Information on the Court of Justice of the European Communities

1980 – IV

I N F O R M A T I O N

on

THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

IV

1980

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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 1980

(from 30 October 1980 to 31 December 1980)

Order of precedence

J. MERTENS DE WILMARS, President of the Court and President of the Third Chamber
P. PESCATORE, President of the Second Chamber
G. REISCHL, First Advocate General
T. KOOPMANS, President of the First Chamber
H. MAYRAS, Advocate General
J.-P. WARNER, Advocate General
Lord A.J. MACKENZIE STUART, Judge
A. O'KEEFFE, Judge
F. CAPOTORTI, Advocate General
G. BOSCO, Judge
A. TOUFFAIT, Judge
O. DUE, Judge
U. EVERLING, Judge
A. VAN HOUTTE, Registrar

First Chamber	Second Chamber	Third Chamber
. KOOPMANS, President	P. PESCATORE, President	J. MERTENS DE WILMARS, President
. O'KEEFFE, Judge	A. TOUFFAIT, Judge	Lord A.J. MACKENZIE STUART, Judge
. BOSCO, Judge	O. DUE, Judge	U. EVERLING, Judge

J U D G M E N T S

of the

COURT OF JUSTICE

of the

EUROPEAN COMMUNITIES

Judgment of 25 November 1980

Case 820/79

Kingdom of Belgium v Commission of the European Communities

(Opinion delivered by Mr Advocate General Mayras on 7 October 1980)

1. Agriculture - Common organization of the markets - Export refunds - Varied refund - Conditions for grant - Arrival at destination of goods - Means of proof - Bill of lading - Insufficient proof

   (Regulation No. 876/68 of the Council, Art. 6 (2); Regulation No. 1041/67 of the Commission, Art. 8 (1))

2. Agriculture - Common Agricultural Policy - Expenditure resulting from an incorrect application of Community law - Financing by the European Agricultural Guidance and Guarantee Fund - Condition - Error attributable to a Community institution

   (Regulation No. 729/70 of the Council)

1. A varied export refund is payable provided it is proved that the product has reached the destination for which the refund was fixed which implies that the goods must have been cleared through customs and put into free circulation at the destination.

   A document such as a bill of lading even bearing the words "freight prepaid" and in which the declarations are identical to those of the export licence cannot constitute proof of the arrival of goods at their destination within the meaning of the relevant Community rules.

2. When clearing accounts presented by the Member States in respect of the expenditure financed by the European Agricultural Guidance and Guarantee Fund the Commission is not obliged to accept as chargeable the expenditure incurred on the basis of an incorrect application of Community law unless that incorrect application may be attributed to an institution of the Community.

NOTE

The Kingdom of Belgium applied for the annulment of Commission Decision No. 79/893 of 12 October 1979 concerning the clearance of the accounts presented by the Kingdom of Belgium in respect of the expenditure for the financial year 1973 financed by the European Agricultural Guidance and Guarantee Fund in so far as the Commission did not charge to the Fund the sum of Bfr 29 008.562 relating to varied export refunds on milk and milk products paid by the applicant.

The rule is that a varied export refund is paid provided that proof is furnished that the product has reached the destination for which the refund has been fixed. For application purposes it is provided that the party concerned is obliged to submit one copy of the transport document and, in addition, at the discretion of the competent national authorities, one or more of the following documents:

"The copy of the customs or port document made out in the country of destination, a certificate issued by the official services of one of the Member States established in that country, a certificate by an international control and surveillance company".

The first submission accuses the Commission of having infringed the provisions of the regulation by refusing to recognize the validity of documents produced by the applicant as proof as to arrival at their destination of the goods in question. The document in this case is a bill of lading which has declarations identical to those of the export licence on the dual requirement that it is a c.i.f. bill of lading bearing the words "freight prepaid" and that it is issued by a shipping agent recognized by the Compagnie Maritime Anversoise.

The applicant contends that as it shows that the costs of transport have been paid before the goods are exported there is a guarantee that they will reach the agreed destination. The Compagnie Maritime Anversoise warrants to the exporter that the goods will arrive at destination.

The Court has already held in a judgment of 2 June 1976 (Case 124/75) that in order for the varied refund to be paid it is necessary for the goods to have been cleared through customs and put into free circulation at the destination.

In those circumstances the Commission was right to consider that a bill of lading, even bearing the words "freight prepaid", cannot constitute proof of the arrival of goods at their destination within the meaning of the Community regulations.

The first submission is accordingly rejected.

The second submission accuses the Commission of lateness in responding and of lack of care.

The practice of the Belgian authorities of accepting bills of lading as proof as to the arrival of goods at their destination arises from an incorrect interpretation of Community law.

In such a case the Commission is not obliged to charge expenditure incurred on that basis to the Fund unless the incorrect application of Community law may be attributed to an institution of the Community. The Court takes the second submission of the applicant as contending that the incorrect interpretation is attributable to the Commission's conduct.

The applicant has admitted that at a meeting of the "trade arrangements" group in January 1972 the Commission's officers formally disputed the validity of a freight prepaid bill of lading in regard to the Community regulations.

Even if that view may not be regarded as the official view of the Commission nevertheless it is expressed in unequivocal terms and only a clear indication of a contrary opinion on the part of the Commission as an institution could have allowed the Belgian Government to believe that that institution had approved the practice in issue.

The Court

1. Dismissed the application;

2. Ordered the applicant to pay the costs.

Judgment of 2 December 1980

Case 815/79

Criminal proceedings against Gaetano Cremonini and Maria Luisa Vrankovich

(Opinion delivered by Mr Advocate General Warner on 23 September 1980)

1. Approximation of laws - Electrical equipment - Directive No. 73/23 - Purpose - Duties of Member States - Scope

   (Council Directive No. 73/23)

2. Approximation of laws - Electrical equipment - Directive No. 73/23 - Equipment bearing marks denoting conformity and entitled to a presumption of conformity - Restriction of free movement by a judicial authority - Not permissible - Obligation to follow procedure of Article 9 of Directive

   (Council Directive No. 73/23, Arts. 9 and 10)

3. Approximation of laws - Electrical equipment - Directive No. 73/23 - Equipment not entitled to a presumption of conformity - Restriction of free movement by a judicial authority - Permissibility - Limits

   (Council Directive No. 73/23, Arts. 8 (2) and 10)

1. The aim of Directive No. 73/23, which was adopted on the basis of Article 100 of the EEC Treaty, is, as far as concerns the different conceptions of safety with which the provisions in force in the Member States comply, to permit the free movement of electrical equipment designed for use within certain voltage limits, provided however that certain safety requirements prescribed by the directive are observed. Its purpose would be frustrated if the competent national authorities in the exercise of the powers reserved to them relating to the form and method of implementing the directive did not keep within the limits of the discretion outlined by this directive. Indeed any overstepping of these limits might create new disparities and therefore fresh barriers to trade and as a result prevent the free movement of goods in a field in which the Community legislature had adopted provisions in order to ensure such freedom.

2. If the imported electrical material bears marks denoting conformity duly issued by bodies notified in accordance with Directive No. 73/23, there is a presumption of conformity which prevents the adoption of any measure restricting the free movement of that equipment by a judicial authority of a Member State, even if the Member States have not all designated the bodies which are empowered to issue such marks. Where there is such a presumption of conformity, measures restricting the free movement of the goods may be adopted only in the context of the procedure of Article 9 of the said directive by a national administrative authority acting on behalf of the Member State and empowered to participate in that procedure.

3. A judicial authority of a Member State may, on the basis of the requirements of its national law, adopt a measure restricting the free movement of electrical equipment in respect of which there is no presumption of conformity within the meaning of Article 10 of Directive No. 73/23 so long as the equipment has not been the subject of a report within the meaning of Article 8 (2) of the directive. On the other hand the judicial authority of a Member State does not have that power in other circumstances in which Community law and procedures apply.

NOTE

The Pretore di Como referred to the Court several questions on the harmonization of the laws of the Member States relating to electrical equipment designed to be used within certain voltage limits in the context of criminal proceedings during which the Pretore ordered the seizure of electrical equipment (smoothing irons (Calor and Rowenta marks), electric drills (Metabo mark) and lawn mowers (Gazonette marks)) imported from Member States of the Community.

This seizure was effected because the equipment in question did not comply with the standards set by Articles 314 and 315 of the Decree of the President of the Republic No. 547 of 27 April 1955.

The first two questions referred to the Court by the Pretore concern the goods which are the subject-matter of the trade-marks Calor and Rowenta which are presumed to comply with the provisions of the directive because they bear marks of conformity issued by approved bodies.

The first two questions are designed to ascertain whether the provisions of Directive No. 72/23 must be interpreted in such a manner that the presumption of conformity with the provisions of this directive is to be regarded as a presumption which prevents the taking of any measures restricting the free movement of goods within the EEC by any judicial authority of a Member State.

Directive No. 73/23 of the Council lays down the categories of standards applicable to electrical equipment.

The Court in answer to these two questions ruled that if the imported electrical equipment bears marks of conformity duly issued by the bodies notified by the Member States to each other in accordance with Directive No. 73/23, the presumption of conformity prevents the taking of any step restricting the free movement of this equipment by a judicial authority of a Member State, even if all the Member States have not appointed the bodies which are empowered to issue these marks, and that since a judicial authority is not entitled to take any step restricting the free movement of goods, where there is a presumption of conformity such a step can only be taken in the context of the procedure of Article 9 of the directive by a national administrative authority acting on behalf of the Member State and empowered to participate in this procedure.

The Pretore by the third and fourth questions asks whether a national court may, in the absence of any presumption of conformity resulting from the affixing of a mark or the issue of a certificate or declaration certifying conformity with one of the three categories of the standards mentioned in Directive No. 73/23, take, before any application for and submission of a report on conformity as provided for in the directive in the event of a challenge, a step restricting the free movement of the electrical equipment which does not comply with the express requirements of national law, though provided with other safety features laid down in the Commission regulation.

In answer to these questions the Court ruled that a judicial authority of a Member State may, on the basis of the requirements of its national law, take a step restricting the free movement of electrical equipment in respect of which there is no presumption of conformity within the meaning of Article 10 of Directive No. 73/23 so long as the equipment has not been the subject of a report within the meaning of Article 8 (2) of the Directive; since it is permissible for the judicial authority of a Member State to take steps restricting the free movement of any electrical equipment only under the conditions which have been specified in answer to the third question, such judicial authority does not have that power in other circumstances in which Community law and procedures apply.

Judgment of 2 December 1980

Case 42/80

Commission of the European Communities v Italian Republic

(Opinion delivered by Mr Advocate General Warner on 21 October 1980)

Member States - Obligations - Implementation of directives - Failure to fulfil - Justification - Not permissible

(EEC Treaty, Art. 169)

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

NOTE

The Commission applied to the Court for a declaration that the Italian Republic has failed to fulfil an obligation incumbent on it under the Treaty by not adopting within the prescribed period the provisions needed in order to comply with Council Directive No. 73/361 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the certification and marking of wire-ropes, chains and hooks.

The Italian Government merely stated that the prescribed period of 18 months had been exceeded because during the previous Italian Parliament a draft Law was introduced which lapsed because of the dissolution of the Parliament before the due date.

A suitable draft Law is at the present time under consideration by the Chamber of Deputies.

According to the well-established case-law a Member State cannot rely on the provisions, practices or circumstances of its national order for the purpose of justifying non-compliance with obligations and time-limits resulting from Community directives.

Consequently the Court declared that the Italian Republic has failed to comply with an obligation incumbent upon it under the Treaty.

Judgment of 2 December 1980

Case 43/80

Commission of the European Communities v Italian Republic

(Opinion delivered by Mr Advocate General Warner on 21 October 1980)

Member States - Obligations - Implementation of directives - Failure to fulfil - Justification - Not permissible

(EEC Treaty, Art. 169)

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

IE In this case, which is similar to the preceding one, the Court declared that, by not adopting within the period laid down the measures needed in order to comply with Commission Directive No. 76/696/EEC of 27 July 1976 adapting to technical progress the Council Directive of 19 November 1973 on the approximation of the laws of the Member States relating to non-automatic weighing machines, the Italian Republic has failed to fulfil an obligation incumbent upon it under the Treaty.

Judgment of 4 December 1980

Case 54/80

Procureur de la République v Samuel Wilner

(Opinion delivered by Mr Advocate General Capotorti on 16 October 1980)

1. Common Customs Tariff - Value for customs purposes - Normal price of goods - Determination - Invoice price - Reduction by national authorities - Not permissible - Duty to accept value for customs purposes for purposes other than those of customs - Absence

   (Regulation No. 803/68 of the Council)

2. Common Customs Tariff - Value for customs purposes - Normal price of goods - Determination - Reference to the price declared by the seller's forwarding agent, which is less than the price invoiced and paid - Not permissible

   (Regulation No. 803/68 of the Council)

1. The reduction by the competent authorities of a Member State of the invoice price of goods imported from a non-member country does not accord with the aims of the rules relating to the determination of the value of goods for customs purposes. However, the determination of the value for customs purposes in accordance with those rules cannot have the effect of requiring the fiscal and financial authorities of the Member States to accept that value for purposes other than the application of the Common Customs Tariff.

2. It is not in accordance with Regulation No. 803/68 for the value for customs purposes of goods imported from a non-member country to be determined, for the requirements of customs, by the national authorities by reference to a declaration made by the forwarding agent to the customs authority of the exporting country at a level which is less than the price invoiced and paid for the goods.

TE The examining judge of the Tribunal de Grande Instance /Regional Court/, Paris, referred to the Court a question on the interpretation of Regulation (EEC) No. 803/68 of the Council on the valuation of goods for customs purposes.

This question was raised in the context of a criminal investigation of the Chairman and Director General of Victory France S.A. who has been charged with having declared for customs purposes goods bought from Victory Jobbing House (the exporter), established in the United States of America, whose manager is the brother of the Chairman and Director General of Victory France, at a value above the normal price.

The purchases at issue cover the period 10 March 1972 to 7 March 1974 and amount to more than 1½ million US dollars.

The French Customs Administration maintained that Victory France S.A. overvalued the imported goods in question by FF 3 905 540 with the intention of enabling it to transfer capital unlawfully to the U.S.A.

Since the national court considered that it was necessary to obtain an interpretation of a Council regulation it has referred to the Court the question whether the customs authority of a Member State, in the context of Regulation No. 803/68, may reduce the customs value of goods for purposes other than those of actual customs control.

The Court has had occasion to indicate in detail the applicable considerations of Community law on this question in its judgment of 24 April 1980 in Case 65/79 Procureur de la République and René Châtain (/1980/ ECR 1345) and ruled, repeating part of the operative part of that decision.

1. The reduction by the competent authorities of a Member State of the invoice price of goods imported from a non-member country does not accord with the aims of the rules relating to the determination of the value of goods for customs purposes. However, the determination of the value for customs purposes in accordance with those regulations cannot have the effect of requiring the tax and financial authorities of the Member States to accept that valuation for purposes other than the application of the Common Customs Tariff (paragraph 1 of the operative part of Case 65/79).

2. The determination by the national authorities for customs purposes of the customs value of goods imported from a non-member country with reference to a declaration made by the forwarding agent to the customs authorities of the exporting country at a level below the price invoiced and paid for the goods does not comply with Regulation No. 803/68.

Judgment of 10 December 1980

Case 140/78

Commission of the European Communities v Italian Republic

(Opinion delivered by Mr Advocate General Reischl on 28 October 1980)

1. Agriculture - Common Agricultural Policy - Financing by the EAGGF - Fixed amounts granted to a Member State - Obligation to submit reports on expenditure incurred

   (Regulation No. 130/66 of the Council, Art. 4 (3), as amended by Regulation No. 966/71; Regulation No. 159/66 of the Council, Art. 12 (4))

2. Member States - Obligations - Implementation of Community law - Failure - Justification - None

   (EEC Treaty, Art. 169)

1. The reports required by Article 4 (3) of Regulation No. 130/66 on expenditure incurred within the framework of the fixed amounts granted to a Member State by the EAGGF for improvements in the production and marketing of certain products must be on the sums paid to recipients after the works have been completed and not on the expenditure committed to future works or works in progress.

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

IOTE

The Commission of the European Communities brought an action before the Court for a declaration that the Italian Republic, by failing to submit reports together with supporting documents within the periods laid down by the regulations, had failed to fulfil its obligations under the Community regulations laying down additional provisions for the common organization of the market in fruit and vegetables.

Amongst other amounts the Italian Republic received from the resources of the European Agricultural Guidance and Guarantee Fund 45 million units of account for the purpose of making structural improvements in the marketing of olives, olive oil, fruit and vegetables, 15 million units of account for the purpose of making structural improvements in the production of raw tobacco and an additional amount of 87 299 539 units of account for the purpose of making structural improvements in the production and the marketing of fruit and vegetables.

The regulations provided that the Italian Republic was to submit to the Commission, before the end of the transitional period, reports together with supporting documents on the expenditure incurred on the planned measures.

The reports were not submitted within the periods or in a manner satisfactory to the Commission which, after the exchange of several memoranda, brought the present action. The action was restricted to the third sum of aid amounting to 87 299 539 units of account as the first two sums of aid of 45 million units of account and 15 million units of account had actually been paid to the persons who had completed the installations to improve those structures.

In its defence the Italian Government contended that it was impossible for the programmes to be achieved and for the sums to be actually paid within the periods provided.

The Court did not accept that argument and held that the obligations which Community rules impose on Member States must be observed in full and that the reports required must be on the amounts paid to the recipients after the works have been completed and not the expenditure committed to future works or works in progress.

The Italian Government further invoked numerous legal, technical and administrative difficulties which allegedly made the completion of the programmes and the payment of the aid allocated by the Fund objectively impossible within the periods laid down by the regulations.

Those arguments were not accepted and the Court declared that:

(1) As regards the fixed rate aid of 87 299 539 units of account granted by the European Agricultural Guidance and Guarantee Fund in the fruit and vegetable sector, the Italian Republic, by its delay in the submission of its reports on the expenditure incurred and by submitting them, by 31 August 1980, only in respect of Lit. 44 722.7 million or 81.97% of the aid granted, has not satisfied the requirements of the third subparagraph of Article 12 (4) of Regulation No. 159/66 of the Council of 25 October 1966 laying down further provisions for the common organization of the market in fruit and vegetables and of Article 4 (3) of Regulation No. 130/66 of the Council of 26 July 1966 on the financing of the Common Agricultural Policy, as amended by Regulation No. 966/71 of the Council of 10 May 1971; for that reason it has failed to fulfil its obligations under the EEC Treaty.

(2) The Italian Republic is ordered to pay the costs.

Judgment of 11 December 1980

Case 827/79

Amministrazione delle Finanze v Acampora

(Opinion delivered by Mr Advocate General Capotorti on 16 October 1980)

1. Common Customs Tariff - System of generalized preferences in favour of developing countries - Origin of the goods - Verification - Necessity

(Regulation No. 1371/71 of the Commission)

2. Common Customs Tariff - System of generalized preferences in favour of developing countries - Origin of the goods - Verification - Methods - Verification of certificates of origin after importation - Negative outcome - Recovery of duties not paid - Lawfulness

(Regulation No. 1371/71 of the Commission, Art. 13)

1. The system of generalized preferences such as those provided for by Regulation No. 1371/71 is based on the principle of the unilateral grant by the Community of tariff advantages in favour of products originating in certain developing countries with the aim of facilitating the flow of trade with those countries. The benefit of that preferential system is thus linked to the origin of the goods and the verification of that origin is therefore a necessary element of the system.

2. The customs authorities of an importing Member State may, pursuant to Article 13 of Regulation No. 1371/71 of the Commission of 30 June 1971 and the general structure of that regulation, after having permitted without reserve the final importation of goods and the application of the preferential tariff treatment granted to products originating in developing countries:

   1. Require the State benefiting from the exportation to verify the certificate of origin on Form A relating to those goods;

   2. Then, if the outcome of that verification is negative, demand payment of the duty which was not paid at the

IOTE The Corte Suprema di Cassazione of Italy submitted to the Court of Justice for a preliminary ruling a question on the interpretation of Regulation No. 1371/71 of the Commission concerning the definition of the concept of originating products for the application of tariff preferences granted by the EEC on certain products from developing countries.

That question was raised in the course of a dispute between on the one hand an undertaking which imported into Italy from Hong Kong several consignments of transistor radios between 1 July 1971 and 2 February 1972 and having declared them as "originating products" procured their clearance through customs by paying customs duties calculated on the basis of tariff preferences, and, on the other hand, the Amministrazione delle Finanze which, after carrying out a subsequent verification under Article 13 of Regulation No. 1371/71 which disclosed that the products in question did not meet the definition of "originating products", demanded that the importer pay the relevant duties unpaid at the time of importation.

The importer challenged that demand for payment on the ground that the investigation into the origin of the goods had taken place subsequent to their importation when they were no longer at the importer's disposal.

That led the Corte Suprema di Cassazione to submit the following question:

> "May an importing Member State, pursuant to Article 13 of Regulation (EEC) No. 1371/71 of 30 June 1971 - after having permitted, without reserve, the final importation of goods in application of the preferential tariff treatment granted to products originating from developing countries - require the State benefiting from that exportation to check the certificate of origin 'Model A' relating to those goods, and then, if the outcome of that check is negative, demand payment of the duty which was not paid at the time of importation?"

The Court, ruling on the question submitted to it, held that the customs authorities of an importing Member State may, pursuant to Article 13 of Regulation No. 1371/71 of the Commission, after having permitted, without reserve, final importation of goods in application of the preferential tariff treatment granted to products originating in developing countries:

(1) Require the State benefiting from the exportation to verify the certificate of origin "Model A" relating to those goods;

(2) Then, if the outcome of that verification is negative, demand payment of the duty which was not paid at the time of importation.

Judgment of 11 December 1980

Case 1252/79

Acciaierie e Ferriere Lucchini v Commission of the European Communities

(Opinion delivered by Mr Advocate General Capotorti on 12 November 1980)

1. ECSC - Prices - Minimum price scheme - Alignment on prices below minimum prices - Not permissible

(ECSC Treaty, Arts. 60, 61)

2. ECSC - Prices - Alignment - Infringement - Concession by authorities - Justification - None

3. Measures adopted by institutions - Duty to state reasons on which based - Scope - Decision imposing fine

1. Intra-Community alignment cannot in any case enable goods to be sold below the minimum prices since all price-lists of Community undertakings must comply with the decision establishing those minimum prices. It follows that any sale by alignment below the minimum prices constitutes not only an improper intra-Community alignment, which is an infringement of Article 60 of the ECSC Treaty, but also an infringement of the minimum prices.

2. A concession on the part of the authorities cannot make an infringement legitimate, still less justify making that infringement more serious. Thus the fact that the Commission may have shown some laxity as regards alignment not on specific price-lists but on a basic price formed by the minimum price in no way justifies selling at prices lower than the minimum prices or the failure to take into consideration extras for quality or quantity.

3. The statements of the reasons on which a decision imposing a fine for infringement of the ECSC rules on minimum prices is based, although succinct, must be considered to be sufficient where the undertaking to which it is addressed has participated in the procedure whereby the decision in question was drawn up and has been informed of the method of calculating the disputed under-pricing.

TE

The Italian company Lucchini made an application under Article 36 of the ECSC Treaty for the annulment and if appropriate the reversal of the individual decision of 31 October 1979 by which the Commission fined it 25 000 units of account, or Lit 28 770 000 for infringements of General Decision No. 3000/77/ECSC of 28 December 1977 fixing minimum prices for hot-rolled wide strips, merchant bars and concrete reinforcing bars. The decision in issue was adopted following an investigation carried out at the premises of Lucchini; it was accused in the case of sales of merchant bars in France of having sold below the minimum prices fixed by Decision No. 3000/77/ECSC and in the case of sales of the same product in the Federal Republic of Germany, by not applying certain extras for quality and quantity contained in the German price lists, of having charged sales prices which are in fact lower than the alignment prices which should have been equal to or more than the minimum prices.

The applicant first of all contended that it complied with the ECSC decision by exercising the right of alignment accorded by Article 60 (2) (b) of the ECSC Treaty.

The Court replied that alignment within the Community may not in any event allow sales below minimum prices to occur, all the price lists of Community undertakings having to comply with the decision.

It follows that any sale by alignment below the minimum prices constitutes not only an improper alignment inside the Community - thus an infringement of Article 60 of the Treaty - but also a breach of the minimum price system. Therefore the first submission is not justified.

In the second place the applicant invoked general principles of law, in particular of legitimate expectation and of non-discrimination. The Commission betrayed the applicant's legitimate expectation by momentarily adopting a lenient attitude towards other undertakings guilty of having acted in the same way and then dropping that attitude in its own case.

The Court observed that the alleged discrimination was apparent only before the entry into force of the regulations the breach of which forms the basis for the decision under attack. The second submission therefore has no foundation.

Thirdly the applicant contended that it acted by necessity in order not to lose traditional markets which are vitally important to it.

The applicant did not demonstrate however that it is in danger of bankruptcy. Finally the applicant alleged that there was a breach of essential procedural requirements on the ground that the reasons on which the decision was based are insufficient.

The Court found for its part that the reasons given for the decision, although succinct, must be deemed sufficient. That objection must therefore be dismissed.

The Court dismissed the action and ordered the applicant to pay the costs.

Judgment of 11 December 1980

Case 31/80

L'Oréal (Brussels) and L'Oréal (Paris) v De Nieuwe AMCK

(Opinion delivered by Mr Advocate General Reischl on 15 October 1980)

1. Competition - Agreements, decisions and concerted practices - Systems of selective distribution - Prohibition - Conditions - Decision to exempt - Power of Commission alone

   (EEC Treaty, Art. 85; Regulation No. 17 of the Council, Art. 9 (1))

2. Competition - Agreements, decisions and concerted practices - Notification - Decision by Commission to take no action - Legal nature - Effect on appraisal by national courts of the agreement in question

   (EEC Treaty, Art. 85)

3. Competition - Agreements, decisions and concerted practices - Prohibition - Decisions to exempt - Reliance thereon as against third parties

   (EEC Treaty, Art. 85 (3))

4. Competition - Dominant position - Abuse - Concept

   (EEC Treaty, Art. 86)

1. The agreements laying down a selective distribution system based on criteria for admission which go beyond a mere objective selection of a qualitative nature exhibit features making them incompatible with Article 85 (1) of the EEC Treaty where such agreements, either individually or together with others, may, in the economic and legal context in which they occur and on the basis of a set of objective factors of law or of fact, affect trade between Member States and have either as their objective or effect the prevention, restriction or distortion of competition. It is for the Commission alone, subject to review by the Court, to grant an exemption in respect of such agreements under Article 85 (3).

2. A letter signed by an official of the Commission indicating that there is no reason for the Commission to take action pursuant to Article 85 (1) of the EEC Treaty against a distribution system which has been notified to it, may not be relied upon as against third parties and is not binding on the national courts. It merely constitutes an element of fact of which the national courts may take account in considering the compatibility of the system in question with Community law.

3. Decisions to grant exemption under Article 85 (3) of the EEC Treaty give rise to rights in the sense that the parties to an agreement which has been the subject of such a decision may rely on that decision as against third parties who claim that the agreement is void on the basis of Article 85 (2).

4. The behaviour of an undertaking may be considered as an abuse of a dominant position within the meaning of Article 86 of the Treaty, where the undertaking enjoys in a particular market the power to behave to an appreciable extent independently of its competitors, its customers and the consumers and where its behaviour on that market, through recourse to methods different from those which condition normal competition on the basis of the transactions of traders, hinders the maintenance or development of competition and may affect trade between Member States.

NOTE

The questions on the interpretation of Articles 85 and 86 (Competition) were submitted during an action brought by L'Oréal against the company De Nieuwe AMCK.

The L'Oréal companies set up in Belgium a Kerastase hair-care network to which the company De Nieuwe AMCK does not belong.

The action which was brought sought in particular a declaration that the offering for sale or sale by the defendant of Kerastase products on which it is expressly stated that they may be sold only by hair-dressing consultants constitutes an act contrary to fair trading practices.

By the same action an injunction was also sought restraining the defendant from offering for sale, selling or stocking the products in question.

The defendant in the main action claimed that L'Oréal's selective distribution network was illegal for being contrary to the competition rules of the Community.

For its part L'Oréal referred to a letter by which the Commission informed it that by reason of the small portion of the market for perfumery, beauty and toilet preparations occupied by L'Oréal in the various countries and the presence on the market of a large number of competing undertakings of a similar size the Commission believed that there was no reason for it to intervene under the provisions of Article 85 (1) of the Treaty in regard to the distribution system of L'Oréal and that it had consequently closed its file.

That led the commercial court of Antwerp to submit the following questions to the Court for a preliminary ruling:

1. Is the system of "parallel" exclusive selling agreements between a producer and exclusive importers, linked with selective distribution networks between the national importers and the retailers chosen by them, based on alleged qualitative and quantitative selection criteria, in respect of a few perfumery products from a whole range, eligible for exemption as provided for in Article 85 (3) of the Treaty of Rome and is such the case here, from the point of view of Community law, for L'Oréal N.V. (Brussels) and L'Oréal S.A. (Paris)?

2. Is a decision to allow a matter to rest, from an official of the Commission of the European Communities, such as that contained in the letter of 22 February 1973 [Translator's note: 1978 would appear to be meant] signed by J. E. Ferry, Director of the Directorate-General for Competition, Restrictive Practices and Abuse of Dominant Positions Directorate, addressed to the first plaintiff in the main action, binding?

3. Are exemptions given in application of Article 85 (3) to be regarded as instances of toleration or do they create a right that, from the point of view of Community law, may be relied on against third parties, and is that the case for L'Oréal?

4. Can L'Oréal's conduct towards third parties be regarded as an abuse of a dominant position within the meaning of Article 86 of the Treaty of Rome?

Clearly it is for the national court to decide whether or not Articles 85 and 86 of the Treaty should be applied; however, as the jurisdiction of national courts is capable of being affected by the action of the Commission, the issue which should be considered first is that of the legal nature and consequences to be attached to the letter sent by the Commission to L'Oréal S.A.

The legal nature of the letter in question

It is evident that a letter such as that addressed to L'Oréal by the Director General for Competition, which is sent without the publication measures provided for in Article 19 (3) of Regulation No. 17 being taken and which has not been published in any way under Article 21 (1) of the regulation, constitutes neither a decision to grant negative clearance nor a decision to apply Article 85 (3) within the meaning of Articles 2 and 6 of Regulation No. 17.

As the Commission itself points out it is simply an administrative letter which reflects the Commission's views on the matter and brings to an end an inquiry undertaken by the competent officers of the Commission.

It does not bind the national courts but nevertheless constitutes a factual element which should be taken into account.

The application of Article 85 to the distribution system in question

It should be recalled that under Article 9 (1) of Regulation No. 17 the Commission has sole power, subject to review of its decision by the Court, to declare Article 85 (1) inapplicable pursuant to Article 85 (3) of the Treaty.

The jurisdiction of national courts is limited to deciding on the conformity of an agreement, decision or concerted practice with Article 85 (2) and where appropriate to hold the agreement, decision or practice in question void under Article 85 (2).

Selective distribution systems are a factor in competition under Article 85 (1) provided that retailers make their choice according to objective criteria of a qualitative nature and that the conditions are determined in a uniform manner.

An agreement should also be examined to see whether it is likely to affect trade between Member States. The appropriate step is to determine, on the basis of all the objective factors of law or of fact and especially in the light of the consequences of the agreement in question on the possibility of effecting parallel imports, whether that agreement enables it to be seen with a sufficient degree of probability that it may have a direct or indirect, actual or potential effect on trade patterns between Member States.

It is for national courts, on the basis of all the relevant facts, to determine whether the agreement actually fulfils the conditions to bring it under the prohibition of Article 85 (1).

The application of Article 86

To the extent to which trade between Member States may be affected Article 86 of the Treaty prohibits one or more undertakings from abusing a dominant position in the Common Market or in a major part of it. The definition of the market is of fundamental importance.

It is for national courts to decide, on the basis of all the facts pertaining to the conduct in question, whether Article 86 has application.

In answer to the questions submitted to it the Court ruled that:

1. Agreements laying down a system of selective distribution based on criteria for admission which go beyond a simple objective selection of a qualitative nature exhibit features making them incompatible with Article 85 (1) where such agreements, either individually or together with others, in the economic and legal context in which they are concluded and on the basis of a body of objective features of law and fact, are capable of affecting trade between Member States and have as either their object or their effect the prevention, restriction or distortion of competition. It is within the exclusive power of the Commission, subject to review by the Court, to grant an exemption in respect of such agreements pursuant to Article 85 (3).

2. A letter signed by an official of the Commission indicating that there is no reason for the Commission to intervene in pursuance of Article 85 (1) of the EEC Treaty against a distribution system which has been notified to it is not an exemption within the meaning of Article 85 (3), and has therefore no effect as against third parties and is not binding on national courts. It constitutes only an element of fact, of which the national courts may take account in considering the compatibility of the system in question with Community law.

3. The conduct of an undertaking may be considered as an abuse of a dominant position within the meaning of Article 86 of the Treaty, where the undertaking has the opportunity in a given market to behave to an appreciable extent in an independent manner as against its competitors, its customers and consumers and when its conduct in the market, as a result of means differing from those governing normal competition based on transactions by traders, hinders the maintenance or development of competition and is capable of affecting trade between Member States.

Judgment of 16 December 1980

Case 814/79

Netherlands State v Rüffer

(Opinion delivered by Mr Advocate General Warner on 8 October 1980)

1. Convention on Jurisdiction and the Enforcement of Judgments - Ambit - Civil and commercial matters - Concept - Independent interpretation - Criteria

(Convention of 27 September 1968, Art. 1)

2. Convention on Jurisdiction and the Enforcement of Judgments - Ambit - Determination - Factors to be taken into consideration

(Convention of 27 September 1968, Art. 1)

3. Convention on Jurisdiction and the Enforcement of Judgments - Ambit - Civil and commercial matters - Actions brought by a public authority against a private person on the basis of its public authority powers - Recovery of the costs of removing a wreck - Exclusion - Claim for redress before civil courts - Not available

(Convention of 27 September 1968, Art. 1)

1. The concept "civil and commercial matters" used in Article 1 of the Convention must be regarded as an independent concept which must be construed with reference first to the objectives and scheme of the Convention and secondly to the general principles which stem from the corpus of the national legal systems.

2. As the Convention must be applied in such a way as to ensure, as far as possible, that the rights and obligations which derive from it for the Contracting States and the persons to whom it applies are equal and uniform it must be interpreted solely in the light of the division of jurisdiction between the various types of courts existing in certain States; its ambit must therefore be essentially determined by reason of the legal relationships existing between the parties to the action or of the subject matter of the action.

3. The concept of "civil and commercial matters" within the meaning of the first paragraph of Article 1 of the Convention does not include actions brought by the agent responsible for administering public waterways against the person having liability in law in order to recover the costs incurred in the removal of a wreck carried out by or at the instigation of the administering agent in the exercise of its public authority.

The fact that the agent responsible for administering public waterways is seeking to recover those costs by means of a claim for redress before the civil courts and not by administrative process cannot be sufficient to bring the matter in dispute within the ambit of the Convention.

NOTE

A question was referred to the Court of Justice during a dispute concerning a claim for redress brought by the Netherlands State against a waterman, the owner of a German river motor vessel, the "Otrate", which, on 26 October 1971, collided with the Dutch motor vessel "Vechtborg" in the Bight of Watum and as a result of that collision sank on the spot. The Bight of Watum is a public waterway in the mouth of the Ems located in an area over which both the Kingdom of the Netherlands and the Federal Republic of Germany claim sovereign rights.

Collaboration in that waterway between the two States is governed by the Ems-Dollard Treaty of 8 April 1960.

The Netherlands State had the wreck of the boat removed and is claiming from the waterman reimbursement of the balance of the costs incurred after the sale of the parts of the wreck recovered.

That dispute led the Hoge Raad to ask the Court of Justice whether the concept of "civil and commercial matters" within the meaning of Article 1 of the Convention must be interpreted as including a claim for redress such as that brought in the instant case by the Netherlands State.

The Court gave a negative answer to the question submitted to it ruling that the concept of "civil and commercial matters" within the meaning of the first paragraph of Article 1 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters does not include actions such as that referred to by the national court brought by the agent responsible for administering public waterways against the person having liability in law in order to recover the costs incurred in the removal of a wreck carried out by or at the instigation of the administering agent in the exercise of its public authority.

Judgment of 16 December 1980

Case 27/80

Criminal proceedings against Anton A. Fietje

(Opinion delivered by Mr Advocate General Mayras on 30 September 1980)

1. Free movement of goods - Quantitative restrictions - Measures having equivalent effect - Rules governing the marketing of a product - Description and labelling - Permissibility - Conditions and limits

2. Free movement of goods - Quantitative restrictions - Measures having equivalent effect - Mandatory description of alcoholic beverages - Extension to imported products - Prohibition - Criteria - Assessment by the national court

   (EEC Treaty, Art. 30)

3. Free movement of goods - Quantitative restrictions - Measures having equivalent effect - National authorities' power to grant exemption - No effect on the classification of a prohibited measure - Permissibility in the case of a measure justified on grounds recognized by the Treaty - Limits

   (EEC Treaty, Arts. 30 and 36)

1. In the absence of common rules relating to the production and marketing of a product, it is, in principle, for the Member States to regulate all matters relating to the marketing of that product on their own territory, including its description and labelling, subject to any Community measure adopted with a view to approximating national laws in these fields.

   However, in order to examine the compatibility with Community law of national rules requiring the employment of a given description for national and imported products, it is necessary to consider whether those rules are capable of impeding the free movement of goods between Member States and, if so, to what extent such an obstacle is justified on the ground of the public interest underlying the national rules.

2. The extension by a Member State of a provision which prohibits the sale of certain alcoholic beverages under a description other than that prescribed by national law to beverages imported from other Member States, thereby making it necessary to alter the label under which the imported beverage is lawfully marketed in the exporting Member State, is to be considered a measure having an effect equivalent to a quantitative restriction which is prohibited by Article 30 of the EEC Treaty and which is not justified on the ground of the public interest in consumer protection in so far as the details given on the original label supply the consumer with information on the nature of the product in question which is equivalent to that in the description prescribed by law.
It is for the national court to make the findings of fact necessary in order to establish whether or not there is such equivalence.

3. A measure caught by the prohibition provided for by Article 30 of the EEC Treaty does not escape this prohibition simply because the competent authority is empowered to grant exemptions, even if this power is freely applied to imported products. On the other hand, in the case of a measure justified on grounds recognized by the Treaty, the Treaty does not forbid in principle provision being made for the possibility of granting derogations therefrom by individual decisions left to the discretion of the administration. However, exceptions must not lead to the favouring of domestic products because this would constitute arbitrary discrimination against or a disguised restriction on products imported from other Member States.

NOTE The questions submitted to the Court of Justice arose from criminal proceedings against a wine and spirits merchant accused of having supplied an alcoholic beverage imported from the Federal Republic of Germany called "Berentzen Appel - aus Apfel mit Weizenkorn - 25 vol.%" which did not bear the name "Likeur" whereas the beverage came under the Likeurbesluit, a Netherlands order promulgated pursuant to the Warenwet /Food and Drugs Act/.

The accused alleged that the national regulations were incompatible with Article 30 of the EEC Treaty which led the national court to submit the following question: Does the concept of "measures having an effect equivalent to quantitative restrictions on imports" in Article 30 of the EEC Treaty cover the provisions of Article 1 of the Netherlands Likeurbesluit governing the obligation to use the word "liqueur" for drinks defined therein, as a result of which products from other Member States which have the characteristics defined in Article 1 of the Likeurbesluit, but in respect of which there is no obligation to use the description "Liqueur" in those Member States, must be labelled differently for importation into the Netherlands?"

The Court replied by ruling that the extension by a Member State of a measure prohibiting the sale of specific alcoholic beverages under a name other than that required by national legislation to beverages imported from other Member States so as to necessitate alteration of the label under which the imported beverage is lawfully marketed in the exporting Member State is to be considered as a measure having an effect equivalent to a quantitative restriction prohibited by Article 30 of the Treaty inasmuch as the details on the original label provide consumers with equivalent information about the nature of the product in question as the name required in law. The findings of fact required to establish whether or not there is such equivalence are for the national courts to decide.

Judgment of 17 December 1980

Case 149/79

Commission of the European Communities v Kingdom of Belgium

(Opinion delivered by Mr Advocate General Mayras on 24 September 1980)

1. Free movement of persons - Derogations - Employment in the public service - Criteria - Participation in the exercise of powers conferred by public law and in the safeguarding of the general interests of the State

   (EEC Treaty, Art. 48 (4))

2. Free movement of persons - Workers - Equal treatment - Derogations - Participation in the management of bodies governed by public law and the holding of an office governed by public law - Aim of the derogation

   (Regulation No. 1612/68 of the Council, Art. 8)

3. Free movement of persons - Derogations - Employment in the public service - Concept - Uniform interpretation and application - Reference to national law alone - Not permissible

   (EEC Treaty, Art. 48 (4))

4. Free movement of persons - Derogations - Employment in the public service - Admission of nationals alone to posts involving the exercise of powers conferred by public law and the safeguarding of the general interests of the State - Permissibility - Exclusion of nationals of other Member States from the totality of posts - Breach of the principle of proportionality

   (EEC Treaty, Art. 48 (4))

1. By providing that "the provisions of this article shall not apply to employment in the public service" Article 48 (4) of the EEC Treaty removes from the ambit of Article 48 (1) to (3) a series of posts which involve direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities. Such posts in fact presume on the part of those occupying them the existence of a special relationship of allegiance to the State and reciprocity of rights and duties which form the foundation of the bond of nationality. On the other hand

   the exception contained in Article 48 (4) does not apply to posts which, whilst coming under the State or other organizations governed by public law, still do not involve any association with duties belonging to the public service properly so called.

2. Article 8 of Regulation No. 1612/68 by which a worker from another Member State "may be excluded from taking part in the management of bodies governed by public law and from holding an office governed by public law" is not intended to debar workers from other Member States from certain posts, but simply permits them to be debarred in some circumstances from certain activities which involve their participation in the exercise of powers conferred by public law, such as those involving the presence of trade-union representatives on the boards of administration of many bodies governed by public law with powers in the economic sphere.

3. The rule fundamental to the existence of the Community, by which recourse to provisions of the domestic legal system to restrict the scope of the provisions of Community law is not permissible as it would have the effect of impairing the unity and efficacy of that law, must also apply in determining the scope and bounds of Article 48 (4) of the Treaty. Whilst it is true that that provision takes account of the legitimate interest which the Member States have in reserving to their own nationals a range of posts connected with the exercise of powers conferred by public law and with the protection of general interests, at the same time it is necessary to ensure that the effectiveness and scope of the provisions of the Treaty on freedom of movement of workers and equality of treatment of nationals of all Member States shall not be restricted by interpretations of the concept of public service which are based on domestic law alone and which would obstruct the application of Community rules.

4. In referring to posts involving the exercise of powers conferred by public law and the conferment of responsibilities for the safeguarding of the general interests of the State, Article 48 (4) allows Member States to reserve to their nationals by appropriate rules entry to posts involving the exercise of such powers and such responsibilities within the same grade, the same branch or the same class. Even if it is accepted that such rules might create discrimination, an interpretation of Article 48 (4) which has the effect of debarring the nationals of other Member States from the totality of posts in the public service is not permissible since it involves a restriction on the rights of such nationals which goes further than is necessary to ensure observance of the objectives of that provision.

NOTE

The Commission brought an action before the Court of Justice for a declaration that, by requiring or permitting to be required the possession of Belgian nationality as a condition of recruitment to posts not covered by Article 48 (4) of the Treaty, Belgium has failed to fulfil its obligations under the rules on freedom of movement for workers within the Community.

Article 48 of the EEC Treaty establishes and determines the rules on the freedom of movement for workers within the Community; in paragraph (2) it states that any discrimination based on nationality shall be abolished but adds a limitation in paragraph (4) worded as follows: "The provisions of this article shall not apply to employment in the public service".

The facts are as follows: in Belgium a number of posts were offered, in public notices or newspaper advertisements, by public establishments and local authorities (Belgian railways (SNCB) (SBCV), City of Brussels, Comune of Auderghem), and the advertisements stipulated, among the conditions required for recruitment, the possession of Belgian nationality.

The posts in issue are for, inter alia, locomotive drivers, track layers, nurses, child-minders, night watchmen, architects and so on.

The Commission notified the Belgian government that it considered that policy of recruitment to be incompatible with other Community rules and the Belgian Government replied that:-

> The nationality requirement in question meets the requirements of the second paragraph of Article 6 of the Belgian Constitution by which "Belgians ... only shall be admitted to civil and military posts save in special cases for which exception is made by law",
>
> The interpretation placed by the Commission on Article 48 (4) of the Treaty makes it necessary to distinguish within each administrative entity between posts which involve the exercise of official authority and those which do not and thus raises a problem the solution of which for all the Member States is to be found at the Community level.
>
> The Commission did not accept that argument and pointed out that:
>
> The Kingdom of Belgium could not rely on its Constitution to justify those practices in employment matters.
>
> The exception clause contained in Article 48 (4) of the Treaty covers only posts whose performance involves actual participation in official authority (internal and external security of the State).
>
> That exception does not apply to posts of the nature of those covered by offers of employment in question.

The situation should be judged on the basis of the aim pursued by Article 48 (4).

The effect of extending the exception contained in Article 48 (4) to posts which, while coming under the State or other bodies governed by public law, do not however involve any association with tasks belonging to the public service properly so called, would be to put a considerable number of jobs outside the application of the principles of the Treaty and to create inequalities between Member States according to the disparities which characterise the organization of the State and that of certain sectors of economic life.

It is necessary, said the Court, to examine whether the posts covered by the action may be associated with the idea of public service within the meaning of Article 48 (4) which must comprise uniform interpretation and application throughout the Community.

The Belgian Government contends that the constitutional texts of certain Member States refer expressly to the problem of employment in the public service, the principle being the exclusion of non-nationals. That is the approach adopted by the Belgian constitution. The Belgian Government does not deny that Community rules override national rules but believes that the approximation of the constitutional law of the Member States should be used as an aid to interpret Article 48 (4).

The French Government propounded an argument of similar tenor.

But the demarcation of the concept of "public service" within the meaning of Article 48 (4) may not be left to the total discretion of the Member States.

According to established case-law of the Court, reference to provisions of domestic legal systems to restrict the scope of the provisions of Community law, which has the effect of damaging the unity and impairing the efficacity of that law, cannot be accepted.

While it is true that Article 48 (4) takes account of the legitimate interests which the Member States have in reserving to their own nationals a range of posts connected with the exercise of official authority and with the protection of general interests, at the same time an attempt must be made to avoid the beneficial effect and the scope of the provisions of the Treaty on freedom of movement for workers and equality of treatment for nationals of all Member States being restricted by interpretations of the concept of public service which are based on domestic law alone and which obstruct the application of Community rules . The Belgian and French Governments argue that the exclusion of foreign workers becomes necessary if recruitment takes place on the basis of service regulations and the persons occupying public service posts are fitted to a career which, in the higher grades, comprises functions and responsibilities specific to official authority.

In addition to that argument the German and United Kingdom Governments point out the possibility of transfers in the service and the consequences of such transfers.

Those objections do not take account of the fact that it is still possible for Member States to reserve to their nationals by appropriate regulations entry to posts involving the exercise of official authority and such responsibilities within the same career, department or section.

The Court is of the general opinion that, so far as the posts in dispute are concerned, the pieces of information contained in the file on the case and provided by the parties during the written and oral procedure do not enable a sufficiently accurate appraisal to be made of the actual nature of the functions they involve in order to identify, in the light of the foregoing considerations, which of those posts do not come within the concept of public service within the meaning of Article 48 (4) of the Treaty.

The Court ordered the Commission and the Kingdom of Belgium to re-examine the issue between them in the light of the legal considerations contained in its judgment and to report to the Court on the result of that examination before 1 July 1981. The Court will give a final ruling after that date.

ANALYTICAL TABLE

GENERAL INFORMATION ON THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

A. TEXTS OF JUDGMENTS AND OPINIONS AND GENERAL INFORMATION

1. Judgments of the Court and opinions of Advocates General

Orders for offset copies, provided some are still available, may be made to the International Services Branch of the Court of Justice of the European Communities, Boîte Postale 1406, Luxembourg, on payment of a fixed charge of Bfr 100 for each document. Copies may no longer be available once the issue of the European Court Reports containing the required judgment or opinion of an Advocate General has been published.

Anyone showing he is already a subscriber to the Reports of Cases Before the Court may pay a subscription to receive offset copies in one or more of the Community languages.

The annual subscription will be the same as that for European Court Reports, namely Bfr 2 250 for each language.

Anyone who wishes to have a complete set of the Court's cases is invited to become a regular subscriber to the Reports of Cases Before the Court (see below).

2. Calendar of the sittings of the Court

The calendar of public sittings is drawn up each week. It may be altered and is therefore for information only.

This calendar may be obtained free of charge on request from the Court Registry.

B. OFFICIAL PUBLICATIONS

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 1954 to 1980 are published in Dutch, English, French, German and Italian.

The Danish edition of the volumes for 1954 to 1972 comprises a selection of judgments, opinions and summaries from the most important cases.

All judgments, opinions and summaries for the period 1973 to 1980 are published in their entirety in Danish.

The Reports of Cases Before the Court are on sale at the following addresses:

BELGIUM	Ets. Emile Bruylant, 67 Rue de la Régence, 1000 Bruxelles
DENMARK	J.H. Schultz - Boghandel, Møntergade 19, 1116 København K
DERAL REPUBLIC OF GERMANY	Carl Heymann's Verlag, 18-32 Gereonstrasse, 5000 Köln 1
FRANCE	Editions A. Pedone, 13 Rue Soufflot, 75005 Paris
IRELAND	Stationery Office, Beggar's Bush, Dublin 4
ITALY	CEDAM - Casa Editrice Dott. A. Milani, 5 Via Jappelli, 35100 Padova (M 64194)
LUXEMBOURG	Office for Official Publications of the European Communities, 2985 Luxembourg
NETHERLANDS	N.V. Martinus Nijhoff, 9 Lange Voorhout, 's-Gravenhage
UNITED KINGDOM	Hammick, Sweet & Maxwell, 16 Newman Lane, Alton, Hants, GU 34 2PJ
OTHER COUNTRIES	Office for Official Publications of the European Communities, 2985 Luxembourg

2. Selected Instruments Relating to the Organization, Jurisdiction and Procedure of the Court

Orders, indicating the language required, should be addressed to the Office for Official Publications of the European Communities, Boite Postale 1003, Luxembourg.

GENERAL LEGAL INFORMATION AND DOCUMENTATION

I. Publications by the Information Office of the Court of Justice of the European Communities

Applications to subscribe to the first three publications listed below may be sent to the Information Office, specifying the language required. They are supplied free of charge (Boîte Postale 1406, Luxembourg, Grand Duchy of Luxembourg).

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

Weekly information sheet on the legal proceedings of the Court containing a short summary of judgments delivered and a brief description of the opinions, the oral procedure and the cases brought during the previous week.

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

Quarterly bulletin containing the summaries and a brief résumé of the judgments delivered by the Court of Justice of the European Communities.

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

Annual publication giving a synopsis of the work of the Court of Justice of the European Communities in the area of case-law as well as of other activities (study courses for judges, visits, study groups, etc.). This publication contains much statistical information.

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

This brochure provides information on the organization, jurisdiction and composition of the Court of Justice of the European Communities.

The above four publications are published in each official language of the Communities. The general information brochure is also available in Irish and Spanish.

II. Publications by the Documentation Branch of the Court of Justice

1. Synopsis of Case-Law on the EEC Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (the "Brussels Convention"). This publication, three parts of which have now appeared, is published by the Documentation Branch of the Court. It contains summaries of decisions by national courts on the Brussels Convention and summaries of judgments delivered by the Court of Justice in interpretation of the Convention. In future the Synopsis will appear in a new form. In fact it will form the D Series of the future Source Index of Community case-law to be published by the Court.

Orders for the first three issues of the Synopsis may, however, be addressed to the Documentation Branch of the Court of Justice, Boite Postale 1406, Luxembourg.

2. Répértoire de la Jurisprudence Européenne - Europäische Rechtsprechung (published by H.J. Eversen and H. Sperl), has been discontinued.

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 versions are on sale at: Carl Heymann's Verlag, 18-32 Gereonstrasse, D-5000 Köln 1 (Federal Republic of Germany).

Compendium of Case-law relating to the European Communities (published by H.J. Eversen, H. Sperl and J. Usher), has been discontinued.

In addition to the complete collection in French and German (1954 to 1976) an English version is now available for 1973 to 1976. The volumes in the English series are on sale at: Elsevier - North Holland - Excerpta Medica, P.O. Box 211, Amsterdam (Netherlands).

3. Bibliographical Bulletin of Community case-law

This Bulletin is the continuation of the Bibliography of European Case-law of which Supplement No. 6 appeared in 1976. The layout of the Bulletin is the same as that of the Bibliography. Footnotes therefore refer to the Bibliography.

The period of collection and compilation covered by the Bulletins which have already appeared is from February 1976 to June 1980 (multilingual).

	BFR	DKR	DM	FF	IRL	LIT	HFL	UKL
No. 1977/1	100.-	16.-	8.-	10.-		1 250	7.25	1.10
No. 1978/1	100.-	17.25	6.50	14.-		2 650	7.-	1.70
No. 1978/2	100.-	18.-	6.25	14.60		2 800	6.90	1.60
No. 1979/1	100.-	19.50	6.25	14.50	1.70	3 000	6.85	1.50
No. 79/80	100.-	20.-	6.10	14.50	1.70	3 000	6 80	1.30

D. 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 Council, 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 Council, the Commission and the Member State or through lawyers who are entitled to practise before a court of a Member State, or through university teachers who have a right of audience under Article 36 of the Rules of Procedure.

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 the 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.

E. ORGANIZATION OF PUBLIC SITTINGS OF THE COURT

As a general rule sessions of the Court are held on Tuesdays, Wednesdays and Thursdays except during the Court's vacations - that is, from 22 December to 8 January, the week preceding and two weeks following Easter, and from 15 July to 15 September. There are three separate weeks during which the Court also does not sit : the week commencing on Carnival Monday, the week following Whitsun and the first week in November.

The full list of public holidays in Luxembourg set out below should also be noted. Visitors may attend public hearings of the Court or of the Chambers so far as the seating capacity will permit. No visitor may be present at cases heard in camera or during proceedings for the adoption of interim measures. Documentation will be handed out half an hour before the public sitting to visiting groups who have notified the Court of their intention to attend the sitting at least one month in advance.

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
Easter Monday	variable
Ascension Day	variable
Whit Monday	variable
May Day	1 May
Robert Schuman Memorial Day	9 May
Luxembourg National Day	23 June
Assumption	15 August
"Schobermesse" Monday	Last Monday of August or first Monday of September
All Saints' 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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