives of Regulation No. 67/67 are opposed to the applicability of that regulation to agreements which fall under the prohibition contained in Article 85 only because of the cumulative effect produced by the existence of one or more networks of similar agreements.

N o t e

In April 1966 Brasserie Concordia concluded a "brewery" contract with the proprietors of a café under which Concordia granted a loan repayable in 10 years at a low rate of interest and the proprietors of the café undertook for their part neither to stock nor to sell other beverages than those manufactured or sold by Brasserie Concordia.

In 1973 Mr and Mrs De Norre, the defendants in the main action, bought the café and although aware from the terms of the contract of purchase of the stipulations contained in the contract of 1966, they sold in their establishment other beverages than those manufactured by Concordia. Brasserie Concordia referred the matter to the Tribunal de Première Instance (Court of First Instance), Oudenaarde, which ordered Mr and Mrs De Norre to pay damages. Mr and Mrs De Norre appealed against that decision. The Hof van Beroep, Ghent, referred to the Court of Justice a series of questions on the interpretation of the provisions of the Treaty and the implementing regulations concerning competition, as well as their application to certain types of exclusive dealing agreements.

One of the questions referred by the national court asks whether the group exemption provided for by Regulation No. 67/67 in favour of certain categories of agreements "is applicable to all exclusive dealing agreements of the type at issue, concluded between undertakings in a single Member State ?"

By its nature and purpose, Regulation No. 67/67 applies only to agreements which, in the absence of exemption, fall under the prohibition contained in Article 85 (1) of the Treaty. The Court refers to its judgment of 12 December 1967 in the Brasserie de Haecht case (Case 23/67, SA Brasserie de Haecht v Wilkin and Wilkin [1967] ECR 407) in which it refers to "the existence of similar contracts and the cumulative effect produced by all those contracts" which may affect trade between Member States. The question in the present case must therefore be understood as asking whether, on the assumption that, owing to the cumulative effect of all similar agreements, agreements such as that at issue fall under the prohibition contained in Article 85 (1), they benefit from the exemption by categories provided for in Regulation No. 67/67 ?

The question also arises whether agreements concluded between undertakings in a single Member State for the resale of products within that Member State nevertheless benefit from group exemption in so far as they fall under the prohibition contained in Article 85 (1) of the Treaty. According to the case-law of the Court (judgment of 3 February 1976, SA Fonderies Roubaix-Wattrelos v Société Nouvelle des Fonderies A. Roux and Société des Fonderies JOT [1967] ECR 111) and the terms of the regulation itself, the fact that under Article 1 (2) of the regulation group exemption is withheld from purely domestic agreements is explained by the fact that they are considered, as a rule, to have so little effect on trade between Member States that there is no need for them to be exempted from a prohibition which applies to them only by way of exception.

The said interpretation applies not only to exclusive supply agreements but also to exclusive purchase agreements.

In the opinion of the Court it cannot be argued that it would be contrary to the spirit and objectives of Regulation No. 67/67 to hold that it applies to agreements which fall under the prohibition contained in Article 85 only because of the cumulative effect produced by the existence of one or more networks of similar agreements. There is, in fact, every reason for extending, in so far as the Treaty so permits, a group exemption to agreements which come within the scope of the prohibition contained in Article 85 only because of the cumulative effect produced by other agreements, that is, because of factors unconnected with the agreement in question, of which, in consequence, the contracting parties would generally have no specific knowledge and an appraisal of which requires the consideration of circumstances so numerous and complicated that a national court might be placed in a position of extreme difficulty. In answer to the questions referred to it by the Hof van Beroep, Ghent, the Court ruled that agreements to which only two undertakings from one Member State alone are party, under which one party agrees with the other to purchase only from that other certain goods for resale and which do not display the features set out in Article 3 of Regulation No. 67/67 of the Commission, qualify for the exemption by category provided for in that regulation if, failing exemption, they would fall under the prohibition contained in Article 85 (1) of the EEC Treaty.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

1 February 1977

Federation of Undertakings of the Netherlands

v Inspector of Customs and Excise

Case 51/76

1. Turnover tax - National legislation - Harmonization - Capital goods - Concept - Powers of definition of the Member States
(Second Council Directive of 11 April 1967 on the harmonization of legislation of Member States, Art. 17)

2. Measures adopted by an institution - Direct effect - Directives
(EEC Treaty, Art. 189)

3. Turnover tax - Legislation of the Member States - Harmonization - Goods used for the purposes of an undertaking - Not in the nature of capital goods - Value-added tax - Immediate deduction - Right - Protection by the national court
(Second Council Directive of 11 April 1967 on the harmonization of legislation of Member States, Arts. 11 and 17)

1. The words "capital goods" appearing in the third indent of Article 17 of the Second Council Directive of 11 April 1967, on the harmonization of legislation of Member States concerning turnover taxes, mean goods used for the purposes of some business activity and distinguishable by their durable nature and their value and such that the acquisition costs are not normally treated as current expenditure, but are written off over several years. The Member States have a certain margin of discretion as regards the requirements which must be satisfied concerning the durability and value of the goods, together with the rules applicable for writing off, provided that they pay due regard to the existence of an essential difference between capital goods and the other goods used in the management and in the day to day running of undertakings.

2. It would be incompatible with the binding effect attributed to a directive by Article 189 to exclude, in principle, the possibility that the obligation which it imposes may be invoked by those concerned. In particular, where the Community authorities have, by directive, imposed on Member States the obligation to pursue a particular course of conduct, the useful effect of such an act would be weakened if individuals were prevented from relying on it before their national court and if the latter were prevented from taking it into consideration as an element of Community law. This is especially so when the individual invokes a provision of a directive before a national court in order that the latter shall rule whether the competent national authorities, in exercising the choice which is left to them as to the form and the methods for implementing the directive, have kept within the limits as to their discretion set out in the directive.

3. In the case of goods purchased in 1972 and intended to be used for the purposes of the undertaking which do not belong to the category of capital goods within the meaning of Article 17 of the directive, it is the duty of the national court before which the rule as to immediate deduction set out in Article 11 of the directive is invoked to take those facts into account in so far as a national implementing measure falls outside the limits of the margin of the discretion left to the Member States.

N o t e

A federation of undertakings, which is subject to Netherlands legislation on value-added tax, is contesting a decision adopted by the Inspecteur of Customs and Excise which seeks to limit the right to deduct turnover tax on certain objects acquired by the Federation and used by it as office supplies. It is in the context of that action that the Court of Justice has been called upon to interpret certain provisions of the Second Council Directive of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes - Structure and procedures for application of the common system of value-added tax. That directive provides that where goods and services are used for the purposes of his undertaking, the taxable person shall be authorized to deduct from the tax for which is liable value-added tax invoiced to him in respect of goods supplied to him or in respect of services rendered to him. The deduction system is, however, subject to exceptions, which the directive allows the Member States to make in specifically defined cases and within clearly stated limits. Inter alia, during a certain transitional period, the Member States may exclude, in whole or in part, capital goods from the deduction system laid down by the directive. In application of that derogative provision, the Netherlands law on turnover tax only allowed, for the year 1972, a reduction of 67% of the tax on goods intended to be used by the trader as "business assets".

The Federation claims that, as interpreted by the Netherlands tax authorities, the latter expression has a wider meaning than the expression "capital goods" used by the directive and that the exception to the right to make deduction has thus been extended too widely, with the result that the Federation has had to bear tax not authorized by the directive.

The Netherlands court asked in effect what was the correct interpretation of the expression "capital goods". It must be observed that the expression at issue forms part of a provision of Community law which does not refer to the law of the Member States for the determining of its meaning and scope and it therefore follows that the interpretation, in general terms, of the expression cannot be left to the discretion of each Member State.

The Court has ruled that the words "capital goods" mean goods used for the purposes of some business activity and distinguishable by their durable nature and their value, such that the acquisition costs are not normally treated as current expenditure, but are written off over several years.

The Member States have a certain margin of discretion as regards the requirements which must be satisfied concerning the durability and value of the goods, together with the rules applicable to writing off, provided that they pay due regard to the existence of an essential difference between capital goods and the other goods used in the management and in the day-to-day running of undertakings.

In a third question the Hoge Raad asked whether the directive created a right in favour of an individual subject to Netherlands turnover tax, which may be invoked before a Netherlands court, to make an unrestricted deduction in respect of goods purchased in 1972 and intended to be used for the purpose of the undertaking, but which do not belong to the category of capital goods within the meaning of the directive.

That question raises the general problem of the legal nature of the provisions of a directive. In line with its earlier case-law, the Court has ruled that it would be incompatible with the binding effect attributed to a directive by Article 189 to exclude, in principle, the possibility that the obligation which it imposes may be invoked by those concerned.

Therefore, in reply to the question referred to it, the Court of Justice, has ruled that in the case of goods purchased in 1972 and intended to be used for the purposes of the undertaking, but which do not belong to the category of capital goods within the meaning of Article 17 of the directive, it is for the national court before which the rule as to immediate deduction set out in Article 11 of the directive is invoked to take those facts into account in so far as a national implementing measure falls outside the limits of the margin of the discretion left to the Member States.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

2 February 1977

Amsterdam Bulb B.V. v Produktschap voor Siergewassen

Case 50/76

1. Measures adopted by an institution - Regulation - Direct applicability - Concept - Obligations of the Member States
(EEC Treaty, Art. 189)

2. Community law

3. Agriculture - Flower bulbs - Export to third countries - Minimum prices - Fixed by the Commission - Products larger than the minimum size but smaller than those mentioned in the Community rules - Applicability
(Regulation (EEC) No. 369/75)

4. Agriculture - Flower bulbs - Export to third countries - Minimum prices - Application by the national legislature to bulbs other than those mentioned in the Community rules - Permissible - Conditions
(Regulation (EEC) No. 369/75)

5. Community law - Direct applicability - Individuals' failure to observe it - Sanction not laid down by a provision - Powers of the Member States

1. The direct application of a Community regulation means that its entry into force and its application in favour of or against those subject to it are independent of any measure of reception into national law.

2. The Member States may neither adopt nor allow national organizations having legislative power to adopt any measure which would conceal the Community nature and effects of any legal provision from the persons to whom it applies. They may not, either directly or through the intermediary of organizations created or recognized by them, allow or tolerate an exemption from Community law or in any way affect it adversely.

3. The lowest minimum export price fixed for the product in question by Regulation No. 369/75 is also applicable to products which are larger than the minimum size but smaller than the sizes expressly listed in the annex to that regulation.

4. A national provision which fixes minimum prices for exports to third countries of certain varieties of bulbs other than those for which the Commission has fixed minimum prices in Regulation No. 369/75, which does not create exemptions from the Community system, does not limit its scope and seeks to achieve the same aim, that is, the stabilization of prices in trade with third countries, cannot be regarded as incompatible with Community law.

5. In the absence of any provision in the Community rules providing for specific sanctions to be imposed on individuals for a failure to observe those rules, the Member States are competent to adopt such sanctions as appear to them to be appropriate.

N o t e

The company Amsterdam Bulb B.V. exports flower bulbs from the Netherlands solely to its parent company which is established in the United States of America. It considers that the minimum prices fixed by the Netherlands regulation are so high as to render importation by the parent company unprofitable. Amsterdam Bulb applied to the Produktschap voor Siergewassen for exemption from the minimum prices but its application was rejected. Amsterdam Bulb then appealed to the Netherlands court against the rejection of its application. The court considered that the action raised certain questions of Community law, such as the interpretation of the regulations governing the system of minimum prices for exports to third countries of flower bulbs, and requested the Court of Justice to rule whether the provisions of the regulations in question "or any other provisions or principles of European law" prevent a competent national organization from adopting rules fixing export prices for flower bulbs which, although in part coinciding with the Community regulations, contain provisions which do not appear in those regulations and have no legal foundation therein.

As regards the legal principles, the Court has ruled that the Member States are bound not to put obstacles in the way of the direct effect of the regulations and that, therefore, they may neither adopt nor allow national organizations having legislative power to adopt any measure which would conceal the Community nature and effects of any legal provision from the persons to whom it applies.

In order to determine whether the provisions referred to by the national court are compatible with the Community regulations, the Court has regard not only to the express provisions of the regulations but also to their aims and objectives. It points out, inter alia, that exports of flower bulbs to third countries are of considerable economic importance to the Community and that as the continuation and development of such exports may be ensured by stabilizing prices in that trade it is appropriate for provision to be made for minimum export prices for the products in question. The regulations themselves provide for standards of quality, sizing and packaging for the products in question to be fixed by the Council and for the minimum prices for exports to third countries to be fixed by the Commission.

As regards the fixing by the national authority of minimum prices for exports to third countries of products covered by the common organization of the market but of a genus, species or variety other than those for which minimum prices have so far been fixed by the Commission, it must be stated that there is no provision in any Community regulation which expressly prevents this. Therefore, in reply to the question referred to it by the national court, the Court of Justice has ruled that a national provision which fixes minimum prices for the export to third countries of certain varieties of bulbs other than those for which the Commission has fixed minimum prices, but which does not form an exception to the Community system, does not limit its scope and seeks to achieve the same aim, that is, the stabilization of prices in trade with third countries, cannot be regarded as incompatible with Community law. In the absence of any provision in the Community rules providing for specific sanctions to be imposed on individuals for a failure to observe the provisions of such rules, the Member States are competent to adopt such sanctions as appear to them to be appropriate. The Member States cannot either directly or through the intermediary of organizations set up or recognized by them authorize any exemption to be made from the minimum prices fixed by the Community.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

3 February 1977

Luigi Benedetti v Munari F.lli s.a.s.

Case 52/76

1. Agriculture - Common organization of the markets - Member States - Intervention - Admissibility - Conditions
EEC Treaty, Art. 40

2. Agriculture - Common organization of the markets - Cereals - Price - Formation - Member States - Intervention - Prohibition
Regulation No. 120/67 of the Council, Art. 2

3. Questions referred for preliminary ruling - Jurisdiction of the Court - Limits
EEC Treaty, Art. 177

4. Questions referred for preliminary ruling - Judgment - Purpose - Effects
EEC Treaty, Art. 177

1. Interventions by a Member State to arrest at consumer level the price of certain foodstuffs made from cereals are not incompatible with the common organization of the market in so far as they do not jeopardize the objectives or the operation of that organization.

2. The action of a Member State in purchasing wheat on the world market and subsequently reselling it on the Community market at a price lower than the target price is incompatible with the common organization of the markets.

3. Having to limit itself to giving an interpretation of the provisions of Community law, the Court cannot itself assess or classify those activities or the provisions of national law relating thereto. Within the framework of proceedings under Article 177, it is not for the Court of Justice to interpret national law and assess its effects. Therefore, within that framework, it cannot make a comparison of any kind whatsoever between the effects of the decisions of the national courts and the effects of its own decisions.

4. The purpose of a preliminary ruling is to decide a question of law and that ruling is binding on the national court as to the interpretation of the Community provisions and acts in question.

N o t e

The Pretura di Cittadella referred to the Court of Justice a series of questions essentially concerning the conduct of the Azienda di Stato per gli Interventi sul Mercato Agricolo (A.I.M.A.) (State Corporation for Intervention on the Agricultural Market) in relation to various provisions of Community regulations. The parties to the main action are the Benedetti flour-milling undertaking and the Munari undertaking. The former, the plaintiff in the main action, is claiming damages from the latter, the defendant in the main action, in respect of injury which it claims to have suffered as a result of the unfair competition engaged in by Munari in selling quantities of flour at a price below the market price.

The defendant in the main action does not dispute that these sales were made but imputes all liability for any loss to the A.I.M.A. on the ground that A.I.M.A. sold the defendant common wheat at prices below the market price.

The first and second questions ask whether Community legislation on the market in cereals authorizes intervention agencies to take unilateral decisions. The Court notes the absence of details and of detailed findings on matters of fact and emphasizes that the A.I.M.A. was still not a party to the action and had not been given an opportunity to make any explanations. In its reply the Court refers to the principles laid down in Case 60/75 (Russo v A.I.M.A. [1976] ECR 45) and rules that the provisions of Regulation No. 120/67 of 13 June 1967 on the common organization of the market in cereals must be interpreted as meaning that the action of a Member State in purchasing wheat on the world market and subsequently reselling it on the Community market at a price lower than the target price is incompatible with the common organization of the market.

A third question asks whether the conduct of an intervention agency "in availing itself of finance from institutions of the State" may in certain cases constitute a State aid to undertakings within the meaning of Articles 92 to 94 of the Treaty. The Court has replied that in providing that any aid granted by a Member State or through State resources shall be incompatible with the Common Market, Article 92 (1) specifies that the said prohibition applies only "in so far as it (the aid) affects trade between Member States" and save as otherwise provided in the Treaty.

The last question asks what force the interpretation placed by the Court of Justice on Community law has for the court dealing with the substance of the case and whether the "ruling" of the Court of Justice is binding on that court in the same way as it is bound by a "point of law" laid down by the Corte di Cassazione. The Court, of course, replied in the affirmative and ruled that the purpose of a preliminary ruling by the Court is to decide a question of law and that ruling is binding on the national court as to the interpretation of the Community provisions and acts in question.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

3 February 1977

Procureur de la République de Besançon v Bouhelier and Others

Case 53/76

Quantitative restrictions on exports - Measures having equivalent effect - Concepts - Export licence - Requirement - Prohibition

EEC Treaty, Art. 34

The expression "quantitative restrictions on exports and any measures having equivalent effect" contained in Article 34 of the EEC Treaty must be understood as applying to rules adopted by a Member State which require in respect only of the export of certain goods either a licence or a standards certificate which is issued in place of such licence and may be refused if the quality does not conform to certain standards laid down by the body issuing the said certificate, even if such certificate does not give rise to the imposition of a charge.

N o t e

The main aim of certain technical centres for industry established in France is to guarantee quality in the industry concerned. A Ministerial Decree of 1949 set up one such centre, CETEHOR (Technical Centre for the watch- and clock-making industy), whose purpose is to inspect the quality of watches intended for export.

With the exception of articles accompanied by a standards certificate issued by the CETEHOR, which replaces the export licence, exporters of watches must obtain an export licence. The judgment referring the matter to the Court shows that the accused forged inspection certificates. The accused justified the said forgeries on the ground that the speed of commercial transactions was not compatible with the delays inherent in drawing up the CETEHOR certificates.

The Tribunal Correctionnel, Besançon, which was seised of the matter, referred the following question to the Court of Justice:

> "Must the words 'quantitative restrictions on exports and any measures having equivalent effect' contained in Article 34 of the EEC Treaty be understood as also applying to the legislation of a Member State which requires in respect of the export of certain goods either a licence or standards certificate in place of such licence, where such certificate does not give rise to the imposition of a charge and may be refused if the quality does not conform to certain standards laid down by the body issuing the certificate in substitution for the licence ?"

While emphasizing that, however desirable may be the introduction of a policy on quality by a Member State, such a policy can only be developed within the Community by means which are in accordance with the fundamental principles of the Treaty, the Court ruled that the expression "quantitative restrictions on exports and any measures having equivalent effect" contained in Article 34 of the EEC Treaty must be understood as applying to rules adopted by a Member State which require in respect of the export of certain goods either a licence or a standards certificate which is issued in place of such licence and may be refused if the quality does not conform to certain standards laid down by the body issuing the said certificate, even if such certificate does not give rise to the imposition of a charge.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

3 February 1977

Josef Strehl

v Nationaal Pensioenfonds voor Mijnwerkers

Case 62/76

1. Social security for migrant workers - Social security benefits - Rights created by the Treaty - Exercise - Detailed rules - Power of the Council
(EEC Treaty, Art. 51)

2. Social security for migrant workers - Social security benefits - Overlapping - Limitation - Entitlement by virtue of national legislation alone - Reduction - Prohibition
(EEC Treaty, Art. 51; Regulation No. 1408/71, Art. 46(3); Decision No. 91 of the Administrative Commission)

1. In the exercise of the powers which it holds under Article 51 concerning the co-ordination of the social security schemes of the Member States, the Council has the power, in conformity with the provisions of the Treaty, to lay down detailed rules for the exercise of rights to social benefits which the persons concerned derive from the Treaty.

2. A limitation on the overlapping of benefits which would lead to a diminution of the rights which the persons concerned already enjoy in a Member State by virtue of the application of the national legislation alone is incompatible with Article 51. Article 46(3) of Regulation No. 1408/71 and Decision No. 91 of the Administrative Commission are incompatible with Article 51 of the Treaty to the extent to which they impose a limitation on the overlapping of two benefits acquired in different Member States by a reduction of the amount of the benefit acquired under national legislation alone.

N o t e

Mr Strehl, who is of Belgian nationality and lives in Belgium, was employed in Belgium as an underground mine-worker and then in Germany in other work.

The calculation of his invalidity pension gave rise to problems, in that it was reduced by the Belgian institution on the basis of the rule laid down by Article 46 of Regulation No. 1408/71 which limits the overlapping of benefits provided for in the various Member States.

The Arbeidsrechtbank, Hasselt, referred to the Court of Justice a series of questions concerning the interpretation of Article 46 of Regulation No. 1408/71 and of Decision No. 91 of the Administrative Commission on social security for migrant workers.

Before considering those questions, it is necessary to examine the validity of the texts whose interpretation is requested.

The foundation, the framework and the limits of the regulations governing social security for migrant workers are Articles 48 to 51 of the Treaty. The aim of those articles would not be achieved if, as a result of the exercise of their right of free movement, workers were to lose the social security advantages which they are afforded, in any event, by the legislation of one Member State alone.

The Court has ruled that Article 46 (3) of Regulation No. 1408/71 and Decision No. 91 of the Administrative Commission are incompatible with Article 51 of the Treaty to the extent to which they impose a limitation on the overlapping of two benefits acquired in different Member States by a reduction in the amount of a benefit acquired under the legislation of one Member State only.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

15 February 1977

Firma Rolf H. Dittmeyer, Hamburg v Hauptzollamt Hamburg-Waltershof

Joined Cases 69 and 70/76

1. Common Customs Tariff - Classification of goods - Interpretation - Committee on Common Customs Tariff Nomenclature - Opinion - Authority - Limits

2. Common Customs Tariff - Classification of goods - Pieces of fruit - Absence of essential constituents of the natural product - Classification under tariff heading 23.06

1. The opinions of the Committee on Common Customs Tariff Nomenclature constitute an important means of ensuring the uniform application of the Common Customs Tariff by the customs authorities of the Member States and as such they may be considered as a valid aid to the interpretation of the tariff. Nevertheless such opinions do not have legally binding force so that, where appropriate, it is necessary to consider whether their content is in accordance with the actual provisions of the Common Customs Tariff and whether they alter the meaning of such provisions.

2. Heading 23.06 of the Common Customs Tariff must be interpreted to mean that it may include products consisting of parts of fruit, which however are almost entirely lacking in any of those features which determine the nature of fruit, in particular products consisting of oranges which initially entered the juice in the course of pressing the oranges and which have subsequently been strained off even if they contain scarcely any constituent parts of the flesh of the fruit or fruit juice and instead constitute principally cell membrane and albedo.

N o t e

This case is concerned with the customs classification of a product, in one case pasteurized and in the other frozen, which is

"obtained in the course of manufacturing fruit juice and consists of pieces of fruit which fall into the juice during pressing and are subsequently strained off."

The product is intended to be used as an additive to diluted fruit juices in order to give them a richer and more natural appearance.

The customs authorities first of all classified the product under heading 23.06 of the Common Customs Tariff of the EEC: "Vegetable products of a kind used for animal food, not elsewhere specified or included".

After an examination had shown that it was a pulp produced from oranges, the customs authorities amended the tariff classification and classified it, according to the method whereby it was preserved, under one of the following headings:

08.10 "Fruit (whether or not cooked), preserved by freezing, not containing added sugar.

20.06 Fruit otherwise prepared or preserved, whether or not containing added sugar or spirit".

In the proceedings which it initiated against the amendment notice, Dittmeyer, the plaintiff in the main action, claimed that it was impossible to consider the products in dispute as fruit within the meaning of the above-mentioned tariff headings since they did not contain any of the essential elements of natural fruit (that is to say, there was no element of the outer peel or of fruit juice). Basically the products consist of the cell tissues of the pulp and also to a lesser degree of the pith (albedo).

This residue from pressing answers to the description of "waste from the food industry" and only a very insignificant proportion of it is used to improve the appearance of the juices.

In this case, the Court decided to interpret the tariff headings in question in relation to this flavourless product, used by human beings and animals, and ruled that heading 23.06 of the Common Customs Tariff must be interpreted to mean that it may include products consisting of parts of fruit which, however, are almost entirely lacking in any of those features which determine the nature of fruit and consist principally of cell membrane and albedo.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

16 February 1977

Landesversicherungsanstalt Rheinland-Pfalz

v Henriette Töpfer, née Dontenwill, widow of Charles Töpfer

Jean Pierre Weber

Le Phénix insurance company

Case 72/76

Social security for migrant workers - Injury sustained in the territory of another Member State - Compensation - Claims against a third party - Right of the person concerned - Subrogation thereto of the institution liable to pay benefits - Limits
Regulation No. 3, Art. 52

The action by subrogation which may be available, under the terms of Article 52 of Regulation No. 3, to a social security institution in a Member State, as the consequence of an accident in the territory of another Member State involving a person insured with such institution must be recognized on the basis of the legislation applicable to the institution liable to pay benefits. However, the right of subrogation covers only the compensation to which the victim or his legal successors are entitled under the legislation of the State in the territory of which the injury occurred which corresponds to the benefits paid by the institution liable to pay them, and not compensation granted for non-material damage or in respect of other items of damage of a personal nature.

N o t e

The main action concerns the subrogation of a German social security institution, the Landesversicherungsanstalt Rheinland-Pfalz, to the rights of the widow of a person insured with it, pursuant to Paragraph 1542 of the Reichsversicherungsordnung (German Social Security Code), which provides for the subrogation of a social security institution to the rights of a victim or of his legal successors against the third party liable, to the extent of the benefits which it has paid.

The facts are as follows: Mrs Töpfer, a French national, following the accident which caused the death of her husband, a German national, brought an action before the Tribunal de Grande Instance, Mulhouse, against the person liable and his insurance company. She claimed a sum representing the total amount of the damage which she had suffered but,

in her calculations, she took into account the pension which the Landesversicherungsanstalt had been paying her since the death of her husband, and therefore claimed only the difference between the damage which the death of her husband caused her and the amount she received from the social security institutions. The claim of the Landesversicherungsanstalt, the intervener in the case, for repayment of the pension which it was paying to Mrs Töpfer was dismissed.

The Landesversicherungsanstalt appealed and, subsequently, asserted before the French Cour de Cassation that, by means of the action by subrogation, it should be granted repayment without any limitation of the pension payments already made and of the pension that it would continue to pay to the widow.

The Cour de Cassation asked the Court of Justice whether the action by subrogation which might be available, under Article 52 of Regulation No. 3, is, as regards its extent and the apportionment between the institution and the insured person or his legal successors of the compensation payable by the person responsible for the accident, governed by the legislation of the State in which the said institution is established.

Under the terms of Article 52 of Regulation No. 3 of the Council, the subrogation takes place under the legislation applicable to the institution liable to pay benefits but, for the purposes of determining the content of that right, account must be taken of the limitation resulting from the provisions of Article 52 of the regulation, whereby subrogation is permitted only in so far as the damage is the cause of the benefits paid by the institution liable to pay them.

The Court ruled that the action by subrogation which may be available, under Article 52 of Regulation No. 3, to a social security institution in a Member State, as the consequence of an accident in the territory of another Member State involving a person insured with such institution, must be recognized on the basis of the legislation applicable to the institution liable to pay benefits. However, the right of subrogation covers only the compensation to which the victim or his legal successors are entitled under the legislation of the State in the territory of which the injury occurred and which corresponds to the benefits paid by the institution liable to pay benefits, and not compensation granted for non-material damage or in respect of other items of damage of a personal nature.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

16 February 1977

Firma Schöttle & Söhne OHG, Oberkollwangen

v Finanzamt Freudenstadt

Case 20/76

1. Tax provisions - Internal taxation - Concept - Wide interpretation - International transport of goods by road - Charge - Imposition according to the distance covered on the national territory and the weight of the goods in question
(EEC Treaty, Art. 95)

2. Tax provisions - Internal taxation - Imported products - Charges in excess of those imposed on similar national products - Concept
(EEC Treaty, Art. 95)

3. Tax provisions - Internal taxation - Goods moving within the national territory - Imported goods - Charges - Comparison - Criteria - Powers of the national judge
(EEC Treaty, Art. 95)

4. Tax provisions - Internal taxation - Imported goods - Discrimination - Prohibition - Application
(EEC Treaty, Art. 95)

1. As the concept of internal taxation within the meaning of Article 95 of the EEC Treaty must be given a wide interpretation, taxation "imposed indirectly on products" must be interpreted as also including a charge imposed on international transport of goods by road according to the distance covered on the national territory and the weight of the goods in question.

2. Article 95 is intended to ensure that the application of internal taxation in one Member State does not have the effect of imposing on products originating in other Member States taxation in excess of that imposed on similar domestic products and it is therefore irrelevant that the taxation is also imposed on the same conditions on national products which are exported and on imported products.

3. In order to compare the tax on goods moving within the national territory with that on the imported product for the purposes of the application of Article 95, account must be taken of both the basis of assessment of the tax and the advantages or exemptions which each tax carries with it. It is for the national judge to compare in specific cases the situations which may arise.

4. The minor and incidental nature of the obstacle created by a national tax and the fact that it could only have been avoided in practice by abolishing the tax are not sufficient to prevent Article 95 from being applicable.

N o t e

The first paragraph of Article 95 of the EEC Treaty prohibits the Member States from imposing "directly or indirectly, on the products of other Member States any internal taxation ... in excess of that imposed ... on similar domestic products".

As part of the Transport Policy Programme for 1968 to 1972 the Federal Republic of Germany enacted a Law providing for the temporary taxation of certain carriage of goods by road in order to divert long-distance transport towards the railways.

Local carriage of goods and all international carriage were subject to the tax, which was calculated on the metric ton per kilometre.

The Law defines the concept of local transport as covering all transport of goods for others by powered vehicle within the borders of the town or village or the "local" zone (50 kilometres from the centre of the town or village in which the lorry has its place of origin). However, international transport which commences in or has its destination in a local zone in the immediate vicinity of a frontier is exempt from the tax. The main action is concerned with a dispute between a German importer of gravel from French territory and the Finanzamt Freudenstadt has called in question the compatibility of the German tax on the carriage of goods by road with the first paragraph of Article 95 of the Treaty in that, for transport operations which were in every way comparable, the importer had to pay a tax in respect of French goods but was able to carry out the transport operation in respect of national goods without paying tax. In answer to the various questions referred to it by the Finanzgericht Baden-Württemberg, the Court ruled:

1. Taxation imposed indirectly on products within the meaning of Article 95 of the EEC Treaty must be interpreted as also including a charge imposed on international transport of goods by road according to the distance covered on the national territory and the weight of the goods in question.

2. Article 95 is intended to ensure that the application of internal taxation in one Member State does not have the effect of imposing on products originating in other Member States taxation in excess of that imposed on similar domestic products and it is therefore irrelevant that the taxation is also imposed, on the same conditions, on national products which are exported and on imported products.

3. In order to compare the tax on goods moving within the national territory with that on the imported product for the purposes of the application of Article 95, account must be taken of both the basis of assessment of the tax and also of the advantages or exemptions which each tax carries with it.

4. The minor and incidental nature of the barrier created by national tax and the fact that it could only have been avoided in practice by abolishing the tax are not sufficient to prevent Article 95 from being applicable.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

17 February 1977

Farbwerke Hoechst AG v Hauptzollamt Frankfurt

Case 82/76

1. Value for customs purposes - Determination - Association - Definition for the purposes of Article 2 (2) of Regulation No. 803/68 - Application to the case of Article 3 (7) (b) of that regulation

2. Value for customs purposes - Determination - Association - Concept
(Regulation No. 803/68, Article 2 (2))

3. Value for customs purposes - Determination - Territorial distribution rights - Transfer in exchange for royalties - Right to manufacture the imported product - Assignment free of charge - Regulation No. 1788/69, Article 2 (1) (a) - Application

1. The definition of the concept of "persons associated in business" set out in Article 2 (2) of Regulation No. 803/68 of the Council is also valid for the purposes of the application of Article 3 (7) (b) of that regulation.

2. An association such as that referred to in Article 2 (2) of Regulation No. 803/68 is created by a contract whereby the foreign supplier of a product grants to the Community buyer distribution rights which are territorially defined against payment of royalties in the form of a percentage share of the proceeds of sales.

3. A contract by which, primarily, territorial distribution rights are transferred in return for royalties and, in addition, the right, assigned free of charge, to manufacture the imported product, falls within the provisions of Article 2 (1) (a) of Regulation No. 1788/69 of the Commission.

N o t e

The German undertaking Hoechst concluded with the Swiss undertaking Hoffman-La Roche a contract whereby it obtained the right to purchase from La Roche a product produced by the latter from two substances or to manufacture this product itself from the substances delivered by La Roche and to sell the preparation throughout the world with the exception of the United States of America.

Hoechst may sell the speciality under its own trade-mark and in its own name without being able to mention La Roche in its publicity without the express consent of that firm. In consideration "for the granting of the marketing rights" Hoechst undertook to pay to La Roche a royalty of 3% of the net proceeds.

In 1971 and 1972, Hoechst imported ten consignments of the speciality in question and re-packed the product and subsequently affixed for the first time the trade-mark "Borgal", registered in its name in the Federal Republic of Germany.

The Customs Office, the defendant in the main proceedings, after ruling that there existed a licensing contract between Hoechst and La Roche and the affixing of the trade-mark "Borgal", by amended notice of assessment determined the customs value of the specialities in question by increasing their price both in respect of the royalties paid to La Roche, which increase is no longer at issue, and also in respect of the presumed value of the trade-mark "Borgal".

It is this latter increase which is at issue as the Customs Office holds that in application of Article 3 (7) of Regulation No. 803/68 of the Council on the valuation of goods for customs purposes, the trade-mark "Borgal" must be regarded as a foreign mark in view of the fact that Hoechst was "associated in business" with La Roche, the vendor of products based outside the customs territory of the Community and that the inclusion of the value of the trade-mark in the value for customs purposes is not excluded by Article 2 of Regulation No. 1788/69 of the Commission determining certain exceptions within the meaning of Article 3 (2) of the above-mentioned regulation of the Council.

The Hessisches Finanzgericht considered it necessary to refer to the Court of Justice certain questions of interpretation concerning these provisions of the regulations.

The first question asks whether the definition of business association contained in Article 2 (2) of the regulation is also applicable to the concept of association referred to in Article 3 (7) of the same regulation. The Court ruled that the definition of the concept of "persons associated in business" set out in Article 2 also holds good for the application of Article 3 of that regulation.

Another question is concerned with the origin of an association such as that referred to in Article 2 (2) of Regulation No. 803/68. The Court ruled that an association of this type is created by a contract whereby the foreign supplier of a product grants to the Community purchaser distribution rights which are territorially defined against payment of royalties in the form of a percentage share in the proceeds of sales.

A third group of questions is concerned with certain exceptions provided for by the regulation of the Commission. Article 2 of Regulation No. 1788/69 of the Commission provides that "in so far as the right to use a trade-mark treated as a foreign trade-mark within the meaning of Article 3 (7) of Regulation (EEC) No. 803/68 does not entail the payment of any royalty, the value of such right shall not be included in the value for customs purposes where ... the trade-mark is that of a sole agent or sole concessionnaire established in a Member State, there is no business association between the agent or concessionnaire and the supplier of the goods to be valued other than the relationship created by the agency or concession".

The national court believed that this provision could be applicable to the use made by Hoechst of its trade-mark "Borgal" and seeks clarification of the terms "sole agent" and "sole concessionnaire".

The Court held that these concepts must not be understood as referring to two quite distinct and mutually exclusive legal constructions but as including different relations which, in the legal systems of the Member States, include under one or other heading contractual relationships belonging to the category thus set out.

Consequently, a contract whereby principally territorial distribution rights are transferred in exchange for royalties and in addition the right, assigned free of charge, to manufacture the imported product, comes within the meaning of the said concepts.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

17 February 1977

Silvana Di Paolo

v Office National de l'Emploi

Case 76/76

1. Social security for migrant workers - Unemployment of a worker, other than a frontier worker, occupied in another Member State - Benefits - Claim in the Member State of residence - Concept of residence

(Regulation No. 1408/71, Article 71 (1)(b)(ii)

2. Social security for migrant workers - Unemployment of a worker, other than a frontier worker, occupied in another Member State - Benefits - Claim in the Member State of residence - Grant - Conditions

(Regulation No. 1408/71, Article 71 (1)(b)(ii)

1. The concept of the Member State in which the worker resides, appearing in Article 71 (1)(b)(ii) of Regulation No. 1408/71, must be limited to the State where the worker, although occupied in another Member State, continues habitually to reside and where the habitual centre of his interests is also situated.

The addition of the words "or who returns to that territory" implies merely that the concept of residence in a State does not necessarily exclude non-habitual residence in another Member State.

2. For the purposes of applying Article 71 (1)(b)(ii), account should be taken of the length and continuity of residence before the person concerned moved, the length and purpose of his absence, the nature of the occupation found in the other Member State and the intention of the person concerned as it appears from all the circumstances.

Miss di Paolo, an Italian national, received technical secondary education in Belgium until June 1972. From September 1972 to the end of July 1973 she was in the United Kingdom, where she was employed in a hospital. On returning to her parents' home in Belgium Miss di Paolo, being unemployed, submitted, in October 1973, an application for unemployment benefits to the Belgian Office National de l'Emploi. The application was rejected on the ground that the applicant could not claim the requisite number of working days during the ten months immediately prior to her application.

The appellant in the main action has claimed the application to her of Article 67 (1) of Regulation No. 1408/71, which provides that, as regards the acquisition, retention or recovery of the right to unemployment benefits, account shall be taken, to the extent necessary, of periods of insurance or employment completed under the legislation of any other Member State. However, paragraph (3) of that article provides that, except in the cases referred to in Article 71 (1), application of the provisions of paragraph (1) shall be subject to the condition that the person concerned should have completed lastly periods of insurance in accordance with the provisions of the legislation under which the benefits are claimed. Article 71 covers the case of a worker, other than a frontier worker, who is wholly unemployed and who makes himself available for work to the employment services "in the territory of the Member State in which he resides, or who returns to that territory", and he receives benefits in accordance with the legislation of that State as if he had last been employed there.

The Belgian Cour de Cassation asked the Court of Justice to interpret the concepts of residence and return to the territory, to explain which criteria are applicable and to state when the conditions of residence and return must be fulfilled. After consideration of the above-mentioned provisions, which must be strictly interpreted, the Court ruled:

1. The concept of the Member State where the worker resides, appearing in Article 71 (1) of Regulation No. 1408/71, must be limited to the State where the worker, although employed in another Member State, continues habitually to reside and where the habitual centre of his interests is also situated.

2. The addition to the provision of the words "or who returns to that territory" implies merely that the concept of residence in one State does not necessarily exclude non-habitual residence in another Member State.

3. For the purposes of applying Article 71 (1), account should be taken of the length and continuity of residence before the person concerned moved, the length and purpose of his absence, the nature of the occupation found in the other Member State and the intention of the person concerned as it appears from all the circumstances.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

17 February 1977

Confédération Française Démocratique du Travail

v Council of the European Communities

Case 66/76

Costs - Order that the parties bear their own costs - Exceptional circumstances
Rules of Procedure, Art. 69 (3)

When a trade union institutes proceedings with the sole aim of ensuring that the Consultative Committee is representative, a requirement expressly laid down by Article 18 of the ECSC Treaty, this constitutes an exceptional circumstance justifying an order that the parties should bear their own costs.

N o t e

This is an application for the annulment of the decision of the Council of 1 June 1976 and of the refusal of the Secretary General of the Council contained in his letter of 1 July 1976 to submit to the Council the candidates put forward by the C.F.D.T. for membership of the Consultative Committee referred to in Article 18 of the ECSC Treaty.

The application for annulment submitted by the C.F.D.T. was dismissed as inadmissible since, under Article 38 of the ECSC Treaty, an act of the Council may be declared void by the Court only on an application by a Member State or the Commission and since, as the application was submitted by a body other than those defined in that article, it fails to fulfil an essential condition as to admissibility laid down by that provision.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

1 March 1977

Goulven Collic

v Fonds d'Orientation et de Régularisation des Marchés Agricoles

Case 84/76

Agriculture - Common organization of the markets - Milk - Withholding from market - Premium - Beef and veal - Production - Adult bovine animals - Annual inspection - Number - Calculation - Method

(Regulation No. 2195/69 of the Commission, Art. 2)

Article 2 of Regulation (EEC) No. 2195/69 requires the competent authority, in calculating the number of adult bovine units on a farm, to take such animals into account in proportion to the time for which they have been there. In making that calculation the competent authority must exclude the period during which the cattle were under the age of four months.

N o t e

The main action arises out of the decision of the competent French authority to recover from the applicant in the main action a part of the Community subsidy previously paid to him for ceasing to market milk, on the ground that he had failed to comply with the requirements laid down.

In order to limit the growth of the surplus of milk and milk products and to encourage the production of beef and veal the Council adopted a regulation which grants subsidies to farmers who, without ceasing their production of milk, completely and finally give up the marketing of milk products. The amount of that subsidy is intended to compensate for the loss of the income received from marketing the products in question. Such subsidy is paid only if the recipient has on his farm a number of units of adult bovine animals equal to or exceeding the number of milk cows kept when the application for the subsidy was submitted. When an inspection was made to see that the condition in question was satisfied, it appeared that the plaintiff in the main action, Mr Collic, did not have on his farm the number of units of adult bovine animals required by the regulation.

How is that number of units of adult bovine animals calculated?

Article 1 (2) of the implementing regulation adopted by the Commission defines a unit of adult bovine animal as "an animal of the domestic bovine species aged at least 12 months".

As regards the calculation, the following conversion rates fixed by Article 2 of the Commission regulation must be applied:

(a) bovine animals of less than 4 months: 0 units of adult bovine animals;

(b) bovine animals of more than 4 months but less than 12 months: 0.4 units of adult bovine animals.

Mr Collic, who when applying for the subsidy had stated that he kept 14 milk cows, had 14 units of adult bovine animals when the first and second inspections were carried out. A third inspection had shown the existence of only 4.4 units of adult bovine animals, which led the competent French authority to claim reimbursement of the subsidy from the plaintiff in the main action.

Mr Collic challenged that claim for reimbursement on the ground that in counting the adult bovine animals present on his farm, calves reared by him and slaughtered after the age of 4 months should be included at a conversion rate of 0.4. It appears that, in addition to the adult bovine animals noted at the time of the inspection, Mr Collic had on his farm three herds of 50 calves for slaughter aged from 15 days to 4½ months.

As the Tribunal Administratif, Rennes, considered European law to be involved, it asked the Court of Justice to rule whether the provisions in question permit bovine animals on a farm to be taken into account in proportion to the time that they have been there and whether, in order to establish the conversion rate, account must be taken of the age of the bovine animals at the date of the inspection or at the date on which they are marketed if the person in receipt of the subsidy produces evidence that his bovine animals were marketed after reaching the age of 4 months.

In its analysis of the rules the Court has stated that it is clear from the objectives of the texts in question that the important factor in the application of the regulation is not the occasional presence on the farm of the required number of units of adult bovine animals but the presence of the required number throughout the whole of the reference year. The use of the expression "to the satisfaction of the competent authority" allows the authority to exercise its discretion as regards the evidence which must be provided by the person to whom the subsidy is paid.

In reply the Court ruled that:

(1) For the calculation of the number of units of adult bovine animals on a farm, Article 2 of Regulation (EEC) No. 2195/69 obliges the competent authority to take such animals into account in proportion to the time that they have been there;

(2) In making that calculation the competent authority must exclude the period before the bovine animals reached the age of four months.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

2 March 1977

Milch-, Fett- und Eier-Kontor

v Council and Commission

Case 44/76

1. Procedure - European Economic Community - Non-contractual liability - Request for declaration - Imminent and foreseeable damage - Damage not yet assessable - Application to the Court - Admissibility
(EEC Treaty, Art. 215)

2. Agriculture - Products subject to a single price-system - Export refunds - Variability - Payment - Conditions
(Regulation No. 1041/67 of the Commission, Art. 4)

1. Article 215 of the Treaty does not prevent the Court from being asked to declare the Community liable for imminent damage foreseeable with sufficient certainty even if the damage cannot yet be precisely assessed.

2. Neither the publication by the Commission of Regulation No. 1041/67 nor the behaviour of the Commission as regards the grant of variable export refunds is sufficient to make the Community liable and to require it to make good the damage suffered by the applicant since the competent institution is only required to grant variable refunds if the goods have actually arrived in the territory of destination.

N o t e

The large butter surplus existing in 1968 led the Community authorities to adopt certain measures to promote its disposal. For that purpose, any party concerned could, subject to certain conditions, purchase from the national intervention agency butter for which a special reduction was granted if that party undertook to export it.

In September 1970 the applicant obtained export certificates to Morocco, Algeria or Tunisia fixing in advance the refunds for certain quantities of butter obtained from the German intervention agency.

The competent German customs office initially paid the amount of the refund fixed in advance for part of the said exportation but subsequently rejected the claims for payment of the refunds for the remainder and demanded proof of marketing in Morocco. Since it did not receive such proof the customs office in question reclaimed from the applicant the amount which had been paid to it.

These events have given rise to a number of cases before the Finanzgericht Hamburg, one of which led to a request for a preliminary ruling (judgment of 2 June 1976, Case 125/75 [1976] ECR 771).

The applicant brought the present action for damages against the Commission under the second paragraph of Article 215 of the EEC Treaty on the ground that through its "communications" that body let it be assumed that payment of the refunds fixed in advance depended solely upon the condition of the goods' having actually arrived in Morocco. The action is also directed against the Council on the ground that it failed to establish clearly the legal situation regarding export refunds.

The claim is for payment by the defendants of the refunds refused to the applicant by the customs office, for discharge by the defendants of the customs office's claims for repayment of the sum paid in respect of the first batch of exports, together with interest on the two sums as from February 1971 and, finally, for repayment of the lawyers' fees already incurred, the court fees and legal fees.

As regards the substance of the case, the Court referred to the grounds of the request for a preliminary ruling which had been previously dealt with and held that the reason why the refund varies according to the destination of the products is that "markets in the countries of destination are at [varying] distances from Community markets and special conditions apply to imports in certain countries of destination". It follows from the Community rules that the amount of the refund depends on the conditions of the market on which the product in question is to be placed and, as a result, on the actual import of the product into the given country of destination. It is necessary for the goods to have been cleared through customs and put into free circulation at the destination.

The Member States may require, as a condition for payment of the refund, proof not only that the product has left the geographical territory of the Community, but also that the product in question has been imported into a third country. The applicant provided no such proof. The application was therefore dismissed and, since the applicant failed in all its submissions, it was ordered to bear the costs.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

22 March 1977

North Kerry Milk Products Ltd

and Minister for Agriculture and Fisheries

Case 80/76

1. Community law - Linguistic discrepancies - Elimination - Interpretation

2. Agriculture - Common organization of the market - Skimmed milk - Processing into casein before 7 October 1974 - Marketing after that date - Aid - Calculation - Conversion date

1. The elimination of linguistic discrepancies by way of interpretation may in certain circumstances run counter to the concern for legal certainty, inasmuch as one or more of the texts involved may have to be interpreted in a manner at variance with the natural and usual meaning of the words. Consequently, it is preferable to explore the possibilities of solving the points at issue without giving preference to any one of the texts involved.

2. A proper reading of the relevant texts must lead to the conclusion that marketing was the event by which the manufacturer became entitled to aid. It follows that marketing was "le fait générateur de la créance" within the meaning of the French text and the other corresponding texts as well as "the event by which the amount became due and payable" within the meaning of the English text of Article 6 of Regulation No. 1134/68. This Article in conjunction with Regulation No. 756/70 must therefore be understood to mean that the amount of aid for skimmed milk processed into casein before 7 October 1974 but marketed after that date is to be calculated by reference to the rate of conversion between the Irish pound and the unit of account applicable on the date of marketing.

Note

The main action is between North Kerry Milk Products Limited, an Irish manufacturer of milk products, and the Minister for Agriculture and Fisheries which is the agency in Ireland responsible for the implementation of the common agricultural policy.

The action seeks to discover which date must be applied in choosing the rate of conversion applicable between the unit of account and the Irish pound in respect of certain quantities of casein which were manufactured before 7 October 1974, the date on which the conversion rate was altered, but were not marketed until after that date.

The High Court of Ireland was led to ask the European Court to give a preliminary ruling on the question whether the amount of aid payable to the manufacturer is to be calculated with reference to the rate of exchange applicable on the date of manufacture or to the rate of exchange applicable on the date of marketing.

In order to answer that question the Court considered the terms of the regulation on conditions for alterations to the value of the unit of account used for the common agricultural policy and of the implementing regulation.

Article 4 of Regulation No. 1134/68 of the Council provides that "the sums owed to or by a Member State or a duly authorized body, expressed in national currency and representing amounts fixed in those provisions in units of account, shall be paid on the basis of the relationship between the unit of account and the national currency which obtained at the time when the transaction or part transaction was carried out".

Article 6 of the same regulation specifies that "the time when a transaction is carried out shall be considered as being the date on which occurs the event ... by which the amount involved in the transaction becomes due and payable".

The question arises whether the event by which the amount becomes due and payable is constituted by the marketing of the products, as is claimed by the plaintiff in the main action or, as the Commission maintains, by the mere processing of the product.

The Court has found that under the Community legislation the processing as such does not confer upon the manufacturer any enforceable right to aid. He cannot submit an application to the competent national intervention agency before having marketed the casein for which he seeks aid. Before marketing the product it is impossible for a manufacturer to know to what amount of aid expressed in units of account he will be entitled.

The Court has ruled that Article 6 of Regulation No. 1134/68 in conjunction with Regulation No. 756/70 must be understood to mean that the amount of aid for skimmed milk processed into casein before 7 October 1974 but marketed after that date is to be calculated by reference to the rate of conversion between the Irish pound and the unit of account applicable on the date of marketing.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

9 March 1977

Société Anonyme Générale Sucrière, Société Béghin-Say

v Commission and Others

Joined Cases 41/73, 43/73 and 44/73 (Interpretation)

1. Competition - Cartels - Prohibition - Infringement - Fine - Fixing the fine - Amount - Units of Account - Conversion into national currency - Fixing the fine in this national currency

   (Regulation No. 17 of the Council, Art. 15, Art. 18)

2. Competition - Cartels - Prohibition - Infringement - Fine - Amount - Fixing the amount in another national currency - Payment in another national currency of the Community - Admissibility - Conditions

   (Regulation No. 17 of the Council, Art. 15)

3. Procedure - Judgment - Interpretation - Effects

   (Rules of Procedure, Art. 102)

1. To the extent to which Article 15 (2) of Regulation No. 17, for the purpose of defining these limits, takes the u.a. into consideration the Commission and the Court, in order to convert the u.a. into national currency, have to adopt the method found in Article 18 of the said regulation and in the provisions to which this article refers. Nevertheless there is nothing in the wording of Article 15 of Regulation No. 17 which justifies the conclusion that the Commission and the Court are bound to express the amount of a fine in u.a. or with reference to a sum expressed in u.a. Since the u.a. is not a currency in which payment is made, the Commission and the Court are of necessity bound to fix the amount of the fine in national currency.

2. Although the Commission can require undertakings upon which a fine has been imposed within the meaning of Article 15 of Regulation No. 17 to pay their debts in the national currency indicated in the Commission's decision or in the judgment of the Court, no legal provision prevents the Commission from accepting payments in another national currency of the Community. Nevertheless it must see to it that the actual value of the payments made in another currency corresponds to that of the sum fixed in national currency in the decision or in the judgment. Therefore

the conversion of the two national currencies in question must be effected at the exchange rate on the free foreign exchange market applicable on the day of payment.

3. An interpreting judgment is binding not only on the applicants but also on any other party, in so far as that party is affected by the passage in the judgment which the Court is asked to interpret or by a passage which is exactly similar thereto.

N o t e

By its judgment of 16 December 1975 the Court of Justice annulled or partly revised a decision of the Commission of 2 January 1973 which had been adopted mainly in order to impose fines expressed in units of account and in national currency on a large number of continental manufacturers of sugar on the ground of infringements of the rules governing competition.

The operative part of the judgment of 16 December 1975 expresses the fines imposed in units of account (a unit of account is equal to 0.88867088 grammes of fine gold) and indicates in brackets the value of the fine in the national currency.

Two French companies, Générale Sucrière et Béghin-Say, paid the equivalent of the amount expressed in units of account to the Commission in Italian lire. The Commission informed the companies that those payments could not be accepted in full settlement of their debt and that if they wished to pay in lire they should have paid a sum corresponding to the amount expressed in the national currency (in this case, French francs).

The companies challenged that point of view. In their view the size of the debt is determined by the amounts fixed by the Court in units of account and the sums expressed in national currency only appear in the judgment by way of guidance.

The two French companies submitted an application for the interpretation of the judgment of 16 December 1975.

Under the terms of Article 15 of Regulation No. 17, the Commission may, within certain strict limits, impose fines on undertakings (such fines may range from 1,000 to 1,000,000 units of account but must not exceed 10 % of the turnover of the undertaking). However, there is nothing in that provision to indicate that the Commission and the Court are obliged to express the amount of a fine in units of account or by reference to a sum reckoned in units of account. Furthermore, the reference made to the turnover of the undertaking necessarily assumes that the calculation is made in the national currency. Moreover, since the unit of account is not a currency in which payment may be made, the Commission and the Court must, of necessity, fix the amount of the fine in a national currency. The judgment must therefore be understood to mean that the size of the debts of each of the applicants is to be determined by the amounts expressed in French francs and that the amounts expressed in units of account were stated solely in order to enable a check to be made that the fines fell within the required range.

Therefore, the Commission was and is empowered to require the applicants to pay their debts in French francs.

There is, of course, no text which prohibits the Commission from accepting payments made in another national currency of the Community; nevertheless, it is bound to ensure that the real value of payments made in another currency corresponds to that of the sum fixed in national currency by the judgment of the Court, and the conversion between the two national currencies in question must be made at the free rate of exchange applicable on the day of payment.

An interpretative judgment is effective not only with regard to the applicants (in this case, the French companies) but also with regard to any other party, to the extent to which such party is affected by the provision of the judgment whose interpretation is requested, or by a provision which is strictly analogous thereto.

As regards the costs, the undertakings Générale Sucrière, Béghin-Say, Centrale Suiker Maatschappij, Raffinerie Tirlemontoise, Sucres et Denrées, Süddeutsche Zucker AG, Südzucker Verkauf GmbH and Pfeifer & Langen were each ordered to bear their own costs and one-eighth of the costs incurred by the Commission.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

10 March 1977

Silvana Kaucic and Anna Maria Kaucic

v Institut National d'Assurance Maladie-Invalidité

Case 75/76

Social security for migrant workers - Invalidity insurance - Insurance periods completed - Benefits - Calculation - Theoretical amount - Reduction - National rule - Application where payment is made to the person concerned from a source outside the Community

(Regulation No. 3 of the Council, Art. 11 (2), Art. 26, Art. 28)
(Regulation No. 4 of the Council, Art. 9 (2))

The provisions of Regulation No. 3 of the Council of 25 September 1958 concerning social security for migrant workers, and in particular Article 28 (1) thereof, and of Regulation No. 4 of the Council do not preclude the application by the institution of a Member State, when calculating "for accounting purposes" the amount of the benefit to which the person concerned would be entitled if all the insurance periods had been completed exclusively under the legislation of that Member State, of a rule laid down under its own legislation in order to reduce the theoretical amount by the amount of a benefit received by the person concerned from a source outside the Community.

N o t e

Mr Kaucic, an Italian national, worked in Belgium from 1929 to 1940, in Austria from 1941 to 1945 and in Italy from 1949 to 1957. On 30 September 1957 he became unfit for work. He received an invalidity pension payable by the competent Austrian institution as from 1 October 1957 and from 1 January 1958 he obtained a pension payable by the competent Italian and Belgian institutions. Relations between Italy and Austria are governed by a bilateral convention, although there is no such convention governing relations between Belgium and Austria.

In accordance with a decision of the Administrative Commission of the EEC, which governs what is to be done in such circumstances, the pension payable to Mr Kaucic by the Italian institution was calculated in accordance with the convention between Italy and Austria pro rata with the insurance periods completed in those two countries, since a calculation made in that way was more favourable than one made in accordance with the Community provisions. On the other hand, the amount pro rata of the Belgian pension was calculated by aggregating the periods completed in Italy and in Belgium. However, the Belgian organization deducted the amount of the Austrian pension from the Belgian allowance calculated "for accounting purposes", that is to say, the allowance to which the person concerned would be entitled if all the insurance periods or assimilated periods had been completed exclusively under Belgian legislation. In doing so it applied the Belgian Law of 1963, organizing a system of compulsory sickness and invalidity insurance. Article 70 of that Law provides that Belgian insurance benefits shall not be added to the compensation payable for the same incapacity under other legislation, since, in every case, the recipient must receive sums which are at least equal to the amount of the insurance benefits. The case, which had been brought by Mr Kaucic and was proceeded with after his death by his two daughters, finally came before the Belgian Cour de Cassation, which asked the Court of Justice to give a preliminary ruling on questions concerning the interpretation of certain provisions of Regulation No. 3 on social security for migrant workers and, in particular, on the question whether Articles 27 and 28 of Regulation No. 3 of the Council on social security for migrant workers preclude the application of Article 70 of the Belgian Law of 1963.

The European Court of Justice emphasizes that the provisions of Regulations Nos. 3 and 4 which concern the aggregation of insurance periods refer only to periods completed under the legislation of the Member States and that periods completed in a third country, whether or not such country is bound to one or more of the Member States concerned by a convention on social security, do not form the subject of any provision of the Community regulations relating to the harmonization by the Member States of their systems of social security.

The Court ruled that the provisions of Regulation No. 3 of the Council of 25 September 1958, in particular Article 28 (1) thereof, and of Regulation No. 4 of the Council concerning social security for migrant workers, do not preclude the application by the institution of a Member State, when calculating "for accounting purposes" the amount of the benefit to which the person concerned would be entitled if all the insurance periods had been completed exclusively under the legislation of that Member State, of a rule of its own legislation in order to reduce the notional sum by the amount of a benefit accruing to the person concerned from a source outside the Community.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

16 March 1977

Fernand Liégeois and Office National des Pensions pour Travailleurs Salariés

Case 93/76

Social security for migrant workers - Voluntary or optional continued insurance within the meaning of Article 9 (2) of Regulation No. 1408/71 - Concept

The expression "voluntary or optional continued insurance" appearing in Article 9 (2) of Regulation No. 1408/71 covers assimilation to periods of employment for the purposes of insurance for periods of study whether there is any continuance of existing insurance or not.

N o t e

The plaintiff in the main action, a Belgian national, studied engineering in Belgium from 1950 to 1954 and in France from 1954 to 1956. After continuing his studies in the United States he worked, first, in France, then in the United States and since 1971 in Belgium.

In accordance with Belgian law he asked to be allowed to buy in his periods of study but the request was rejected on the ground that he did not fulfil one of the requirements of Belgian legislation, namely, the pursuit immediately after the period of study of an occupation in which he was subject to Belgian law on retirement and survivor's pensions for employed persons.

The dispute led the Tribunal du Travail, Charleroi, to ask the Court of Justice whether the requirement that the person concerned must have been employed, in this case in Belgium, immediately after the period of study, is affected by Article 9 of Regulation No. 1408/71, as being a clause under which admission to voluntary or optional continued insurance is made conditional upon the obligation to complete an insurance period, or by any other provision of a Community regulation.

Article 9 (2) of Regulation No. 1408/71 provides that "Where, under the legislation of a Member State, admission to voluntary or optional continued insurance is conditional upon completion of insurance periods, any such periods completed under the legislation of another Member State shall be taken into account, to the extent required, as if they were completed under the legislation of the first State".

The plaintiff in the main action states that the regularization of periods of study for the purpose of determining the pension rights of the employed person is a matter of admission to continued voluntary or optional insurance involving the application of the Community legislation. The Court stated that the assimilation of periods of study to periods of employment is devoid of purpose unless it gives those concerned the benefit of insurance for the periods in question subject to their paying the contributions prescribed by the national legislation.

The Court has ruled that the expression "voluntary or optional continued insurance" appearing in Article 9 (2) of Regulation No. 1408/71 covers assimilation to periods of employment for the purposes of insurance in respect of periods of study, whether or not there is any continuation of existing insurance.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

16 March 1977

Commission of the European Communities v French Republic

Case 68/76

1. Quantitative restrictions - Elimination - Measures having equivalent effect - Concept
(EEC Treaty, Art. 30)

2. Agriculture - Transitional period - Expiration - Quantitative restrictions on exports - Measures having equivalent effect - Elimination - Product not subject to a common organization of the market - Derogation - Not permissible
(EEC Treaty, Art. 34)

1. The imposition of any special formality on intra-Community trade constitutes an obstacle to the free movement of goods by the delay which it involves and the dissuasive effect which it has upon exporters.

2. Following the end of the transitional period, the provisions of Articles 39 to 46 cannot be relied upon in justification of a unilateral derogation from the requirements of Article 34 of the Treaty, even in respect of an agricultural product for which no common organization of the market has yet been established.

N o t e

Since 25 October 1975 exports of potatoes from France to the other Member States have been made conditional upon submission of an export declaration endorsed by the Fonds d'Orientation et de Régularisation des Marchés Agricoles (FORMA).

In an application lodged on 17 July 1976 the Commission asked the Court to rule that France has failed to fulfil its obligations under the Treaty and, in particular, under Article 34 thereof.

The French Government made exports of potatoes conditional upon submission of the declaration in question as a result of the reduction in the number of potatoes produced. The Ministry of Agriculture even specified that the measure in question was intended to "restrain" and to "regulate" the export of potatoes. The Commission considered that the purpose of the measure adopted by France was not only to monitor the market at the Community frontier but also to monitor intra-Community trade and that it was in fact introduced as a means of granting authorizations and imposing quota restrictions.

In its defence, France maintained that as the measure in question was merely a check for statistical purposes, it could not be regarded as a measure having an effect equivalent to a quantitative restriction on exports. France stated, in addition, that the bulletins circulated by the Ministry of Agriculture are intended for internal use alone. However, those explanations do not deal with the question of the objective scope of the French measure, and there is nothing in the bulletins to indicate that exports to the Member States are treated differently from exports to third countries.

The Court reaffirmed its earlier case-law (International Fruit Company NV v Produktschap voor Groenten en Fruit) and stated that apart from the exceptions for which provision is made by Community law itself Articles 30 and 34 preclude the application to intra-Community trade of a national provision which requires, even as a pure formality, import or export licences or any other similar procedure. The Court ruled that the French Republic has failed to fulfil its obligation under Article 34 of the EEC Treaty.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

22 March 1977

Firma Steinike and Weinlig v Federal Republic of Germany

Case 78/76

1. State aid - Compatibility with Community law - Challenge by individuals - Inadmissibility save in the cases provided for in Article 92 in respect of the measures provided for in Articles 93 (2) and 94 of the Treaty

2. State aid - Article 92 of the EEC Treaty - Interpretation - Application - National court - Jurisdiction - Limits - Bringing before the Court
(EEC Treaty, Art. 92, Art. 93)

3. State aid - Undertakings and production within the meaning of Article 92 of the EEC Treaty - Concepts

4. State aid - Prohibition - Field of application
(EEC Treaty, Art. 92)

5. State aid - Concept - Measures by public authority - Financing - Contributions imposed by this authority on the undertakings concerned
(EEC Treaty, Art. 92)

6. Member States - Obligations - Infringement - Failings of other Member States - Justification - Absence

7. Customs duties - Charges having equivalent effect - Internal taxation - Distinction - Criteria
(EEC Treaty, Art. 9, Art. 95)

8. Customs duties - Charges having equivalent effect - Levying subsequent to crossing the frontier

9. Internal taxation - Imported products - Domestic product - Discrimination - Concept
(EEC Treaty, Art. 95)

1. The intention of the Treaty in providing through Article 93 for aid to be kept under constant review and supervised by the Commission is that the finding that an aid may be incompatible with the Common Market is to be determined, subject to review by the Court, by means of an appropriate procedure which it is the Commission's responsibility to set in motion. The parties concerned cannot therefore simply, on the basis of Article 92 alone, challenge the compatibility of an aid with Community law before national courts or ask them to decide as to any compatibility which may be the main issue in actions before them or may arise as a subsidiary issue. There is this right however where the provisions of Article 92 have been applied by the general provisions provided for in Article 94 or by specific decisions under Article 93 (2).

2. The provisions of Article 93 do not preclude a national court from referring a question on the interpretation of Article 92 of the Treaty to the Court of Justice if it considers that a decision thereon is necessary to enable it to give judgment; in the absence of implementing provisions within the meaning of Article 94 however a national court does not have jurisdiction to decide an action for a declaration that existing aid which has not been the subject of a decision by the Commissio requiring the Member State concerned to abolish or alter it or a new aid which has been introduced in accordance with Article 93 (3) is incompatible with the Treaty.

3. Save for the reservation in Article 90 (2) of the Treaty, Article 92 covers all private and public undertakings and all their production.

4. The prohibition contained in Article 92 (1) covers all aid granted by a Member State or through State resources without its being necessary to make a distinction according to whether the aid is granted directly by the State or by public or private bodies established or appointed by it to administer the aid.

5. A measure adopted by the public authority and favouring certain undertakings or products does not lose the character of a gratuitous advantage by the fact that it is wholly or partially financed by contributions imposed by the public authority and levied on the undertakings concerned.

6. Any breach by a Member State of an obligation under the Treaty cannot be justified by the fact that other Member States are also failing to fulfil this obligation.

7. The same charge cannot within the system of the Treaty fall simultaneously within the category of charges having an effect equivalent to a customs duty within the meaning of Articles 9, 12 and 13 of the Treaty and that of internal taxation within the meaning of Article 95 in view of the fact that whereas Articles 9 and 12 prohibit Member States from introducing between themselves any new customs duties on imports or exports or any charges having equivalent effect, Article 95 is limited to prohibiting discrimination against the products of other Member States by means of internal taxation.

8. Where the conditions which distinguish a charge having an effect equivalent to a customs duty are fulfilled, the fact that it is applied at the stage of marketing or processing of the product subsequent to its crossing the frontier is irrelevant when the product is charged solely by reason of its crossing the frontier, which factor excludes the domestic product from similar taxation.

9. There is generally no discrimination such as is prohibited by Article 95 where internal taxation applies to domestic products and to previously imported products on their being processed into more elaborate products without any distinctions of rate, basis of assessment or detailed rules for the levying thereof being made between them by reason of their origin.

N o t e

In this case the Verwaltungsgericht Frankfurt-am-Main referred to the Court of Justice questions concerning the interpretation of provisions of the Treaty concerning aids granted by States. The main action concerns proceedings brought by a German firm against the Federal Republic of Germany, represented by the Bundesamt für Ernährung und Forstwirtschaft (Federal Office for Food and Forestry) relating to the compatibility with Community law of a contribution of 20,000 DM exacted from the plaintiff on the processing of citrus concentrates imported by it from Italy and various third countries.

The contribution is intended to finance a Fund for the promotion of German agriculture, forestry and food industries. The aid is given to the food industry independently of whether the German food products are made from domestic raw materials or semi-processed goods or such goods from other Member States.

The plaintiff in the main action takes the view that the contributions demanded of it infringe the Treaty and are therefore not payable because, on the one hand, their purpose is to finance aid which is incompatible with Article 92 of the Treaty and, on the other, they were levied on the processing of citrus concentrates coming from another Member State, although there is no similar product in the country of import, and were therefore either charges having an effect equivalent to customs duties prohibited by Articles 9, 12 and 13 of the Treaty or internal taxation discriminating against a product from another Member State contrary to Article 95.

The case has raised a large number of questions, namely: whether the procedural rules prescribed in Article 93 of the EEC Treaty preclude a national court from obtaining a preliminary ruling on Article 92 of the EEC Treaty and subsequently from deciding on the application of that provision; whether the expression "undertakings or the production of certain goods" in Article 92 of the EEC Treaty is restricted to private undertakings or whether it also includes non-profit-making institutions governed by public law; whether the concept "any aid granted through State resources" is satisfied even if it is the State agency itself which receives aid from the State or private undertakings; whether there is aid in the sense of granting a gratuitous advantage if the recipient of aid is not a private undertaking but a State agency, and whether it can be said to be gratuitous when the charge on the individual undertaking is insignificant in relation to the total amount of contributions; whether competition is distorted and trade between Member States affected if the market research and advertising carried on by the State agency in its own country and abroad is also carried on by similar institutions of other Community countries; whether a charge levied not on the imported goods themselves but on their processing is a charge having an effect equivalent to a customs duty; and, finally, whether the imposition of taxation on "the products of other Member States" not when they are imported but only when they are processed amounts to discrimination within the meaning of Article 95 of the EEC Treaty.

In reply to these questions the Court has ruled as follows:

1. A national court is not precluded by the provisions of Article 93 from referring a question on the interpretation of Article 92 of the Treaty to the Court of Justice if it considers that a decision thereon is necessary to enable it to give judgment; in the absence of implementing provisions within the meaning of Article 94, however, a national court does not have jurisdiction to decide an action for a declaration that an existing aid which has not been the subject of a decision by the Commission requiring the Member State concerned to abolish or alter it, or a new aid which has been introduced in accordance with Article 93 (3), is incompatible with the Treaty.

2. Save for the reservation contained in Article 90 (2) of the Treaty, Article 92 covers all private and public undertakings and their entire production.

3. The prohibition contained in Article 92 (1) covers all aids granted by a Member State or through State resources, no distinction being made as to whether the aid is granted directly by the State or by public or private institutions established or instructed to implement the system of aid.

4. A State measure favouring certain undertakings or products does not cease to be a gratuitous advantage by the fact that it is wholly or partially financed by contributions exacted from the undertakings concerned by the public authorities.

5. Where a Member State infringes an obligation under the Treaty in connexion with the prohibition contained in Article 92, it is no justification that other Member States likewise fail to fulfil that obligation.

6. Where a charge satisfies the conditions characterizing effects equivalent to customs duties, the fact that it is applied at a stage of marketing or processing of the product subsequent to its crossing of the frontier is irrelevant, provided that the product is charged solely because it crosses the frontier, which factor excludes the domestic product from similar taxation.

7. There is, generally, no discrimination such as prohibited by Article 95 where internal taxation applies to national products and previously imported products on processing into more highly-finished products where there is no distinction between them as to rate, basis of assessment or conditions of payment by reason of their origin.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

22 March 1977

Iannelli & Volpi S.p.A. and Paolo Meroni

Case 74/76

1. State aid - Compatibility with Community law - Challenge by individuals - Inadmissibility

   (EEC Treaty, Art. 92, Art. 93)

2. Quantitative restrictions - Elimination - Individual rights - Protection

   (EEC Treaty, Art. 30)

3. State aid - Articles 92, 93 and 30 of the EEC Treaty - Field of application - Difference - Aspects of aid which are not necessary for attainment of its object or for its proper functioning - Incompatibility with Article 30 of the EEC Treaty - Application of this provision

4. State aid - An aspect of aid which is not necessary for attainment of its object or for its proper functioning - Incompatibility with a provision of the EEC Treaty other than Articles 92 and 93

5. Internal taxation - Imported product - Domestic product - Discrimination - Prohibition - Field of application

   (EEC Treaty, Art. 95)

6. Internal taxation - Imported product - Domestic product - Discrimination within the meaning of Article 95 of the EEC Treaty - Jurisdiction of the national court

1. The intention of the Treaty in providing through Article 93 for aid to be kept under constant review and supervised by the Commission is that the finding that an aid may be incompatible with the Common Market is to be determined, subject to review by the Court, by means of an appropriate procedure which it is the Commission's responsibility to set in motion. The parties concerned cannot therefore simply, on the basis of Article 92 alone, challenge the compatibility of an aid with Community law before national courts or ask them to decide as to any incompatibility which may be the main issue in actions before them or may arise as a subsidiary issue.

2. Article 30 of the Treaty has direct effect and creates, at the end of the transitional period at the latest, for all persons subject to Community law, rights which national courts must protect.

3. The aids referred to in Articles 92 and 93 of the Treaty do not as such fall within the field of application of the prohibition of quantitative restrictions on imports and measures having equivalent effect laid down by Article 30. The aspects of aid, which are not necessary for attainment of its object or for its proper functioning and which contravene this prohibition may for that reason be held to be incompatible with this provision.

4. The fact that an aspect of aid, which is not necessary for the attainment of its object or for its proper functioning, is incompatible with a provision of the Treaty other than Articles 92 and 93 does not in fact invalidate the aid as a whole or for that reason vitiate by reason of illegality the system of financing the said aid.

5. Since Article 95 of the Treaty refers to internal taxation of any kind the fact that a tax or levy is collected by a body governed by public law other than the State or is collected for its own benefit and is a charge which is special or appropriated for a specific purpose cannot prevent its falling within the field of application of Article 95 of the Treaty.

In order to apply Article 95 of the Treaty not only the rate of direct and indirect internal taxation on domestic and imported products but also the basis of assessment and detailed rules for levying the tax must be taken into consideration.
As soon as any differences in this respect result in the imported product being taxed at the same stage of production or marketing at a higher rate than the similar domestic product the prohibition of Article 95 is infringed.

6. It is nevertheless for the national court within the framework of its own legal system to decide whether the whole of any internal taxation which is discriminatory within the meaning of Article 95 or only that part of it which exceeds the tax assessed on the domestic product is to be regarded as not payable.

N o t e

When the Iannelli e Volpi company, the plaintiff in the main action, imported rolls of wallpaper from France into Italy, it paid the Ente Nazionale per la Cellulosa e per la Carta (hereinafter referred to as the "ENCC") a body governed by Italian public law, a levy which it charged to the purchaser, the Meroni company. The latter company, the defendant in the main action, refused to pay the amount on the ground that the levy in question was incompatible with Community law.

In respect of these facts the Pretore of Milan requested the Court of Justice to interpret Article 30 (prohibition on quantitative restrictions or measures having equivalent effect) and Article 95 (aid granted by a State) of the EEC Treaty.

The ENCC is a body governed by Italian public law whose purpose is to promote and regulate, in particular by means of subsidies, the production of cellulose and paper.

The operations of the ENCC are financed by levies imposed on home-produced cellulose, paper and cardboard at various stages of their production or marketing and on similar imported products on the occasion of their importation. Italian law allows an importer who has paid to the ENCC the levy which was imposed on him to pass on part thereof to subsequent purchasers.

By way of justification for its refusal to pay its share the defendant in the main action argues, on the one hand, that the machinery for aid introduced by the statutory provisions in question is incompatible with the Treaty because it infringes Article 30 of the Treaty and, on the other hand, that the levy at issue constitutes discriminatory internal taxation in contravention of Article 95 of the Treaty. It is appropriate to state that the alleged infringement of Article 30 is due to the fact that the granting by the ENCC of subsidies to newspaper undertakings to enable them to obtain newsprint at cheaper prices was at the time subject to the condition that the newsprint in question was produced in Italy or imported by the ENCC; the scheme did not cover newsprint imported directly from another Member State.

The infringement of Article 95 of the Treaty is due to the fact that the basis of assessment of the levy differs for paper and cardboard according to whether they were produced in Italy or were imported.

The main point raised by the questions referred is whether a national court which has been asked to rule on the compatibility with the Treaty of a system of aids granted by a State within the meaning of Article 92 or of certain of the particular provisions of the system, may take account of a possible infringement of Articles 30 and 95 and, if that question is answered in the affirmative, what criteria are applicable for ruling on the existence of an infringement of those articles. It should be pointed out that these questions refer to the situation existing prior to the amendment of the system of aids in question, which was carried out as from 1 January 1974.

The first three questions referred by the national judge ask whether a system of subsidies for newsprint produced solely by national paper-producers constitutes a measure having an effect equivalent to a quantitative restriction on imports prohibited by Articles 30 et seq. of the Treaty; whether, in view of the fact that the system of subsidies is financed by parafiscal contributions levied on paper products imported from the other Member States, the possible illegality of the system makes those contributions in their turn illegal; and, finally, whether the rules set out in Articles 30 et seq. of the EEC Treaty are directly applicable and whether they create an individual right on behalf of importers of Community products to request the reimbursement of levies paid.

Although the scope of application of Article 30 is very wide nevertheless it does not cover the obstacles referred to in other specific provisions of the Treaty. Obstacles of a tax nature or having an equivalent effect referred to in Articles 9 to 16 and 95 of the Treaty do not fall within the prohibition set out in Article 30.

Similarly, the fact that a system of aids granted by a State obstructs, at the least indirectly, the importation of products from other Member States is not of itself sufficient to cause an aid as such to be described as a measure having an effect equivalent to a quantitative restriction.

Moreover, the incompatibility of aids with the Common Market is neither absolute nor unconditional.

Nevertheless, if, of itself, an aid frequently entails protection and thus a certain partitioning of the market in relation to the products of undertakings which do not benefit from the aid, that fact may not entail restrictive effects beyond what is necessary for the aid to achieve the objectives permitted by the Treaty.

In reply to these three questions the Court has ruled that:

1. Article 30 of the Treaty has direct effect and, from the end of the transitional period at the latest, creates individual rights which national courts must protect.

2. The aids referred to in Articles 92 and 93 of the Treaty do not as such fall within the scope of the prohibition on quantitative restrictions on imports and measures having equivalent effect laid down in Article 30, but particular provisions of an aid scheme which are not necessary for its object or its functioning and which contravene that prohibition may for that reason be recognized as being incompatible with that provision.

3. The fact that a particular component of an aid scheme which is not necessary to its object or its functioning is incompatible with a provision of the Treaty other than Articles 92 and 93 does not have the effect of making the aid as a whole void nor of thereby rendering the system for financing that aid illegal.

In the event of the preceding questions' being answered in the negative, the fourth question asks whether the prohibition on tax discrimination established by Article 95 of the Treaty also covers special levies imposed upon both domestic goods and imported goods, the revenue from which is intended for public bodies other than the State.

The Court has ruled that as Article 95 of the Treaty refers to any internal taxation of any kind the circumstances described cannot remove the special tax from the scope of Article 95.

The fifth and sixth questions raise the problem of the basis of assessment and of the individual right of importers of products from the Community to request the reimbursement of that part of the levy paid in excess as from 1 January 1962, the date of the beginning of the second stage.

In answering these final questions the Court has ruled that in applying Article 95 of the Treaty account should be taken not only of the rate of the internal taxation imposed directly or indirectly on national and imported products but also the basis of assessment and the detailed rules for the imposition of that tax.

If differences in this respect have the effect of producing higher taxation at the same stage of production or marketing of an imported product in comparison with a similar national product there does exist an infringement of the prohibition contained in Article 95.

It is for the national court, within the context of its own legal system, to determine whether discriminatory internal taxation within the meaning of Article 95 must be regarded as repayable in its entirety or only to the extent to which it affects the imported product more than the national product.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

31 March 1977

Walter Bozzone v Office de Sécurité Sociale d'Outre-mer

Case 87/76

Social security for migrant workers - Legislation of a Member State within the meaning of Article 1 (j) of Regulation No. 1408/71 - Concept

Social security for migrant workers - Rights acquired under the legislation of a Member State - Recipient - Employment exclusively in a non-metropolitan territory - Residence clause - Waiver - Application

(Regulation No. 1408/71, Art. 10 (1))

The expression "legislation" within the meaning of Article 1 (j) of Regulation No. 1408/71 includes all provisions laid down by law, regulation and administrative action by the Member States and must be taken to cover all the national measures applicable in this case, not only within the metropolitan territories but also in territories maintaining special relations with those States.

In the absence of express provisions to the contrary, the waiving of residence clauses prescribed by the first subparagraph of Article 10 (1) of Regulation No. 1408/71 applies to the situation of a recipient of benefits guaranteed by the legislation of a Member State relating to employment exclusively in a territory which at the time maintained special relations with a Member State, where that recipient, who is a national of a Member State, resides in the territory of a Member State other than that which is responsible for payment of social security benefits in respect of employment in the said territory.

N o t e

Is a Member State bound under the Community regulations on social security for migrant workers to grant invalidity benefits to a worker from another Member State on the basis of insurance periods completed by that worker in a former colony of the State "which is bound to pay the benefit"?

The facts are as follows: W. Bozzone, an Italian national, worked in the former Belgian Congo, now the Republic of Zaïre, from 1952 to 1960.

In April 1960 he left Africa for reasons of health and returned to Italy. At the same time he submitted a claim to the Belgian Fonds des Invalidités (Invalidity Fund) for an invalidity allowance under the Colonial Decree of 1952 governing the sickness and invalidity insurance of colonial employees. The claim was rejected on the ground that under the Colonial Decree referred to by the national court such benefits are only granted to persons who actually and habitually reside in Belgium or in one of the former Belgian colonies.

Since Regulation No. 1408/71 applies to workers who are or have been subject to the legislation of one or several Member States and who are nationals of one of those Member States and since it is accepted that Mr Bozzone is a worker and a national of a Member State, the Tribunal du Travail, Brussels, referred two questions to the Court of Justice for a preliminary ruling.

One of the problems raised concerns the scope of the concept "legislation of a Member State". The defendant in the main action, the Office de Sécurité Sociale d'Outre-Mer, maintains that the Community rules apply solely to the metropolitan territories of the Member States.

The Court ruled that in order to interpret the term "legislation" it is necessary to refer to the definition contained in Article 1(j) of Regulation No. 1408/71 which is so wide as to cover all types of legislative and administrative measures, including regulations adopted by the Member States, and which must be understood as referring to the whole corpus of national measures applicable in the matter.

The file shows that in this instance the plaintiff benefited from the Colonial Decree of 1952, under which he was awarded an invalidity pension. The continuation of the insurance scheme set up by that decree was guaranteed and the rights acquired thereunder confirmed by a Belgian Law of 16 June 1960.

Considered as a whole those provisions constitute "national legislation" within the meaning of Regulation No. 1408/71 and the Court ruled that the reply to be given to the question referred to it by the Tribunal du Travail, Brussels, must be that Article 2(1) of Regulation No. 1408/71 must be interpreted as applying to workers who have been or who are subject to the insurance scheme established by the Decree of 7 August 1952 which was continued in force by the Belgian Law of 16 June 1960.

The national court also referred to the Court of Justice a second question concerning the waiver of residence clauses provided for in the first subparagraph of Article 10(1) of Regulation No. 1408/71. In reply, the Court ruled that in the absence of express provisions to the contrary, the waiver of residence clauses provided for in the first subparagraph of Article 10(1) of Regulation No. 1408/71 applies to a recipient of benefits guaranteed by the legislation of a Member State in respect of employment exclusively in a territory which at the period in question enjoyed a special relationship with that Member State, where the recipient, being a national of a Member State, resides in the territory of a Member State other than that which is responsible for payment of the social security benefits in respect of employment in the territory in question.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

31 March 1977

Compagnie Industrielle et Agricole du Comté de Lohéac and Others

Joined Cases 54 to 60/76

EEC - Non-contractual liability - Legislative measure constituting a measure taken in the sphere of economic policy

(EEC Treaty, second paragraph of Art. 215)

A measure of a legislative nature constituting a measure taken in the sphere of economic policy cannot incur liability on the part of the Community under the provisions of the second paragraph of Article 215 unless a flagrant violation of a superior rule of law for the protection of the individual has occurred.

N o t e

In their applications the applicants, who are cane-sugar producers in the French departments of Martinique and Guadeloupe, are claiming damages for loss allegedly suffered during the sugar marketing years 1971 to 1975 as a result of the fact that, in fixing intervention prices for sugar, the Community institutions failed to take account of the discrepancy existing between the harvesting and selling periods for that product in the European territory (1 July to 30 December) and the same periods in the departments of Guadeloupe and Martinique (1 January to 30 June). The applicants put forward three submissions in support of their claim:

1. They consider that the regulations adopted before Regulation No. 3330/74 of 19 December 1974 of the Council (Official Journal No. L 359, p. 1) on the common organization of the market in sugar were manifestly unlawful in that they infringed Articles 39 and 40(3) of the Treaty and the principle of the protection of the legitimate expectation of citizens of the Community that the Treaty will be correctly implemented.

2. Secondly, they take the view that since the regulations did not take their interests into account, they constituted a manifest wrongful act or omission on the part of the Community institutions giving rise to liability "in that they failed to take into consideration the special geographical position of the departments of Guadeloupe and Martinique".

3. Finally, they maintain that even "if it cannot be found that the Community institutions are guilty of any wrongful act or omission, the applicants have suffered direct, special and abnormal damage" which must be made good.

The aim of those three submissions is, therefore, to claim that the Community has a non-contractual liability in respect of the damage which the applicants allegedly suffered as a result of the implementation of the Council Regulation of 1967 on the common organization of the market in sugar. Since the contested measure is legislative in nature and was adopted in the sphere of economic policy, the Community cannot, under the provisions of the second paragraph of Article 215, be held liable for any damage suffered, unless there has been a flagrant violation of a superior rule of law for the protection of the individual. Has any such violation occurred in this instance?

The aim of the rules enacted for the common organization of the market in beet and cane sugar was to establish a balance between the general interest in the proper management of the market, so as to avoid fluctuations in prices, and the maintenance of the guarantees necessary to ensure to growers of sugar beet and sugar cane employment and a fair standard of living. The Council, acting on a proposal from the Commission, based the organization of the market upon the principles of validity for one-year periods and the unity of the marketing year, which are moreover common to all agricultural policies.

The Council considered that it was justified, in a period of relative currency stability, for the intervention price for sugar from the departments of Martinique and Guadeloupe to be determined largely by the prices prevailing on the European market.

Having regard to the particular characteristics of that market a Management Committee was established for the purpose of adopting the appropriate measures, should changes occur and the need arise. In 1974 the Council decided in the light of a new situation (a rise in prices and a world shortage of sugar) that "the derived prices fixed ... for the French departments of Martinique and Guadeloupe shall apply to their sugar production during the calendar year in which that marketing year begins".

In adopting that decision the Council made a choice of economic policy falling within its discretionary powers, in accordance with the objectives of the common agricultural policy as defined by the Treaty and in particular by Article 39 thereof.

It has not been shown that the applicants were disappointed in their legitimate expectations and it cannot be proved that they suffered direct, special and abnormal damage, particularly since the damage in question is alleged to result not from a loss but from a failure to make a profit; it is difficult to prove within the framework of commercial contracts outside the sphere of Community arrangements (the applicants have never offered their sugar for intervention).

The Court dismissed the applications and ordered the applicants to pay the costs.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

31 March 1977

Fossi v Bundesknappschaft

Case 79/76

1. Social security for migrant workers - Community system - Area of application (EEC Treaty, Art. 51)

2. Social security for migrant workers - Invalidity and pensions insurance - German legislation - Insurance periods completed before 1945 outside the territory of the Federal Republic of Germany and West Berlin - Benefits - Community law - Inapplicability

1. Legislation which confers on the beneficiaries a legally defined position which involves no individual and discretionary assessment of need or personal circumstances comes in principle within the field of social security within the meaning of Article 51 of the Treaty and of Regulations Nos. 3 and 1408/71.

2. Where the competent insurance institutions to which the persons referred to by German legislation had been affiliated before 1945 no longer exist or are situated outside the territory of the Federal Republic of Germany and the purpose of such legislation is to alleviate certain situations which arose out of events connected with the National Socialist régime and the Second World War and where the payment of the benefits in question to nationals is of a discretionary nature where such nationals are residing abroad, those benefits are not to be regarded as in the nature of social security.

N o t e

Mr. Fossi, an Italian national residing in Italy, worked in the German mines in the Sudetenland, an area which at that time formed part of the former German Reich, from 1 June 1942 to 1 July 1943. During that period he was subject to the compulsory invalidity and pensions insurance scheme of the "Sudetendeutsche Knappschaft" (the then competent social security institution for mineworkers in the Sudetenland).

In 1958 Mr Fossi was awarded an invalidity pension by the competent Italian institution on the basis of Insurance periods which he had completed in Italy. On 1 February 1970 he applied to the

Bundesknappschaft (the mineworkers' insurance fund for the Federal Republic of Germany) for a pension. The Bundesknappschaft, which is required to assume certain of the obligations incumbent upon the mineworkers' social security institutions in existence before 1945 awarded the pension applied for but refused to pay it, on the ground that since the plaintiff had only worked and completed insurance periods outside the Federal Republic of Germany and was residing outside that territory it was "suspended under Paragraphs 105 et seq. of the RKG" (Imperial Law governing social security for mineworkers).

The Bundesknappschaft maintains that the suspension is not incompatible with the prohibition contained in Article 10 of Regulation No. 1408/71, since Annex V to that regulation provides for an exception to that prohibition in cases such as the present, whilst the plaintiff maintains that the exception is incompatible with Articles 48 et seq. of the EEC Treaty and that the refusal of the Bundesknappschaft results in discrimination against foreign nationals.

This led the Bundessozialgericht to ask the Court to give a preliminary ruling on the question whether "an Italian national living in Italy who at no time had lived or worked in the territory of the Federal Republic of Germany or of West Berlin, is to be treated, by virtue of Article 8 of Regulation No. 3 and of Article 3 (1) of Regulation (EEC) No. 1408/71 on the same footing as a German national when applying Paragraph 108 (c) of the RKG, so far as concerns insurance periods which were completed before 1945 with the Reichsknappschaft (Mineworkers' Association of the Reich) under the law of the Reich outside the territory of the Federal Republic of Germany or West Berlin".

A law of 1953 on substitute pensions and pensions awarded to certain categories of persons residing abroad assumed responsibility under certain conditions for the rights of the refugees or dispossessed persons concerned, whether or not they were German nationals.

Under the terms of that law payment of such pensions is to be suspended if the person entitled thereto is habitually resident outside the territory of the Federal Republic of Germany.

That law is in principle in the field of social security within the meaning of Article 51 of the Treaty and of Regulations Nos. 3 and 1408/71.

However, in the light of the facts that the competent insurance institutions to which the persons referred to in the provision in question had been affiliated no longer exist or are situated outside the territory of the Federal Republic of Germany and that the purpose of the German legislation in question is to alleviate certain situations which arose out of events connected with the national-socialist regime and the Second World War and, finally, that the payment of the benefits in question to nationals is discretionary where such nationals are residing abroad, those benefits are not to be regarded as in the nature of social security.

The Court has held that Article 8 of Regulation No. 3 and Article 3 (1) of Regulation No. 1408/71 do not apply to benefits such as those provided for in Paragraph 108 (c) of the Reichsknappschaftsgesetz in respect of periods completed before 1945 outside the territory of the Federal Republic of Germany and of West Berlin.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

31 March 1977

Société pour l'Exportation des Sucres S.A.

v Commission of the European Communities

Case 88/76

1. Procedure - Proceedings instituted by individuals - Measure of direct and individual concern - Concept - Admissibility
(EEC Treaty, second paragraph of Article 173)

2. Procedure - Proceedings instituted by individuals - Measure not applicable to the plaintiff - Lack of legal interest - Inadmissibility
(EEC Treaty, second paragraph of Article 173)

3. Procedure - Costs - Unreasonable costs - Payment thereof
(Rules of Procedure, Art. 69 (3))

1. Proceedings instituted by natural or legal persons are admissible against a measure of an institution concerning them by reason of circumstances in which they are differentiated from all other persons and distinguished individually just as in the case of the person addressed.

2. Proceedings instituted by any natural or legal person against a measure (regulation) which is not applicable to the situation of the plaintiff are inadmissible for lack of legal interest.

3. Even a successful party which, throughout the proceedings, based its position on a presumption which reveals itself to be unfounded may be ordered to pay the costs which it caused the other party to incur.

N o t e

The Société pour l'Exportation des Sucres possesses export licences which indicate the refund fixed in the context of the partial awards made before 15 March 1976 in accordance with the provisions of Regulation No. 2101/75. They represent a certain number of the licences acquired before 15 March which were still valid on 1 July and which, taken together, relate to a total quantity of 27,000 metric tons of sugar. The plaintiff company claims that it used before 30 June 1976 most of the licences due to expire on 31 July 1976 for a total of

approximately 15,000 metric tons of sugar. For those due to expire on 31 August 1976 it wished to renounce its intention to carry out the export transactions and to seek their cancellation. By a letter of 1 July 1976 addressed to the Office Central des Contingents et Licences (Central Office for Quotas and Licences), Brussels, the company requested the cancellation of those licences for a total amount of 11,000 metric tons of sugar. The said Office rejected the application for cancellation on the basis of Commission Regulation No. 1579/76, which abolished the right of cancellation with effect from 1 July.

The applicant considers that in so far as that regulation adversely affects acquired rights or justifiable expectations, it violates the principles of legal certainty and the protection of legitimate expectation and, therefore, cannot validly be relied on. It requests the Court of Justice to declare the regulation concerned void in accordance with Article 174 of the EEC Treaty, at least as regards those sections which contain the above-mentioned violation.

The application seeks the annulment of Commission Regulation (EEC) No. 1579/76 of 30 June 1976, laying down special detailed rules of application for sugar under Regulation (EEC) No. 557/76 on the exchange rates to be applied in agriculture, in so far as it abolishes the right to cancel export licences indicating the refund fixed in the context of the awards provided for by Regulation No. 2101/75 which were issued before 15 March 1976 and not yet used on 1 July 1976.

The Commission adopted the contested regulation on the ground that "in the sugar sector large scale recourse to the right to cancel export licences issued in connexion with partial awards ... could seriously disturb the Community management of the sector" and that "in order to avoid such a risk provision must be made for the right of cancellation not to apply, for appropriate compensation for the resulting disadvantage and for the terms under which such compensation shall be granted". The Court declared the application inadmissible.

It is true that as the regulation is of direct and individual concern to the applicant its application is admissible under the terms of Article 173 of the EEC Treaty.

The contested provision concerns natural or legal persons who are affected by circumstances in which they are differentiated from all other persons and which distinguish them individually just as in the case of a person to whom a decision is addressed.

However, the Court stated that it was necessary to consider whether the contested regulation is applicable to the situation of the applicant. The applicant, in fact, maintained that the regulation was not applicable to it since, although it was published in an issue of the Official Journal dated 1 July 1976, that issue was only circulated as from the following day and the regulation cannot have retroactive effect.

The Court stated that nothing in the contested regulation can affect the applicant before the date of its actual publication and it could not therefore be applied to requests for cancellation of licences which the applicant lodged before 1 July 1976.

Just published

THE EUROPEAN COMMUNITIES AND THE RULE OF LAW
By Lord A. Mackenzie Stuart
Published by Stevens 1977: The Hamlyn Lectures
29th Series, 125 pages

OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES
Boîte postale 1003 — Luxembourg

Catalogue number DY-PA-77-001-EN-C