Information on the Court of Justice of the European Communities

1978 – IV

I N F O R M A T I O N

on

THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

IV

1978

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C O N T E N T S

COMPOSITION OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

for the judicial year 1978 to 1979

(as from 7 October 1978)

Order of precedence

H. KUTSCHER, President
J. MERTENS DE WILMARS, President of the First Chamber
LORD MACKENZIE STUART, President of the Second Chamber
F. CAPOTORTI, First Advocate General
A. M. DONNER, Judge
P. PESCATORE, Judge
H. MAYRAS, Advocate General
M. SØRENSEN, Judge
J.-P. WARNER, Advocate General
G. REISCHL, Advocate General
A. O'KEEFFE, Judge
G. BOSCO, Judge
A. TOUFFAIT, Judge
A. VAN HOUTTE, Registrar

Composition of the First Chamber

J. MERTENS DE WILMARS, President
A. M. DONNER, Judge
A. O'KEEFFE, Judge
G. BOSCO, Judge
H. MAYRAS, Advocate General
J.-P. WARNER, Advocate General

Composition of the Second Chamber

LORD MACKENZIE STUART, President
P. PESCATORE, Judge
M. SØRENSEN, Judge
A. TOUFFAIT, Judge
F. CAPOTORTI, Advocate General
G. REISCHL, Advocate General

JUDGMENTS

of the

COURT OF JUSTICE

of the

EUROPEAN COMMUNITIES

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

25 October 1978

Royal Scholten Honig (Holdings) Ltd and Tunnel Refineries Ltd

v

Intervention Board for Agricultural Produce

Joined Cases 103/77 and 145/77

1. Measure adopted by an institution - Regulation - Statement of reasons on which based - Reference to legislative context (EEC Treaty, Art. 190)

2. Agriculture - Common organization of the market - Discrimination between producers or consumers within the Community - Concept (EEC Treaty, second subparagraph of Art. 40 (3))

3. Agriculture - Common provisions for isoglucose - Production levy - Difference as compared with sugar production levy - Council Regulation No. 1111/77, Arts. 8 and 9 - Invalidity

1. Even though the statement of the reasons on which a regulation is based may be laconic, it must nevertheless be examined and assessed in the context of the whole of the rules of which the regulation in question forms an integral part.

2. The prohibition of discrimination laid down in the second subparagraph of Article 40 (3) of the Treaty is merely a specific enunciation of the general principle of equality which is one of the fundamental principles of Community law. That principle requires that similar situations shall not be treated differently unless the differentiation is objectively justified.

3. Council Regulation No. 1111/77 offends against the general principle of equality and is invalid to the extent to which Articles 8 and 9 thereof impose a production levy on isoglucose of 5 units of account per 100 kg of dry matter for the period corresponding to the sugar marketing year 1977/78.

NOTE Isoglucose, the product at issue in these cases, is a new natural sweetener made from starch of any origin but most frequently obtained from maize. This product, which appeared on the market in the Community countries in 1976, has sweetening properties comparable to those of sugar. However, in the present state of technical knowledge, isoglucose cannot be crystallized. Therefore it competes with liquid sugar in certain areas of the food industry: refreshing drinks, jams, biscuits, ice-creams etc. The plaintiffs in the main actions in these cases are starch manufacturers who have made heavy investments to enable them to produce isoglucose.

The plaintiff companies commenced proceedings in the High Court of Justice, Queen's Bench Division, Commercial Court, against the British intervention agency, for a declaration that Regulation (EEC) No. 1862/76 on production refunds and Regulations Nos. 1110/77 and 1111/77 concerning the production levy were void and of no effect.

Regulation No. 1862/76 (production refund)

Council Regulation No. 2727/75 of 29 October 1975 on the common organization of market in cereals stated that "in view of the special market situation for cereal starch, potato starch and glucose produced by the 'direct hydrolysis' process it may prove necessary to provide for a production refund of such a nature that the basic products used by this industry can be made available to it at a lower price than that resulting from the application of the system of levies and common prices".

By the regulation at issue, which entered into force on 1 August 1976, the Council amended the basic regulation, it being stated in the recitals in the preamble to that regulation that: "... in view of the situation which will exist as from the beginning of the 1976/1977 marketing year, particularly as a result of the application for that marketing year of common prices for cereals and rice, it is necessary to increase the production refunds; however, given the objectives of the production refund system, such an increase should not be retained in the case of products used in the manufacture of glucose having a high fructose content; the best method of implementing a measure of this type is to provide for recovery from the manufacturers concerned of the amount of the increase in production refunds according to the product used". The regulation also made special provision for the production refund for only one product processed from starch, glucose having a high fructose content (that is, isoglucose), by maintaining the amount of the refund at the level of the previous marketing year and by abolishing it as from the 1977/1978 marketing year.

The plaintiffs in the main actions argued that the regulation does not give an adequate statement of reasons, and thereby infringes Article 190 of the Treaty.

The Court rejected this argument on the grounds that the reference to the purposes of the refund system, which are well known to the circles concerned, satisfies the requirements of Article 190

Another of the plaintiffs' arguments is that Regulation No. 1862/76, by creating an exceptional situation for producers of starch intended for the production of isoglucose, is discriminating between them and manufacturers of starch intended for other purposes and that this is contrary to the principle of non-discrimination set out in Article 40 of the Treaty.

In order to elucidate the question of discrimination, it must be ascertained whether isoglucose is in a situation comparable to that of other products of the starch industry. Isoglucose is a product which is at least partially interchangeable with sugar, and there is no competition between starch and isoglucose. Hence Regulation No. 1862/76 does not infringe the rule of non-discrimination.

Regulations Nos. 1110/77 and 1111/77 (production levy)

In order to assess the validity of these regulations, it is necessary to consider certain aspects of the common organization of the market in sugar. By Regulation No. 1111/77 the Council laid down common provisions for isoglucose involving in particular a common system of trade with non-member countries and a production levy system and instituting a procedure involving close co-operation between the Member States and the Commission in a management committee. The preamble to the regulation gives the following reasons for the establishment of a system of production levies:

"... being a substitute product in direct competition with liquid sugar which, like all beet or cane sugar, is subject to stringent production constraints, isoglucose therefore enjoys an economic advantage and since the Community has a sugar surplus it is necessary to export corresponding quantities of sugar to third countries; ... there should therefore be provision for a suitable production levy on isoglucose to contribute to export costs".

According to the terms of the regulation at issue the introduction of a production levy on isoglucose is based on the need for isoglucose producers to share the costs incurred by the sugar sector inasmuch as the substitution of isoglucose for sugar makes it inevitable, in view of the Community sugar surplus, for corresponding quantities of sugar to be exported to third countries. In these circumstances it must be provided that the revenue from the production levy on isoglucose should be set against these marketing losses.

In order to analyse the complaint alleging an infringement of the prohibition on discrimination laid down in Article 40 of the Treaty, inquiry must be made as to whether isoglucose and sugar are in comparable situations.

Although the two products are in direct competition with each other, it must be pointed out that isoglucose manufacturers and sugar manufacturers are treated differently as regards the imposition of the production levy.

The Court concluded that the charges were manifestly unequal and that the provisions of Regulation No. 1111/77 offend against the general principle of equality of which the prohibition on discrimination is a specific expression.

Therefore the Court's answer on this point was that Council Regulation No. 1111/77 of 17 May 1977 is invalid to the extent to which Articles 8 and 9 thereof impose a production levy on isoglucose of 5 units of account per 100 kg of dry matter for the period corresponding to the sugar marketing year 1977/1978 .

Opinion of Mr Advocate General G. Reischl delivered on 20 June 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

25 October 1978

Royal Scholten Honig N.V. and De Verenigde Zetmeelbedrijven De Bijenkorf B.V.

v

Hoofdproduktschap voor Akkerbouwprodukten

Case 125/77

1. Measure adopted by an institution - Regulation - Statement of reasons on which based - Reference to legislative context (EEC Treaty, Art. 190)

2. Agriculture - Common organization of the market - Discrimination between producers or consumers within the Community - Concept (EEC Treaty, second subparagraph of Art. 40 (3))

3. Measure adopted by an instittution - Amendment of a former provision - Situations arising under the latter - Future consequences - Application of the amending provision

1. Even though the statement of the reasons on which a regulation is based may be laconic, it must nevertheless be examined and assessed in the context of the whole of the rules of which the regulation in question forms an integral part.

2. The prohibition of discrimination laid down in the second subparagraph of Article 40 (3) of the Treaty is merely a specific enunciation of the general principle of equality which is one of the fundamental principles of Community law. That principle requires that similar situations shall not be treated differently unless the differentiation is objectively justified.

3. Laws amending a former legislative provision apply, unless otherwise provided, to the future consequences of situations which arose under the former law.

NOTE See the note on Joined Cases 103/77 and 145/77 supra.

Opinion of Mr Advocate General G. Reischl delivered on 20 June 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

9 November 1978

Meeth v Glacetal

Case 23/78

1. Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters - Agreement conferring jurisdiction - Mutual assent to the jurisdiction of the courts of the State of domicile of the defendant - Lawfulness
(Convention of 27 September 1968, first paragraph of Article 17)

2. Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters - Agreement conferring jurisdiction - Mutual assent to the jurisdiction of the courts of the State of domicile of the defendant - Power of such courts to take into account a set-off connected with the legal relationship in dispute - Conditions
(Convention of 27 September 1968, first paragraph of Article 17)

1. Although, with regard to an agreement conferring jurisdiction, Article 17 of the Brussels Convention, as it is worded, refers to the choice by the parties to a contract of a single court or the courts of a single State, that wording cannot be interpreted as prohibiting an agreement under which the two parties to a contract, who are domiciled in different States, can be sued only in the courts of their respective States.

2. Having regard to the need to respect individuals' right of independence, upon which Article 17 is based, and the need to avoid superfluous procedure, which forms the basis of the Convention as a whole, the first paragraph of Article 17 cannot be interpreted as preventing a court before which proceedings have been instituted pursuant to a clause of the type described above from taking into account a claim for a set-off connected with the legal relationship in dispute if such court considers that course to be compatible with the letter and spirit of the clause conferring jurisdiction.

NOTE

The undertaking Meeth, which has its head office in Piesport/Mosel, Federal Republic of Germany, defendant in the main action, is bound by a contract with the company Glacetal, which has its head office in Vienne (Estressin), France, the plaintiff in the main action, for the supply of glass by the French undertaking to the German undertaking.

It was agreed between the parties that the contract should be governed by German law, that the place where the contract was to be implemented was Piesport and that any proceedings instituted by Meeth against Glacetal must be before the French courts and inversely any proceedings instituted by Glacetal against Meeth must be before the German courts.

Since Meeth failed to pay for certain of Glacetal's deliveries the French undertaking instituted proceedings in Trier in order to obtain payment.

In the course of that procedure Meeth countered Glacetal's claim with its own claim relating to the damage alleged to have arisen as a result of the delayed or defective fulfilment by the French firm of its obligations under the contract. The court of first instance did not allow that claim to be set off against the French firm's claim relating to the sale price since it considered that Meeth had failed to adduce any persuasive evidence in support of its claim for damages.

The appeal court ruled with regard to the setting off of the sale price against the claim put forward by Meeth that the jurisdiction clause inserted in the contract between the parties precluded such a claim from being made before the German courts. An appeal was lodged against that judgment on a point of law to the Bundesgerichtshof (Federal Court of Justice), in connexion with which the Bundesgerichtshof referred two preliminary questions to the Court of Justice.

The first question asked: "Does the first paragraph of Article 17 of the Convention of 1968 cover an agreement under which the two parties to a contract for sale, who are domiciled in different States, can be sued only in the courts of their country of origin?"

That paragraph provides that: "If the parties ... have ... agreed that a court or the courts of a Contracting State are to have jurisdiction to settle any disputes which have arisen or which may arise in connexion with a particular legal relationship that court or those courts shall have exclusive jurisdiction".

Must that provision be interpreted to mean that it excludes a reciprocal agreement as to jurisdiction?

In response to the question submitted the Court of Justice ruled that the first paragraph of Article 17 of the Convention cannot be interpreted as excluding a clause in a contract to the effect that each of two parties to a contract of sale who have their domicile in different States can be sued only before the courts of their respective States.

The second question asked whether, if a jurisdiction clause such as that mentioned above is in accordance with the first paragraph of Article 17 of the Convention of 1968, it automatically rules out any counterclaim which one of the contracting parties wishes to make in answer to the claim made by the other contracting party in the court having jurisdiction to hear the said claim.

The Court ruled that the first paragraph of Article 17 of the Convention cannot be interpreted as meaning that a clause conferring jurisdiction, such as that described in the reply to the first question, precludes a court before which a dispute is brought in pursuance of such a clause from taking cognizance of a counterclaim relating to the legal relationship in dispute.

Opinion of Mr Advocate General F. Capotorti delivered on 11 October 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

14 November 1978

RULING

pursuant to the third paragraph of Article 103 of the Euratom Treaty

1/78

1. EAEC - Draft agreements or contracts of the Member States - Compatibility with the Treaty - Assessment by the Court - Extent
(EAEC Treaty, third paragraph of Art. 103)

2. EAEC - Supply arrangements - Exclusive right of the Community - Specific exceptions - Scope
(EAEC Treaty, Art. 52 et seq.)

3. EAEC - Supply arrangements - Access to fissile materials - Conditions laid down in national rules and regulations - Reasons of public policy and public health - Compliance therewith by the Community institutions - Purpose - Limits - Responsibility of the Community
(EAEC Treaty, Art. 195)

4. EAEC - Nuclear common market - Nature - Relationship with the general common market - Jurisdiction of the Community
(EAEC Treaty, Art. 92 et seq.)

5. EAEC - Safeguards - Concept - Extent
(EAEC Treaty, Art. 77 et seq.)

6. EAEC - Security provisions - Preventive measures - Jurisdiction of the Community - International commitments entered into by Member States alone - Not permissible
(EAEC Treaty, Art. 77 et seq.)

7. EAEC - System of property ownership - The Community's right of ownership - Meaning
(EAEC Treaty, Art. 86 et seq.)

8. EAEC - Treaty - Conferring of powers upon the Community - Consequences - International agreements - Unilateral intervention of the Member States - Prohibition - Autonomy of the Community

9. EAEC - International agreements - Matters falling within the jurisdiction of the EAEC and that of the Member States - Conclusion of such agreements by the Community in association with the Member States - Division of powers with regard to negotiation and conclusion
(EAEC Treaty, Arts. 101 and 102)

10. EAEC - International agreements - Implementation governed by the provisions applicable to the division of powers with regard to conclusion - Application of the general provisions of the Treaty
(EAEC Treaty, Arts. 115, 124 and 192)

1. It is clear from the third paragraph of Article 103 of the EAEC Treaty that the examination by the Court of the compatibility of a draft agreement or contract with the provisions of the Treaty must take account of all the relevant rules of the Treaty whether they concern questions of substance, of jurisdiction or of procedure.

2. The Community has exclusive jurisdiction in the field of nuclear supply in both internal and external relations, the extent of which is defined by Articles 52 to 76 of the EAEC Treaty. Even in the case of the quantities of fissile materials removed from the ambit of the provisions relating to the supply arrangements under Articles 62 (2), 74 and 75, the Community exercises close supervision so that those provisions do not call in question the principle of its exclusive right.

3. Article 195 is not intended to settle the question of powers in relations between the Community and the Member States; its purpose is to require the institutions of the Community as well as the Supply Agency and joint undertakings to comply with the requirements laid down by the Member States in their national territory for reasons of public policy or public health with regard to the conditions of access to fissile materials. Article 195 as such therefore does not have the effect of limiting the Community's right and obligation to take measures to guarantee the security of the materials and installations for which it is itself responsible, or the Community's ability to enter into international commitments to the same end.

4. The Community has general responsibility for the normal functioning of the nuclear common market. Reinserted in the context of the EEC Treaty Article 92 et seq. of the EAEC Treaty relating to the nuclear common market appear to be only the application, in a highly specialized field, of the legal conceptions which form the basis of the structure of the general common market. Like the EEC Treaty the EAEC Treaty seeks to set up, with regard to matters covered by it, a homogeneous economic area; it is within this area from which barriers have been removed that the Commission and the Supply Agency are called upon to exercise their exclusive rights in the name of the Community.

5. The safeguards provided for in Chapter VII of the EAEC Treaty relate to all diversions of nuclear materials entailing a security risk, that is to say the danger of interference with the vital interests of the public and the States. Consequently there can be no doubt that the concept of "safeguards" within the meaning of the Treaty is sufficiently comprehensive to include also measures of physical protection.

6. The exercise of the Community's powers in relation to safeguards would be hindered and the responsibility which it assumes in this respect would be set at naught if the Member States undertook, without its participation, to take, for the purposes of an international convention relating to the physical protection of nuclear materials, installations and transport, a body of preventive measures which may also include measures of supervision of users of fissile materials which are subject to the authority of the Community.

7. The system of property ownership defined by the Treaty signifies that, whatever the use to which nuclear materials are put, the Community remains the exclusive holder of the rights which form the essential content of the right of property. In contrast to the right of use and consumption which, for the purposes of economic exploitation, is divided between many different holders, the right of ownership of fissile materials was concentrated by the Treaty in the hands of a common public authority, namely the Community; therefore, it is the Community, and the Community alone, which is in a position to ensure that in the management of nuclear materials the general needs of the public are safeguarded in its own field.

8. To the extent to which jurisdiction and powers have been conferred on the Community under the EAEC Treaty it must be in a position to exercise them with unfettered freedom. The Member States, whether acting indivually or collectively, are no longer able to impose on the Community obligations which impose conditions on the exercise of prerogatives which thenceforth belong to the Community and which therefore no longer fall within the field of national sovereignty. To the extent to which the Community is to be bound to comply with an international convention in the field of the physical protection of nuclear materials, installations and transport it is necessary that it should assume such obligations itself, through its own institutions.

9. Where it appears that the subject-matter of an agreement or convention falls in part within the power and jurisdiction of the Community and in part within that of the Member States there are strong grounds for using the procedure envisaged by Article 102 of the Treaty whereby such obligations may be entered into by the Community in association with the Member States. In this connexion it is not necessary to set out and determine, as regards the other parties to the convention, the division of powers in this respect between the Community and the Member States, particularly as it may change in the course of time. It is sufficient to state to the

other contracting parties that the matter gives rise to a division of powers within the Community, it being understood that the exact nature of that division is a domestic question in which third parties have no right to intervene.

10. The questions connected with the implementation of the agreement or convention must be resolved on the basis of the same principles as govern the division of powers with regard to its negotiation and conclusion, taking account of the general provisions of the Treaty relating to the powers of the Council (Article 115), to those of the Commission (Article 124) and to the co-operation of the Member States (Article 192).

NOTE For the first time the Court of Justice has been called upon to give a ruling under the third paragraph of Article 103 of the Euratom Treaty.

The application was made by the Kingdom of Belgium which, while taking part in discussions on a Draft Convention on the Physical Protection of Nuclear Materials, Facilities and Transports held at Vienna in 1977 on the initiative of the International Atomic Energy Agency (IAEA), applied to the Court for a decision on the question whether, in the absence of the concurrent participation of the Community, the Kingdom of Belgium might adhere to the convention.

In view of the grave dangers arising out of the potential theft and misuse of nuclear materials and the need for effective measures to provide for the physical protection of nuclear material at an international level, the draft convention lays down a series of measures to be undertaken by the States Parties to the Convention. According to the Commission analysis of these measures shows that whereas certain of the proposed clauses fall within the powers of the Member States, others impinge on areas in which the Community has direct responsibility.

In the interests of legal certainty the Belgian Government by way of proceedings under the third paragraph of Article 103 of the EAEC Treaty requested the Court of Justice to adjudicate on the division of powers between the Community and the Member States.

In order to delineate exactly the scope of the problem, the Court in its examination takes account of all the relevant rules of the Treaty whether they concern questions of substance, of jurisdiction or of procedure.

What does the draft convention of the IAEA consist in?

The aim of the convention is to take all measures in order to ensure the "physical protection" of nuclear installations and materials in order to avoid any possibility of theft, sabotage, misuse and the like, and it involves obligations entered into by the parties, such as measures by way of precautions, responsibility of the national agencies and so on.

What is the relationship between the draft convention and the Euratom Treaty ?

The convention concerns materials and facilities to which the provisions of the EAEC Treaty are applicable.

(a) Supply and the nuclear common market

Analysis of the wording of the Treaty shows that the authors took great care to define in a precise and binding manner the exclusive right exercised by the Community in the field of nuclear supply in both internal and external relations.

The nuclear common market is nothing other than the application, in a highly specialized field, of the legal conceptions which form the basis of the structure of the general common market. It is within this area from which barriers have been removed that the Commission and the Supply Agency are called upon to exercise rights in the name of the Community.

It is clearly apparent that it would not be possible for the Community to define a supply policy and to manage the nuclear common market properly if it could not also, as a party to the convention, decide itself on the obligations to be entered into with regard to the physical protection of nuclear materials.

(b) Safeguards

It is clear that awareness of nuclear danger has become sharper now than it was when the Euratom Treaty was signed in 1957.

However, there can be no doubt that the concept of "safeguards" within the meaning of the Treaty is sufficiently comprehensive to include also concepts of physical protection. The exclusion of the Community from the draft convention of the IAEA would not only prevent the proper functioning of the safeguards as laid down in the Treaty but would also compromise the development of that system in the future to its full scope as a system of safeguards.

(c) Property ownership

In contrast to the right of use and consumption which, for the purposes of economic exploitation, is divided between many different holders, the right of ownership of fissile materials was concentrated by the Treaty in the hands of a common public authority, namely the Community.

It is apparent that by reserving to the Community the right of ownership of special fissile materials the Treaty sought to place the Community in a strong position to enable it to accomplish fully its task of general interest.

What conclusions are to be drawn in relation to the division of jurisdiction and powers between the Community and the Member States?

The centre of gravity of the draft convention lies in the preventive measures and in the organization of effective physical protection; it is precisely on this plane that the convention, directly and in various respects, concerns matters within the purview of the Treaty. Indeed with regard to these provisions, a close interrelation between the powers of the Community and those of the Member States is evident.

The system of physical protection organized by the draft convention could only function in an effective manner, within the ambit of Community law, on condition that the Community itself is obliged to comply with it in its activities.

To the extent to which jurisdiction and powers have been conferred on the Community under the EAEC Treaty the Member States, whether acting individually or collectively, are no longer able to impose on the Community obligations which impose conditions on the exercise

of prerogatives which thenceforth belong to the Community and which therefore no longer fall within the field of national sovereignty.

The draft convention put forward by the IAEA can be implemented as regards the Community only by means of a close association between the institutions of the Community and the Member States both in the process of negotiation and conclusion and in the fulfilment of the obligations entered into.

The answer to the question raised by the Belgian Government with regard to the implementation of the convention is to be found in the wording of the second paragraph of Article 115 of the EAEC Treaty, under which the Council will arrange for the co-ordination of the actions of the Member States and of the Community.

There is a need for co-ordinated, joint action in which there is found the necessity for harmony between international action by the Community and the distribution of jurisdiction and powers within the Community (Case 22/70 Commission v Council [1971] 1 ECR 263 on the European agreement on road transport).

The Court, adjudicating upon the application from the Government of the Kingdom of Belgium under Article 103 of the EAEC Treaty, ruled as follows:

1. The participation of the Member States in a convention relating to the physical protection of nuclear materials, facilities and transports such as the convention at present being negotiated within the IAEA is compatible with the provisions of the EAEC Treaty only subject to the condition that, in so far as its own powers and jurisdiction are concerned, the Community as such is a party to the convention on the same lines as the States.

2. The fulfilment of the obligations entered into under the convention is to be ensured, on the Community's part, in the context of the institutional system established by the EAEC Treaty in accordance with the distribution of powers between the Community and its Member States.

Opinion of Mr Advocate General F. Capotorti delivered on 5 October 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

22 November 1978

Établissements Somafer S.A. v Saar-Ferngas A.G.

Case 33/78

1. Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments - Interpretation - General rules

2. Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments - Special jurisdiction - Concepts in Article 5 (5): "operations of a branch, agency or other establishment" - Independent interpretation - Meaning - Jurisdiction of the national court
(Convention of 27 September 1968, Art. 5 (5))

1. The Convention of 27 September 1968 must be interpreted having regard both to its principles and objectives and to its relationship with the Treaty. The question whether the words and concepts used in the Convention must be regarded as having their own independent meaning and as being thus common to all the Contracting States or as referring to substantive rules of the law applicable in each case under the rules of conflict of laws of the court before which the matter is first brought must be so answered as to ensure that the Convention is fully effective in achieving the objects which it pursues.

2. The need to ensure legal certainty and equality of rights and obligations for the parties as regards the power to derogate from the general jurisdiction of Article 2 requires an independent interpretation, common to all the Contracting States, of the concepts in Article 5 (5) of the Convention of 27 September 1968.

The concept of branch, agency or other establishment implies a place of business which has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third parties so that the latter, although knowing that there will if necessary be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension.

The concept of "operations" comprises:

actions relating to rights and contractual or non-contractual obligations concerning the management properly so-called of the agency, branch or other establishment itself such as those concerning the situation of the building where such entity is established or the local engagement of staff to work there;

actions relating to undertakings which have been entered into at the above-mentioned place of business in the name of the parent body and which must be performed in the Contracting State where the place of business is established and also actions concerning non-contractual obligations arising from the activities in which the branch, agency or other establishment within the above defined meaning, has engaged at the place in which it is established on behalf of the parent body.

It is in each case for the court before which the matter comes to find the facts whereon it may be established that an effective place of business exists and to determine the legal position by reference to the concept of "operations" as above defined.

NOTE The main action relates to the reimbursement of expenses incurred by a German undertaking (Saar-Ferngas) in order to protect gas mains owned by it from any damage which might be caused by demolition work carried out by the French undertaking Somafer.

Under the Convention of 27 September 1968 the defendant, which is domiciled in a Contracting State, may, in another Member State, be sued: "as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated" (Article 5 (5)).

The French undertaking, the registered office of which is in French territory, has an office or place of contact in the territory of the Federal Republic of Germany described on its letter heads as "Representation for Germany".

The dispute led the Oberlandesgericht (Higher Regional Court) Saarbrücken to ask several questions on the interpretation of the Convention.

The first question asks whether the conditions regarding jurisdiction in the case of the operations of a branch, agency or other establishment mentioned in Article 5 (5) of the Convention are to be determined:

(a) under the law of the State before the courts of which the proceedings have been brought; or

(b) under the law of the States concerned; or

(c) independently, that is in accordance with the objectives and system of the said Convention and also with the general principles of law which stem from the corpus of the national legal system?

The Court ruled:

"The need to ensure legal certainty and equality of rights and obligations for the parties as regards the power to derogate from the general jurisdiction of Article 2 requires an independent interpretation, common to all the Contracting States, of the concepts in Article 5 (5) of the Convention".

The other questions raised ask what criteria apply for the interpretation of the concepts of "branch" or "agency" with regard to the capacity to take independent decisions (inter alia to enter into contracts) and the extent of the plant.

In answer to those questions the Court ruled:

"2. The concept of branch, agency or other establishment implies a place where business is carried on and which has the appearance of permanency such as the extension of a parent body having a management and materially equipped to negotiate business with third parties so that the latter, although knowing that there will if necessary be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension.

3. The concept of 'operations' comprises:

actions relating to rights and contractual or non-contractual obligations concerning the management properly so-called of the agency, branch or other establishment themselves such as concerning the situation of the building where such entities are established or the local engagement of staff to work there;

cases concerning those relating to undertakings entered into by the above-mentioned business centre in the name of the parent body and which must be performed in the Contracting State where the business centre is established and also actions concerning non-contractual obligations arising from the activities in which the branch, agency or other establishment within the above defined meaning has engaged at the place where it is established on behalf of the parent body.

4. It is in each case for the court before which the matter comes to find the facts enabling the existence of an effective business centre to be shown and to specify the connexion of the law in question in relation to the concept of 'operations' as above defined".

Opinion of Mr Advocate General H. Mayras delivered on 11 October 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

22 November 1978

Mattheus v Doego Fruchtimport, Dortmund

Case 93/78

1. References for a preliminary ruling - Respective powers of the Court and of the national courts - Division by the Treaty - Mandatory nature
(EEC Treaty, Article 177)

2. EEC - Admission of new Member States - Conditions for admission - Definition by the authorities referred to in the Treaty
(EEC Treaty, Article 237)

1. The division of powers between the Court of Justice and the courts of the Member States provided for in Article 177 of the EEC Treaty is mandatory; it cannot be altered, nor can the exercise of those powers be impeded, in particular by agreements between private persons tending to compel the courts of the Member States to request a preliminary ruling, by depriving them of the independent exercise of the discretion which they are given by the second paragraph of Article 177.

2. Article 237 of the EEC Treaty lays down a precise procedure encompassed within well-defined limits for the admission of new Member States, during which the conditions of accession are to be drawn up by the authorities indicated in the article itself; thus the legal conditions for such accession remain to be defined within the context of that procedure without its being possible to determine the context judicially in advance.

NOTE The Amtsgericht (Local Court) Essen referred to the Court of Justice for a preliminary ruling questions relating to the interpretation of Article 237 of the Treaty asking whether the accession of Spain, Portugal and Greece to the European Communities is made impossible in the foreseeable future for reasons of Community law.

The questions arose from a contract whereby Mattheus undertook to carry out a series of market studies in Spain and Portugal with regard to certain agricultural products.

Doego terminated the contract and Mattheus brought proceedings against it before the Amtsgericht Essen which referred to the Court the following questions:

"(a) Is Article 237 of the EEC Treaty, either standing alone or in conjunction with other provisions of the EEC Treaty, to be interpreted as meaning that it contains substantive legal limits on the accession of third countries to the European Communities over and above the formal conditions laid down in Article 237?

(b) What are these limits?

(c) Is therefore the accession of Spain, Portugal and Greece to the European Communities for reasons based on Community law not possible in the foreseeable future?"

Article 237 of the Treaty provides that "any European State may apply to become a member of the Community.

"It shall address its application to the Council, which shall act unanimously after obtaining the opinion of the Commission".

Article 237 lays down a clear and well-defined procedure for the accession of new Member States.

The Court therefore ruled that it has no jurisdiction to decide on the questions raised by the national court.

Opinion of Mr Advocate General H. Mayras delivered on 26 October 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

23 November 1978

Agence Européenne d'Interims S.A. v Commission of the European Communities

Case 56/77

Request for tenders - Conclusion of a contract following a request for tenders - Discretion of the administration - Judicial review - Limits

(Financial Regulation No. 73/91 (ECSC, EEC, Euratom), Art. 59 (2))

Although the Court has jurisdiction to review the judgment of the departments of the Commission to decide whether there is any misuse of powers or a serious and manifest error of judgment it must, however, respect the discretion given to the competent authorities in assessing the factors to be taken into account in the interests of the department with a view to taking a decision to enter into a contract following a request for tenders under Article 59 (2) of the Financial Regulation of 25 April 1973.

NOTE

The action brought by the Société Européenne d'Intérims (AEI) seeks the annulment of the decision of the Commission of 1 March 1977 whereby it rejected the tender for the supply of temporary staff made by the applicant and an order that the Commission should pay Bfrs 26 600 000 as damages for the loss caused to the applicant by that decision and by the conduct of certain officials of the Commission.

It appears from the file that in December 1976 the Commission, having decided to terminate the contract which had existed between it and the AEI since 1970, issued an invitation to tender in due and proper form which resulted in the conclusion of a contract with Randstad for the supply of temporary staff.

AEI's application is based on several grounds regarding infringement of the financial regulation and misuse of power - allegations which are denied by the Commission.

The Court held that the procedure was in the correct form and that the financial regulation and its implementing rules were complied with; it therefore rejected the application including that for damages and interest.

Opinion of Mr Advocate General G. Reischl delivered on 11 October 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

23 November 1978

Regina v Ernest George Thompson and Others

Case 7/78

1. Free movement of goods - Goods - Concept - Means of payment - Gold and silver coins - Designation
(EEC Treaty, Arts. 30 to 37)

2. Free movement of goods - Derogations - Grounds of public policy - Silver coins which are no longer legal tender - Ban on export - Lawfulness
(EEC Treaty, Art. 36)

1. In the system of the EEC Treaty means of payment are not to be considered as goods falling within the terms of Articles 30 to 37 of the Treaty. These provisions do not therefore apply to

(a) silver alloy coins which are legal tender in a Member State,

(b) gold coins such as Krugerrands which are produced in a non-member country but which circulate freely within a Member State.

2. A ban on the export from a Member State of silver alloy coins, which have been but are no longer legal tender in that State and the melting down or destruction whereof on national territory is forbidden, which has been adopted with a view to preventing such melting down or destruction in another Member State, is justified on grounds of public policy within the meaning of Article 36 of the Treaty because it stems from the need to protect the right to mint coinage which is traditionally regarded as involving the fundamental interests of the State.

NOTE Three British subjects (hereinafter referred to as "the appellants") imported into the United Kingdom between April and June 1975 3 400 South African Krugerrands which came from a firm established in the Federal Republic of Germany and exported for the same German firm 40.39 tons of silver alloy coins minted in the United Kingdom before 1947, namely sixpences, shillings, florins and half-crowns.

The appellants were charged and found guilty before the Crown Court of Canterbury of being knowingly concerned in a fraudulent evasion of the prohibition on importation of gold coins into the United Kingdom and on the export of silver alloy coins minted before 1947 from the United Kingdom.

On the one hand the importation of gold coins into the United Kingdom is prohibited by the Import of Goods (Control) Order 1954 and, on the other, the Export of Goods (Control) Order 1970 prohibits the export from the United Kingdom of silver alloy coins minted before 1947 in a quantity exceeding ten in number and not more than 100 years old at the date of exportation.

On appeal the appellants submitted that the provisions of British law prohibiting the imports and exports in question infringe Articles 30 and 34 of the Treaty which prohibit any measure having an effect equivalent to a quantitative restriction on imports and exports between Member States.

The appellants also submitted that the restrictions on exports and imports contained in British legislation cannot be justified on grounds of public policy on the basis of Article 36 of the Treaty.

The British Government has maintained that the coins imported and those exported are "capital" within the meaning of Article 67 et seq. of the Treaty and that the provisions of Articles 30 and 34 are consequently inapplicable.

Even if the coins in question were to be regarded as goods falling within the scope of Article 30 et seq. of the Treaty the restrictions on imports and exports could be justified on grounds of public policy because, as far as concerns the restrictions on imports, the ban was enacted in order to prevent the drain on the balance of payments and to prevent the speculation and hoarding of unproductive assets and, as far as concerns the restrictions on exports, the ban was enacted in order to ensure that there is no shortage of current coins for the use of the public, to ensure that any profit resulting from any increase in the value of the metal content of the coin accrues to the Member State rather than to an individual and to prevent the destruction of these coins - which if it occurred within the jurisdiction of the United Kingdom would be a criminal offence - from occurring outside its jurisdiction.

In these circumstances the Court of Appeal asked a series of questions the actual purpose of which, even if they have been formulated so as to lay emphasis on the description of the coins in question as "capital", is to find out whether these coins are goods falling within the provisions of Articles 30 to 37 of the Treaty or constitute a means of payment falling within the scope of other provisions.

An analysis of the general system of the Treaty shows that the rules relating to the free movement of goods (Article 30 et seq.) must be considered not only with reference to the specific rules relating to transfers of capital but with reference to all the provisions of the Treaty relating to monetary transfers, which can be effected for a great variety of purposes, of which capital transfers comprise only one specific category.

Although Articles 67 to 73 of the Treaty, which are concerned with the liberalization of movements of capital, assume special importance as far as one of the aims set out in Article 3 of the Treaty is concerned, namely the abolition of obstacles to freedom of movement for capital, the provisions of Articles 104 to 109, which are concerned with the overall balance of payments, must be considered as essential for the purpose of attaining the free movement of goods, services or capital which is of fundamental importance for the attainment of the Common Market.

In particular the aim of Article 106 is to ensure that the necessary monetary transfers may be made both for the liberalization of movements of capital and for the free movement of goods, services and persons. It must be inferred from this that under the system of the Treaty means of payment are not to be regarded as goods falling within the purview of Articles 30 to 37 of the Treaty.

Silver alloy coins which are legal tender in a Member State are, by their very nature, to be regarded as means of payment and as regards Krugerrands, in spite of certain doubts, it can nevertheless be noted that on the money markets of those Member States which permit dealings in these coins they are treated as being equivalent to currency.

The Court ruled:

1. The provisions of Articles 30 to 37 of the Treaty do not apply to

   (a) silver alloy coins which are legal tender in a Member State;

   (b) gold coins such as Krugerrands which are produced in a non-member country but which circulate freely within a Member State.

As regards the question of protection of certain coins against destruction in a Member State the Court ruled:

2. A ban on the export from a Member State of silver alloy coins, which have been but are no longer legal tender in that State and the melting down or destruction whereof on national territory is forbidden, which has been adopted with a view to preventing such melting down or destruction in another Member State, is justified on grounds of public policy within the meaning of Article 36 of the Treaty.

Opinion of Mr Advocate General H. Mayras delivered on 4 July 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

28 November 1978

Michel Choquet

Case 16/78

Free movement of persons and services - National of a Member State - Establishment in another Member State - Driving licence - Licence issued by the State of origin - Obligation to obtain a fresh licence in the host State - Compatibility with Community law - Conditions and limits

(EEC Treaty, Arts. 48, 52 and 59)

It is not in principle incompatible with Community law for one Member State to require a national of another Member State, who is permanently established in its territory, to obtain a domestic driving licence for the purpose of driving motor vehicles, even if he is in possession of a driving licence issued by the authorities in his State of origin.

However, such a requirement may be regarded as indirectly prejudicing the exercise of the right of freedom of movement, the right of freedom of establishment or the freedom to provide services guaranteed by Articles 48, 52 and 59 of the Treaty respectively, and consequently as being incompatible with the Treaty, if it appears that the conditions imposed by national rules on the holder of a driving licence issued by another Member State are not in due proportion to the requirements of road safety. Insistence on a driving test which clearly duplicates a test taken in another Member State for the classes of vehicle which the person concerned wishes to drive, or linguistic difficulties arising out of the procedure laid down for the conduct of any checks, or the imposition of exorbitant charges for completing the requisite formalities could all be examples of this.

NOTE The Amtsgericht (Local Court) Reutlingen, Federal Republic of Germany, referred a question to the Court for a preliminary ruling concerning the interpretation of Article 48 of the EEC Treaty (free movement of persons) in relation to mutual recognition of motor vehicle driving licences in favour of Community nationals.

The question was raised in the course of criminal proceedings brought against a French national resident in Germany, where he is employed as an electrician, for having driven a vehicle without a driving licence valid under German law. The accused presented a driving licence issued by the French authorities, which the German administrative authorities do not regard as valid because a person who has a foreign driving licence and who has been resident in Germany for more than one year is required to obtain a German driving licence.

The issue of a German driving licence is subject to simplified conditions and does not require a further test to be taken. However, acquisition of a new driving licence may give rise to language difficulties and involve such disproportionate expense that it might give rise to discrimination against nationals of other Member States contrary to Article 7 of the Treaty and to an infringement of the right of freedom of movement for workers which is guaranteed by Article 48.

This prompted the national court to ask whether it is "compatible with Community law for a Member State to require the nationals of other Member States to possess a driving licence issued by the first Member State for driving motor vehicles and, as the case may be, to penalize them for driving without such a driving licence even though such citizens of the Community have a right of residence under Article 48 et seq. of the EEC Treaty and are in possession of an equivalent driving licence from their own country".

In answer to the question the Court ruled:

1. It is not in principle incompatible with Community law for one Member State to require the nationals of other Member States to obtain a driving licence issued by the first Member State for the purpose of driving motor vehicles in the event of permanent establishment within the territory of the first Member State, even if they are in possession of a driving licence issued by the authorities in their State of origin.

2. However, such a requirement may be regarded as indirectly derogating from the exercise of the right of freedom of movement guaranteed by Article 48 of the EEC Treaty, the right of freedom of establishment guaranteed by Article 52 or the freedom to provide services guaranteed by Article 59, and hence as incompatible with the Treaty, if it appears that the conditions imposed by the rules of one Member State on the holder of a driving licence issued by another Member State are not in due proportion to the requirements of road safety.

Opinion of Mr Advocate General G. Reischl delivered on 24 October 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

29 November 1978

Pigs Marketing Board (Northern Ireland)

v

Raymond Redmond

Case 83/78

1. Reference for a preliminary ruling - Court of Justice - National courts - Respective jurisdictions
(EEC Treaty, Art. 177)

2. Agriculture - Common organization of the markets - Specific provisions of the Treaty - Precendence over general rules - System of national monopolies of a commercial character - Inapplicability
(EEC Treaty, Arts. 37 and 38 (2))

3. Agriculture - Common organization of the markets - Exceptions created by Member States to Community legislation
(EEC Treaty, Art. 40)

4. Agriculture - Common organization of the markets - Pigmeat - Concept of the open market - Incompatibility of national measures which restrict the marketing of products and restrict direct access to intervention measures
(EEC Treaty, Arts. 30 and 34; Regulation No. 2759/75 of the Council)

5. Agriculture - Common organization of the markets - Pigmeat - Quantitative restrictions - Measures having equivalent effect - Prohibition - Direct applicability - Date of taking effect
(EEC Treaty, Arts. 30 and 34; Regulation No. 2759/75 of the Council; Act of Accession, Arts. 2, 42 and 60 (1))

1. As regards the division of jurisdiction between national courts and the Court of Justice under Article 177 of the Treaty the national court, which is alone in having a direct knowledge of the facts of the case and of the arguments put forward by the parties, and which has to give judgment in the case, is in the best position to appreciate, with full knowledge of the matter before it, the relevance of the questions of law raised by the dispute before it and the necessity for a preliminary ruling so as to enable it to give judgment.

In the event of questions' having been improperly formulated or going beyond the scope of the powers conferred on the Court of Justice by Article 177, the Court is free to extract from all the factors provided by the national court and in particular from the statement of grounds contained in the reference, the elements of Community law which, having regard to the subject-matter of the dispute, require an interpretation or, as the case may be, an assessment of validity.

2. It follows from Article 38 (2) of the EEC Treaty that the provisions of the Treaty relating to the common agricultural policy have precedence, in case of any discrepancy, over the rules relating to the establishment of the Common Market. The specific provisions creating a common organization of the market have precedence in the sector in question over the system laid down in Article 37 in favour of State monopolies of a commercial character.

3. Once the Community has, pursuant to Article 40 of the Treaty, legislated for the establishment of the common organization of the market in a given sector, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it.

4. The common organizations of the agricultural markets are based on the concept of the open market to which every producer has free access and the functioning of which is regulated solely by the instruments provided for by those organizations.

Any provisions or national practices which might alter the pattern of imports or exports or influence the formation of market prices by preventing producers from buying and selling freely within the State in which they are established, or in any other Member State, in conditions laid down by Community rules and from taking advantage directly of intervention measures or any other measures for regulating the market laid down by the common organization are incompatible with the principles of such organization.

5. The provisions of Articles 30 and 34 of the EEC Treaty and of Regulation No. 2759/75 are directly applicable and confer on individuals rights which the courts of Member States must protect. As regards the new Member States, the effects of those provisions applied, according to the terms of the Act of Accession and in particular of Articles 2, 42 and 60 (1) thereof, as from 1 February 1973.

NOTE The facts are as follows: in Northern Ireland marketing of pigs is governed by the Pigs Marketing Scheme (Northern Ireland) 1933, which is administered by the Pigs Marketing Board (Northern Ireland).

In particular the system requires producers not to sell pigs weighing over 77 kg (known as "bacon pigs") except to or through the agency of the Pigs Marketing Board. This provision is implemented by the Movement of Pigs Regulations (Northern Ireland) 1972, which prohibit any transport of bacon pigs otherwise than to one of the Board's purchasing centres, a destination for which the producer must be in possession of a document authorizing transport. Any offence against the regulations is punishable by a term of imprisonment and/or a fine.

In January 1977 a police officer in Northern Ireland stopped a lorry containing 75 bacon pigs, and the lorry driver was unable to produce a transport authorization issued by the Board.

The lorry and its contents were seized, and proceedings were commenced in the course of which Mr Redmond, the owner of the pigs, claimed before the Resident Magistrate that the provisions of national law on the basis of which he was being prosecuted were contrary to various provisions of the EEC Treaty and of regulations adopted for its implementation relating to the production of and trade in agricultural products, more particularly in the pigmeat sector.

The case prompted the Resident Magistrate, County Armagh, to refer to the Court for a preliminary ruling a number of questions concerning the interpretation of Regulation No. 2759/75 of the Council on the common organization of the market in pigmeat and a number of provisions of the Treaty relating to the abolition of quantitative restrictions (Article 30 et seq.), to the common agricultural policy (Article 40), to the provisions relating to State monopolies and undertakings having special or exclusive rights (Articles 37 and 90) and to the rules of competition (Articles 85 and 86).

Mr Redmond argued that the provisions of the Pigs Marketing Scheme and the Movement of Pigs Regulations under which he was charged were incompatible with the provisions of Community law, and in reply the Board claimed that the Pigs Marketing Scheme was compatible with the Common Market according to the provisions of Article 37 of the EEC Treaty dealing with State monopolies of a commercial character and Article 44 of the Act of Accession which prescribes a period expiring on 31 December 1977 for the adjustment of such monopolies to the requirements of the Common Market.

Two decisive issues emerge from the series of questions raised by the Resident Magistrate:

1. The classification of the Pigs Marketing Scheme under the provisions of the Treaty and secondary legislation.

2. The position of the Pigs Marketing Scheme vis-à-vis the common organization of the market in pigmeat.

First of all the Resident Magistrate wished to obtain all necessary factors which may enable him to interpret Community law and to classify the Pigs Marketing Scheme under the provisions of the Treaty and secondary legislation with a view to identifying those provisions which will enable him to deliver a judgment as regards the compatibility of the Scheme with Community law.

Three possibilities are envisaged:

1. The Pigs Marketing Scheme and its administering body, the Board, are to be considered as a "State monopoly of a commercial

character" (Article 37 of the EEC Treaty) so that its activities would be exempted, at least until 31 December 1977, by virtue of Article 44 of the Act of Accession from the application of the Treaty with regard to quantitative restrictions.

2. They are to be considered as an "undertaking" with the consequence that the provisions of the Treaty with regard to competition are applicable subject, however, to any special privileges which might arise from Article 90.

3. They are to be considered as a "national market orhanization", which would raise the problem of the compatibility of such an organization with the common organization of the market existing in the sector in question.

The answer to this question of classification must be deduced from the general structure of the EEC Treaty and from the function in that structure of the provisions relating to agriculture.

The Pigs Marketing Scheme concerns a sector of economic activity coming under a common organization of the market governed at the material time by Regulation No. 2759/75 of 29 October 1975, which is still in force.

It follows from Article 38 of the EEC Treaty that the provisions relating to the common agricultural policy have precedence, in case of any discrepancy, over the other rules relating to the establishment of the Common Market. Hence the specific provisions have precedence over the system laid down in Article 37 in favour of State monopolies of a commercial character. Consequently the special time-limit laid down by Article 44 of the Act of Accession cannot be relied on so as to cover a national organization relating to a sector for which a common organization of the market exists. It is therefore irrelevant whether the Pigs Marketing Scheme and the Board have the character of a "State monopoly".

The Board also maintains that it considers itself, having regard both to the nature of its activities and to the powers conferred upon it by Northern Ireland legislation, as being an undertaking which has "special or exclusive rights" within the meaning of Article 90 of the Treaty. Article 90 provides expressly that the Member States, as regards the undertakings in question, "shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty", which include the free movement of goods and the common organization of the agricultural market.

Finally the question has been raised whether the activities of the Board may be recognized as a special scheme inasmuch as the Pigs Marketing Scheme constitutes a "national market organization".

On this point the Court applies the case-law which it laid down in Case 48/74, Charmasson, to the effect that national market organizations were accepted only provisionally and the intention is to replace them by the institution of common organizations of the market. Accordingly the question whether the Pigs Marketing Scheme might be classified as a "national market organization" is irrelevant.

On the second issue concerning the position of the Pigs Marketing Scheme vis-à-vis the common organization of the market in pigmeat, it must be recalled that once the Community has, pursuant to Article 40 of the Treaty, legislated for the establishment of the common organization of the market in a given sector, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it.

Hence any provisions or national practices which might alter the pattern of imports or exports or influence the formation of market prices by preventing producers from buying and selling freely are incompatible with the principles of such organization of the market. Any action of this type, which is brought to bear upon the market by a body set up by a Member State and which does not come within the arrangements made by Community rules, cannot be justified by the pursuit of special objectives of economic policy, national or regional; the common organization of the market is intended precisely to attain such objectives on the Community scale in conditions acceptable for the whole of the Community and taking account of the needs of all its regions.

Economic regionalism is incompatible with the common organization of the market. In answer to the questions referred to it by the Resident Magistrate, County Armagh, the Court ruled:

1. A marketing system on a national or regional scale set up by the legislation of a Member State and administered by a body which, by means of compulsory powers vested in it, is empowered to control the sector of the market in question or a part of it by measures such as subjecting the marketing of the goods to a requirement that the producer shall be registered with the body in question, the prohibition of any sale otherwise than to that body or through its agency on the conditions determined by it, and the prohibition of all transport of the goods in question otherwise than subject to the authorization of the body in question are to be considered as incompatible with the requirements of Articles 30 and 34 of the EEC Treaty and of Regulation No. 2759/75 on the common organization of the market in pigmeat.

2. The provisions of Articles 30 and 34 of the EEC Treaty and of Regulation No. 2759/75 are directly applicable and confer on individuals rights which the courts of Member States must protect.

3. The effects described above applied, according to the terms of the Act of Accession and in particular of Articles 2, 42 and 60 (1) thereof, to the whole of the territory of the United Kingdom as from 1 February 1973.

Opinion of Mr Advocate General G. Reischl delivered on 7 November 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

29 November 1978

Knud Oluf Delkvist v Anklagemyndigheden (Danish Public Prosecutor)

Case 21/78

1. Transport - Common policy - Road passenger transport operator - Admission to the occupation - Requirement relating to good repute - Definition - Discretion of the Member States
(Council Directive No. 74/562, Art. 2 (2))

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

3. Transport - Common policy - Road passenger transport operator - Engaging in the occupation - Authorization before 1 January 1978 - Requirement relating to good repute - Verification by the national authorities
(Council Directive No. 74/562, Art. 2 (1) (a), Art. 4 (1) and Art. 5 (2))

1. Article 2 (2) of Council Directive No. 74/562 leaves the Member States a wide margin of discretion as to the requirements relating to good repute imposed on applicants wishing to engage in the occupation of road passenger transport operator. A provision of national law whereby an applicant who has a criminal conviction may be regarded as not being of good repute if the criminal conduct provides grounds for considering that there is imminent danger of misuse of his occupation cannot be regarded as exceeding the margin of discretion left to a Member State.

2. It would be incompatible with the binding effect attributed to a directive by Article 189 to exclude, in principle, the possibility that the obligation which it imposes may be invoked by those concerned. In particular, where the Community authorities have, by directive, imposed on Member States the obligation to pursue a particular course of conduct, the effectiveness of such an act would be weakened if individuals were prevented from relying on it before their national courts and if the latter were prevented from taking it into consideration as an element of Community law.

3. Although persons who before 1 January 1978 had obtained authorization to engage in the occupation of road passenger transport operator are exempt from the requirement themselves to furnish proof that they satisfy the requirement relating to good repute laid down in Article 2 (1) (a) of the directive, the national authorities nevertheless remain competent to verify in each case that the said requirement is fulfilled.

København's Byret (Copenhagen City Court) referred several questions to the Court of Justice for a preliminary ruling concerning the interpretation and validity of Article 2 (1) of Council Directive No. 74/562/EEC on admission to the occupation of road passenger transport operator in national and international transport operations, in particular the concept of "good repute" contained in that article.

The Council directive provides that natural persons or undertakings wishing to engage in the occupation of road passenger transport operator must be of good repute. Under the Danish Penal Code (Straffelov) a person cannot be prohibited on grounds of criminal behaviour from engaging in an occupation which requires special authorization or approval by the public authorities unless the criminal conduct provides grounds for considering that there is imminent danger of misuse of the position or occupation which he wishes to continue or take up. It is not enough for the person concerned to be considered unworthy of engaging in a certain occupation. The Lov om Omnibuskørsel (Law on Motorbus Transport) contains no particular requirement regarding the character of the holder of the authorization.

The main action concerns the refusal by the competent Danish authority to renew a road passenger transport licence upon the application of a road passenger transport operator, on the ground that it appeared from the list of his previous convictions that he had several convictions for theft and burglary and that his criminal conduct provided grounds for considering that there was imminent danger of misuse of his position as a passenger transport operator.

The competent Danish authority applied the Danish Penal Code. The national court considered that questions of Community law arose, and referred several questions of validity and interpretation to the Court of Justice.

The Court ruled that:

1. Consideration of Council Directive No. 74/562/EEC of 12 November 1974 has disclosed no factor of such a kind as to affect its validity.

2. A statutory provision such as Article 78 of the Danish Penal Code is to be regarded as a provision validly enacted by the State within the limits of the directive.

3. Although persons who before 1 January 1978 had obtained authorization to engage in the occupation of road passenger transport operator are exempt from the requirement themselves to furnish proof that they satisfy the requirement relating to good repute laid down in Article 2 (1) (a) of the directive, the national authorities remain competent to verify in each case whether the said requirement is fulfilled.

Opinion of Mr Advocate General H. Mayras delivered on 25 October 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

30 November 1978

Francesco Bussone v Italian Ministry for Agriculture and Forestry

Case 31/78

1. Agriculture - Common organization of the markets - Eggs - Marketing standards - Bands and labels - Preparation and issue - Exclusive right of the authorities - Admissibility

   (Regulations No. 1619/68 and No. 2772/75 of the Council; Regulation No. 95/69 of the Commission)

2. Agriculture - Common organization of the markets - Eggs - Marketing standards - Supervision - Methods of financing - Bands and labels - Issue - Payment of a consideration - Admissibility - Condition - Consideration not exceeding the real cost of supervision - Determination by the national court

   (Regulations No. 1619/68 and No. 2772/75 of the Council)

3. Measures adopted by an institution - Regulation - Direct applicability - Concept

   (EEC Treaty, Art. 189)

4. Community law - Principles - Discrimination on grounds of nationality - Prohibition - Scope

   (EEC Treaty, Art. 7)

1. Regulation No. 1619/68 of the Council on marketing standards for eggs, replaced by Regulation No. 2772/75 and Regulation No. 95/69 of the Commission must be interpreted to mean that the discretionary power held by the Member States by virtue of those regulations authorizes them to entrust exclusively to the public authorities the preparation and distribution of bands and labels with which large packs of eggs must be provided.

2. In the absence of any provision in the Community rules relating to the means of financing the costs arising from the supervision required by those rules the Member States may make the issue of bands and labels conditional on payment of a consideration in respect of that supervision provided that such consideration does not exceed the real costs of the supervisory system in question.

   It is for the national court to determine whether or not the amount of the consideration charged is justified.

3. By reason of its nature and its function in the system of the sources of Community law, a regulation has direct effect. The direct applicability of a regulation requires that its entry into force and its application in favour of or against those subject to it must be independent of any measure of reception into national law. Proper compliance with that duty precludes the application of any legislative measure, even one adopted subsequently, which is incompatible with the provisions of that regulation.

4. Article 7 of the Treaty prohibiting discrimination on grounds of nationality does not apply to national rules which are not applicable on the basis of the nationality of the traders concerned and which take into consideration solely the location of the commercial activities.

NOTE This preliminary question, which was referred to the Court of Justice by the Pretura (District Court) of Venasca in connexion with the interpretation and validity of the EEC provisions establishing a common organization of the market in eggs, was decided as follows:

The Court ruled that:

1. Regulation (EEC) No. 1619/68 of the Council of 15 October 1968 on marketing standards for eggs, replaced by Regulation No. 2772/75 of the Council of 29 October 1975 and by Regulation No. 95/69 of the Commission of 17 January 1969, must be interpreted as meaning that the Member States, pursuant to the discretionary power which they enjoy under those regulations, are entitled to entrust exclusively to their public authorities the preparation and distribution of bands and labels.

2. Where the Communities make no provision for the method of financing the costs incurred in undertaking checks, the Member States may make the issue of bands and labels conditional on payment of a consideration for the said checks.

3. It is for the national court to assess whether the amount of the consideration requested at the appointed packing centres is justified.

4. The direct applicability of Regulation No. 1619/68, replaced by Regulation No. 2772/75 and Regulation No. 95/69, is not affected by the enactment of national rules required for the implementation of the said regulations which are in accordance with the aims and objectives of those regulations, introducing further conditions, such as those entrusting to the public authorities the preparation and distribution of bands and labels and the requirement that the issue of such bands and labels shall be conditional on payment of a pecuniary consideration, provided that such consideration is not out of proportion to the costs of the system of inspection in question.

5. Article 7 of the Treaty, which prohibits discrimination on grounds of nationality, does not affect national provisions which are not applied in terms of the nationality of traders and which have regard only to the locality where the economic activities occur.

Opinion of Mr Advocate General G. Reischl delivered on 26 October 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

5 December 1978

Denkavit v Commission of the European Communities

Case 14/78

Application for compensation - Conduct of an institution - Unlawfulness - Absence - Liability not incurred
(EEC Treaty, second paragraph of Art. 215)

NOTE

The applicant, whose application is based on the second paragraph of Article 215 of the EEC Treaty, claims that the Court should:

1. Declare that the Commission has acted unlawfully in that it failed to adopt a measure in respect of the Italian State requiring it to revoke the "urgent note" of 7 September 1976 whereby the Italian authorities fixed a maximum level for the nitrate content of certain feeding-stuffs and prohibited the marketing or importation of feeding-stuffs failing to fulfil that condition;

2. Order the Commission to adopt such a measure as a matter of urgency; and

3. Order the Commission to pay the applicants sums subsequently to be determined for the damage which they have suffered as a result of the failure or delay on the part of the Commission to take such action and order the Commission to bear the costs.

The Commission decided on 30 May 1978, on the basis of Council Directive No. 74/63/EEC of 17 December 1973 on the fixing of maximum permitted levels for undesirable substances and products in feeding-stuffs that it was unnecessary to fix maximum levels for nitrates in feeding-stuffs and required the Italian Republic to countermand the "urgent note" in dispute.

A period of 21 months elapsed between the date of the Italian measure, 7 September 1976, and the date when the Commission adopted the decision requiring the government concerned to countermand the note, 30 May 1978. Since the measure in dispute constituted an obstacle to trade between Member States there are grounds for considering whether the Commission has not, by an unjustified course of behaviour, contributed to the improper maintenance of such obstacle and has thereby incurred liability.

Pursuant to Article 5 of Council Directive No. 74/63/EEC, where a Member State enacts a measure provisionally preventing the free movement of goods in reliance in particular on the fact that the presence in feeding-stuffs of substances or products which it considers undesirable and whose permitted content is not yet established by the directive presents a danger to animal or human health "an immediate decision shall be made" as to whether the annex should be modified.

In the meantime the Member State may maintain the measures it has implemented.

Directive No. 74/63/EEC provides that the decision on the substance in question shall be subject to the prior opinion of the Standing Committee for Feeding-stuffs. The problem was referred to the Standing Committee as early as 7 September 1976 and indeed at its first meeting it decided that the problem of any harm which might arise from the presence of nitrares in feeding-stuffs should be submitted to a Scientific Committee for Feeding-stuffs and recommended that such a committee be set up. Although that committee met nine times during the period 1976 to 1978 it was only after 30 May 1978 that the Commission adopted a decision in accordance with the finding of the Standing Committee and the Scientific Committee.

In those circumstances the Commission cannot be blamed for having waited until it was fully informed before adopting a decision on such a complicated matter. The certain knowledge throughout the Community that the institutions of the Community vigilantly ensure that the free movement of goods cannot have any harmful effects on human or animal health is a factor which promotes such free movement. Since the conduct of the Commission is not such that it has incurred any liability the Court of Justice dismissed the application and ordered the applicants to bear the costs.

Opinion of Mr Advocate General H. Mayras delivered on 8 November 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

12 December 1978.

Bundesanstalt für landwirtschaftliche Marktordnung v

Jacob Hirsch & Sohne GmbH

Case 85/78

1. Agriculture - Common organization of the markets - Cereals - Import licences - Levy - Advance fixing - Application by party concerned - Error in the declaration of intent
Applicable law - Community law
(Regulation No. 19/62/EEC of the Council, Art. 16 (1);
Regulation No. 130/62/EEC of the Council)

2. Agriculture - Common organization of the markets - Cereals - Import licences - Levy - Advance fixing - Application by party concerned - Error in the declaration of intent - Cancellation not permissible
(Regulation No. 19/62/EEC of the Council, Art. 16 (1);
Regulation No. 130/62/EEC of the Council)

1. The question whether an application for the grant of an import licence under the first sentence of Article 16 (1) of Regulation No. 19/62/EEC can be cancelled and what the effects of such cancellation are must, having regard to the system established by that regulation, together with Regulation No. 130/62/EEC of the Council, be decided on the basis of Community law.

2. In view of the continual variations in the rate of the levy, if errors relied upon by traders were taken into consideration it would be possible to call in question unilaterally, on the basis of those fluctuations, the undertakings given by importers and the forecasts which are essential for the purpose of ensuring effective management of the common market in cereals would thus be made completely unreliable.

An importer cannot, within the context of the organization of the market established by Regulations Nos. 19 and 130, rely upon an error made by him as regards the option of choosing between the rate of the levy in force at the date of lodging the application and that in force at the date of importation; reliance upon such an error cannot in particular justify cancellation of the application for the grant of an import licence.

NOTE This case relates to the cancellation, on the ground of error, of an application for an import licence for cereals.

The facts are as follows: on 16 January 1963 Hirsch applied to the German intervention agency for a licence to import a consignment of French barley giving as the date of delivery April of the same year.

A bank guaranteed that the import to which the licence related would be carried out.

Three weeks after obtaining the licence, on 17 January 1963, Hirsch wrote to the intervention agency to obtain an advance fixing of the levy at the rate applicable on the day of application (16 January) alleging an oversight on its part when the form of application for the licence was completed.

The intervention agency rejected this request and Hirsch by letter dated 5 April 1963 claimed that its original application was invalid by reason of the error which it had made at the time of the application and asked for the release of the security.

These questions have to be answered in the context of the system established by Regulations Nos. 19 and 130 on the organization of the market in cereals.

A study of these regulations shows that an application for any import licence must be accompanied by a bank guarantee and this makes it clear that the importer, in so applying, undertakes to abide strictly by the terms of the import document applied for.

In its turn the intervention agency declared the security forfeit when it was established that the import to which the licence related had not been made within the period laid down.

This was the case which led the Bundesverwaltungsgericht to refer the following questions to the Court:

1. Must the question whether an application for the grant of an import licence under the first sentence of Article 16 (1) of Regulation No. 19/62/EEC can be cancelled and what are the effects of such cancellation be decided according to national law?

2. In the event of Question 1 being answered in the negative: can such an application be cancelled under EEC law on the ground of error and if so can this be done even where the error is the fault of the applicant?

3. In the event of Question 2 being answered in the affirmative: what legal consequences has such cancellation on the forfeiture of the security which the applicant has to lodge under the second sentence of Article 16 (2) of Regulation No. 19/62/EEC to guarantee the obligation to import while the licence is valid?

In view of the constant variations in the rate of levy, to take account of mistakes alleged by traders would open the door to the unilateral revocation, according to the fluctuations, of the undertakings entered into by the importers and would thus remove any certainty in the forecasts which are essential to ensure effective management of the common market in cereals.

The Court answered the questions raised as follows:

1. The question whether an application for the grant of an import licence under the first sentence of Article 16 (1) of Regulation No. 19 of the Council of 4 April 1962 on the progressive establishment of a common organization of the market in cereals can be cancelled and the effects of such cancellation must be decided on the basis of Community law with reference to the system established by the said regulation together with Regulation No. 130 of the Council of 23 October 1962 derogating from Article 17 of Regulation No. 19 of the Council as regards the advance fixing of the levy on certain products.

2. Having regard to the system provided for by Regulations Nos. 19 and 130 of the Council, an application for an import licence cannot be cancelled by the applicant on the ground of an error in the statement of the choice he makes, as allowed by Regulation No. 130, between the levy applying on the day of application and that applying on the day of import.

Opinion of Mr Advocate General G. Reischl delivered on 9 November 1978.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

14 December 1978

N.G.J. Schouten B.V.

v

Hoofdproduktschap voor Akkerbouwprodukten

Case 35/78

1. Agriculture - Common organization of the markets - Monetary compensatory amounts - Determination - Condition - Alteration of the difference between exchange rates - Exchange rate to be taken into account - Representative rates - Discretionary powers of the Commission
(Regulation No. 974/71 of the Council, Art. 2 (1) and Art. 3)

2. Agriculture - Common organization of the markets - Cereals - Management Committee - Procedure - Opinion of the Committee - Absence - Measures adopted by the Commission - Communication to the Council - Obligation - None
(Regulation No. 2727/75 of the Council, Art. 26)

1. Article 3 of Regulation No. 974/71 of the Council may be interpreted as meaning that the exchange rates taken into account in order to establish the difference **referred** to must be assessed on the basis of economically justified criteria and that consequently it is open to the Commission to leave out of account rates which it considers to be unrepresentative. It follows that by so doing it does not exceed the margin of discretion conferred upon it in relation to the fixing of compensatory amounts.

2. According to the provisions of Article 26 of Regulation No. 2727/75 it is only if the Commission adopts measures which are not in accordance with the opinion of the Committee that those measures must be communicated to the Council. Accordingly the absence of an opinion by the Committee in no way affects the validity of the measures adopted by the Commission.

NOTE This reference for a preliminary ruling made by the College van Beroep voor het Bedrijsfleven concerns the validity of Commission Regulation (EEC) No. 1356/76 of 11 June 1976 on the monetary compensatory amounts and the differential amounts applicable in respect of movements in the Irish pound and the pound sterling.

The questions were raised in an action brought by a Netherlands exporter, the plaintiff in the main action, against the decision of the defendant intervention agency, according to which the monetary compensatory amounts which the defendant had to pay in respect of commercial transactions with the United Kingdom would not be altered as from 14 June 1976 on the basis of the average of the spot market rates recorded on the foreign exchange markets during the period from 2 to 8 June 1976 inclusive but for the time being would remain unaltered.

Article 1 of Regulation No. 1356/76 provides that "by way of derogation ... from Article 2 of Regulation (EEC) No. 1380/75, the components used to calculate... the monetary compensatory amounts relating to movements in the Irish pound and the pound sterling and applicable with effect from 7 June 1976 shall continue to apply during the period commencing 14 June 1976".

The plaintiff challenged the validity of this regulation.

As regards the alleged breach of the principle of legal certainty, the Court states that although an exporter is entitled to try to guard against any changes in the exchange rates in the manner described by the plaintiff, it should be observed that the system of monetary compensatory amounts was not intended to give traders an exchange guarantee or to indemnify them against any loss.

As regards the alleged breach of the principle of legal equality, it suffices to observe that in a case such as the present where it appears that an alteration in the monetary compensatory amounts on the basis of statistics applying to one Member State cannot be economically justified, there is nothing in this principle to prevent the application to other Member States of the rate of monetary compensatory amounts which is economically justified.

The Court ruled that consideration of the question raised has disclosed no factor of such kind as to affect the validity of Regulation No. 1356/76.

Opinion of Mr Advocate General H. Mayras delivered on 14 November 1978.

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ANALYTICAL TABLE

GENERAL INFORMATION ON THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

Complete list of publications giving information on the Court:

I - Information on current cases (for general use)

1. Hearings of the Court

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

2. Judgments and opinions of the Advocates General

Offset copies of these documents may be ordered from the Internal Services Division of the Court of Justice, P.O. Box 1406, Luxembourg, subject to availability and at a standard price of Bfrs 100 per document. They will not be available after publication of that part of the Reports of Cases Before the Court which contains the judgment or Advocate General's opinion requested.
Interested persons who have a subscription to the Reports of Cases Before the Court can take out a subscription to the offset texts in one or more Community languages. The price of that subscription for 1978 will be the same as the price of the Reports, Bfrs 1 800 per language. For subscriptions in subsequent years, the price will be altered according to changes in costs.

II - Technical information and documentation

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

1. Reports of Cases Before the Court

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

The volumes for the years 1954 to 1972 have been published in Dutch, French, German and Italian; the volumes for 1973 onwards have also been published in English and in Danish. An English edition of the volumes for the years 1957 and 1958 and 1960 to 1972 is available; the volumes for the years 1954 to 1956 and 1958 and 1959 will be available during 1979. The Danish edition of the volumes for the years 1954 to 1972 is being completed. It includes a selection of judgments, opinions and summaries from the most important cases; the volume for the years 1954 to 1964, the volume for the years 1965 to 1968 and the volumes for the years 1969, 1970 and 1971 are already available.

2. Legal publications on European integration (Bibliography)

New edition in 1966 and five supplements, the last of which appeared in December 1974; has been stopped.

3. Bibliography of European Judicial Decisions

Concerning judicial decisions relating to the Treaties establishing the European Communities.

4. Synopsis of case-law on the EEC Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters - two parts have appeared.

5. Selected instruments relating to the organization, jurisdiction and procedure of the Court

1975 edition.

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

OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES,
Rue du Commerce, Case Postale 1003, Luxembourg.

and from the following addresses:

Belgium: Ets. Emile Bruylant, Rue de la Régence 67,
1000 BRUSSELS

Denmark: J. H. Schultz' Boghandel, Mø̸ndergade 19,
1116 COPENHAGEN K

France: Editions A. Pedone, 13, Rue Soufflot,
75005 PARIS

Germany: Carl Heymann's Verlag, Gereonstrasse 18-32,
5000 KÖLN 1

Ireland: Messrs Greene & Co., Booksellers, 16, Clare Street,
DUBLIN 2

Italy: Casa Editrice Dott. A. Milani, Via Jappelli 5,
35100 PADUA M. 64194

Luxembourg:	Office for Official Publications of the European Communities, Case Postale 1003, LUXEMBOURG
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United Kingdom:	Sweet & Maxwell, Spon (Booksellers) Limited, North Way, ANDOVER, HANTS, SP10 5BE
Other Countries:	Office for Official Publications of the European Communities, Case Postale 1003, LUXEMBOURG

B - Publications issued by the Information Office of the Court of Justice

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

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

2. Information on the Court of Justice of the European Communities

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

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

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

4. General booklet of information on the Court of Justice of the European Communities

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

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

Répertoire de la jurisprudence relative aux traités instituant les Communautés européennes

Europäische Rechtsprechung

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

The German and French editions are available from:

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

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

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

III - Visits

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

Visitors may attend public hearings of the Court or of the Chambers to the extent permitted by the seating capacity. No visitor may be present at cases heard in camera or during proceedings for the adoption of interim measures. The Information Office of the Court of Justice must be informed of each group visit.

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Public holidays in Luxembourg

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

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

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

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

A - References for preliminary rulings

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

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

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

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

B - Direct actions

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

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

The application must contain:

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

The application should also be accompanied by the following documents:

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

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

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

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

The application is notified to the defendant by the Registry of the Court of Justice. It requires the submission of a statement of defence; these documents may be supplemented by a reply on the part of the applicant and finally a rejoinder on the part of the defendant.

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

After hearing the opinion of the Advocate General, the Court gives judgment. This is served on the parties by the Registry.

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