Information on the Court of Justice of the European Communities

N. XX

1976

INFORMATION ON THE COURT OF JUSTICE

OF THE

EUROPEAN COMMUNITIES

No. XX

Published by the Information Office of the Court of Justice of the European Communities, Boîte Postale 1406, Luxembourg.

Table of Contents

This Bulletin is distributed free to judges, advocates and practising lawyers in general, on application to one of the Information Offices of the European Communities at the following addresses:

1000 BERLIN 31
Kurfürstendamm 102
Federal Republic of Germany

53 BONN
Zitelmannstrasse 22
Federal Republic of Germany

1049 BRUSSELS
244 rue de la Loi
Belgium

THE HAGUE
Lange Voorhout 29
Netherlands

DUBLIN 2
29 Merrion Square
Republic of Ireland

1202 GENEVA
37-39 rue de Vermont
Switzerland

1004 COPENHAGEN K
Gammel Torv 4
Denmark

LONDON, W8 4 QQ
20 Kensington Palace Gardens
United Kingdom

75782 PARIS Cedex 16
61 rue des Belles Feuilles
France

00187 ROME
Via Poli 29
Italy

MONTEVIDEO
1337 Calle Bartolome Mitre
Casilla 641
Uruguay

SANTIAGO DE CHILE 9
Avda Ricardo Lyon 1177
Casilla 10093
Chile

NEW YORK 10017
277 Park Avenue
U.S.A.

WASHINGTON, D.C. 20037
2100 M. Street, N.W.
Suite 707
U.S.A.

TOKYO 102
Kowa 25 Building
8 - 7 Sanbancho
Chiyoda-Ku
Japan

ANKARA
13 Bogaz Sokak
Kavaklidere
Turkey

D E C I S I O N S

of the

COURT OF JUSTICE

of the

EUROPEAN COMMUNITIES

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

Boîte Postale No. 1406, Luxembourg.
Telephone: 47621
Registry Telex: 2510 CURIA LU
Information Office Telex: 2771 INFO LU
Telegraphic address: CURIA Luxembourg.

General information on the Court of Justice is contained in Bulletin No. XIX.
In future, that information will be repeated in the Bulletins for the first and third quarter of each year.

Analytical Table

Agriculture

Joined Cases 88 to 90/75:	SADAM and Others (Common organization of the market in sugar)
Case 65/75:	Tasca (Common organization of the market in sugar)
Case 95/75:	Firma EFFEM GmbH v Hauptzollamt Lüneburg (Flat rate export levy)
Joined Cases 67 to 85/75:	Société Lesieur Cotelle and Others (Compensatory amounts)
Case 47/75:	Federal Republic of Germany v Commission (European Agricultural Guidance and Guarantee Fund - Management Committee)

Failure to fulfil an obligation

Case 52/75:	Commission v Italian Republic

State monopolies - Taxation - Discrimination

Case 45/75:	Rewe-Zentrale des Lebensmittel Großhandels eGmbH v Hauptzollamt Landau/Pfalz
Case 91/75:	Hauptzollamt Göttingen and Bundesfinanzminister v W. Miritz GmbH

Commercial policy

Case 29/75:	Kaufhof AG v Commission

Social policy - Male and female workers - Equality

Case 43/75:	G. Defrenne v Sabena

Social Security for Migrant Workers

Case 108/75:	G. Balsamo
Case 112/75:	A. Hirardin
Case 103/75:	W. Aulich

Common Customs Tariff

Joined Cases 98 and 99/75:	Carstens Keramik and Oberfinanzdirektion Frankfurt am Main

Taxation - Turnover tax - Value Added Tax

Case 111/75:	Mazzalai

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

17 February 1976

(Rewe-Zentrale des Lebensmittel-Großhandels eGmbH
v Hauptzollamt Landau/Pfalz)

Case 45/75

1. QUESTIONS REFERRED FOR PRELIMINARY RULING - JURISDICTION OF THE COURT - LIMITS
(EEC Treaty, Art. 177)

2. TAX PROVISIONS - INTERNAL TAXATION ON IMPORTED PRODUCTS AND SIMILAR DOMESTIC PRODUCTS - DISCRIMINATION - PROHIBITION - DIRECT EFFECT
(EEC Treaty, Art. 95)

3. TAX PROVISIONS - INTERNAL TAXATION ON IMPORTED PRODUCTS AND SIMILAR DOMESTIC PRODUCTS - SIMILARITY OF THE PRODUCTS
(EEC Treaty, Art. 95)

4. TAX PROVISIONS - INTERNAL TAXATION ON IMPORTED PRODUCTS AND SIMILAR DOMESTIC PRODUCTS - DIFFERENT METHOD OF CALCULATION - DISCRIMINATION - PROHIBITION - EXTENT
(EEC Treaty, Art. 95)

5. TAX PROVISIONS - INTERNAL TAXATION ON IMPORTED PRODUCTS AND SIMILAR DOMESTIC PRODUCTS - IDENTICAL TAXES - DIFFERENT ALLOCATION - PERMISSIBLE
(EEC Treaty, Art. 95)

6. QUANTITATIVE RESTRICTIONS - ELIMINATION - STATE MONOPOLIES OF A COMMERCIAL CHARACTER - TRANSITIONAL PERIOD - EXPIRY - DISCRIMINATION - ABOLITION - DIRECT EFFECT
(EEC Treaty, Art. 37)

7. QUANTITATIVE RESTRICTIONS - ELIMINATION - STATE MONOPOLIES OF A COMMERCIAL CHARACTER - DISCRIMINATION REGARDING CONDITIONS UNDER WHICH GOODS ARE PROCURED AND MARKETED - PROHIBITION - EXTENT
(EEC Treaty, Art. 37)

1. Although, in the context of proceedings under Article 177 of the Treaty, it is not for the Court to rule on the compatibility of the provisions of a national law with the Treaty, it does, on the other hand, have jurisdiction to provide the national court with all the criteria of interpretation relating to Community law which may enable it to judge such compatibility.

2. The first paragraph of Article 95 produces direct effects and creates individual rights which national courts must protect.

3. A comparison must be made between the taxation imposed on products which, at the same stage of production or marketing, have similar characteristics and meet the same needs from the point of view of consumers. In this respect, the classification of the domestic product and the imported product under the same heading in the Common Customs Tariff constitutes an important factor in this assessment.

4. The first paragraph of Article 95 must be interpreted as prohibiting the imposition of taxation on an imported product according to a method of calculation or manner of imposition which differs from those applying to the tax imposed on the similar domestic product and leads to higher taxation on the imported product, such as the imposition of a uniform amount in one case and a graduated amount in the other, even if such disparity only occurs in a minority of cases, and that it is inappropriate to take into consideration the possibly different effects of such taxation on the price levels of the two products.

5. The first paragraph of Article 95 does not prohibit the imposition of the same taxation on an imported product and a similar domestic product, even if a part of the tax levied on the domestic product is allocated for the purposes of financing a State monopoly, whilst that levied on the imported product is imposed for the benefit of the general budget of the State.

6. When the transitional period has expired, the duty laid down in Article 37 (1) is no longer subject to any condition, nor can its performance or effects be subject to the adoption of any measure either by the Community or the Member States, and, by its very nature, it is capable of conferring on those concerned

individual rights which national courts must protect.

7. The application of Article 37 (1) is not limited to imports or exports which are directly subject to the monopoly but covers all measures which are connected with its existence and affect trade between Member States in certain products, whether or not subject to the monopoly, and thus covers charges which would result in discrimination against imported products as compared with national products coming under the monopoly.

8. However, that provision does not prohibit the imposition of identical taxation on an imported product and a similar domestic product, even if the charge imposed on the latter is, in part, allocated for the purposes of financing the monopoly, whilst the charge levied on the imported product is imposed for the benefit of the general budget of the State.

Note

The Court of Justice has been seised of two references for a preliminary ruling by German courts on the interpretation of provisions concerning the adjustment of State monopolies. The two cases have arisen from individual disputes with the German State alcohol monopoly. In Case 45/75 (REWE), the questions have been referred in the context of a dispute between an importer of Italian vermouth and the customs administration of the Federal Republic of Germany, concerning the compatibility of the rules of the Treaty concerning State monopolies (Article 37 (1)) and those concerning tax provisions (the first paragraph of Article 95) with the provisions of the law laying down the excise duty levied in the Federal Republic of Germany on imported alcohol, termed the Monopolausgleich.

According to the Federal Law on the alcohol monopoly, ethyl alcohol of agricultural and non-agricultural origin must be sold to the monopoly administration at a price fixed by the authorities; it is then resold by the monopoly after processing at prices which differ according to the use to which it is to be put on resale and which are also determined by the public authorities. The price at which this alcohol is resold

includes the cost of producing the alcohol, an amount intended to cover expenses incurred by the monopoly, including the cost of processing, storage and administrative costs, and the tax called the Branntweinsteuer.

The Federal Law also provides that certain domestically produced alcohol, and in particular cereal alcohol and alcohol made from certain fruits, shall be free of the requirement of sale to the monopoly. The situation which gave rise to the dispute is therefore marked by the existence of a national monopoly covering the purchase and marketing of a product which nevertheless covers only a part of the national production of that product, a further proportion being purchased and marketed by the private sector.

Furthermore, the German tax system imposes on alcohol exempt from the requirement to sell to the monopoly the burden of part of the administrative costs of the monopoly, and this tax - called the Branntweinaufschlagspitze - is allocated to the monopoly administration, forming one of its sources of revenue.

Imported alcohol and alcoholic beverages bear a charge called the Monopolausgleich, comprising the duty payable on alcohol delivered to the monopoly (Branntweinsteuer) and a surcharge which is deemed to correspond to the amount intended to cover "monopoly costs" (Monopolausgleichspitze). This surcharge is not allocated to the monopoly but constitutes an item in the general State budget. The Government of the Federal Republic of Germany has stated that it is intended to re-establish equal conditions of competition between imported spirits and alcoholic beverages and the same products produced domestically from alcohol exempt from the requirement to sell to the monopoly.

The question put to the Court was whether the levying of the Monopolausgleichspitze on imports of Italian vermouth violates the first paragraph of Article 95 of the EEC Treaty because it is not intended to compensate for the burdening of the comparable domestic products with a tax but rather for the State monopoly's own administrative expenses. The first paragraph of Article 95 provides that no Member State shall impose on the products of another Member State any internal taxation in excess of that imposed on similar domestic products.

The Court has ruled that the first paragraph of Article 95 is to be interpreted as meaning that it prohibits the burdening of the imported product by means of a different method of calculation or by different amounts, such as a uniform amount in one case and a progressive amount in another, from those used for the charge levied on the comparable domestic product, leading to higher amounts on the imported product, even if this difference occurs only in a minority of cases. In this connexion there is no reason to take into consideration the possibly differing incidence of these charges on the price levels of the two products.

The said provision does not prohibit the imposition of the same charge on an imported product and on the comparable domestic product even if a part of the charge, levied on the domestic product, is allocated to the financing of a State monopoly, whereas that part falling on the imported product is allocated to the general State budget. The other question referred concerns the interpretation of Article 37 (1) on the adjustment of monopolies by the Member States. The Court was asked whether the levying of the part of the Monopolausgleich called the Monopolausgleichspitze (surcharge), violates the principle of Article 37 (1) in that it is not intended to compensate, by means of a tax, for the burdening of the comparable domestic products but rather to compensate for the administrative expenses of the State monopoly.

The Court has ruled that Article 37 (1) is to be interpreted as meaning that the discrimination in terms of conditions of supply and marketing to which it relates includes the imposition on an imported product, even in the form of a tax, of a contribution to the costs of the monopoly, but that that provision does not prohibit the imposition of an identical charge on an imported product and on the comparable domestic product, even if the charge imposed on the latter product is, in part, allocated to the financing of the monopoly whereas that imposed on the imported product is allocated to the general State budget.

The Court has also stated, in confirmation of its previous case-law, that the first paragraph of Article 95 and Article 37 (1)

of the EEC Treaty are capable of creating individual rights which the national courts must protect.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

17 February 1976

(Hauptzollamt Göttingen and Bundesfinanzminister v
Wolfgang Miritz GmbH & Co.)

Case 91/75

1. QUANTITATIVE RESTRICTIONS - ELIMINATION - STATE MONOPOLIES OF A COMMERCIAL CHARACTER - TRANSITIONAL PERIOD - EXPIRATION - DISCRIMINATION - ABOLITION
(EEC Treaty, Art. 37)

2. QUANTITATIVE RESTRICTIONS - ELIMINATION - STATE MONOPOLIES OF A COMMERCIAL CHARACTER - DISCRIMINATION REGARDING THE CONDITIONS UNDER WHICH GOODS ARE PROCURED AND MARKETED - PROHIBITION - EXTENT
(EEC Treaty, Art. 37)

3. QUANTITATIVE RESTRICTIONS - ELIMINATION - STATE MONOPOLIES OF A COMMERCIAL CHARACTER - DISPOSAL OF OR OBTAINING THE BEST RETURN FOR AGRICULTURAL PRODUCTS - DISCRIMINATION - ABOLITION - DEROGATION - ABSENCE
(EEC Treaty, Art. 37)

1. Article 37 (1) prescribes in mandatory terms that monopolies must be adjusted in such a way as to ensure that when the transitional period has ended such discrimination shall cease to exist.

2. The application of Article 37 (1) is not limited to imports or exports which are directly subject to the monopoly but covers all measures which are connected with its existence and affect trade between Member States in certain products, whether or not subject to the monopoly, and thus covers charges which result in discrimination against imported products as compared with national products coming under the monopoly.

This provision prevents a Member State from levying a charge imposed only on products imported from another Member State for the purpose of compensating for the difference between the selling

price of the product in the country from which it comes and the higher price paid by the State monopoly to national producers of the same product.

3. Article 37 (4) does not derogate from the other provisions of that article. Its purpose is to enable the national authorities, if necessary in co-operation with the Community institutions, to promulgate measures compatible with paragraphs (1) and (2) and designed to compensate for the effects which the abolition of the discrimination which a monopoly specifically implies may have on the employment and standard of living of the producers concerned.

Note

In a further case concerning a State monopoly the Bundesfinanzhof has referred questions on the interpretation of Articles 12 (elimination of customs duties and charges having equivalent effect) and 37 (adjustment of State monopolies) of the Treaty. The Federal Republic of Germany adjusted the State alcohol monopoly so as to conform to the requirements of the Treaty of Rome. It introduced a special compensatory charge on the import of alcoholic products, called the Preisausgleichsgabe, which is calculated on the basis of the difference between the basic price used for the fixing of the price paid by the monopoly to national alcohol producers and the lowest price at which it is possible to obtain pure alcohol in the exporting Member State. Since this charge is not intended to compensate for an internal duty falling on the domestic product and does not have that effect, it does not form part of a general system of internal taxation.

The Miritz undertaking put onto the German market citrus peel distillates imported from Italy and was required to pay the monopoly compensatory duty. The customs office also required payment of the special compensatory charge (Preisausgleich), which was contested by Miritz on the ground that the charge was incompatible with the EEC Treaty.

The Bundesfinanzhof has referred to the European Court three preliminary questions: Does the introduction of a levy which is only

imposed upon imported spirits coming from other Member States, the amount of which corresponds to the general charge imposed by the alcohol monopoly upon similar domestic products, without such products being expressly subject to the same compensatory levy, amount to an infringement of Article 12 of the Treaty? If the answer to that question is in the negative, does the imposition of the levy infringe Article 37 (2) of the Treaty? Is the imposition of the levy justified by Article 37 (4) of the Treaty?

As regards the first question the Court has replied that since the compensatory charge is linked, by its nature and general scheme, to the system of the German alcohol monopoly, the reply should be sought in the context of Article 37 of the Treaty, which is specifically concerned with the adjustment of State monopolies. The Court has analyzed each of the paragraphs of Article 37 and has ruled that, although not requiring the abolition of monopolies, that provision imperatively requires their adjustment so as to ensure, by the end of the transitional period, the entire elimination of the discrimination concerned. This is a precise and unconditional duty to ensure a specific result.

The application of Article 37 (1) extends to any action linked to the existence of the monopoly and having an effect upon trade between Member States in certain products, whether or not subject to a monopoly, and therefore applies to such charges as create discrimination to the detriment of imported products in relation to domestic products covered by the monopoly.

The Federal Government had claimed in the course of the proceedings that Article 37 (4) justifies a charge having equivalent effect which is intended to provide a safeguard for the employment and standard of living of German agricultural alcohol producers because it is comparable to the safeguards afforded to them by virtue of the monopoly's exclusive right to import, whichwas abolished by the German Government in order to conform to the obligation imposed by the first paragraph of that article.

The Court has ruled that following the end of the transitional period Article 37 of the EEC Treaty prohibits the levying by a Member State of a charge falling only on a product imported from another Member State so as to compensate for the difference between the sale price of that product in

the country from which it comes and the highest price paid by the State monopoly to domestic producers of the comparable product. The provisions of Article 37 (4) do not derogate from the other provisions of that article.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

18 February 1976

(Carstens Keramik GmbH Tönnieshof, Firma August Hoff v Oberfinanzdirektion Frankfurt am Main)

Joined Cases 98 and 99/75

1. COMMON CUSTOMS TARIFF - INTERPRETATION - ABSENCE OF COMMUNITY PROVISIONS - CONVENTION ON THE BRUSSELS NOMENCLATURE - EXPLANATORY NOTES - AUTHORITY

2. COMMON CUSTOMS TARIFF - SUBHEADINGS 69.12 A and 69.12 C; 69.13 A and 69.13 C - INTERPRETATION - DISTINCTION

1. It is established that in the absence of Community measures, of explanatory notes and other information supplied by the Community authorities, the Explanatory Notes to the Brussels Nomenclature are an authoritative aid to the interpretation of headings in the Common Customs Tariff.

2. Subheadings 69.12 A and 69.12 C (tableware "of common pottery" and "of fine pottery") and subheadings 69.13 A and 69.13 C (statuettes and other ornaments of "common pottery" and of "other kinds of pottery") must be interpreted and distinguished in terms of the fineness of the grain and the homogeneity of the structure so that a very fine and homogeneous product cannot be classified as a product of common pottery.

Although the opinion issued in June 1972 by the Committee on Nomenclature, established by Regulation No. 97/69 of the Council of the EEC, is not binding and relates to a heading which is not one of those at issue in the present case, it represents a valid evidence for the above purposes.

Note

The Carstens Keramik undertaking imported from Rumania vases approximately 15 cm high in simple decorative shapes. The August Hoff undertaking imported from Hungary and from Rumania mugs devoid of any originality.

The German customs administration classified the vases under a subheading of the Common Customs Tariff as "articles of furniture or ornaments of fine pottery" and the mugs as "tableware of fine pottery". The importers contested this classification, claiming that the products should be classified under the heading of products "of common pottery".

The essential problem raised by these questions referred by the Bundesfinanzhof is therefore the interpretation of the term "common pottery" as a criterion for classification under the tariff.

The Court has examined all the possibilities under the Common Customs Tariff: "earthenware", "stoneware", "porcelain", "fine pottery" and "common pottery", and has ruled that the interpretation and definition of the subheadings relating to tableware of "common pottery" and of "fine pottery" and of the subheadings covering articles of furniture and ornaments of "common pottery" and of "other ceramic materials" must be made on the basis of the fineness of the grain and the homogeneity of the structure, with the result that a product showing a particularly fine texture and homogeneity may not be classified as a product made of common pottery.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

26 February 1976

(Commission of the European Communities v
Italian Republic)

Case 52/75

1. MEASURES ADOPTED BY AN INSTITUTION - DIRECTIVES - BINDING EFFECT - TIME-LIMITS FOR THE IMPLEMENTATION OF SUCH MEASURES (EEC Treaty, Art. 189)

2. MEMBER STATES - OBLIGATIONS - PERFORMANCE - DELAYS BY OTHER MEMBER STATES - JUSTIFICATION FOR FAILURE TO PERFORM OBLIGATIONS - INADMISSIBILITY

3. COMMUNITY LAW - CHARACTER AS NEW LAW

4. MEMBER STATES - OBLIGATIONS - FAILURE - LIABILITY - EXTENT (EEC Treaty, Art. 169)

1. Although the provisions of a directive are no less binding on the Member States to which they are addressed than the provisions of any other rule of Community law, such an effect attaches a fortiori to the provisions relating to the periods allowed for implementing the measures prescribed, in particular since the existence of differences in the rules applied in the Member States after these periods have expired might result in discrimination.

2. Any delays there may have been on the part of other Member States in performing obligations imposed by a directive may not be invoked by a Member State in order to justify its own, even temporary, failure to perform its obligations.

3. The Treaty did not merely create reciprocal obligations between the various subjects to whom it applies, but established a new legal order which governs the powers, rights and duties of the said subjects, as well as the procedures necessary for the purposes of having any infringement declared and punished.

4. Under Article 169 of the Treaty, the Member States are liable no matter which organ of the State is responsible for the failure.

A Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits under Community directives.

Note

The Council, aware that the disparities between national regulations on the use of vegetable seed were forming an obstacle to trade between the Member States, intended by means of the directive of 29 September 1970 to introduce common rules comprising common requirements with regard to the marketing of that seed on the international markets. That directive laid down a period ending on 1 July 1972 for the implementation of national measures. The Commission lodged an application to the Court of Justice in June 1975 for a declaration that Italy has failed to fulfil its obligations under the Treaty by still not having adopted the necessary measures to comply with the provisions of the directive.

Italy has endeavoured to justify its delay by stating that the period laid down in the directive was too short to implement on a national basis specific and precise provisions contained in the directive.

The Court replied that the correct implementation of a directive is all the more important since the implementing measures are left to the discretion of the Member States and the periods laid down are a guarantee of the effectiveness of the instrument. Moreover, the Court says, if the period for the implementation of a directive proves too short the only course open to the Member State which is compatible with Community law consists in requesting the competent Community institiution for an extension of the period.

The Court ruled that by not observing the periods laid down for the implementation of a directive, the Italian Republic has failed to fulfil an obligation under the Treaty.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

26 February 1976

(SADAM and others)

Joined Cases 88 to 90/75

1. AGRICULTURE - COMMON ORGANIZATION OF THE MARKET - SUGAR - SALE - MAXIMUM PRICES - UNILATERAL FIXING BY A MEMBER STATE - PROHIBITION
(Regulation No. 1009/67 of the Council)

2. QUANTITATIVE RESTRICTIONS - MEASURES HAVING EQUIVALENT EFFECT - CONCEPT
(EEC Treaty, Art. 30)

3. AGRICULTURE - COMMON ORGANIZATION OF THE MARKET - SUGAR - SALE - MAXIMUM PRICES - UNILATERAL FIXING BY A MEMBER STATE - QUANTITATIVE RESTRICTIONS - MEASURE HAVING EQUIVALENT EFFECT
(Regulation No. 1009/67 of the Council, Art. 35)

4. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - SUGAR - SALE - MAXIMUM PRICES - UNILATERAL FIXING BY A MEMBER STATE - JUSTIFICATION - INADMISSIBILITY
(EEC Treaty, Arts. 30 and 103; Regulation No. 1009/67 of the Council)

1. The unilateral fixing by a Member State of maximum prices for the sale of sugar, whatever the marketing stage in question, is incompatible with Regulation No. 1009/67 once it jeopardizes the objectives and the functioning of this organization and in particular its system of prices.

Such is the case where a Member State in respect of which the intervention price has been fixed at a level higher than the target price regulates the prices in such a way as directly or indirectly to make it difficult for the sugar manufacturers to obtain an ex-factory price at least equal to the said intervention price. Such an indirect obstruction exists when the Member State in question, without regulating the prices at the production stage, fixes maximum selling prices for the wholesale and retail stages

at such a low level that the grower finds it practically impossible to sell at the intervention price since, if he were to do so, it would force the wholesalers or retailers, bound by the said maximum prices, to sell at a loss.

2. For national measures to constitute measures having an effect equivalent to quantitative restrictions, it is sufficient that the measures in question are likely to constitute an obstacle, directly or indirectly, actually or potentially, to imports between Member States.

3. Although a maximum price applicable without distinction to domestic and imported products does not in itself constitute a measure having an effect equivalent to quantitative restrictions, it may have such an effect, however, when it is fixed at a level such that the sale of imported products becomes, if not impossible, more difficult than that of domestic products. A maximum price, in any event in so far as it applies to imported products, constitutes therefore a measure having an effect equivalent to a quantitative restriction, especially when it is fixed at such a low level that, having regard to the general situation of imported products compared to that of domestic products, dealers wishing to import the product in question into the Member State concerned can do so only at a loss.

4. In so far as a maximum price fixed unilaterally by a Member State is incompatible with Article 30 of the Treaty or the provisions of the agricultural law of the Community a Member State concerned cannot base its justification for this fixing either on Article 103 of the Treaty or on the need to protect the economy from speculative operations or on a change occurring in the economic situation in the sugar sector.

Note

The Court was requested in two questions referred for preliminary rulings by Italian courts to interpret provisions of the Regulation of the Council of 18 December 1967 on the common organization of the market in sugar and provisions of the Treaty on the abolition of quantitative restrictions between the Member States.

In Joined Cases 88 to 90/75, several sugar-producing companies, the plaintiffs in the main action, brought proceedings for the annulment of certain orders adopted in 1974 by the Italian Interdepartmental Committee on Prices (Comitato Interministeriale dei Prezzi) on the ground that they are incompatible with Community law.

The object of the contested ministerial orders is to fix maximum prices for the sale of sugar, whether the sale is made by growers, importers, wholesalers or retailers.

The first questions asked by the Tribunale Amministrativo Regionale del Lazio raise the problem whether the European Economic Community has exclusive jurisdiction to exercise legislative power to control sugar prices and whether, where the situation arises, that power has been used correctly and whether unilateral measures of intervention by a Member State in the field in question which are said to have been adopted on the basis of conjunctural policy are lawful.

The Court recalls its judgment of 23 January 1975 in Case 31/74, Galli, in which it was stated: "Member States can no longer interfere through national provisions taken unilaterally in the machinery of price formation as established under the common organization" so that "a national system which by freezing prices ... has the effect of modifying the formation of prices as provided for in the context of the common organization of the market, is incompatible with" Community law.

The judgment also states that the Member States are left free to take appropriate measures relating to price formation at the retail and consumption stages on condition that they do not jeopardize the aims or functioning of the common organization of the market in question.

However, the Court finds that price regulation at the stage of sale to the ultimate consumer may well have repercussions on price formation at earlier stages and concludes by ruling that the unilateral fixing by a Member State of maximum prices for the sale of sugar, whatever the marketing stage concerned, is incompatible with the regulation on the common organization of the markets in sugar since it endangers the objectives and functioning of that organization, in particular its price system.

To indicate to the national court in what circumstances that incompatibility could exist, the Court gives the hypothetical case of a Member State which, without regulating prices at the production stage, fixes maximum selling prices for the wholesale or retail marketing stages at such a low level that growers find it practically impossible to sell at the intervention price since by so doing they would compel wholesalers or retailers who are bound by those maximum prices to sell at a loss.

The Court answers the question whether national measures such as those in question are compatible with the prohibition on measures having an effect equivalent to a quantitative restriction when those measures have been justified by the need to protect the national economy against speculative practices and to guarantee the necessary consumption in view of the upsetting of the conditions upon which the Community rules are based, by ruling that a maximum price, in any case to the extent to which it applies to imported products, constitutes a measure having an effect equivalent to a quantitative restriction in particular when it is fixed at such a low level that in view of the general position of imported products as compared with that of national products traders wishing to import the product in question in the Member State concerned could only do so at a loss.

The Member State concerned cannot in any case rely upon the need to protect the economy against speculative practices in order to justify the fixing of a maximum price which is incompatible with the prohibition on quantitative restrictions or measures having equivalent effect.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

26 February 1976

(Tasca)

Case 65/75

1. AGRICULTURE - COMMON ORGANIZATION OF THE MARKET - SUGAR - SALE - MAXIMUM PRICES - UNILATERAL FIXING BY A MEMBER STATE - PROHIBITION
(Regulation No. 1009/67 of the Council)

2. QUANTITATIVE RESTRICTIONS - MEASURES HAVING EQUIVALENT EFFECT - CONCEPT
(EEC Treaty, Art. 30)

3. AGRICULTURE - COMMON ORGANIZATION OF THE MARKET - SUGAR - SALE - MAXIMUM PRICES - UNILATERAL FIXING BY A MEMBER STATE - QUANTITATIVE RESTRICTIONS - MEASURE HAVING EQUIVALENT EFFECT
(Regulation No. 1009/67 of the Council, Art. 35)

4. MEASURES ADOPTED BY AN INSTITUTION - REGULATION - IMMEDIATE EFFECTS - INDIVIDUAL RIGHTS - PROTECTION
(EEC Treaty, Art. 189)

1. The unilateral fixing by a Member State of maximum prices for the sale of sugar, whatever the marketing stage in question, is incompatible with Regulation No. 1009/67 once it jeopardizes the objectives and the functioning of this organization and in particular its system of prices.

Such is the case where a Member State in respect of which the intervention price has been fixed at a level higher than the target price regulates the prices in such a way as directly or indirectly to make it difficult for the sugar manufacturers to obtain an ex-factory price at least equal to the said intervention price. Such an indirect obstruction exists when the Member State in question, without regulating the prices at the production stage, fixes maximum selling prices for the wholesale and retail stages at such a low level that the grower finds it practically impossible to sell at the intervention price since, if he were to do so, it

would force the wholesalers or retailers, bound by the said maximum prices, to sell at a loss.

2. For national measures to constitute measures having an effect equivalent to quantitative restrictions, it is sufficient that the measures in question are likely to constitute an obstacle, directly or indirectly, actually or potentially to imports between Member States.

3. Although a maximum price applicable without distinction to domestic and imported products does not in itself constitute a measure having an effect equivalent to quantitative restrictions, it may have such an effect, however, when it is fixed at a level such that the sale of imported products becomes, if not impossible, more difficult than that of domestic products. A maximum price, in any event in so far as it applies to imported products, constitutes therefore a measure having an effect equivalent to a quantitative restriction, especially when it is fixed at such a low level that, having regard to the general situation of imported products compared to that of domestic products, dealers wishing to import the product in question into the Member State concerned can do so only at a loss.

4. By reason of its very nature and its function in the system of the sources of Community law the regulation produces immediate effects and as such is capable of conferring on parties rights which the national courts must protect.

Note

In this case the Pretore of Padua is requesting the Court for the interpretation of the same provisions as in Joined Cases 88 to 90/75. Naturally, the Court gives the same replies.

In addition, the Pretore of Padua asked whether the provisions of the Regulation of the Council on the common organization of the markets produce direct effects and are as such capable of conferring upon individuals rights which the national courts must protect. The Court replied in the affirmative.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

9 March 1976

(Giovanni Balsamo v
Institut National d'Assurance Maladie-Invalidité)

Case 108/75

1. SOCIAL SECURITY FOR MIGRANT WORKERS - INVALIDITY INSURANCE - BENEFIT GRANTED ON THE BASIS OF NATIONAL LEGISLATION ALONE - ALTERATION IN CASE OF FULFILMENT OF THE CONDITIONS FOR THE GRANT OF BENEFITS OBTAINED THROUGH THE LEGISLATION OF ANOTHER MEMBER STATE
(Article 28 (1) (f) and (g) of Regulation No. 3 of the Council; Article 49 of Regulation No. 1408/71 of the Council)

2. SOCIAL SECURITY FOR MIGRANT WORKERS - INVALIDITY INSURANCE - BENEFITS - CLAIM - LODGING - PROCEDURE
(Article 30 of Regulation No. 4 of the Council; Article 36 (1) of Regulation No. 574/72 of the Council)

1. Article 28 (1) (f) and (g) of Regulation No. 3, subject to the compatibility of subparagraph (g) with Article 51 of the Treaty, as well as Article 49 of Regulation No. 1408/71, refer exclusively to a possible alteration of a benefit granted in one Member State on the basis of national legislation alone, in a case where the conditions for the grant of benefits obtained through the legislation of another Member State in which the person concerned has completed periods are satisfied later. These provisions do not therefore concern the calculation or the conditions for the grant of these later benefits.

2. When a migrant worker has made a claim for invalidity benefit to the institution of the place of his permanent residence and in accordance with the procedure specified by the legislation of the said place, as prescribed by Article 30 (1) of Regulation No. 4, or specified by the legislation applied by that institution, as is prescribed by Article 36 (1) of Regulation No. 574/72, there is no need to make a new claim in another Member State even if, at the time of the making of his claim he did not yet satisfy all the

fundamental conditions required by the legislation of the second State for a grant of the benefit.

Note

G. Balsamo was employed as a mineworker in Belgium from 1946 to 1958 and, on his return to Italy, he worked as an employed person until 31 October 1968. On 26 October, 1968, that is, five days before he ceased working, Mr Balsamo submitted a claim for an invalidity pension to the Istituto Nazionale della Previdenza Sociale (INPS) of his place of residence, which sent his file to the relevant institution in Belgium for the purpose of the award of that proportion of the Belgian pension applicable to mineworkers and assimilated workers.

The Belgian institution rejected this claim, relying on the fact that Mr Balsamo had not, when he submitted the claim to the INPS, that is, on 26 October 1968, ceased all work, this being a condition imposed by Belgian law for the grant of this benefit.

The Tribunal du Travail, Brussels, being of the opinion that it was necessary to obtain an interpretation of various provisions of Regulations Nos. 3 and 4 of the Council on social security for migrant workers, made a reference to the Court in Luxembourg for a preliminary ruling. The Court, having examined the provisions submitted to it, and recalling the desired objective of simplifying administration, has ruled that:

(1) Article 28 (1) (f) and (g) of Regulation No. 3 subject to the compatibility of subpargraph (g) with Article 51 of the Treaty, as well as Article 49 of Regulation No. 1408/71, refer exclusively to a possible alteration of a benefit granted in one Member State on the basis of national legislation alone, in a case where the conditions for the grant of benefits obtained through the legislation of another Member State in which the person concerned has completed insurance periods are satisfied later. Those provisions do not therefore concern the calculation or the conditions for the grant of these later benefits.

(2) When a migrant worker has made a claim for invalidity benefit to the institution of the place of his permanent residence, and in accordance with the procedure specified by the legislation of the said place, as

prescribed by Article 30 (1) of Regulation No. 4, or specified by the legislation applied by that institution, as is prescribed by Article 36 (1) of Regulation No. 574/72, there is no need to make a new claim in another Member State even if, at the time of the making of his claim, he did not yet satisfy all the fundamental conditions required by the legislation of the second State for the grant of the benefit.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

9 March 1976

(EFFEM GmbH v Hauptzollamt Lüneburg)

Case 95/75

AGRICULTURE - COMMON ORGANIZATION OF THE MARKET - CEREALS - COMPOUND FEEDINGSTUFFS FOR CATTLE - QUANTITY OF CEREALS INCLUDED - TAKING INTO ACCOUNT - STANDARD EXPORT LEVY - FIXING - UNACCEPTABILITY
(Regulation EEC No. 120/67, Art. 1)

The fixing of a standard export levy applicable irrespective of the quantity, whether negligible or substantial, of cereals contained in the compound feedingstuffs for cattle listed under heading 23.07 of the Common Customs Tariff does not comply with the provisions of Community law.

Note

The Court of Justice of the European Communities has ruled that various regulations of the Commission adopted in 1974 fixing the export levies on cereals are invalid to the extent to which they fix, in respect of the products listed under tariff subheading 23.07, a flat rate levy applicable without distinction whatever the quantity of cereals contained in those products, whether negligible or substantial.

The main action relates to proceedings initiated against an assessment of levy sent to the applicant, the EFFEM undertaking, on the occasion of exports to Austria, Sweden and Switzerland of preparations used in foodstuffs for domestic animals covered by two different tariff subheadings.

The Commission had fixed the levy on the said products at a flat rate without taking account, inter alia, of the quantity of cereals necessary for the manufacture of the said products and of the opportunities for and conditions of sale of those products on the world market. This led the Court to declare the regulations at issue to be invalid.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

17 March 1976

(Société Lesieur Cotelle and Others v
Commission of the European Communities)

Joined Cases 67 to 85/75

1. EEC - NON-CONTRACTUAL LIABILITY - COMMUNITY LEGISLATION - COURSE TO BE TAKEN - EXPECTATION - ABSENCE - RESULTS - DAMAGE - COMPENSATION - CONDITIONS
(EEC Treaty, Art. 215)

2. AGRICULTURE - COMMON ORGANIZATION OF THE MARKET - INTRA-COMMUNITY TRADE AND TRADE OUTSIDE THE COMMUNITY - MONETARY CRISIS - COMPENSATORY AMOUNTS - PURPOSE - MAINTENANCE - CONDITIONS

1. On the assumption that the parties concerned could make the Community liable for the consequences of an unfilled expectation concerning the course which Community legislation will take, such liability could only exist with regard to actual and certain losses which they had suffered as a result.

2. Since the object of the establishment of the system of monetary compensatory amounts was the maintenance of single agricultural prices, the granting or levying of compensatory amounts is acceptable in respect of a specific product only if trade in that product (intra-Community or with third countries) would be disturbed in their absence.

Note

Nineteen French undertakings manufacturing and refining table oil brought an action for damages against the Commission in respect of damage allegedly suffered by them as a result of the "wrongful" elimination by the Commission of compensatory amounts for oils and fats, claiming that the Community should be ordered to pay large sums (25,409,080 FF) by way of damages.

The Council regulation establishing a common organization of the market in oils and fats provides for the fixing of a target price and an

intervention price for colza and rape-seed. The regulation provides that where the target price is higher than the world market price a subsidy shall be granted for seed harvested and processed within the Community. That subsidy is generally equal to the difference between those prices and it may be fixed in advance. During the monetary upheavals of 1971 the Council introduced a system of compensatory amounts which was applied to colza and rape-seed by a Commission regulation of 9 July 1971. Regulation No. 189/72 of the Commission of 26 January 1972 abolished compensatory amounts applicable in the oils and fats sector with effect from 1 February 1972, the situation on the market being such that the application of those compensatory amounts was no longer indispensable in order to avoid disturbances on the market.

The applicants consider that the abolition of the compensatory amounts for oils and fats rendered insufficient the subsidies fixed in advance before 26 January 1972 and that accordingly they have suffered damage.

In support of their action the applicants adduced various arguments which have been rejected by the Court.

They contend that the common organization of the market in oils and fats gives producers a guarantee that they will obtain a price for their products equal to the target price fixed for the current marketing year. The Court has replied that subsidies granted to processers of seed are not intended to guarantee the latter a fixed return for their processing operations but to enable them to buy Community seed at prices approaching the target price. The introduction of compensatory amounts was prompted, in accordance with Community rules, by the desire to prevent disturbances in trade and not by the idea of guaranteeing producers a fixed income.

The second argument adduced by the applicants claims that since the alteration of the exchange rate for the dollar (1971), the subsidies provided to enable producers to obtain a return equal to the target price have become insufficient on account of the method of calculation employed (in unchanged units of account). The Court has analysed the provisions of the Council regulation concerning the value of the unit of account and the rates of exchange to be applied in the context of the common

agricultural policy and has concluded that the applicants should have established that this mechanism was in fact disorganized in order to show that the Council and the Commission had failed in the duties imposed on them by the regulation. The general statements made by the applicants cannot be accepted as evidence of manifest error on the part of the Community institutions.

The applicants further claim that in order to make up the deficit created by the insufficiency of the subsidies and to protect Community production against competition from rape-seed offered at prices based on the devalued exchange rate of the dollar, the introduction of the system of compensatory amounts on imports and exports has become necessary.

The Court has replied to this argument that the institution of the system of compensatory amounts was prompted by the desire to prevent the States from creating distortions by the adoption of monetary measures of such a nature as would disturb the working of the Community markets. The applicants have not shown that the abolition of the compensatory amounts has caused disturbances in trade.

The applicants claim, finally, that the abolition of the compensatory amounts by the Commission regulation of 26 January 1972 exposed Community producers, themselves in effect, to the risk that prices would be formed at levels which would be insufficient to enable them to achieve the guaranteed return on their products equal to the target prices fixed for the marketing year in question and therefore caused them damage for which the Community is liable.

The Court has replied that since no evidence has been given of such losses any damage remains unproven. The Court has dismissed the actions as unfounded and ordered the applicants to pay the costs.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

8 April 1976

(Kaufhof AG v Commission of the European Communities)

Case 29/75

COMMERCIAL POLICY - DEROGATIONS WITHIN THE MEANING OF ARTICLE 115 OF THE EEC TREATY - STRICT INTERPRETATION - DUTIES OF THE COMMISSION

Because they constitute not only an exception to Articles 9 and 30 of the EEC Treaty, which are fundamental to the operation of the Common Market, but also an obstacle to the implementation of the common commercial policy provided for by Article 113, the derogations allowed under Article 115 must be strictly interpreted and applied.

When authorizing a Member State to adopt protective measures within the sphere of commercial policy, the Commission must review the reasons put forward by the State concerned in order to justify those measures and examine whether they are necessary and in accordance with the Treaty.

Note

The Commission Decision of 20 January 1975 authorizing the Federal Republic of Germany not to apply Community treatment to certain products originating in the People's Republic of China and in free circulation in the Netherlands has been annulled to the extent to which it concerns products in respect of which applications for licences were pending before the German administration when the application for authorization was lodged.

This is the substance of the judgment given by the Court of Justice in a dispute between the Kaufhof undertaking, an important German chain of food shops, and the Commission.

The Government of the Federal Republic of Germany had requested the Commission to exclude from Community treatment preparations or preserves of green beans imported from China by Kaufhof.

The Court reached the conclusion in this case that the Commission, by failing to review the reasons put forward by the Member State concerned in justification of the measures of commercial policy which it wished to introduce, was in breach of its duty under Article 115 to examine whether the measures have been "taken in accordance with this Treaty" and whether the protective measures sought are necessary within the meaning of that same provision.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

8 April 1976

(Royer)

Case 48/75

1. FREE MOVEMENT OF PERSONS - NATIONALS OF MEMBER STATES - RIGHT OF RESIDENCE - INDIVIDUAL RIGHT - RIGHT CONFERRED DIRECTLY BY THE TREATY - SAFEGUARD OF PUBLIC POLICY, PUBLIC SECURITY AND PUBLIC HEALTH - EFFECTS
(EEC Treaty, Articles 48, 52, 56 and 59)

2. FREE MOVEMENT OF PERSONS - NATIONALS OF MEMBER STATES - RESIDENCE PERMIT - ISSUE - MEMBER STATES' OBLIGATIONS
(Directive No. 68/360, Article 4)

3. FREE MOVEMENT OF PERSONS - NATIONALS OF MEMBER STATES - ENTRY, MOVEMENT AND RESIDENCE - LEGAL FORMALITIES - FAILURE TO COMPLY - CONSEQUENCES
(EEC Treaty, Articles 48, 52 and 59)

4. FREE MOVEMENT OF PERSONS - NATIONALS OF MEMBER STATES - EXPULSION - TAKING EFFECT - APPEAL BY THE PARTY CONCERNED - RIGHT - EXERCISE - PREREQUISITE
(Directive No. 64/221, Articles 8 and 9)

5. FREE MOVEMENT OF PERSONS - NATIONALS OF MEMBER STATES - ESTABLISHMENT - PROVISION OF SERVICES - MEMBER STATES' OBLIGATIONS - IMPLEMENTING MEASURES - NEW RESTRICTIONS - PROHIBITION
(EEC Treaty, Articles 53 and 62)

6. MEASURES ADOPTED BY AN INSTITUTION - DIRECTIVE - IMPLEMENTATION IN THE NATIONAL LEGAL SYSTEM - FORMS AND METHODS - CHOICE - EFFECTIVENESS - MEMBER STATES' OBLIGATIONS
(EEC Treaty, Article 189)

1. The right of nationals of a Member State to enter the territory of another Member State and reside there is a right conferred directly, on any person falling within the scope of Community

law, by the Treaty, especially Articles 48, 52 and 59 or where appropriate, by the provisions adopted for its implementation, independently of any residence permit issued by the host State. The exception concerning the safeguard of public policy, public security and public health contained in Articles 48 (3) and 56 (1) of the Treaty must be regarded not as a condition precedent to the acquisition of the right of entry and residence but as providing the possibility, in individual cases where there is sufficient justification, of imposing restrictions on the exercise of a right derived directly from the Treaty.

2. Article 4 of Directive No. 78/360 entails an obligation for Member States to issue a residence permit to any person who provides proof, by means of the appropriate documents, that he belongs to one of the categories set out in Article 1 of the directive.

3. The mere failure by a national of a Member State to comply with the formalities concerning the entry, movement and residence of aliens is not of such a nature as to constitute in itself conduct threatening public policy and public security and cannot therefore, by itself, justify a measure ordering expulsion or temporary imprisonment for that purpose.

4. A decision ordering expulsion cannot be executed, save in cases of urgency which have been properly justified, against a person protected by Community law until the party concerned has been able to exhaust the remedies guaranteed by Articles 8 and 9 of Directive No. 64/221.

5. Articles 53 and 62 of the Treaty prohibit the introduction by a Member State of new restrictions on the establishment of nationals of other Member States and the freedom to provide services which has in fact been attained and prevent the Member States from reverting to less liberal provisions or practices in so far as the liberalization measures already adopted constitute the implementation of obligations arising from the provisions

and objectives of the Treaty.

6. The freedom left to the Member States by Article 189 as to the choice of forms and methods of implementation of directives does not affect their obligation to choose the most appropriate forms and methods to ensure the effectiveness of the directives.

Note

The Tribunal de Première Instance, Liège, has referred a number of questions for a preliminary ruling concerning the interpretation of the provisions of the Treaty on the free movement of persons and the limitations thereto for reasons of public policy, and of certain Council directives, one dealing with the co-ordination of measures for the special treatment of foreign nationals in relation to movement and residence justified on grounds of public policy, public security or public health, the other concerning the abolition of restrictions on the movement and residence of workers of the Member States and their families within the Community.

These questions have been raised in the context of legal proceedings instituted against a French national on the ground of the prevention of illegal entry and residence on Belgian territory.

The facts are as follows: during an inquiry, the Belgian Police Judiciaire discovered that Mr Royer had been resident at Grace Hollogne since November 1971 without having complied with the administrative formalities concerning entry in the population register and that he had been prosecuted in France for various armed robberies and had been sentenced to two years' imprisonment for procuring.

In January 1972 the Police Judiciaire served on Royer an order to leave the country on the ground that he was unlawfully resident there, forbidding him to return.

Following a brief stay in Germany he was once again detected by the Belgian gendarmerie and placed under arrest.

Having once more been set at liberty, before leaving prison he was served with a ministerial decree expelling him from the country on the

grounds that "Royer's personal conduct shows his presence to be a danger to public policy ... and that he has not observed the conditions attached to the residence of aliens and he has no permit to establish himself in the Kingdom".

The Court of Justice has given a ruling which clearly sets out the rights of nationals of the Member States concerning freedom of movement and precisely defines the "restrictive arguments" of which the host State may avail itself merely on the grounds of irregularity of administrative status.

It has ruled that the right of entry on to the territory of another Member State and of residence there is directly conferred on any person falling within the scope of Community law by the Treaty, independently of any residence permit issued by the host State.

The host State has a duty to issue a residence permit to any person subject to Community law.

The mere fact that a national of a Member State has failed to comply with formalities concerning entry, movement and residence of aliens cannot, of itself, constitute conduct inimical to public policy and public security.

The provisions of the Treaty prohibit the introduction by a Member State of new restrictions on the establishment of nationals of other Member States, thereby preventing the Member States from returning to less liberal provisions or practices.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

8 April 1976

(Directeur Régional de la Sécurité Sociale de Nancy
v Auguste Hirardin, Caisse Régionale d'Assurance Maladie du Nord-Est, Nancy)

Case 112/75

1. REFERENCES FOR A PRELIMINARY RULING - JURISDICTION OF THE COURT - LIMITS
(EEC Treaty, Art. 177)

2. SOCIAL SECURITY - MIGRANT WORKERS - OLD AGE (PENSIONS) INSURANCE - ALGERIA - INSURANCE PERIODS COMPLETED BEFORE 19 JANUARY 1965 - TAKING INTO CONSIDERATION BY FRENCH INSTITUTIONS - NATIONAL OF A MEMBER STATE OTHER THAN FRANCE - RECIPIENT
(EEC Treaty, Arts. 48 to 51. Regulation No. 109/65 of the Council, Art. 16 (2).

1. Although the Court, when giving a ruling under Article 177, has no jurisdiction to apply Community rules to a specific case or, consequently, to pronounce upon a provision of national law, it may however provide the national court with the factors of interpretation depending on Community law which might be useful to it in evaluating the effects of such provision.

2. The principle of the equal treatment of workers laid down by Articles 48 to 51 of the EEC Treaty implies that provisions of national law cannot be applied as against a worker who, whilst residing in France, is a national of another Member State, where their effect is to deprive such a worker of a benefit awarded to French workers as regards the taking into account, in calculating the old-age pension, of insurance periods completed in Algeria.

Note

Mr Hirardin, a Belgian national living in France, worked as an employed person in France from 1930 and in Algeria from 1957 to 1961,

the remainder of his working life until the age of retirement having been spent in France.

When Mr Hirardin's old-age pension was being calculated he requested the North East Regional Sickness Insurance Fund to take his period of employment in Algeria into account on the basis of a French law granting French nationals repatriated from Algeria the right to have periods of employment in Algeria before 1 July 1962 taken into account. The insurance fund refused to grant this request on the ground that a decree required of foreign nationals the condition that they should have shown devotion to France or have rendered exceptional services in order that the said law - a law of national unity - should apply to them.

The Cour d'Appel, Nancy, asked the European Court whether the discrimination provided for between French nationals and aliens by the law might be applied to a Community citizen where its effect must be to deprive him of an old-age pension awarded to French nationals and whether, in order to benefit under French law, a Belgian national must establish that he fulfils the conditions imposed by the above-mentioned decree.

The Court has ruled that the principle of equality of treatment for workers enshrined in Articles 48 to 51 of the EEC Treaty implies that where provisions of national law have the effect of denying a worker who is resident in France although a national of another Member State the advantage granted to French workers as regards the taking into consideration, for the calculation of the old-age pension, of periods of insurance completed in Algeria, those provisions may not be relied on against such a worker.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

8 April 1976

(Defrenne)

Case 43/75

1. SOCIAL POLICY - MEN AND WOMEN WORKERS - PAY - EQUALITY - DIRECT DISCRIMINATION - INDIVIDUAL RIGHTS - PROTECTION BY NATIONAL COURTS
(EEC Treaty, Art. 119)

2. SOCIAL POLICY - MEN AND WOMEN WORKERS - PAY - EQUALITY - DIRECT DISCRIMINATION - INDIVIDUAL RIGHTS - DATE OF TAKING EFFECT - TIME-LIMIT FIXED BY THE TREATY - RESOLUTION OF MEMBER STATES - DIRECTIVE OF COUNCIL - INEFFECTIVE TO VARY TIME-LIMIT - AMENDMENT OF TREATY - METHOD OF EFFECTING
(EEC Treaty, Arts. 119 and 216)

3. SOCIAL POLICY - MEN AND WOMEN WORKERS - PAY - EQUALITY - DIRECT DISCRIMINATION - INDIVIDUAL RIGHTS - CLAIMS - RETROACTIVITY - LEGAL CERTAINTY
(EEC Treaty, Art. 119)

4. SOCIAL POLICY - MEN AND WOMEN WORKERS - PAY - EQUALITY - INDIRECT DISCRIMINATION - ELIMINATION - COMMUNITY POWERS AND NATIONAL POWERS
(EEC Treaty, Art. 119)

1. The principle that men and women should receive equal pay, which is laid down by Article 119, is one of the foundations of the Community. It may be relied on before the national courts. These courts have a duty to ensure the protection of the rights which that provision vests in individuals, in particular in the case of those forms of discrimination which have their origin directly in legislative provisions or collective labour agreements, as well as where men and women receive unequal pay for equal work which is carried out in the same establishment or service, whether private or public.

2. (a) The application of the principle that men and women should receive equal pay was to have been fully secured by the original Member States as from 1 January 1962, the end of the first stage of the transitional period. Without prejudice to its possible effects as regards encouraging and accelerating the full implementation of Article 119, the Resolution of the Member States of 31 December 1961 was ineffective to make any valid modification of the time-limit fixed by the Treaty. Apart from any specific provisions, the Treaty can only be modified by means of the amendment procedure carried out in accordance with Article 236.

(b) In the absence of transitional provisions, the principle that men and women should receive equal pay has been fully effective in the new Member States since the entry into force of the Accession Treaty, that is, since 1 January 1973. The Council Directive No. 75/117 was incapable of diminishing the effect of Article 119 or of modifying its effect in time.

3. Important considerations of legal certainty affecting all the interests involved, both public and private, make it impossible in principle to reopen the question of pay as regards the past. The direct effect of Article 119 cannot be relied on in order to support claims concerning pay periods prior to the date of this judgment, except as regards those workers who have already brought legal proceedings or made an equivalent claim.

4. Even in the areas in which Article 119 has no direct effect, that provision cannot be interpreted as reserving to the national legislature exclusive power to implement the principle of equal pay since, to the extent to which such implementation is necessary, it may be achieved by a combination of Community and national provisions.

Note

"Each Member State shall, during the first stage, ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work".

Such are the terms of Article 119 of the EEC Treaty an interpretation of which by the Court of Justice has been requested by the Cour du Travail, Brussels. Two aspects were at issue, its effect (does it introduce directly into the national law of each Member State of the European Community the principle of equal pay for equal work and may it be relied upon before national courts?) and its implementation (has Article 119 become applicable in the internal law of the Member States by virtue of measures adopted by the authorities of the Community, or must the national legislature be regarded as alone competent in this matter?).

The Court also considered the date from which Article 119 is to be considered to have had direct effect.

All these questions are of obvious interest to female workers, whose condition is the subject-matter of a flood of verbiage, the positive achievements of which are often slow and further retarded by the Member States themselves.

The main action is between Miss Defrenne, an air hostess, and her employer, the Belgian airline company Sabena.

Believing that there was manifest inequality of treatment between air hostesses and male members of air crews performing identical duties in the fact that contracts for female staff automatically came to an end when the employee reached the age of 40, Miss Defrenne brought an action before the Tribunal du Travail, Brussels, relying upon the provisions of Article 119 of the Treaty, for damages which she alleged she had suffered in terms of salary, allowance on termination of service and pension.

The European Court, to which the matter was referred for a preliminary ruling, in its analysis of Article 119, has stated that the principle of equal pay is one of the fundamental principles of the Community and that the very wording of that provision imposes on States a duty to bring about a specific result to be mandatorily achieved within a fixed period.

The time-limit fixed by the Treaty is not affected by the fact that the duty imposed by the Treaty has not been discharged by certain Member States and that the institutions have not reacted with sufficient energy

against this failure to act. (In respect of Member States which had not taken the measures necessary to ensure the implementation of the whole of Article 119 within the specified period - that is before 1 January 1962, the end of the first transitional period, for the original Member States and 1 January 1973 for the three new Member States - the Commission should have instituted proceedings pursuant to Article 169 of the Treaty for failure to fulfil their obligations.)

The Court, fully affirming the direct effect of Article 119 of the Treaty, has ruled that the principle of equal pay for male and female workers laid down by Article 119 may be relied on before national courts.

Those courts have a duty to ensure the protection of the rights which that provision vests in individuals, in particular as regards those types of discrimination arising directly from legislative provisions or collective labour agreements, as well as in cases in which men and women receive unequal pay for equal work which is carried out in the same establishment or service, whether private or public.

Even in the areas in which Article 119 has no direct effect, it cannot be interpreted as reserving to the national legislature exclusive power to implement the principle of equal pay since, to the extent to which such implementation is necessary, it may be achieved by a combination of Community and national measures. As to the temporal effect of its judgment, the Court has ruled that, except as regards those workers who have already brought legal proceedings or made an equivalent claim, the direct effect of Article 119 cannot be relied on in order to support claims concerning pay periods prior to the date of the judgment. The Court had lent an attentive ear in this connexion to statements by the Governments of Ireland and of the United Kingdom which had drawn attention to the economic consequences of a recognition of the direct effect of Article 119. In fact, if this direct effect had been ruled to be retroactive to 1 January 1973, in view of the large number of people concerned, claims which private and public undertakings could not have foreseen might have seriously affected the financial situation of such undertakings and even driven some of them to bankruptcy.

* * *

The Judgment of 8 April is worthy of the attention of the reader for two reasons:

(1) Direct effect of Article 119 of the EEC Treaty

The grounds of Judgment contain various criticisms as to way in which the Member States of the Community, as well as the Council and the Commission have, for years, postponed the time-limits set by the Treaty in the matter of equal pay:

" ... in the light of the conduct of several of the Member States and the views adopted by the Commission and repeatedly brought to the notice of the circles concerned, it is appropriate to take exceptionally into account the fact that, over a prolonged period, the parties concerned have been led to continue with practices which were contrary to Article 119, although not yet prohibited under their national law" (paragraph 72). "The fact that, in spite of the warnings given, the Commission did not initiate proceedings under Article 169 against the Member States concerned on grounds of failure to fulfil an obligation was likely to consolidate the incorrect impression as to the effects of Article 119" (paragraph 73).

Article 119 pursues a double aim:

"First, in the light of the different stages of the development of social legislation in the various Member States, the aim of Article 119 is to avoid a situation in which undertakings established in States which have actually implemented the principle of equal pay suffer a competitive disadvantage in intra-Community competition as compared with undertakings established in States which have not yet eliminated discrimination against women workers as regards pay.

Secondly, this provision forms part of the social objectives of the Community which is not merely an economic union but is at the same time intended, by common action, to ensure social progress and seek the constant improvement of living and working conditions of their peoples, as is emphasized by the Preamble to the Treaty.

This aim is accentuated by the insertion of Article 119 into the body of a chapter devoted to social policy whose preliminary provision,

Article 117, marks 'the need to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained'.

This double aim, which is at once economic and social, shows that the principle of equal pay forms part of the foundations of the Community."

(2) The temporal effects of the Judgment in "Defrenne"

"The Governments of Ireland and the United Kingdom have drawn the Court's attention to the possible economic consequences of attributing direct effect to the provisions of Article 119, on the ground that such a decision might, in many branches of economic life, result in the introduction of claims dating back to the time at which such effect came into existence.

In view of the large number of people concerned such claims, which undertakings could not have foreseen, might seriously affect the financial situation of such undertakings and even drive some of them to bankruptcy.

Although the practical consequences of any judicial decision must be carefully taken into account, it would be impossible to go so far as to diminish the objectivity of the law and compromise its future application on the ground of the possible repercussions which might result, as regards the past, from such a judicial decision.

.....

In these circumstances, it is appropriate to determine that, as the general level at which pay would have been fixed cannot be known, important considerations of legal certainty affecting all the interests involved, both public and private, make it impossible in principle to reopen the question as regards the past ... Except as regards those workers who have already brought legal proceedings or made an equivalent claim, the direct affect of Article 119 cannot be relied on in order to support claims concerning pay periods prior to the date of this judgment."

The decision of the Court of Justice concerning the temporal effect of this judgment cannot fail to provoke lively discussion in legal and judicial circles. Already certain commentators have remarked in relation to this

judgment that the Court of Justice of the European Communities has displayed "a sovereignty of decision which is characteristic of constitutional courts".

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

4 May 1976

(Federal Republic of Germany
v Commission of the European Communities)

Case 47/75

1. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - CEREALS - RICE - INTERNAL MARKET - INTERVENTION - EXPENSES - FINANCING - EUROPEAN AGRICULTURAL GUIDANCE AND GUARANTEE FUND - TAKING OVER RESPONSIBILITY - MANAGEMENT COMMITTEE PROCEDURE - WAREHOUSING - TRANSPORTATION - EXPENSES - DEFRAYING (Regulation (EEC) No. 787/69 of the Council, Art. 4 (1) (e) and (g))

2. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - CEREALS - RICE - INTERNAL MARKET - INTERVENTION - EXPENSES - FINANCING - EUROPEAN AGRICULTURAL GUIDANCE AND GUARANTEE FUND - TAKING OVER RESPONSIBILITY - MANAGEMENT COMMITTEE PROCEDURE - TRANSPORTATION - Art. 4 (1) (g) of Regulation (EEC) No. 787/69 - APPLICATION - POWERS AND DUTIES OF THE COMMISSION

1. Article 4 (1) (e) of Regulation (EEC) No. 787/69, which is intended to cover the storage costs of all quantities of cereals stored by the intervention agency is not capable, either by its wording or by the method of calculation at present in use, of covering the costs of transportation which does not fulfil the conditions in subparagraph (g).

2. Although it is within the powers of the Commission, after consultation with the management Committee, to promulgate general rules prescribing the cases in which the European Agricultural Guidance and Guarantee Fund is to take responsibility for transportation costs within the meaning of Article 4 (1) (g) of Regulation (EEC) No. 787/69, it must do so in advance to enable the Member States, if need be, to revise their arrangements. In the absence of general rules, it cannot hold that transportation is not made necessary solely because it is the result of the determination of leases if, given the particular circumstances

of intervention and of its connexion with the monetary situation, the storage system operated in a State where such determination is allowed is economically sound.

The Commission is also under a duty, after consultation with the Management Committee, to determine whether the second condition in subparagraph (g) is fulfilled, in particular whether the mode of transport chosen for the cereals and the route followed involve the Fund in necessary costs only.

On this subject it may decide, after consultation with the Management Committee that, as a general rule, its advance authorization is essential. However, no such rule having been promulgated, it could not reject a request that it should accept responsibility merely because the request was made after transportation.

Note

The Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) has the task of financing intervention aimed at stabilizing agricultural markets in the context of the common organization of the markets. The general implementing rules were laid down in a Council regulation which drew up a list of expenditure chargeable to the EAGGF. The latter's account is debited with:

the total amount of the costs incurred through storage, calculated on the basis of a standard amount per unit of weight/period of storage;

the total amount of the costs incurred through transportation made necessary after the taking over of goods by the intervention agency ...

In the Federal Republic of Germany cereals bought by the State intervention agency are not stored in State warehouses, but in private warehouses on the basis of private contracts, determinable on six months' notice. This situation gives rise to transfers between warehouses as a necessary result of the determination of leases by warehouse owners, this being due in general to economic factors.

Each year, from 1971 to 1974, some 12,500 metric tons of cereals had to be transported within Germany from one warehouse to another, which prompted the Federal Government to submit a claim to the Commission for the latter to take responsibility for the costs of transportation of these stocks.

By letter of 20 March 1975 the Commission informed the Federal Republic of Germany that it refused to recognize the necessity for these transportations.

The Court of Justice, before which an application against the Commission was brought, has deduced from its study of the rules laid down on this matter that in order to be covered by the EAGGF, transportation must be made necessary and must be carried out under conditions to be laid down by the Commission after consultation with the Management Committee.

In the absence of general rules the Commission cannot take the view that transportation is not made necessary solely because it is the consequence of the determination of leases where, in view of the particular circumstances of the intervention and its relationship with the monetary situation, the storage system in force in the State, which allows for such determination of leases, is justified in economic terms.

The Court has annulled the Commission decision notified to the Federal Republic of Germany by letter of 20 March 1975. The Commission has been ordered to pay the costs.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

20 May 1976

(Mazzalai v Ferrovia del Renon)

Case 111/75

1. QUESTIONS REFERRED FOR A PRELIMINARY RULING - JURISDICTION OF THE COURT - LIMITS
(EEC Treaty, Art. 177)

2. TAXATION - LEGISLATION OF THE MEMBER STATES - HARMONIZATION - TURNOVER TAX - VALUE-ADDED TAX - CHARGEABLE EVENT - OCCURRENCE - MOMENT
(Second Council Directive of 11 April 1967, Art. 6 (4) on the harmonization of legislation)

1. Under Article 177, the Court of Justice has jurisdiction to give preliminary rulings concerning the interpretation of acts of the institutions of the Community, regardless of whether they are directly applicable.

It is not for the Court to appraise the relevance of questions referred under Article 177, which is based on a clear separation of jurisdictions and leaves to the national courts the task of deciding whether the procedure of a reference for a preliminary ruling is helpful for the purposes of the decision in the proceedings pending before them.

2. Article 6 (4) of the Second Council Directive of 11 April 1967 cannot be interpreted as permitting the moment when the service is provided to be identified with that when the invoice is issued or a payment on account is made if these transactions take place after the service has been carried out.

Note

The Mazzalai construction company concluded with the Ferrovia del Renon (FEAR) a works contract for the execution of certain construction work. This work was completed in 1967, but because of a difference between the parties, the final payment was made only in 1973. Pursuant to the national legislation which came into force on 1 January 1973 introducing value-added tax in Italy, Mazzalai, the plaintiff in the main action, paid value-added tax at the rate of 12% on the sum received and then requested the defendant in the main action (FEAR) to reimburse the tax paid, whereupon it met the objection that, since the work was completed in 1967, only turnover tax, which at that time was applicable at the rate of 4%, could be taken into account.

The national court before which the case was brought, believing that the matter concerned the interpretation of the second Council Directive of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes, requested the European Court to rule whether Article 6 (4) of that directive is to be interpreted as meaning that in the case of the provision of services and, in particular, in the case of works contracts, the chargeable event occurs at the moment when the service is provided, and that individual Member States have continuing authority to identify this moment with the issue of an invoice or with a payment on account, whether these events take place before completion of the work or, as in this case, afterwards. That provision lays down that "The chargeable event shall occur at the moment when the service is provided. In the case, however, of the provision of services of indeterminate length or exceeding a certain period or involving payments on account, it may be provided that the chargeable event shall already have occurred at the moment of issue of the invoice or, at the latest, at the moment of the receipt of the payment on account, in respect of the whole of the amount invoiced or received."

The Court has ruled that that provision cannot be interpreted as allowing the moment when the service is provided to be identified with the moment of issue of the invoice or of the payment on account if those operations take place following completion of the service.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

26 May 1976

(Walter Th. Aulich v Bundesversicherungsanstalt für Angestellte)

Case 103/75

SOCIAL SECURITY FOR MIGRANT WORKERS - SICKNESS INSURANCE - RETIRED PERSON - BENEFITS WITHIN THE MEANING OF ARTICLE 27 OF REGULATION NO. 1408/71 - CONCEPT - VOLUNTARY SICKNESS INSURANCE - CONTRIBUTION - ALLOWANCE TOWARDS - GRANT UNDER THE LEGISLATION OF ANOTHER MEMBER STATE - SAFEGUARD

Article 27 of Regulation No. 1408/71 refers only to sickness or maternity benefits granted by the competent institution of the State in which the retired person resides after these risks materialize, and cannot affect any right of the retired person to receive, under the legislation of another State, a benefit of the type of an allowance towards the contribution to a voluntary sickness insurance.

Note

The Bundesversicherungsanstalt für Angestellte (Federal Insurance Institution for Clerical Workers) has referred to the Court of Justice a request for a preliminary ruling on questions relating to the application of social security schemes to employed persons and their families moving within the Community.

Mr Aulich, a German national, left the Federal Republic of Germany for the Netherlands in 1970. In the Netherlands he receives an old-age pension but not sickness insurance benefits for which he took out voluntary insurance with a Netherlands insurer. Pursuant to the German Law on social insurance, he requested the German insurance institution to contribute to the payment of the contribution which he pays for voluntary sickness insurance.

This request was rejected on the ground that the institution of the State of residence is liable for the benefits.

The Landessozialgericht Berlin, before which the case was brought, has put to the European Court a question on the interpretation of Article 27 of Regulation No. 1408/71 of the Council, which lays down that benefits obtained under the legislation of the Member State in whose territory the worker resides are at the expense of the institution of that State.

The Court of Justice has interpreted Article 27 as meaning that it prevents the relevant institution of the State in which a worker resides, which is bound under the national legislation to pay sickness or maternity benefits (since Article 27 forms part of Chapter I of Title III of the regulation), from wholly or partially evading this obligation by reliance upon the right of the person concerned to receive benefits pursuant to the legislation of another Member State. Benefits such as part-payment of the contribution at issue are not granted when the sickness or maternity risk has materialized and may not therefore be limited by Article 27 of Regulation No. 1408/71. The Court has ruled that that provision cannot affect any right which may be enjoyed by a retired person to obtain benefits pursuant to the legislation of another Member State such as part-payment of contributions in respect of voluntary sickness insurance.

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

7161/2