INFORMATION ON THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

No. 12-13

Publications Division, Directorate General of Press and Information,
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THE ENFORCEMENT OF JUDGMENTS WITHIN THE COMMUNITY

Since February 1973, judgments in civil and commercial cases, delivered in any country of the Community, have in principle become enforceable throughout the Community. On 1 February 1973 the Convention on jurisdiction and the enforcement of civil and commercial judgments, which was signed on 27 September 1968 by the "Six", came into force. The new members of the Community have undertaken to adhere to this Convention.

This Convention applies in principle to all judgments in civil or commercial matters by the courts of the "Nine". It relates equally to orders of execution, court settlements, orders as to costs and other enforceable "public" documents. On the other hand, it does not apply to decisions relating to the status and capacity of natural persons, matrimonial régimes, wills, inheritances, bankruptcies, compositions or similar proceedings, social security and arbitration.

The innovation which should first be emphasized is the obligation of the courts when required to pronounce on a civil or commercial matter involving a foreign element, to examine their jurisdiction on the basis of the provisions of the Convention, even if the parties have not themselves expressly referred to those provisions. The court before which the case is brought should declare that it does not have jurisdiction when it establishes that a foreign court has exclusive or prior jurisdiction. Where an action is already pending before a foreign court, the tribunal to whom the case has been referred in the second instance must suspend proceedings until the court to which the case was originally referred has pronounced on whether it has jurisdiction. It follows from this automatic examination of the question of jurisdiction that judgments by default can only be delivered by courts, if they have jurisdiction in accordance with the Convention and if it is found that the defendant has been summonsed in due form and in sufficient time for him to enter a defence. The most important criterion for the determination of jurisdiction is the domicile of the defendant.

The second important innovation is the enforcement of judgments delivered in one Contracting State in any other Contracting State by means of a uniform and accelerated procedure. The court called upon to enforce a judgment shall examine neither the jurisdiction of the original court, nor the merits of the judgment for which enforcement is requested. The number of grounds on which enforcement of a judgment may be refused has been reduced to a minimum. The Convention is based on confidence in the sound administration of justice within the States concerned.

The uniform application of this Convention will be guaranteed by the Protocol, which gives the Court of Justice of the European Communities at Luxembourg the necessary jurisdiction as to interpretation.

See below (under: "Community Legislation") for the text of the Convention.

DECISIONS OF THE COURT OF JUSTICE

OF THE EUROPEAN COMMUNITIES

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

4 October 1972

(Brunner K.G. and Hauptzollamt Hof)

Case 9/72

AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - POULTRYMEAT - IMPORTS COMING FROM POLAND - CONCEPT (Regulation No. 565/68, Article 1).

Article 1 of Regulation No. 565/68 is to be interpreted as meaning that goods should be considered as "coming from" Poland, where they remain, up to the moment of their delivery in the Community, at the disposal and under the direct control of the seller, who is bound, in relation to the Polish People's Republic, to respect the undertakings entered into with regard to prices, and where the goods during the course of transport have not received customs clearance, been put in free circulation or been processed in any way.

NOTE:

The Munich Finanzgericht referred to the Court of Justice for a preliminary ruling in a case concerning the origin of agricultural products coming from countries outside the Common Market.

In order to avoid disturbances of the market in poultrymeat in the Community as a result of the offer of goods at abnormally low prices, the Council of the Communities adopted a regulation, providing for the fixing of a sluice-gate price and laying down that the levy applicable to a product should be increased by an additional amount when the offer price at the frontier of the Common Market falls below the sluice-gate price.

In the same way as another regulation of the Council in respect of wines, this Regulation also provides that the additional levy shall not be applied in regard to third countries, which are prepared and in a position to

guarantee that the price for imports into the Community of products originating in and coming from their territory will not be lower than the sluice-gate price of the product concerned and that any deflection of trade will be avoided.

The Government of the Polish People's Republic applied for the benefit of this exemption and gave the required guarantees in respect of its application. In consequence Poland has been allowed to benefit from exemption from the additional levy.

A Munich import firm declared 17 cars of slaughtered ducks of total weight 180,775 kgs. at a German customs office on the Austro-German border, giving Poland as the country of production, origin and purchase and indicating that the ducks had been despatched by the State Foreign Trade Agency (ANIMEX) in Warsaw.

After checking the position, the German Customs Authorities considered that the ducks in question had been sold and delivered by ANIMEX to an Austrian firm which had, in turn, resold them to the German firm. They therefore required payment of the amount of the additional levy. According to the German importer, the ducks of Polish origin had initially been sold by ANIMEX to an Austrian firm, which refused to accept them owing to delay in delivery. A Swiss undertaking acted as intermediary in the name of ANIMEX and offered the ducks to the German importer.

The Munich Finanzgericht, before whom this case was brought, requested the Court of Justice to give a ruling on whether the words "and coming from", appearing in the above-mentioned Regulation of the Council should be interpreted as meaning that the products in question could only satisfy this criterion, if they had not remained for any period of time in a transit country, nor been made the object, in that country, of transactions for reasons other than that of their transportation.

The Court of Justice gave an affirmative answer to this question.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

17 October 1972

(Cementhandelaren v. Commission)

Case 8/72

1. COMMUNITY ADMINISTRATION - DELEGATION OF POWER TO SIGN - ADMISSIBILITY (Provisional Internal Regulation of the Commission, Article 27).

2. COMPETITION - AGREEMENTS - PRICE FIXING - TARGET PRICES - RESTRICTIVE CLAUSES OF OTHER CONDITIONS OF TRANSACTIONS - INTERFERENCE WITH COMPETITION WITHIN THE COMMON MARKET (EEC Treaty, Article 85).

3. COMPETITION - PURELY NATIONAL AGREEMENT - EFFECTS WITHIN THE TERRITORY OF A MEMBER STATE AS A WHOLE - INFLUENCE ON TRADE BETWEEN MEMBER STATES - INCOMPATIBILITY WITH THE TREATY (EEC Treaty, Article 85).

1. A delegation of the power to sign constitutes a measure relating to the internal organization of the departments of the Commission, in accordance with Article 27 of the Provisional Internal Regulation adopted under Article 7 of the Treaty of 8 April 1965 establishing a single Council and a single Commission.

2. The fixing of even simply target prices affects competition by the fact that these target prices permit all parties to an agreement to anticipate with a reasonable degree of certainty the price policy to be pursued by their competitors.

3. An agreement which covers the whole of the territory of a Member State has, by its very nature, the effect of consolidating barriers of a national character, thus impeding the economic interpenetration sought by the Treaty, and affording protection for domestic production.

NOTE:

This case was brought by the Netherlands Association of Cement Traders against the Commission of the European Communities.

This association was founded in 1928 with the aim, particularly by the conclusion of agreements, of defending the interests of its members on the Netherlands Cement Market.

In 1962 the Association notified the Commission of its statutes, its general provisions with regard to prices, its price list and its general conditions of sale. The Commission was kept regularly informed of subsequent amendments to these documents.

On 16 December 1971 the Commission took a decision whereby these conditions and practices were found to be incompatible with Article 85(1) of the EEC Treaty. At the same time the Commission rejected the application of the Association under Article 85(3) to be exempted from the prohibition. The Association of Cement Traders then brought the matter before the Court of Justice.

The applicant contended before the Court that it had conformed with Article 85 by having abandoned its obligatory prices. The Commission replied that the target prices applied by the applicant equally constituted an infringement of Article 85

The applicant further contended that its price conditions and conditions of sale applied to both domestic and foreign cement; these conditions applied to Netherlands territory alone and could not therefore impede trade between Member States. According to the Commission, for agreements or practices to be contrary to Article 85, it is sufficient that they are "likely" to impede trade between Member States.

The Court dismissed the application, declaring in particular that the fixing of an even purely target price affected competition by the very fact that it enabled all parties to anticipate with a reasonable degree of certainty the price policy to be pursued by their competitors. Furthermore, an agreement which covers the whole territory of a Member State has, by its very nature, the effect of consolidating barriers of a national character, thus impeding the economic interpenetration sought by the Treaty, and affording protection for domestic production.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

26 October 1972

(Oliefabrieken)

Case 26/72

1. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - PIGMEAT - LARD AND OTHER PORK FATS - EXPORT REFUNDS - GRANT - CONDITIONS AS TO QUALITY - CONTROLS - DATE (Regulation No. 1041/67 of the Commission, Article 1) (Regulation No. 2403/69 of the Commission, Article 2).

2. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - PIGMEAT - LARD AND OTHER PORK FATS - EXPORT REFUND - GRANT - CONDITIONS AS TO QUALITY - CONTROLS - REFINED LARD - "BOMER VALUE" - DETERMINATION - METHOD (Regulation No. 2403/69 of the Commission, Article 2, Annex II, Item 1).

3. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - PIGMEAT - LARD AND OTHER PORK FATS - EXPORT REFUND - GRANT - CONDITIONS AS TO QUALITY - CONTROLS - SAMPLING METHOD - NATIONAL COURT - POWER OF EVALUATION (Regulation No. 2403/69 of the Commission, Article 2).

4. COMMUNITY LAW - COMMON ORGANIZATION OF THE MARKETS - UNIFORM APPLICATION.

1. Article 2 of Regulation No. 2403/69 of 1 December 1969, on special conditions for granting export refunds on certain pigmeat products, taken in conjunction with Article 1 of Regulation No. 1041/67 of 21 December 1967, on detailed rules for the application of export refunds on products subject to a single price system, is to be interpreted as meaning that control of the conditions as to quality laid down by Regulation No. 2403/69 is to be carried out on samples taken at the time of conclusion of the customs export formalities.

2. Article 2(1) of Regulation No. 2403/69 and Item 1 of Annex II of that Regulation, taken in conjunction with the note appearing at the end of that Annex, are to be interpreted as meaning that the "Bömer value" of refined lard must be determined solely according to the ISO method, referred to in the said Annex.

3. In regard to the granting of export refunds on pigmeat, it is within the power of national courts to assess the conclusive value of a control carried out in any particular case, without prejudice to the observance of the conditions laid down by the Community rules with regard to the time and method of the control.

4. The common organizations of the agricultural markets can only fulfil their functions if the provisions arising from them are applied uniformly in all Member States.

NOTE:

An agricultural regulation of the Communities lays down that exports of animal fats to third countries may benefit from refunds on condition that the fats meet certain criteria as to quality.

Thus, lard and other rendered pig fat intended for the manufacture of food products will benefit from this refund, if the so-called Bömer analysis gives a minimum value of 73.

A Netherlands company exported 100,000 kgs of lard, packed in 6,000 tins, to Bolivia.

The quality of this lard was checked on two occasions by two different official bodies: on the first occasion during packing, when the analysis gave a value of 74.3, and for the second time when making the export declaration, when values of 72.2 and 72.5 were recorded. The Netherlands agency responsible for granting agricultural refunds refused to make payment.

The case was brought by the exporting company before the Netherlands court, which referred several questions to the Court of Justice concerning the interpretation of Community agricultural Regulations. It asked in particular whether the date of the control should be the day on which the export declaration is made or whether such control may be carried out on one or even several other dates. Further, since in this case the second control was carried out on only 2 tins of lard out of 6,000, the Netherlands court wished to know whether an analysis by simple sampling was permissible.

The Court replied that it was within the power of national courts to assess the conclusive value of a control carried out in any particular case, without prejudice to the observance of the conditions laid down by the Community Regulations in regard to the time and method of the control. Furthermore, the common organizations of the agricultural markets can only fulfil their functions if the provisions arising from them are applied uniformly in all Member States.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

7 November 1972

(Etat belge v. Cobelex)

Case 20/72

AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - CEREALS - LEVIES - OBLIGATORY APPLICATION BY THE IMPORTING MEMBER STATE IN THE CASE OF THE GRANT OF "THIRD COUNTRY" REFUNDS BY THE EXPORTING MEMBER STATE - MECHANISMS (Regulation No. 19 of the Council, Article 19).

Article 19(2)(a) of Regulation No. 19 of the Council obliges the importing Member State to apply the prescribed levy to all imports, in respect of which the exporting Member State has granted "third country" refunds. This provision is immediately applicable in all Member States and is binding on all concerned, without the need for additional publication in the importing Member State.

NOTE:

A Belgian company imported maize coming from France and, at the time of importation, benefited from a refund granted by the French intervention agencies in respect of exports to third countries.

On learning of this, the Belgian intervention agency imposed levies of 687,712 and 1,953,105 Belgian francs on these imports.

These imports took place in fact at the time when Regulation No. 19 of the Council of 4 April 1962, on the gradual establishment of a common organization of the markets in cereals, was in force, whereby a single price system, valid for the whole Community, was established, but with each Member State fixing, within limits laid down by the Community, the basic target prices, the intervention prices and the threshold prices.

In order to cover the gap for the time being existing between prices within the Community, the organization of the markets instituted a system of intracommunity levies under which each Member State fixed such levies by calculating the difference between the price of the product coming from the exporting Member State, delivered free-at-frontier in the importing Member State and the threshold price of the importing Member State and reducing this figure by a flat-rate amount.

Only products purchased in the exporting Member State under price conditions in conformity with the Regulation were subject to its application.

The Tribunal de Commerce of Antwerp, before which the case was brought by the company COBELEX, referred to the Court of Justice for a preliminary ruling, on, inter alia, the following questions:

Does the Community agricultural Regulation oblige the importing Member State to levy a tax on imports coming from another Member State, where the latter grants, in respect of the exported products, refunds which are normally reserved for exports to third countries?

If so, is this obligation directly applicable in the sense that the State is bound to execute it, without the need for the institutions of the State first to transform this rule into a rule of domestic law?

The Court of Justice gave an affirmative reply to these questions.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

8 November 1972

(Gesellschaft für Getreidehandel v. Einfuhr und Vorratsstelle für Getreide und Futtermittel)

Case 17/72

1. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - CEREALS - FREE-AT-FRONTIER PRICE - CALCULATION (Regulation No. 89 of the Commission, Article 2, Article 4)

2. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - CEREALS - LEVY - RATE - FIXING OF RATE - INCIDENCE OF RATES OF EXCHANGE - VARIATION - LIMITS - EXCEEDING OF LIMITS - INDICATION OF SERIOUS DISTURBANCE - ABSENCE OF SUCH INDICATION (Regulation No. 67 of the Commission)

1. The free-at-frontier price should not be calculated on the basis of the costs which are in fact borne by an exporter in respect of a given operation, but should be the subject of a flat-rate calculation of the costs which any exporter must inevitably bear up to the frontier.

2. Any variation in the exchange rates beyond the limits laid down by Regulation No. 67 of the Commission, within which no revision of the levy rates will be made, is not sufficient to constitute an indication of serious disturbance of such a nature as to compromise the effectiveness of the mechanism of the common organizations of the market or the implementation of the common agricultural policy, which would justify the application by the Commission of Article 2(2) of Regulation No. 129 of the Council.

NOTE:

The Community rules covering the gradual establishment of a common organization of the markets in cereals provide for the collection of a levy by a Member State at the time of importation of cereals coming from another Member State. This levy is equal to the difference between the

free-at-frontier price of the product in the exporting State and the threshold price of the importing State, after deduction of a flat-rate amount.

A German company, having imported into the Federal Republic about 600 tons of maize originating from France, did not agree with the levy charged by the German Customs. The company accused the Commission of having fixed incorrectly the free-at-frontier price on export from France, as it failed to take into account certain costs, particularly of transport, insurance and financing. Allowance for these costs would have reduced the amount of the levy.

The importing company brought the matter before the Hessisches Finanzgericht (Federal Republic of Germany) which in turn referred to the Court of Justice the question of the validity of the decision whereby the Commission fixed the free-at-frontier price of maize exported from France.

The Court of Justice ruled that the question raised does not reveal any element capable of affecting the validity of the decision (21.1.1966) whereby the Commission fixed the free-at-frontier price for the importation of French maize into the Federal Republic of Germany.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

15 November 1972

(Aimer v. Vorratsstelle für Futtermittel und Getreide)

Case 27/72

AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - COMMON WHEAT - RYE OF BREAD-MAKING QUALITY - DENATURING - PREMIUM - GRANT - DAILY RESIDUE UNDER 40 METRIC TONS - TAKING INTO CONSIDERATION - CONDITIONS (Regulation No. 1403/69 of the Commission, Article 4).

Article 4(3), second sentence, of Regulation No. 1403/69/EEC of the Commission of 18 July 1969, must be interpreted as meaning that a daily residue of less than 40 metric tons may be taken into account for the granting of a denaturing premium, if this results in a rational utilization of the capacity of the undertaking and provided that the maximum duration of the operation as a whole corresponds to an average of at least 40 metric tons per day.

NOTE:

The Community rules on the gradual establishment of a common organization of the market in cereals provides for premiums for denaturing rye and common wheat, or for their admixture with compound feeding-stuffs.

The granting of these premiums is subject to supervision by the national intervention agencies and to the condition that the duration of the denaturing process does not exceed one day per 40 metric tons of cereals processed, in the case of the denaturing process, or thirty days per 50 metric tons or one working day of eight hours for 20 metric tons of cereals processed, in the case of admixture with compound feeding-stuffs.

A Germany company trading in cereals requested and obtained authority to carry out denaturing of 200,000 kgs of wheat by the addition of fish oil. On 24, 25 and 26 August 1971 the company carried out denaturing of a proportion of this tonnage, amounting to 74.4 metric tons on 24 August, 71.5 metric tons on 25 August and 27.5 metric tons on 26 August 1971.

As a result of a check carried out by the German intervention agency, the denaturing premium was granted in respect of the quantities denatured on 24 and 25 August 1971, i.e. a total of 145.9 metric tons, but refused in respect of the quantity denatured on 26 August, since the minimum daily quantity of 40 metric tons had not been reached on that day.

The undertaking appealed against this decision, on the grounds that the quantity denatured on 26 August 1971 represented a surplus and further pointing out that it would have been possible to redistribute the batches in such a way that the minimum daily quantity was observed.

The intervention agency rejected this appeal, basing its decision on Article 4 of Regulation No. 1403/69 of the Commission. The grounds given were that the mandatory provisions of the said Article left no area of discretion: since the minimum daily quantity of 40 metric tons had not been reached on 26 August, it was impossible to grant the premium in respect of that day.

On 16 December 1971 the undertaking instituted proceedings before the court referring the matter for annulment of the disputed decision and for payment by the intervention agency of the premium in question. The Frankfurt Verwaltungsgericht considered that a question of interpretation of Community law had been raised and referred to the Court of Justice the question of whether the Community Regulation must be interpreted as meaning that the undertaking could denature on one day a quantity which was actually less than 40 metric tons of cereals, irrespective of whether this was the overall quantity of cereals to be denatured or a residue, or whether it was to be interpreted as meaning that the authors of the Regulation had intended to lay down, by means of this provision, not only the duration but also the minimum quantity of cereals to be denatured within the period of a single day.

The Court of Justice ruled that the Regulation was to be interpreted as meaning that a daily residue of less than 40 metric tons may be taken into consideration, if it is the result of a rational utilization of the denaturing capacity of the undertaking and provided that the maximum duration of the overall operation corresponds to an average minimum of 40 metric tons per day.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

16 November 1972

(Helmut Heinze v. Landesversicherungsanstalt Rheinprovinz)

Case 14/72

1. PRELIMINARY QUESTIONS - EFFECTS OF A NATIONAL LAW IN RELATION TO COMMUNITY LAW - JURISDICTION OF THE COURT - LIMITS (EEC Treaty. Article 177).

2. SOCIAL SECURITY FOR MIGRANT WORKERS - APPLICATION TO NATIONAL LEGISLATIONS - EXTENSION TO PREVENTIVE AND REMEDIAL MEASURES (Regulation No. 3 of the Council, Article 2(1)).

3. SOCIAL SECURITY FOR MIGRANT WORKERS - SICKNESS BENEFITS - CONCEPT - ESTABLISHMENT OF THE RIGHT TO BENEFIT BY AGGREGATION OF THE INSURANCE PERIODS COMPLETED (Regulation No. 3 of the Council, Article 2, Article 16).

1. The Court is competent to provide national courts with the interpretation of Community law, which may guide the national courts in their appreciation of the effects of a national provision.

2. Article 2(1) of Regulation No. 3 also applies to preventive or remedial measures.

3. Social security benefits which, without being related to the "earning capacity" of the insured person, are also granted to members of his family and are aimed principally at returning the patient to health and at protecting his dependents, should be regarded as sickness benefits referred to in Article 2(1)(a) of Regulation No. 3. For the purposes of establishing the right to such benefits, the aggregation of periods of affiliation completed in different Member States is governed by Article 16 et seq. of Regulation No. 3.

NOTE:

The Court of Justice of the European Communities gave this judgment in a case relating to social security for migrant workers, which was referred to it for a preliminary ruling by the Bundessozialgericht of the Federal Republic of Germany.

A German worker, having accumulated periods of insurance of 36 months in Federal Germany (from 1950 to 1953) and 84 months in the Grand Duchy of Luxembourg (between 1953 and 1960) found himself obliged in 1966 to apply to his pension insurance fund in Germany for benefits in respect of the treatment of his wife and child, who had contracted a contagious tuberculosis requiring prolonged treatment.

According to German law, any resident, German or foreign and whether affiliated to a social security fund or not, has the right in the case of tuberculosis to benefits for medical treatment, for rehabilitation into active life and for post-cure and preventive care.

The agencies principally responsible for these benefits, are the social assistance agencies set up by German law, although, in addition to these agencies, the social insurance funds are also called on to act in this connection. In order to avoid duplication and conflicts of jurisdiction, the law determines the intervention agency in accordance with certain criteria, the principal of which is the affiliation of a worker to an insurance fund. This is the reason why, in this particular case, the insured person submitted his request to his pension insurance fund, which was in the event the competent agency.

This raised a problem for the agency in question: in order to be able to take advantage of the benefits of the fund in the case of tuberculosis, the insured person had to prove affiliation for a certain period, which the insured person concerned had not completed. Since this period had not been completed, could or should the Fund take into account the insurance periods completed in another Member State of the Community?

The Fund - the Landesversicherungsanstalt Rheinprovinz, Düsseldorf - thought not. The insured thought that they should. The matter was brought before the court of first instance (Socialgericht), which found against the Fund.

After failing on appeal to the Landessozialgericht, the Insurance Fund made a further appeal to the Bundessozialgericht.

In accordance with the Treaty of Rome, that court referred to the Court of Justice for a preliminary ruling on whether Regulation No. 3 of the Council of the Communities (Social Security for Migrant Workers) was to be interpreted as applying to the benefits which the pension insurance funds must provide under the German law in force, in the context of preventive measures such as those against tuberculosis.

The Court of Justice ruled that these benefits were governed by the Community Regulation relating to the aggregation of insurance periods completed in several Member States.

The Court of Justice delivered identical decisions in two other cases referred for preliminary rulings by the Bundessozialgericht:

Case 15/72: Land Niedersachsen v. Landesversicherungsanstalt Hannover;

Case 16/72: Allgemeine Ortskrankenkasse Hamburg v. Landesversicherungsanstalt Schleswig-Holstein.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

16 November 1972

(Land Niedersachsen v. Landesversicherungsanstalt)

Case 15/72

1. PRELIMINARY QUESTIONS - EFFECTS OF A NATIONAL LAW IN RELATION TO COMMUNITY LAW - JURISDICTION OF THE COURT - LIMITS (EEC Treaty, Article 177).

2. SOCIAL SECURITY FOR MIGRANT WORKERS - APPLICATION TO NATIONAL LEGISLATIONS - EXTENSION TO PREVENTIVE AND REMEDIAL MEASURES (Regulation No. 3 of the Council, Article 2(1)).

3. SOCIAL SECURITY FOR MIGRANT WORKERS - SICKNESS BENEFITS - CONCEPT - ESTABLISHMENT OF THE RIGHT TO BENEFITS BY AGGREGATION OF THE INSURANCE PERIODS COMPLETED (Regulation No. 3 of the Council, Article 2, Article 16).

1. The Court is competent to provide national courts with the interpretation of Community law, which may guide the national courts in their appreciation of the effects of a national provision.

2. Article 2(1) of Regulation No. 3 also applies to preventive or remedial measures.

3. Social security benefits which, without being related to the "earning capacity" of the insured person, are also granted to members of his family and are aimed principally at returning the patient to health and at protecting his dependents, should be regarded as sickness benefits referred to in Article 2(1)(a) of Regulation No. 3. For the purposes of establishing the right to such benefits, the aggregation of periods of affiliation completed in different Member States is governed by Article 16 et seq. of Regulation No. 3.

NOTE:

See note on the judgment of 16. 1.72: Helmut Heinze v. Landesversicherungsanstalt Rheinprovinz (Case 14/72).

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

16 November 1972

(Allgemeine Ortskrankenkasse Hamburg v. Landesversicherungsanstalt Schleswig-Holstein)

Case 16/72

1. PRELIMINARY QUESTIONS - EFFECTS OF A NATIONAL LAW IN RELATION TO COMMUNITY LAW - JURISDICTION OF THE COURT - LIMITS (EEC Treaty, Article 177).

2. SOCIAL SECURITY FOR MIGRANT WORKERS - APPLICATION TO NATIONAL LEGISLATIONS - EXTENSION TO PREVENTIVE AND REMEDIAL MEASURES (Regulation No. 3 of the Council, Article 2(1).

3. SOCIAL SECURITY FOR MIGRANT WORKERS - SICKNESS BENEFITS - CONCEPT - ESTABLISHMENT OF THE RIGHT TO BENEFITS BY AGGREGATION OF THE INSURANCE PERIODS COMPLETED (Regulation No. 3 of the Council, Article 2, Article 16).

4. SOCIAL SECURITY FOR MIGRANT WORKERS - BENEFITS - ESTABLISHMENT OF THE RIGHT TO BENEFITS - TAKING INTO ACCOUNT OF INSURANCE PERIODS COMPLETED IN THIRD COUNTRIES - ABSENCE OF OBLIGATION (Regulation No. 3 of the Council, Article 1(b)) .

1. The Court is competent to provide national courts with the interpretation of Community law, which may guide the national courts in their appreciation of the effects of a national provision.

2. Article 2(1) of Regulation No. 3 also applies to preventive or remedial measures.

3. Social security benefits which, without being related to the "earning capacity" of the insured person, are also granted to members of his family and are aimed principally at returning the patient to health and at protecting his dependents, should be regarded as sickness benefits

referred to in Article 2(1)(a) of Regulation No. 3. For the purposes of establishing the right to such benefits, the aggregation of periods of affiliation completed in different Member States is governed by Article 16 et seq. of Regulation No. 3.

4. For the purposes of establishing the right to social security benefits, the social security agencies of Member States are not bound to take into account periods of affiliation completed in third countries.

NOTE:

See note on the judgment of 16.11.72: Helmut Heinze v. Landesversicherungsanstalt Rheinprovinz (Case 14/72).

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

14 December 1972

(Boehringer v. Commission)

Case 7/72

COMPETITION - AGREEMENTS - PROHIBITION - CONTRAVENTION OF COMMUNITY RULES - COMMUNITY PENALTIES AND NATIONAL PENALTIES IMPOSED BY THE AUTHORITIES OF A MEMBER STATE OR A THIRD STATE - CUMULATIVE EFFECT - TAKING INTO ACCOUNT BY THE COMMISSION - CRITERIA (EEC Treaty, Article 85, Regulation No. 17 of the Council, Article 15).

When determining the amount of a fine, the Commission is obliged to take into account any penalties already incurred by the same undertaking in respect of the same incident, where the penalties have been imposed for contraventions of the cartel law of a Member State and, consequently, the contraventions have occurred on Community territory. The possible taking into account by the Commission of a penalty imposed by the authorities of a third State presupposes that the facts, alleged against the undertaking charged by the Commission, on the one hand, and the authorities of the third state in question, on the other hand, are identical.

NOTE:

The Boehringer company was fined by the German authorities for contravention of the German legislation on competition, while the Commission had imposed fines on the company in respect of the same offences, which were also judged contrary to the Treaty of Rome.

The company requested before the Court of Justice that the Commission, in its decision, take into account the fines which had been imposed on the national level.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

6 February 1973

(Brasserie de Haecht)

Case 48/72

1. AGREEMENTS PRIOR AND SUBSEQUENT TO REGULATION NO. 17 - NOTIFICATION - EFFECTS - PROHIBITION - COMPETENCE OF NATIONAL COURT (Regulation No. 17 of the Council, Arts. 4, 5 and 9)

2. AGREEMENTS - COMPETENCE OF THE COMMISSION - EXERCISE - MEANING (Regulation No. 17 of the Council, Art. 9)

3. AGREEMENTS - STANDARD CONTRACT - NOTIFICATION - EFFECT (Regulation No. 27/62 of the Commission)

4. AGREEMENTS - PROHIBITION - NULLITY - EFFECTS (EEC Treaty, Art. 85)

1. When an agreement prior to the implementation of Article 85 by Regulation No. 17 has been notified in accordance with the provisions of that Regulation, the general principle of contractual certainty requires that the court may only declare the agreement to be automatically void after the Commission has taken a decision by virtue of that Regulation.

Notifications in accordance with the provisions of Article 4 of Regulation No. 17 in respect of agreements entered into after the implementation of Article 85 by that Regulation do not have suspensive effect.

The court, which, by virtue of the principle of legal certainty, must take into account, in applying the prohibitions of Article 85, any delay by the Commission in exercising its powers, has however an obligation to decide on the claims of interested parties who invoke the automatic nullity.

These considerations apply equally to agreements exempted from notification, such exemption merely constituting an inconclusive indication that the agreements concerned are generally less harmful to the smooth functioning of the Common Market.

2. The initiation of a procedure within the meaning of Article 9 of Regulation No. 17 concerns an authoritative act of the Commission, evidencing its intention of taking a decision under Articles 2, 3 or 6. It follows therefore that the simple acknowledgement of a request for a negative clearance or of notification for the purposes of obtaining exemption under Article 85(3) of the Treaty cannot be considered as initiating a procedure under Articles 2, 3 or 6 of Regulation No. 17.

3. Due notification of a standard contract is to be considered as due notification of all contracts in the same terms, even prior ones, entered into by the same undertaking.

4. A declaration of nullity under Article 85(2) is of retroactive effect.

NOTE:

A Liege brewery had entered into a "brewery contract" with the tenant of licensed premises in the Liege area, under the terms of which the proprietor of the cafe undertook to sell only the products of the Liege brewery in question, in consideration of a loan of money and supplies of furniture from the brewery.

However, the brewer found subsequently that the cafe proprietor was selling beer coming from a country not a member of the Common Market. Hence avoidance of the contract.

The cafe owner submitted to the Tribunal de Commerce de Liege (Liege Commercial Court) that the brewery contract should not be enforced as it was contrary to the competition rules of the Common Market Treaty.

The Tribunal de Commerce de Liege referred to the Court at Luxembourg for a preliminary ruling on whether a contract of this nature was contrary to the Common Market Treaty.

The Court of Justice ruled at the time that brewery contracts are contrary to the Common Market in so far as they are liable to obstruct the free movement of goods between Member States.

In this case, certainly, the beer sold by the cafe proprietor did not come from a Member State, but the brewery contract made no distinction between "Community beers" and beers coming from third States.

This occurred in 1967. On 29 January 1969, however, the Liege brewery notified to the Commission of the Common Market a standard contract of the same type as that which it had granted to the Liege cafe proprietor.

This notification is provided for by the Treaty in the case where an undertaking either wishes to have certified by the Commission that its contracts do not contravene the Treaty or intends to apply for exemption from the rules of the Treaty.

Having notified its contract to the Commission, the Liege brewery claimed before the Tribunal de Commerce de Liege that notification of its standard contract to the Commission rendered it impossible thereafter to challenge that contract, even in Belgian courts.

In a second request for a preliminary ruling, the Tribunal de Commerce de Liege asked the Court of Justice to state the position. The Court ruled that, whilst due notification to the Commission of a standard agreement is indeed equivalent to notification of all agreements in the same terms, even prior ones, entered into by the same undertaking, the simple acknowledgement of a notification of a contract by the Commission does not mean that the Commission will approve that contract. Further, the Court stated that a declaration of nullity of contracts, which are contrary to the competition rules of the Treaty is of retroactive effect.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

7 February 1973

(Schroeder)

Case 40/72

1. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - FRUIT AND VEGETABLES - PROCESSED PRODUCTS - PROTECTIVE MEASURES - SERIOUS DISTURBANCE - CONCEPT (Regulation No. 1427/71 of the Council)

2. ACTS OF AN INSTITUTION - LEGALITY - CRITERIA.

3. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - FRUIT AND VEGETABLES - PROCESSED PRODUCTS - PROTECTIVE MEASURES WITHIN THE MEANING OF REGULATIONS Nos. 1427 and 1428 - DURATION (Regulation No. 1428 of the Council, Article 2(2)

4. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - FRUIT AND VEGATABLES - PROCESSED PRODUCTS - PROTECTIVE MEASURES WITHIN THE MEANING OF ARTICLE 2 OF REGULATION No. 1428/71 AND ARTICLE 41 OF THE ASSOCIATION AGREEMENT WITH GREECE - ABSENCE OF PRIORITY

1. The concept of "serious disturbance" or "threat of serious disturbance" is to be considered in the light of the objectives of the common agricultural policy, enumerated in Article 39 of the Treaty.

   The Commission is therefore justified in taking into account not only the objective of the stabilization of the market, but also that of maintaining a fair standard of living for the agricultural community.

2. The legality of a Community act cannot therefore be held to depend on retrospective considerations as to its degree of effectiveness.

   In the case of complex economic measures, involving a wide discretion as to their opportuneness and very frequently, moreover, a margin of uncertainty as to their effects, it is sufficient that, at the moment when they are promulgated, they should not appear on the evidence to be unlikely to achieve the intended objective.

3. It is not necessary to lay down in advance the duration of protective measures within the meaning of Regulations 1427 and 1428/71. It may be appropriate, in the light of their intended objective, to maintain them for an undefined period.

4. Neither Article 2(1) of Regulation No. 1428/71/EEC of the Council of 2 July 1971, nor Article 41 of the Association Agreement with Greece laid down an order of priority between the protective measures indicated therein.

It is consonant with the objective which these measures are intended to achieve that the authority may select, according to the circumstances, that which it deems most appropriate.

NOTE:

In order to avoid instability threatening the domestic agricultural market (fruit and vegetables), the Council of the Community has regulated imports of fruit and vegetables coming from third countries. As a general rule these products are subject to quantitative restrictions. There is an exception to this in the case of Greece: the system applicable to imports from that country is that of minimum prices. In particular, the issue of an import certificate depends on the written undertaking of the importer to ensure that the imports result from a contract providing for sale and free-at-frontier delivery to the Community, or a place situated outside it, at a price higher than that of Community products, and that that price will in fact be paid.

A German importer applied for an import certificate for tomato concentrate, in boxes, coming from Greece. However, he refused to sign the required undertaking. When he was refused the import certificate by the German intervention agency, he took the matter to the Verwaltungsgericht of Frankfurt, arguing that the minimum price system was contrary to the Treaty of Rome because it could not attain the end in view, that is the stabilization of markets, in view of the numerous possibilities of fraud to which it lent itself.

The Verwaltungsgericht of Frankfurt referred the matter to Luxembourg, where the Court of Justice ruled that the Community Regulation in question did not reveal any factor contrary to the Treaty and likely to affect its validity.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

8 February 1973

(Commission v. Italy: fruit trees)

Case 30/72

MEMBER STATES - OBLIGATIONS - IMPLEMENTATION - INTERNAL ORDER - ADAPTATION
(EEC Treaty, Arts. 5, 189).

A Member State cannot plead the provisions or practices of its internal order, particularly budgetary provisions or practices, in order to justify failure to observe obligations and time-limits arising under Community regulations.

It falls to each Member State to recognise the consequences, in its internal order, of its adherence to the Community, in accordance with the general obligations imposed on Member States by Article 5 of the Treaty, and, if necessary, to adapt its procedures for budgetary provision in such a way that they do not form an obstacle to the implementation, within the prescribed time-limits, of its obligations within the framework of the Treaty.

NOTE:

In order to mitigate the effects of surpluses of apples, pears and peaches in the Community, the Council had in 1971 adopted a regulation providing for the payment of premiums for grubbing fruit trees. As with the procedure already employed for premiums for the slaughtering of dairy cows, half of the financial resources required for payment of the premiums was to be advanced by the European Agricultural Guidance and the Guarantee Fund, the other half being contributed by the Member States.

After it was established that Italy had not adopted the budgetary measures to enable the premium to be paid the Commission brought an action before the Court of Justice against the Italian Republic.

The Court of Justice found against the Italian Republic, after declaring that it falls to each Member State to recognise the consequences, in its internal order, of its adherence to the Community, in accordance with the general obligations imposed on it by the Treaty, and, if necessary, to adapt its procedures for budgetary provision in such a way that they do not form an obstacle to the implementation, within the prescribed time-limits, of its obligations within the framework of the Treaty.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

20 February 1973

(Fonderie Officine riunite F.O.R. v. Vereinigte Kammgarn-Spinnereien)

Case 54/72

1. PRELIMINARY QUESTIONS - JURISDICTION OF THE COURT - LIMITS (EEC Treaty, Article 177).

2. TAXATION PROVISIONS - INTERNAL TAXATION IMPOSED BY ONE MEMBER STATE ON PRODUCTS COMING FROM OTHER MEMBER STATES - PRINCIPLE OF NON-DISCRIMINATION - APPLICATION TO THE BASIS OF ASSESSMENT OF TAXATION - DOUBLE TAXATION - PROHIBITION (EEC Treaty, Article 95).

1. The Court does not have jurisdiction under Article 177 to settle a dispute relating to the interpretation of a national law.

2. The prohibition of discrimination referred to in Article 95 relates not only to the rate but also to the basis of assessment of taxation. Article 95 of the Treaty must therefore be interpreted as prohibiting a taxation system under which imported goods are charged twice with a turnover tax, on the footing that they have been the subject of two distinct transactions, on the basis of an operation which, in respect of a similar domestic product at the same marketing stage, would constitute only one chargeable operation.

NOTE:

The company "F.O.R." exported machines used in the textile industry to the Federal Republic of Germany. It was agreed in respect of these exports that the registered office of the Italian company (Biella) would constitute the place both of delivery and of payment and that the purchasers (V.K.S.) were to pay the taxes and duties charged at the frontier at the time of importation. In pursuance of this, V.K.S. paid the compensatory tax of 6% on the value of the machines, charged under the German law of 1 September 1951 on turnover tax.

However, it was the fitters of the Italian undertaking F.O.R. who installed the machines. Considering that because of this it was a "supply of goods and services" (Werklieferung), the German taxation authorities claimed from F.O.R. a turnover tax of 4% of the total value of the equipment it had installed. Further, they refused to take into account the compensatory tax paid by the German importer V.K.S. and threatened to attach the debts owed to the Italian company in the Federal Republic. V.K.S. was thereby induced to pay an amount which it owed to F.O.R. to the German revenue authorities and requested F.O.R. to set off this amount against the debt it still owed to the latter.

F.O.R. applied to the Biella court for an injunction ordering payment by V.K.S., maintaining that the behaviour of the German revenue authorities resulted in fact in the imposition of a double taxation prohibited by the Treaty.

The Biella court referred the matter to the Court of Justice, which declared that Article 95 of the EEC Treaty must be interpreted as prohibiting a taxation system under which imported goods are charged twice with a turnover tax on the footing that they have been the subject of two distinct transactions, on the basis of an operation which, in respect of a similar domestic product at the same marketing stage, would constitute only one chargeable operation.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

21 February 1973

(Continental Can/Europemballage v. Commission)

Case 6/72

1. COMPETITION - COMMUNITY RULES - APPLICATION - HEARING OF INTERESTED PARTIES - STATEMENT OF OBJECTIONS - OBLIGATIONS OF THE COMMISSION (Regulation No. 99/63/EEC of the Commission, Article 4)

2. ACTS OF AN INSTITUTION - NOTIFICATION - MEANING (EEC Treaty, Article 191)

3. EEC - LANGUAGE RULES - DOCUMENTS ADDRESSED BY THE INSTITUTIONS - ADDRESSEE - REGISTERED OFFICE IN A THIRD COUNTRY - LINKS WITH A MEMBER STATE - LANGUAGE OF THAT STATE - OFFICIAL LANGUAGE (Regulation No. 1/58 of the Council, Article 3)

4. COMPETITION - COMMUNITY RULES - SUBSIDIARY - DISTINCT LEGAL PERSONALITY - PARENT COMPANY - LIABILITY (EEC Treaty, Articles 85, 86)

5. COMPETITION - COMMUNITY RULES - TERRITORIAL APPLICATION - CRITERIA (EEC Treaty, Articles 85, 86)

6. COMPETITION - UNDERTAKINGS - MEASURES HAVING AN EFFECT ON THE MARKET - MEASURES OF A STRUCTURAL NATURE

7. COMPETITION - ARTICLE 3(f) - LEGAL FORCE

8. COMPETITION - ARTICLE 3(f) - SCOPE

9. COMPETITION - PERMISSIBLE RESTRICTIONS - LIMITS - ARTICLES 2 AND 3

10. COMPETITION - ARTICLE 86 - INTERPRETATION

11. COMPETITION - COMMUNITY RULES - RELATIONSHIP BETWEEN ARTICLES 85 AND 86 - OBJECT IDENTICAL

12. COMPETITION - DOMINANT POSITION - ABUSE - MEANING (EEC Treaty, Article 86)

13. COMPETITION - DOMINANT POSITION - ABUSE - LINK OF CAUSALITY NOT NECESSARY FOR THE PROHIBITION

14. COMPETITION - RELEVANT MARKET - DEFINITION

15. COMPETITION - RELEVANT MARKET - DEFINITION - DOMINANT POSITION ON SUCH MARKET - CONDITION OF ITS EXISTENCE

1. In the statement of objections in the decision taken in application of the Community rules on competition the Commission must set out in a clear, even if concise, manner the essential facts on which the decision is based; it is not however obliged to refute all the arguments adduced during the administrative proceedings.

2. A decision is properly notified within the meaning of the Treaty if it reaches the addressee and puts the latter in a position to take cognisance of it.

3. If a legal person has its registered office in a third country the choice of official language in which the decision is addressed to it must take account of the relations it has within the Common Market with a Member State of the Community.

4. Recognition that a subsidiary has its own legal personality does not suffice to exclude the possibility that its conduct might be attributed to the parent company. This is true in those cases particularly where the subsidiary company does not determine its market behaviour autonomously but in essentials follows directives of the parent company.

5. Community law is applicable to a transaction which influences market conditions within the Community irrespective of the question whether the business in question is established within the territory of one of the Member States of the Community.

6. The distinction between measures which concern the structure of the undertaking and practices which affect the market is not decisive, for any structural measure may influence market conditions if it increases the size and the economic power of the undertaking.

7. The argument that Article 3(f) merely contains a general programme devoid of legal effect ignores the fact that Article 3 considers the pursuit of the objectives which it lays down to be indispensable for the achievement of the Community's tasks.

8. By providing for the institution of a system ensuring that competition in the Common Market is not distorted, Article 3(f) requires a fortiori that competition must not be eliminated.

9. The restraints on competition which the Treaty allows under certain conditions because of the need to harmonise the various objectives of the Treaty are limited by the requirements of Articles 2 and 3. Going beyond this limit involves the risk that the weakening of competition would conflict with the aims of the Common Market.

10. The spirit, general scheme and wording of Article 86 as well as the system and objectives of the Treaty must all be taken into account. Problems of this kind cannot be solved by comparing this Article with certain provisions of the ECSC Treaty.

11. Articles 85 and 86 seek to achieve the same aim on different levels, viz. the maintenance of effective competition within the Common Market. The restraint of competition which is prohibited if it is the result of behaviour falling under Article 85 cannot become permissible by the fact that such behaviour succeeds under the influence of a dominant undertaking and results in the merger of the undertakings concerned.

12. The list of abuses contained in Article 86 of the Treaty is not an exhaustive enumeration of the abuses of a dominant position prohibited by the Treaty.

Article 86 is not only aimed at practices which may cause damage to consumers directly, but also at those which are detrimental to them through their impact on an effective competition structure such as is mentioned in Article 3(f) of the Treaty. Abuse may therefore occur if an undertaking in a dominant position strengthens such position in such a way that the degree of dominance reached substantially fetters competition, i.e. that only undertakings remain in the market whose behaviour depends on the dominant one.

If it can, irrespective of any fault, be regarded as an abuse if an undertaking holds a position so dominant that the objectives of the Treaty are circumvented by an alteration to the supply structure which seriously endangers the consumer's freedom of action in the market, such a case necessarily exists if practically all competition is eliminated.

13. The question of the link of causality between the dominant position and its abuse is of no consequence, for the strengthening of the position of an undertaking may be an abuse and prohibited under Article 86 of the Treaty regardless of the means and procedure by which it is achieved, if it has the effect of substantially fettering competition.

14. The definition of the relevant market is of essential significance, for the possibilities of competition can only be judged in relation to those characteristics of the products in question by virtue of which those products are particularly apt to satisfy an inelastic need and are only to a limited extent interchangeable with other products. In order to be regarded as constituting a distinct market, the products in question must be individualised not only by the mere fact that

they are used for packing certain products, but by particular characteristics of production which make them specifically suitable for this purpose.

15. A dominant position on the market for light metal containers for meat and fish cannot be decisive as long as it has not been proved that competitors from other sectors of the market for light metal containers are not in a position to enter this market by a simple adaptation, with sufficient strength to create a serious counterweight.

NOTE:

This is a decision on the problem of the abuse of a dominant position posed by the firm Continental Can. This American company, which manufactures metal packaging, had first acquired a majority of the capital of an important German company manufacturing lightweight metal packaging, and then through its European subsidiary, Europemballage, acquired a majority shareholding in the principal Dutch undertaking in the same industry.

The Commission considered that this second takeover practically eliminated competition in that sector and constituted an abuse of a dominant position and decided that Continental Can should put an end to this infringement of Article 86 of the Treaty. Continental Can brought an action against this decision. That undertaking submitted to the Court that Article 86 did not permit of the sanctioning as an abuse of a dominant position the acquisition by an undertaking, even when in a dominant position, of a majority shareholding in another undertaking in the same sector, even though competition was thereby reduced.

After dismissing various pleas on procedural matters raised by Continental Can against the decision of the Commission, the Court of Justice settled this question in the first part of its judgment.

In considering the spirit, the general scheme and the wording of Article 86 in the context of the system and the objectives of the Treaty, the Court emphasizes that that Article is based on a system ensuring that competition is neither distorted nor eliminated within the Common Market. The Court notes that the prohibition of cartel agreements laid down by Article 85 would have no meaning if Article 86 allowed those actions to become lawful when they result in a merger of undertakings. Such a contradiction would open up a loophole in the competition rules of the Treaty capable of compromising the proper functioning of the Common Market. The Court goes on to rule that for an undertaking in a dominant position to reinforce that position to the point where the degree of domination thus attained substantially impedes competition, that is, only permits of the existence of undertakings dependent, as regards their behaviour, on the dominant undertaking, is capable of constituting an abuse.

In the second part of the judgment it is noted that to apply these principles to the case in question, it is of paramount importance to define the limits of the market in question. The Court holds that the decision of the Commission did not in this case define the limits of the market in which Continental Can held a dominant position. Was it each of the markets in metal cans for meat products, for fish products and in metal caps? Or was it the whole of the market of metal packaging? Are these markets subject to competition from glass or plastic products? On these various points the Court points out uncertainties, and even contradictions, in the decision and annuls it on that ground.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

1 March 1973

(Bollmann)

Case 62/72

1. PRELIMINARY QUESTIONS - PROCEDURE - NATURE - PARTIES - CONCEPT - LAWS (EEC Treaty, Art. 177) (Protocol on the Statute of the EEC Court, Art. 20)

2. PRELIMINARY QUESTIONS - COSTS - RECOVERY - EXPENSES NECESSARILY INCURRED BY THE PARTIES - RECOVERABILITY - NATIONAL LAW - APPLICATION (Rules of Procedure, Art. 103(1))

1. Proceedings instituted under Article 177 are non-contentious and are in the nature of a step in the action pending before a national court, as the parties to the main action are merely invited to state their case within the legal limits laid down by the national court.

   By the expression "parties", Article 20 of the Protocol on the Statute of the EEC Court refers to the parties to the action pending before the national court.

2. In view the essential difference between contentious proceedings and proceedings under Article 177 of the Treaty, one cannot, without express provision, extend to the latter proceedings rules laid down solely for contentious proceedings. The recovery of costs and the recoverability of expenses necessarily incurred by the parties to the main action for the purposes of an application for a preliminary ruling under Article 177 of the EEC Treaty are not covered by Article 103(1) of the Rules of Procedure of the Court. The recovery of those costs and the recoverability of those expenses are governed by the provisions of national law applicable to the main action.

NOTE:

In 1969, the Court of Justice settled the question, referred by the German Federal Fiscal Court (Bundesfinanzhof), of whether turkey tails, imported from the United States by a German importer, were - as turkey meat - subject to the Community levy charged on imports from third states, or whether - as turkey offal - they were exempt. (The Court had ruled that they were offal).

Subsequently, the importer demanded that the opposing party (the German Customs Department) reimburse the disbursements incurred in connection with the application for a preliminary ruling before the Court of Justice in Luxembourg. The competent national authority, while agreeing to the right to a certain amount of lawyer's remuneration as well as the postage and travel expenses to Luxembourg, decided nevertheless that the sum demanded under the heading of lawyer's remuneration should be reduced, as the proceedings before the German court and those before the European Court were, in its opinion, part of one and the same action. Not satisfied with this decision, the importer took the matter to the Federal Fiscal Court which, in turn, asked the Court of Justice to interpret the Community Rules of Procedure on this point.

The Court of Justice ruled that the recovery of costs incurred on a reference for a preliminary ruling, and the recoverability of those expenses, are governed by the provisions of national law applicable to the main action. In this case, therefore, it is for the Federal Fiscal Court to rule on the application in accordance with the provisions of German law.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

1 March 1973

(Bentzinger)

Case 73/72

SOCIAL SECURITY FOR MIGRANT WORKERS - WORKER RESIDING WITHIN THE TERRITORY OF ONE MEMBER STATE - EMPLOYMENT CARRIED ON WITHIN THE TERRITORY OF SEVERAL MEMBER STATES - LEGISLATION APPLICABLE - LEGISLATION OF THE STATE OF RESIDENCE - NUMBER OF EMPLOYERS IRRELEVANT (Regulation No. 3, Article 13(1)(c))

Article 13(1)(c) of Regulation No. 3 must be interpreted as meaning that it applies independently of whether the worker is in the service of one or several employers and wherever the event giving rise to a right of indemnity took place.

NOTE:

A German engineer, resident in Federal Germany and employed by a German employer from 1958 to 1963, worked subsequent to the last date, by agreement of his German employer, for a French company in Alsace.

In 1970 he sustained an accident at work in France. His claim for compensation, addressed to the German Social Security institution, was rejected. The court of first instance quashed this decision, on the ground that the Community Regulations on social security for migrant workers provide that wage-earners or assimilated workers who normally work within the territory of several Member States are, with certain exceptions, subject to the legislation of the State within whose territory they reside.

On appeal, the appeal court for social questions asked the Court of Justice for a preliminary ruling on whether the Regulations in question imply that the worker must work in several Member States for a single employer or whether this provision equally applies when the worker is in the service of several employers in several Member States. The Court of Justice ruled that the provision in question must be interpreted as meaning that it applied independently of whether the worker is in the service of one or several employers.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

13 March 1973

(PPW International)

Case 61/72

AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - SUGAR - TRADE WITH THIRD COUNTRIES - IMPORT OR EXPORT LICENCES - ISSUE - POWERS AND OBLIGATIONS OF MEMBER STATES (Regulation No. 1009/67/EEC, Article 11; Regulation No. 1373/70/EEC, Articles 8, 9 and 15)

The provisions of Article 11(1) of Regulation No. 1009/67/EEC of the Council of 18 December 1967 (O.J. No. 308, p.1) and of Article 8(2), Article 9(1), first and second subparagraphs, and Article 15(4) of Regulation No. 1373/70/EEC of the Commission of 10 July 1970 (O.J. No. L 158, p.1) must be interpreted as meaning that, although they leave the choice to the competent national authorities of the ways and means to be adopted for the dispatch of advance fixing certificates and extracts thereof to the applicant, the requirement of issuing the certificate or extracts involves an obligation for those authorities to ensure that the documents actually reach the applicant.

The competent national authority did not fulfil this obligation when it sent such documents by post and those documents failed to reach the addressee for reasons for which he was not responsible.

NOTE:

Reference for a preliminary ruling by a Netherlands administrative court, the "College van Beroep voor het Bedrijfsleven" at The Hague.

Community agricultural Regulations provide, in the case of certain agricultural exports, for a refund which, however, is subject to the lodging of a deposit and the issue by the national intervention agency of a certificate of "advance fixing" of the rate of refund.

After a Dutch exporter had notified the national intervention agency of his intention to export and had lodged the deposit, the advance fixing certificate sent by that intervention agency to the exporter was mislaid en route.

The exporter reported this to the intervention agency which, as it considered the exporter to be acting in good faith, decided not to consider the deposit forfeited. However the intervention agency refused a request by the exporter to authorize the exports on the previous conditions or, failing that to indemnify him in respect of the loss he would incur in the absence of the export authorization by reason of the difference between the amount of the refund fixed in the mislaid authorization and the amount applicable at the time of subsequent export.

On the matter being brought before the Netherlands Court, it asked the European Court whether the Community Regulation, when it speaks of the "issue" of an advance fixing certificate, means merely posting it or whether it requires that the document must actually reach the person to whom it is addressed.

The Court of Justice ruled that, although the Community Regulation leaves the choice to the competent national authorities of the ways and means to be adopted for the dispatch of advance fixing certificates and extracts thereof to the applicant, the requirement of issuing the certificate or extracts involves an obligation for those authorities to ensure that the documents actually reach the applicant.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

14 March 1973

(Westzucker)

Case 57/72

1. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - SUGAR - DENATURING - PREMIUMS - SYSTEM - IMPLEMENTATION - COUNCIL AND COMMISSION - RESPECTIVE POWERS (EEC Treaty, Article 155 and Regulation No. 1009/67 of the Council, Article 9(8)).

2. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - SUGAR - INTERVENTION ON THE MARKET - FORMS - PRIORITY - ABSENCE OF PRIORITY (Regulation No. 1009/67 of the Council).

3. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - SUGAR - INTERVENTIONS ON THE MARKET - COMMISSION - POWERS OF EVALUATION - JUDICIAL CONTROL - LIMITS (Regulation No. 1009/67 of the Council).

4. AGRICULTURE - COMMON AGRICULTURAL POLICY - IMPLEMENTATION - PREPARATORY DISCUSSIONS - MANAGEMENT COMMITTEE - MECHANICS OF COLLECTIVE DISCUSSION - INTERESTS OF MEMBER STATES - CONFLICTS - GENERAL INTEREST - ARBITRATION BY THE COMMISSION.

5. ACTS OF AN INSTITUTION - REGULATION - IMMEDIATE ENTRY INTO FORCE - JUSTIFICATION (EEC Treaty, Article 191).

6. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - SUGAR - DENATURING - PREMIUMS - APPLICATIONS FOR THE GRANT OF PREMIUMS - ADDITIONAL INFORMATION - MEMBER STATES - POWERS (Regulation No. 833/68 of the Commission, Article 2)

1. The Commission is enabled, under Article 9(8) of Regulation No. 1009/67, to exercise the powers necessary to ensure the functioning of the system of denaturing premiums, in so far as the Council has not itself provided for it in implementing Regulation No. 768/68.

   It follows that, subject to the general rules laid down by the Council, the Commission has the right to decide on both the grant and the amount of the denaturing premiums and that, therefore, it has the power to decide whether they should be suspended.

   With this end in view, it also falls to it to determine the appropriate technical method, which means that, rather than announcing the suspension of the premium, it may fix it at nil, in accordance with a method current in fiscal law and adopted by Community law.

2. Regulation No. 1009/67 does not evidence any intention on the part of the Community legislature to establish any priority between the different forms of intervention on the market for sugar. The choice is conditional at one and the same time upon the variable circumstances of the market, the financial charges arising from the implementation of the chosen measures and the difficulties which the disposal of denatured sugar may create on the market for feeding stuffs.

3. In regard to interventions on the market for sugar, the Commission enjoys a significant freedom of evaluation, which must be exercised in the light of the objectives of the economic policy laid down by Regulation No. 1009/67 within the framework of the common agricultural policy.

   When examining the lawfulness of the exercise of such freedom, the courts cannot substitute their own evaluation of the matter for that of the competent authority but must restrict themselves to examining whether the evaluation of the competent authority contains a patent error or constitutes a misuse of power.

4. One of the aims of the Management Committee procedure is to enable the Commission to prepare its intervention measures in close cooperation with the national authorities charged with the management of the market sectors concerned.

It is consonant with the very idea of the Community that, within the framework of the mechanics of collective discussion set up with a view to the implementation of the common agricultural policy, the Member States should emphasize their own interests, whilst it falls to the Commission to arbitrate, through the measures taken by it, between possible conflicts of interest from the point of view of the general interest.

5. Article 191 of the EEC Treaty reserved to the competent institutions the right to specify the date of entry into force of legislative acts according to the circumstances. Immediate entry into force does not need to be especially reasoned if it expresses a requirement of efficiency inherent in the very nature of the measure introduced by the regulation.

6. Article 2 of Regulation No. 833/68 does not permit national authorities to add new conditions to those specified in the Regulations in question but merely authorizes Member States to ask applicants for fuller information than that required by the Regulation.

   This provision, which is intended to allow for adaptation of administrative formalities to national needs and therefore to facilitate supervision of the operations, must not lead to differences in treatment in the application of the Community rules for the market for sugar.

NOTE:

On a reference for a preliminary ruling from the Hessischer Verwaltungsgerichtshof (Federal Republic of Germany), the Court of Justice of the Communities examined the validity of two Community agricultural Regulations relating to premiums for the denaturing of sugar. An import firm had raised doubts as to the validity of these Regulations before the German Court.

The Court of Justice ruled that examination of the questions referred by the German court did not reveal any element capable of affecting the validity of those Regulations.

NATIONAL DECISIONS

COMMUNITY LEGISLATION

CORTE SUPREMA DI CASSAZIONE OF ITALY

(COMBINED CIVIL CHAMBERS)

8 June 1972

(Ministry of Finance v. S.p.a. Isolabella and Sons)

COMMUNITY LAW - DIRECT APPLICABILITY IN ITALY - INDIVIDUAL RIGHTS

The directly applicable Community rules are integrated in the domestic legal system of the Italian State without limitation and without any condition as to compatibility with preexisting Italian legislation, since these rules have acquired an immediate and automatic effectiveness and create subjective rights in favour of private individuals without it being necessary to adapt the domestic system to the Community system.

NOTE:

The Corte Suprema di Cassazione of Italy heard this appeal against a decision of the Corte di appello of Milan.

An Italian importer claimed the return of taxes levied on cognacs imported from France.

The lower courts, recognizing the direct applicability - on the grounds of conformity with the Italian legislation - of a provision of the General Agreement on Trade and Tariffs (GATT), denied that Article 95 of the EEC Treaty applied, since the Italian legislature had not laid down corresponding provisions, and rejected the application for this reason.

The Corte Suprema di Cassazione, on the other hand, confirmed the principle whereby the directly applicable Community rules are integrated in the law of the Italian State without limitation and without any

condition as to compatibility with preexisting Italian legislation, since these rules have acquired an immediate and automatic effectiveness and create subjective rights in favour of private individuals, without it being necessary to adapt the domestic system to the Community system.

TRIBUNALE CIVILE E PENALE OF TRIESTE

13 December 1973

Vincenzo Divella v. Amministrazione delle Finanze dello Stato

1. ACTS OF A COMMUNITY INSTITUTION - REGULATION - DIRECT APPLICABILITY - LIMITS (EEC Treaty, Article 189).

2. AGRICULTURE - CEREALS - CUSTOMS DUTIES AND CHARGES HAVING EQUIVALENT EFFECT - PROHIBITION - DIRECT APPLICABILITY IN ITALY (Regulation No. 19, Articles 18, 20).

1. The direct applicability of Community Regulations in the internal legal systems of Member States comes up against an insurmountable barrier in the constitutions of those States.

2. Since the system of levies replaces the system of customs duties, the prohibition by Regulation No. 19 of those latter duties and charges having equivalent effect is applicable ipso jure in Italy without the intervention of any law, with the result that the duties and taxes collected must be reimbursed to the parties concerned.

NOTE:

An Italian importer had imported into Italy various quantities of wheat coming from Yugoslavia. At the Italian frontier he was charged by the Italian customs authorities a so-called statistical and administrative services tax, whereas Regulation No. 19 of the Council of the European Communities lays down a Community levy for cereal imports into the Community, which replaces any national customs duty and charge having equivalent effect.

The importer therefore requested repayment of the amount of 5,484,175 Italian lire. The Tribunale of Trieste granted this application, stating that the substitution of the Community levy for national taxes was operative with direct effect (ipso jure) without the need for intervention by the national legislature.

CONVENTION
ON JURISDICTION AND THE ENFORCEMENT OF CIVIL AND COMMERCIAL JUDGMENTS

(signed on 27 September 1968)

PREAMBLE

The High Contracting Parties to the Treaty establishing the European Economic Community,

Being desirous of implementing the provisions of Article 220 of the said Treaty by virtue of which they undertook to simplify the formalities governing the mutual recognition and enforcement of judgments,

Being anxious to strengthen in the Community the legal protection of persons therein established,

Whereas it is necessary for this purpose to determine the international competence of their courts, to facilitate recognition and to introduce a procedure for expediting the enforcement of judgments, "public" documents, and compositions recorded by courts,

Have decided to conclude the present Convention and have appointed to this end as plenipotentiaries:

His Majesty the King of the Belgians:
M. Pierre Harmel, Minister for Foreign Affairs;

The President of the Federal Republic of Germany:
M. Willy Brandt, Vice Chancellor, Minister for Foreign Affairs;

The President of the French Republic:
M. Michel Debré, Minister for Foreign Affairs;

The President of the Italian Republic:
M. Guiseppe Medici, Minister for Foreign Affairs;

His Royal Highness the Grand-Duke of Luxembourg:
M. Pierre Gregoire, Minister for Foreign Affairs;

Her Majesty the Queen of the Netherlands:
M. J.M.A.H. Luns, Minister for Foreign Affairs;

Who, meeting in the Council, having exchanged their Full Powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

Title I

SCOPE

Article 1

This Convention shall apply in civil and commercial matters whatever the nature of the jurisdiction.

It shall not apply to:

(1) The status or capacity of natural persons, marriage regimes, wills or inheritances;

(2) Bankruptcies, compositions or similar proceedings;

(3) Social security;

(4) Arbitration.

Title II

JURISDICTION

Section 1

GENERAL PROVISIONS

Article 2

Subject to the provisions of this Convention, persons domiciled in a Contracting State shall be answerable to the courts of that State, whatever their nationality.

Persons not possessing the nationality of the State in which they are domiciled shall be subject to the rules of jurisdiction applicable to the nationals of that State.

Article 3

Persons domiciled in a Contracting State may be sued in the courts of another Contracting State only by virtue of the rules set forth in Sections 2 and 6 of this Title.

In particular the following may not be invoked against them:

(i) In Belgium: Article 15 of the Code civil, or the provisions of Articles 52, 52bis and 53 of the Law of 25 March 1876 on jurisdiction;

(ii) In the Federal Republic of Germany: Article 23 of the Zivilprozessordnung;

(iii) In France: Articles 14 and 15 of the Code civil;

(iv) In Italy: Articles 2 and 4, Nos 1 and 2, of the Codice di procedura civile;

(v) In Luxembourg: Articles 14 and 15 of the Code civil;

(vi) In the Netherlands: Article 126, third paragraph, and Article 127 of the Wetboek van Burgerlijke Rechtsvordering.

Article 4

If the defendant is not domiciled in a Contracting State, jurisdiction is governed in each Contracting State by its own law, subject to the application of the provisions of Article 16.

Any person, whatever his nationality, domiciled in a Contracting State may, like the nationals of that State, invoke, in that State, against the defendant the rules of jurisdiction there in force, notably those specified in Article 3, second paragraph.

Section 2

SPECIAL JURISDICTION

Article 5

Any defendant domiciled in a Contracting State may, in another Contracting State, be sued in:

(1) The court of the place where the obligation has been or is to be fulfilled, in matters of contract;

(2) The court of the place where the claimant for maintenance has his domicile or usual residence, in matters of compulsory maintenance;

(3) The Court of the place where the tortious act occurred, in matters of tort or quasi-tort;

(4) The court of prosecution, in the case of a claim for damages or a suit for restitution arising from a tort, provided the court has jurisdiction over civil claims;

(5) In disputes concerning the way a firm's branch, agency or other establishment conducts its business, the court of the locality in which such branch, agency or other establishment is situated.

Article 6

The same defendant may also be sued:

(1) Where there is more than one defendant, before the court of the domicile of any one of them;

(2) The court with which the main suit was filed, in the case of an impleader or an application for third-party intervention, unless the impleader or application was made only in order to remove the defendant from the court competent to deal with him;

(3) The court with which the original claim was filed, in the case of a counterclaim arising from the contract or act on which the original claim was based.

Section 3

JURISDICTION IN MATTERS OF INSURANCE

Article 7

In matters of insurance, jurisdiction shall be determined by this section, without prejudice to the provisions of Articles 4 and 5(5).

Article 8

Any insurer domiciled on the territory of a Contracting State may be sued in the courts of that State or in the courts of the place where the insured person is domiciled, if in another Contracting State, or before the courts of the Contracting State, where one of the insurers has his domicile, if there is more than one defendant insurer.

If the law of the court before which the parties appear so allows, the insurer may also, in a Contracting State other than that of his domicile, be sued in the court under the jurisdiction of which the party which served as intermediary for the insurance contract has his domicile, provided that such domicile is mentioned in the policy or in the policy proposal.

An insurer not domiciled in a Contracting State who possesses a branch or an agency in one of the Contracting States shall be considered for the purpose of disputes concerning the conducting of the business of such branch or agency as having his domicile in that Contracting State.

Article 9

In the case of liability insurance or real property insurance, the insurer may in addition be sued in the court of the place where the tortious act took place. The same applies if the insurance covers both real and movable property in the same policy and the same contingency affects both.

Article 10

In liability insurance, the insurer may also be sued in the court with which the injured party has filed his suit against the insured person if the law of the said court so permits.

The provisions of Articles 7, 8 and 9 shall apply if the injured party sues the insurer directly, where this is possible.

If the law relating to the direct suit provides that the policy-holder or the insured may be brought into the action, the same court shall have jurisdiction over him.

Article 11

Subject to the provisions of Article 10, third paragraph, a suit by the insurer may be filed only with the courts of the Contracting State in which the defendant is domiciled, whether he is the policy-holder, the insured person or the beneficiary.

The provisions of this section shall be without prejudice to the right to file a counterclaim with the same court as the original claim filed in accordance with this section.

Article 12

The provisions of this section may be waived only by agreements:

(1) Subsequent to the occurrence of the dispute, or

(2) Allowing the policy-holder, the insured person or the beneficiary to seize courts other than those indicated in this section, or

(3) Which, concluded between a policy-holder and an insurer both having their domicile in the same Contracting State, have the effect, even when the tortious act has taken palce abroad, of assigning jurisdiction to the courts of that Contracting State, unless its law forbids such agreements.

Section 4

JURISDICTION IN MATTERS OF CREDIT SALES AND HIRE PURCHASE

Article 13

In matters of credit sales or hire purchase of tangible personal property, jurisdiction is determined by this section without prejudice to the provisions of Article 4 and Article 5(5).

Article 14

Any vendor or lender domiciled in a Contracting State may be sued either before the courts of that State or before the courts of the Contracting State in which the purchaser or hirer is domiciled.

Suits brought against the purchaser by a vendor or against the hirer by the lender may be filed only with the courts of the State in which the defendant is domiciled.

The provisions cannot prejudice the right to file a counterclaim with the same court as the original claim in accordance with this section.

Article 15

The provisions of this section may be waived only by agreements:

(1) Subsequent to the occurrence of the dispute, or

(2) Allowing the buyer or hirer to seize courts other than those indicated in this section, or

(3) Which, concluded between the purchaser and the vendor or between the hirer and the lender both having their domicile or usual residence in

the same Contracting State, assigns jurisdiction to the courts of that State, unless its law forbids such agreements.

Section 8

LIS PENDENS AND INTERRELATIONSHIP

Article 21

Where actions with the same object and concerning the same issue are brought by the same parties before the courts of different Contracting States, the court applied to second must automatically decalre itself incompetent in favour of the court applied to first.

The court obliged to yield jurisdiction may delay its decision if the jurisdiction of the other court has been challenged.

Article 22

When interrelated actions are brought before the courts of different Contracting States and are pendent in the court of first resort, the court applied to second may delay its decision.

The latter court may also yield jurisdiction of the request of one of the parties provided that the law governing it permits the joinder of interrelated cases and that the court first applied to has jurisdiction over both actions.

Interrelated actions, within the meaning of this Article, shall be those so closely interrelated that there is an advantage in preparing and judging them simultaneously to avoid settlements which ight be incompatible if they were judged separately.

Article 23

Where actions come within the exclusive jurisdiction of a number of courts, jurisdiction shall be yielded to the court applied to first.

Section 9

PROVISIONAL AND PROTECTIVE MEASURES

Article 24

Application may be made for provisional or protective measures under the law of a Contracting State to the legal authorities of that State, even if a court in another Contracting State has jurisdiction on the merits under this Convention.

TITLE III

RECOGNITION AND ENFORCEMENT

Article 25

Within the meaning of this Convention, a "judgment" shall be any judgment rendered by a court or tribunal of a Contracting State, whatever such judgment may be called, such as a decree, decision, or an order or writ of execution, including the determination of costs by the clerk of the court.

Section 1

RECOGNITION

Article 26

Judgments rendered in a Contracting State shall be recognised in the other Contracting States without a special procedure being required.

In the event of dispute, all interested parties invoking recognition on the main issue may have it declared in accordance with the procedures specified in Sections 2 and 3 of this Title that the judgment must be recognised.

If recognition is invoked incidentally before a court of a Contracting State, that court shall have jurisdiction in the matter.

Article 27

Recognition shall, however, not be accorded:

(1) If it is contrary to "public policy" in the State applied to;

(2) If the defaulting defendant was not served with the summons correctly and in good time for him to arrange for his defence;

(3) If the judgment is incompatible with a judgment rendered in a dispute between the same parties in the State applied to;

(4) If the court of the State of origin has, in rendering its judgment in settlement of a matter concerning the status or capacity of natural persons, marriage régimes, wills and inheritances, contravened a rule of the private international law of the State applied to, unless the effect of its judgment is the same as if it had applied the provisions of the private international law of the State applied to.

Article 28

Neither shall judgments be recognised if the provisions of Sections 3, 4 and 5 of Title II have been contravened, or in the case specified in Article 59.

When the jurisdictions referred to in the foregoing paragraph are examined, the authority applied to shall be bound by the de facto verifications on which the court of the State of origin based its jurisdiction.

Without prejudice to the provisions of the first paragraph, the jurisdiction of the court of the State of origin may not be reviewed; the rules relating to jurisdiction do not apply to the matters of "public policy" referred to in Article 27(1).

Article 29

In no circumstances may the foreign judgment be reviewed as to the merits.

Article 30

Any court of a Contracting State before which recognition of a judgment rendered in another Contracting State is invoked may stay the judgment if an ordinary appeal has been lodged.

Section 2

ENFORCEMENT

Article 31

All judgments rendered in a Contracting State which are enforceable in that State shall be enforced in another Contracting State when the writ of execution has been issued at the request of any interested party.

Article 32

The application shall be submitted:

(I) In Belgium, to the tribunal de premiere instance or rechtbank van eerste aanleg;

(II) In the Federal Republic of Germany, to the presiding judge of a chamber of a Landgericht;

(III) In France, to the presiding judge of the tribunal de grande instance;

(IV) In Italy, to the corte d'appello;

(V) In Luxembourg, to the presiding judge of the tribunal d'arrondissement;

(VI) In the Netherlands, to the presiding judge of the arrondissementsrechtbank.

The competent court shall be a court in the area in which is domiciled the party against which enforcement is applied for. If the party is not domiciled in the State applied to, jurisdiction shall be determined by the place of enforcement.

Article 33

The procedure for filing the application shall be determined by the law of the State of enforcement.

The applicant must elect domicile within the area jurisdiction of the court applied to. However, if the law of the State of enforcement does not provide for election of domicile, the applicant shall nominate a representative ad litem.

The documents referred to in Articles 46 and 47 shall be attached to the application.

Article 34

The court applied to shall render judgment at an early date, and the party against which an enforcement is applied for shall at this stage in the proceedings not be entitled to submit comments.

The application may be dismissed only for one of the reasons specified in Articles 27 and 28.

Under no circumstances may the foreign judgment be reviewed as to the merits.

Article 35

The judgment rendered as a result of the application shall immediately be brought to the knowledge of the applicant by the clerk of the court in

accordance with the procedure specified by the law of the State of enforcement.

Article 36

If enforcement is authorized, the party against which enforcement is applied for may appeal against the judgment within a period of one month of its notification.

If the party is domiciled in a Contracting State other than that in which the judgment authorizing the enforcement was rendered, the aforementioned period shall be two months and shall run from the date when the judgment was served on him in person or at his domicile. There shall be no extension of the period on the grounds of distance.

Article 37

The appeal shall be lodged in accordance with the rules governing trial proceedings:

(I) In Belgium, with the tribunal de première instance or rechtbank van eerste aanleg;
(II) In the Federal Republic of Germany, with the Oberlandesgericht;
(III) In France, with the cour d'appel;
(IV) In Italy, with the corte d'appello;
(V) In Luxembourg, with the cour supérieure de justice as dealing with civil appeals;
(VI) In the Netherlands, with the arrondissementsrechtbank.

Any judgment rendered in response to an appeal may be contested only by an appeal for reversal (pourvoi en cassation) and, in the Federal Republic of Germany, by a complaint on a point of law (Rechtsbeschwerde).

Article 38

Any court with which the appeal is lodged may, at the request of the party appealing, stay judgment if an ordinary appeal has been lodged against the foreign judgment in the State of origin or if the period for appealing has not expired; in the latter case, the court may allow time for appealing.

The court may also make enforcement subject to the provision of a guarantee determined by itself.

Article 39

During the period for appeal specified in Article 36, and until judgment has been rendered on the appeal, action concerning the property of the party against whom enforcement is applied for shall not exceed preservation measures.

The judgment granting enforcement shall include authorisation to proceed to such measures.

Article 40

If the application is refused, the applicant may appeal:

(1) In Belgium, to the cour d'appel or hof van beroep;
(II) In the Federal Republic of Germany, to the Oberlandesgericht;
(III) In France, to the cour d'appel;
(IV) In Italy, to the corte d'appello;
(V) In Luxembourg, to the cour supérieure de justice as dealing with civil appeals;
(VI) In the Netherlands, to the gerechtshof.

The party against which enforcement is applied for shall be summoned to appear before the court judging the appeal. If he fails to enter an appearance, the provisions of Article 20, second and third paragraphs, shall be applicable even when the party is not domiciled in any of the Contracting States.

Article 41

The judgment rendered in response to the appeal specified in Article 40 may be challenged only by an appeal for reversal (pourvoi en cassation) and, in the Federal Republic of Germany, by a complaint on a point of law (Rechtsbeschwerde).

Article 42

When the foreign judgment has ruled on a number of heads of the application and when enforcement cannot be authorized for all of them, the court shall grant enforcement for one or more of them.

The applicant may request partial enforcement.

Article 43

Foreign judgments imposing a pecuniary penalty shall be enforceable in the State applied to only if the amount of the penalty has been finally determined by the courts of the State of origin.

Article 44

An applicant receiving legal aid in the State where the judgment was rendered shall also qualify for legal aid, without further examination, in the proceedings specified in Articles 32 to 35.

Article 45

No guarantee or deposit, however designated, may be required either on the grounds of foreign origin or on the grounds of lack of domicile or residence in the country, from the party applying for enforcement in a Contracting State of a judgment rendered in another Contracting State.

Section 3
COMMON PROVISIONS

Article 46

The party relying on recognition or applying for enforcement of a judgment must produce:

(1) A copy of the judgment meeting the conditions necessary for authenticity;

(2) In the case of a judgment by default, the original or a certified true copy of the document establishing that the summons has been served on the defaulting party.

Article 47

The party applying for enforcement must also produce:

(1) All documents for the purpose of establishing that, in accordance with the law of the State of origin, the judgment is enforceable and has been served;

(2) If appropriate, a document bearing witness that the applicant is receiving legal aid in the State of origin.

Article 48

If the documents specified in Article 46(2) and Article 47(2) are not produced, the court may allow time for producing them or accept equivalent documents or, if it deems fit, dispense with them.

The document shall be translated if the court so requires; the translation shall be certified by a person authorised as a translator in one of the Contracting States.

Article 49

Neither the documents referred to in Articles 46, 47 and 48, second paragraph, nor, if issued, a proxy ad litem, shall require authentication or similar formality.

TITLE IV

"PUBLIC" DOCUMENTS AND COURT SETTLEMENTS

Article 50

All "public" documents received and enforceable in a Contracting State shall on request have the writ of execution affixed to them in another Contracting State in accordance with the procedures specified in Article 31 et seq. The application may be rejected only if the execution of the "public" document is contrary to "public policy" in the State applied to.

The document produced must satisfy the conditions necessary for its authenticity in the State of origin.

The provisions of Section 3 of Title III shall apply as far as may be necessary.

Article 51

Settlements made before the judge in the course of an action which are enforceable in the State of origin shall be enforceable in the State applied to under the same conditions as "public" documents.

TITLE V

GENERAL PROVISIONS

Article 52

In order to determine whether a party has his domicile in the Contracting State before whose courts action is brought, the judge shall apply domestic law.

When a party is not domiciled in the State before whose courts action is brought, the judge shall apply the law of that State to determine whether he is domiciled in another Contracting State.

However, in order to determine the domicile of a party, his domestic law shall be applied, if, in accordance with this, his domicile depends on that of another person or the seat of an authority.

Article 53

The registered officies of companies and bodies corporate shall be the same as the domicile for purposes of applying this Convention. However, in order to determine the registered office, the judge before whom action is brought shall apply the rules of his private international law.

TITLE VI

TRANSITIONAL PROVISIONS

Article 54

The provisions of this Convention shall apply only to legal proceedings which have been brought and to "public" documents which have been approved after its entry into force.

Notwithstanding the foregoing, judgments rendered after the date when this Convention comes into force, as a result of proceedings brought before that date, shall be recognized and enforced in accordance with the provisions of Title III if the rules of jurisdiction applied are in accordance with those specified either by Title II or by a convention which was in force between the State of origin and the State applied to when the proceedings were brought.

TITLE VII

RELATIONSHIP TO OTHER CONVENTIONS

Article 55

Without prejudice to the provisions of Article 54, second paragraph, and of Article 56, this Convention shall supersede the following Conventions concluded between two or more of the States party to it:

(i) The Convention between Belgium and France on jurisdiction, the validity and enforcement of judgments, arbitration awards and "public"documents, signed in Paris on 8 July 1899;

(ii) The Convention between Belgium and the Netherlands concerning the territorial jurisdiction of courts, bankruptcy, validity and enforcement of judgments, arbitration awards and "public" documents, signed in Brussels on 28 March 1925;

(iii) The Convention between France and Italy concerning the enforcement of judgments in civil and commercial matters, signed in Rome on 3 June 1930;

(iv) The Convention between Germany and Italy concerning the recognition and enforcement of judgments in civil and commercial matters, signed in Rome on 9 March 1936;

(v) The Convention between the Federal Republic of Germany and the Kingdom of Belgium concerning the mutual recognition and enforcement of judgments, arbitral awards and "public" documents, in civil and commercial matters, signed in Bonn on 30 June 1958;

(vi) The Convention between the Kingdom of the Netherlands and the Italian Republic concerning the recognition and enforcement of judgments in civil and commercial matters, signed in Rome on 17 April 1959;

(vii) The Convention between the Kingdom of Belgium and the Italian Republic concerning the recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed in Rome on 6 April 1962;

(viii)The Convention between the Kingdom of the Netherlands and the Federal Republic of Germany concerning the mutual recognition and enforcement of judgments and other enforceable instruments in civil and commercial matters, signed in The Hague on 30 August 1962;

and inasmuch as it is in force:

(ix) The Treaty between Belgium, the Netherlands and Luxembourg concerning jurisdiction of courts, bankruptcy, validity and enforcement of judgments,

arbitration awards and "public" documents, signed in Brussels on 24 November 1961.

Article 56

The Treaty and Conventions referred to in Article 55 shall continue to have effect in matters to which this Convention does not apply.

They shall continue to have effect in respect of judgments rendered and instruments drawn up before the entry into force of this Convention.

Article 57

This Convention shall be without prejudice to any conventions to which the Contracting States are or will be parties, governing jurisdiction, recognition and enforcement of judgments in particular matters.

Article 58

The provisions of this Convention shall be without prejudice to the rights granted to Swiss nationals by the Convention concluded on 15 June 1869 between France and Switzerland on jurisdiction of courts and the enforcement of judgments in civil matters.

Article 59

This Convention shall not prevent a Contracting State from giving undertakings to a non-member state, under a Convention on the recognition and enforcement of judgments, from refusing to recognize a judgment rendered, notably in another Contracting State, against a defendant having his domicile or usual residence on the territory of the non-member state when, in a case covered by Article 4, it has been possible to base the judgment only on a jurisdiction specified in Article 3, second paragraph.

TITLE VIII

FINAL PROVISIONS

Article 60

This Convention shall apply to the European territories of the Contracting States, to the French Overseas Departments and to the French Overseas Territories.

The Kingdom of the Netherlands may declare at the time of signing or ratifying this Convention or at any later time, by notifying the Secretary-General of the Council of the European Communities, that this Convention shall be applicable to Surinam and the Netherlands Antilles. In the absence of such declaration with respect to the Netherlands Antilles, proceedings opened on the European territory of the Realm as a result of an appeal for reversal of the judgments of courts in the Netherlands Antilles shall be deemed to be proceedings opened before the said courts.

Article 61

This Convention shall be ratified by the signatory States. The instruments of ratification shall be deposited with the Secretary-General of the Council of the European Communities.

Article 62

This Convention shall come into force on the first day of the third month following deposit of the instrument of ratification by the last signatory State to complete this formality.

Article 63

The Contracting States shall recognise that all States becoming members of the European Economic Community shall have the obligation to agree that this Convention shall be taken as a basis for the negotiations necessary to ensure the implementation of Article 220, last sub-paragraph, of the Treaty establishing the European Economic Community, in relations between the Contracting States and the acceding State.

A special convention may be made between the Contracting States on the one hand and the acceding State on the other hand to ensure the necessary adjustments.

Article 64

The Secretary-General of the Council of the European Communities shall notify the signatory States of:

(i) The deposit of each instrument of ratification;
(ii) The date of entry into force of this Convention;
(iii) Any declarations received in pursuance of Article 60, second paragraph;
(iv) Any declaration received in pursuance of Article IV of the Protocol;
(v) Any communications made in pursuance of Article VI of the Protocol;

Article 65

The Protocol annexed to this Convention by mutual agreement of the Contracting States shall form an intergral part of the Convention.

Article 66

This Convention shall be concluded for an indefinite period.

Article 67

Any Contracting State may request the revision of this Convention. In this event, a revision conference shall be convened by the President of the Council of the European Communities.

Article 68

This Convention, drawn up in one original only, in German, French, Italian and Dutch, the four texts being equally authentic, shall be deposited in the archives of the Secretariat of the Council of the European Communities. The Secretary-General shall supply a certified true copy to the Government of each signatory State.

IN WITNESS WHEREOF, the undersigned plenipotentiaries have affixed their signatures to this Convention.

Done at Brussels, on the twenty-seventh day of September, nineteen hundred and sixty-eight.

For His Majesty the King of the Belgians,
Pierre Harmel.

For the President of the Federal Republic of Germany,
Willy Brandt.

For the President of the French Republic,
Michel Debré.

For the President of the Italian Republic,
Giuseppe Medici.

For his Royal Highness the Grand-Duke of Luxembourg,
Pierre Grégoire.

For her Majesty the Queen of the Netherlands,
J.M.A.H. Luns.

PROTOCOL

The High Contracting Parties have agreed on the following provisions, which are annexed to the Convention:

Article I

All persons domicled in Luxembourg who are brought before a court of another Contracting State in pursuance of Article 5(1) may refuse the jurisdiction of that court. The court shall automatically declare that it lacks jurisdiction if the defendant does not enter an appearance.

All agreements awarding jurisdiction within the meaning of Article 17 shall be valid with respect to a person domiciled in Luxembourg only if that person has expressly and specifically so agreed.

Article II

Without prejudice to more favourable national provisions, persons domiciled in a Contracting State who are being prosecuted for involuntary infringement in the criminal courts of another Contracting State of which they are not nationals may have themselves defended by persons competent for the purpose even if they do not appear in person.

However, the court before which the case is brought may order appearance in person; failure to appear may mean that the judgment rendered in the civil suit without the person concerned having had the opportunity to arrange for his defence will not be recognised or enforced in the other Contracting States.

Article III

No tax, duty or fee proportional to the value of the lawsuit shall be collected in the State applied to on the occasion of the proceedings to obtain approval for the writ of execution.

Article IV

Judicial and non-judicial instruments drawn up in one Contracting State which have to be served on persons in another Contracting State shall be transmitted in accordance with the procedures laid down in the conventions and agreements concluded between the Contracting States.

Unless the State of destination objects by declaration to the Secretary-General of the Council of the European Communities, such instruments may also be sent directly by the law officials of the State in which the instruments have been drawn up to the law officials of the State in which the addressee is resident. In this case, the law official of the State of origin shall send a copy of the instrument to the law official of the State applied to who is competent to forward it to the addressee. The instrument shall be forwarded in the forms specified by the law of the State applied to. It shall be confirmed by a certificate sent directly to the law official of the State of origin.

Article V

The courts specified in Article 6(2) and Article 10 as having jurisdiction over impleaders or requests for third-party intervention cannot be invoked in the Federal Republic of Germany. In that State, all persons domiciled on the territory of another Contracting State may be summoned before the courts in pursuance of Articles 68, 72, 73 and 74 of the Zivilprozessordnung concerning litis denunciatio.

Judgments rendered in the other Contracting States by virtue of Article 6(2) and Article 10 shall be recognized and enforced in the Federal Republic of Germany in accordance with Title III. Any effects produced with respect to third parties, in pursuance of Articles 68, 72, 73 and 74 of the Zivelprozessordnung, by judgments rendered in that State shall also be recognized in the other Contracting States.

Article VI

The Contracting States shall communicate to the Secretary-General of the Council of the European Communities the texts of any legal provisions amending either the articles of their laws mentioned in the Convention or changing the courts specified in Title III, Section 2, of the Convention.

IN WITNESS WHEREOF, the undersigned plenipotentiaries have affixed their signatures to this Protocol.

Done at Brussels, on the twenty-seventh day of September, nineteen hundred and sixty-eigth.

For His Majesty the King of the Belgians,

Pierre Harmel.

For the President of the Federal Republic of Germany,
Willy Brandt.

For the President of the French Republic,
Michel Debré.

For the President of the Italian Republic,
Giuseppe Medici.

For His Royal Highness the Grand-Duke of Luxembourg,
Pierre Grégoire.

For Her Majesty the Queen of the Netherlands,
J.M.A.H. Luns.

JOINT DECLARATION

The Governments of the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands,

On signing the Convention on jurisdiction and the enforcement of civil and commercial judgments,

Being desirous of ensuring that the Convention is applied as effectively as possible,

Wishing to prevent differences of interpretation of the Convention from impairing its unity,

Aware that claims and disclaimers of jurisdiction may arise in the application of the Convention,

Declare themselves ready:

(1) To study these matters and in particular to examine the possibility of assigning certain powers to the Court of Justice of the European Communities and, if necessary, to negotiate an agreement to this effect;

(2) To arrange meetings at regular intervals between their representatives.

IN WITNESS WHEREOF, the undersigned plenipotentiaries have affixed their signatures to this Joint Declaration.

Done at Brussels, on the twenty-seventh day of September, nineteen hundred and sixty-eight.

Pierre Harmel	Willy Brandt	Michel Debré
Giuseppe Medici	Pierre Grégoire	J.M.A.H. Luns

INFORMATION IN BRIEF

On 9 January 1973, in the presence of Their Royal Highnesses the Grand Duke and Grand Duchess of Luxembourg, the Ministers of Justice of the nine Member States of the enlarged Community, the Members of the Community Institutions and the Presidents and Procureurs généraux of the Supreme Courts, the Prime Minister of the Luxembourg Government handed over to the President of the Court of Justice of the European Communities the new Court building in the Plateau du Kirchbert, Luxembourg.

During a solemn session, held in the main courtroom during the afternoon, the Court of Justice received its new Members, after the latter had taken the oath laid down in the Rules of Procedure.

The newly composed Court of Justice then received the Commission of the European Communities, the President and Members of which pronounced before the Court the solemn declaration laid down by the Treaty of Rome. The composition of the Court of Justice is now as follows:

President	:	Judge Robert Lecourt (France)
President of the First Chamber	:	Judge Riccardo Monaco (Italy)
President of the Second Chamber	:	Judge Pierre Pescatore (Luxembourg)
		Judge André Donner (Netherlands)
		Judge Josse Mertens de Wilmars (Belgium)
		Judge Hans Kutscher (Federal Republic of Germany)
		Judge Cearbhall Ó Dálaigh (Ireland)
		Judge Max Sørensen (Denmark)
		Judge Lord Mackenzie Stuart (United Kingdom)
		Advocate-General Karl Roemer (Federal Republic of Germany)
		Advocate-General Alberto Trabucchi (Italy)
		Advocate-General Henri Mayras (France)
		Advocate-General Jean-Pierre Warner (United Kingdom)

The working languages of the Court of Justice are, in alphabetical order, Danish, Dutch, English, French, German and Italian. Simultaneous interpretation into these languages is provided during hearings in open court.

The Court of Justice generally conducts hearings in open court on Tuesdays, Wednesdays and Thursdays, except for the Court vacations (15 July to 15 September) and the Christmas and Easter holidays.

The public is admitted to these hearings.

The new address of the Court is as follows:

Cour de Justice des Communautés européenes,
Luxembourg-Kirchberg.
Telephone 476-21.

SUMMARY REMINDER OF THE 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 with a view to determining the validity or interpretation of a provision of Community law, or directly by the Community institutions, the Member States or private parties in the conditions laid down by the Treaties.

A. References for Preliminary Rulings

The national court 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) it desires to put to the Court of Justice. This document is addressed by the registry of the national court to the registry of the Court of Justice,(*) accompanied in appropriate cases by a dossier designed to make known to the Court of Justice the background and limits of the questions posed.

After a period of two months during which the Commission, the Member States and the parties to the national proceedings may address written observations to the Court of Justice, 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 advocates who are members of a Bar of a Member State.

After submissions have been made by the Advocate-General, the judgment given by the Court of Justice is transmitted to the national court through the registries.

B. Direct Actions

The matter is brought before the Court by a statement of claim addressed by an advocate to the Registrar (Luxembourg - Kirchberg) by registered post.

(*) Court of Justice of the European Communities, Luxembourg-Kirchberg
Telephone: 47.621 Telegrams: CURIA - LUXEMBOURG
Telex : CURIA LUX 510

Any advocate who is a member of the Bar of one of the Member States is qualified to appear before the Court of Justice, as also is any professor holding 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. The statement of claim should indicate:

- the name and address of the plaintiff;
- the description of the party against whom the claim is directed;
- the subject of the dispute and the arguments relied on;
- the submissions of the plaintiff;
- the nature of any evidence tendered;
- the address for service at the place where the Court has its seat, with an indication of the name of the person who is authorized, and has consented to accept any communications.

The statement of claim should also be accompanied by the following documents:

- the decision it is sought to annul, or, in the case of an application against an implied decision, a document evidencing the date of the formal request for such decision;
- a document certifying that the advocate is a member of the Bar of one of the Member States;
- where any of the plaintiffs are legal persons under private law, the articles of association, with evidence that the instructions given to the advocate have been drawn up by a duly qualified representative.

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 advocate or any person enjoying their confidence.

The statement of claim is notified to the defendants by the Registry of the Court of Justice. It calls for a defence to be put in by them, followed by a reply on the part of the plaintiff, and finally a rejoinder on the part of the defendants.

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

After the submissions of the Advocate-General, the judgment is given. It is notified to the parties by the Registry.