Information on the Court of Justice of the European Communities

1981 – IV

I N F O R M A T I O N

on

THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

IV

1981

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COMPOSITION OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

for the judicial year 1981

(from 1 November 1981 to 31 December 1981)

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Order of precedence

*

J. MERTENS DE WILMARS, President of the Court
F. CAPOTORTI, First Advocate General
G. BOSCO, President of the First Chamber
A. TOUFFAIT, President of the Third Chamber
O. DUE, President of the Second Chamber
P. PESCATORE, Judge
Lord MACKENZIE STUART, Judge
G. REISCHL, Advocate General
A. O'KEEFFE, Judge
T. KOOPMANS, Judge
U. EVERLING, Judge
A. CHLOROS, Judge
Sir Gordon SLYNN, Advocate General
S. ROZES, Advocate General
P. VERLOREN VAN THEMAAT, Advocate General
F. GREVISSE, Judge
A. VAN HOUTTE, Registrar

First Chamber	Second Chamber	Third Chamber
G. BOSCO President	O. DUE, President	A. TOUFFAIT, President
A. O'KEEFFE, Judge	A. CHLOROS, Judge	Lord MACKENZIE STUART, Judge
T. KOOPMANS, Judge	F. GREVISSE, Judge	U. EVERLING, Judge
	P. PESCATORE,** Judge	

** Judge Pescatore is attached to the Second Chamber in respect of cases in which he is required to sit.

J U D G M E N T S

of the

C O U R T O F J U S T I C E

of the

E U R O P E A N C O M M U N I T I E S

Judgment of 10 November 1981

Case 28/81

Commission of the European Communities v Italian Republic

(Opinion delivered by Advocate General Sir Gordon Slynn on 8 October 1981)

1. Member States - Obligations - Implementation of directives - Absence - Justification - Not possible.

   (EEC Treaty, Art. 169)

2. Applications for a declaration that a Member State has failed to fulfil its obligations - Powers of the Court - Limits - Extension of the period laid down in the reasoned opinion - Powers of the Commission.

   (EEC Treaty, Art. 169)

1. 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 resulting from Community directives.

2. The powers conferred on the Court in relation to applications under Article 169 of the Treaty do not include the power to substitute a different period for that laid down by the Commission pursuant to Article 169 of its reasoned opinion, although the legality of that opinion is subject to review by the Court. Subject to the same reservation, it is for the Commission to decide whether such a request from a Member State is to be granted.

NOTE

The Court ruled that by failing to adopt within the prescribed period the provisions needed to comply with Council Directives Nos. 74/561/EEC (goods) and 74/562/EEC (passengers), the Italian Republic has failed to fulfil its obligations under the EEC Treaty.

Judgment of 10 November 1981

Case 29/81

Commission of the European Communities v Italian Republic

(Opinion delivered by Advocate General Sir Gordon Slynn on 8 October 1981)

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NOTE

See Case 28/81.

Judgment of 11 November 1981

Case 203/80

Criminal proceedings against Guerrino Casati

(Opinion delivered by Mr Advocate General Capotorti on 7 July 1981)

1. Free movement of capital - Implementation - Criteria - Assessment of the requirements of the Common Market - Powers of the Council

   (EEC Treaty, Arts. 67 (1) and 69)

2. Free movement of capital - Provisions of the Treaty - Article 67 (1) - Direct effect - Absence - Restrictions on the exportation of bank notes - Whether permissible

   (EEC Treaty, Arts. 67 (1) and 69)

3. Free movement of capital - Movements of capital which have not been liberalized - Recourse to the safeguard clause in Article 73 of the Treaty - None

   (EEC Treaty, Art. 73)

4. Free movement of capital - Provisions of the Treaty - Article 71, first paragraph - Direct effect - Absence

   (EEC Treaty, Art.71, first paragraph)

5. Balance of payments - Liberalization of payments - Transfers relating to invisible transactions - Re-exportation of bank notes - Exclusion

   (EEC Treaty, Art. 106 (3))

6. Balance of payments - Liberalization of payments - Payments relating to commercial transactions - Authorization to transfer bank notes - Obligation on the part of the Member States - Absence

   (EEC Treaty, Art. 106 (1) and (2))

7. Free movement of capital - Movements of capital and transfers of currency which have not been liberalized - Control measures adopted by Member States - Criminal penalties - Whether permissible

   (EEC Treaty, Arts. 67 and 106)

1. Article 67 (1) of the EEC Treaty differs from the provisions on the free movement of goods, persons and services in the sense that there is an obligation to liberalize capital movements only "to the extent necessary to ensure the proper functioning of the Common Market". The scope of that restriction, which remained in force after the expiry of the transitional period, varies in time and depends on an assessment of the requirements of the Common Market and on an appraisal of both the advantages and risks which liberalization might entail for the latter, having regard to the stage it has reached and, in particular, to the level of integration attained in matters in respect of which capital movements are particularly significant.

   Such an assessment is, first and foremost, a matter for the Council, in accordance with the procedure provided for by Article 69.

2. Article 67 (1) of the Treaty must be interpreted as meaning that restrictions on the exportation of bank notes may not be regarded as abolished as from the expiry of the transitional period, irrespective of the provisions of Article 69.

3. Failure to have recourse to the safeguard procedures provided for by Article 73 in regard to restrictions imposed on capital movements which the Member State concerned is not obliged to liberalize under the rules of Community law does not constitute an infringement of the EEC Treaty.

4. The first paragraph of Article 71 of the Treaty does not impose on the Member States an unconditional obligation capable of being relied upon by individuals.

5. Article 106 (3) of the Treaty is inapplicable to the re-exportation of a sum of money previously imported with a view to making purchases of a commercial nature if such purchases have not in fact been effected.

6. The first two paragraphs of Article 106 of the Treaty are designed to ensure the free movement of goods in practice by authorizing all the transfers of currency necessary to achieve that aim. However, those provisions do not require the Member States to authorize the importation and exportation of bank notes for the performance of commercial transactions, if such transfers are not necessary for the free movement of goods. In connexion with commercial transactions, that method of transfer which, moreover, is not in conformity with standard practice, cannot be regarded as necessary to ensure such free movement.

7. With regard to movements of capital and transfers of currency which the Member States are not obliged to liberalize under the rules of Community law, those rules do not restrict the Member States' power to adopt control measures and to enforce compliance therewith by means of criminal penalties.

* * * *

NOTE

An Italian national residing in the Federal Republic of Germany is charged with attempting to export from Italy, without the authorization provided for by Italian exchange control legislation, the sum of DM 24 000 which was found in his possession at the frontier between Italy and Austria.

The defendant in the main action contended that he had previously imported that sum of money into Italy, without declaring it, with a view to purchasing equipment which he needed for his business in Germany, and was obliged to re-export the currency in question because the factory where he intended to buy the equipment was closed for the holidays.

Italian law provides, first, that foreign bank notes may be freely imported and, secondly, that the unauthorized exportation of currency of a value exceeding Lit 500 000 is penalized by a term of imprisonment of one to six years and by a fine of two to four times the value of the currency exported.

The court hearing the action referred to the Court of Justice for a preliminary ruling a series of questions which may be subdivided into two groups: one on the interpretation of the provisions of the EEC Treaty on movements of capital and monetary transfers; the other on the limits, if any, set by Community law to the provisions of criminal law and procedure adopted by the Member States in matters connected with Community law.

Interpretation of the provisions on capital movements and monetary transfers

Articles 3 and 67 of the EEC Treaty show that the free movement of capital constitutes, alongside that of persons and services, one of the fundamental freedoms of the Community.

However, capital movements also have close links with the economic and monetary policy of the Member States. At present, it cannot be ruled out that complete freedom of movement in relation to capital might undermine the economic policy of one of the Member States or create an imbalance in its balance of payments, thereby impairing the proper functioning of the Common Market. The extent of that restriction varies in time and depends on an assessment of the requirements of the Common Market.

Such an assessment is a matter, first and foremost, for the Council which adopts numerous directives. All the movements of capital are subdivided into four lists (A B C D) set out in an annex to the directives. The capital movements contained in lists A and B have been liberalized unconditionally.

In the case of list C, the directives authorize the Member States to maintain or reimpose exchange restrictions if the freedom of movement is such as to hinder the functioning of the Common Market.

In the case of list D, the directives do not require the Member States to adopt any liberalization measures. List D covers, *inter alia*, the physical importation and exportation of financial assets, including bank notes. The Council has so far taken the view that liberalization of the exportation of bank notes, the operation with which the defendant in the main action is charged, is unnecessary and there is no reason to suppose that, by adopting that position, the Council has overstepped the limits of its discretionary power.

The Court of Justice is asked to determine whether a principle of Community law or a provision of the EEC Treaty guarantees the right of a non-resident to re-export a previously imported sum of money which has not been used.

According to Article 71 of the EEC Treaty, the Member States must endeavour to avoid introducing within the Community any new exchange restrictions on the movement of capital and not to make existing rules more restrictive.

It is clear from the use of the term "shall endeavour" that Article 71 does not impose on the Member States unconditional legislation capable of being relied upon by individuals. The national court draws attention to Article 106 and to the "stand-still" obligation contained in the third paragraph thereof. According to that provision, the Member States undertake not to introduce between themselves any new restrictions on transfers connected with the so-called "invisible" transactions listed in Annex 3 to the Treaty. It must be borne in mind that the defendant in the main action stated that he intended to re-export a sum of money previously imported with a view to making purchases of a commercial nature and not to re-export an amount actually listed in Annex 3.

In reply to all the questions put to it, the Court ruled as follows:

"(1) Article 67 (1) must be interpreted as meaning that restrictions on the exportation of bank notes may not be regarded as abolished as from the end of the transitional period, irrespective of the provisions of Article 69.

(2) Failure to have recourse to the procedures provided for by Article 73 in regard to restrictions on capital movements which the Member State concerned is not obliged to liberalize under the rules of Community law does not constitute an infringement of the EEC Treaty.

(3) The first paragraph of Article 71 does not impose on the Member States an unconditional obligation capable of being relied upon by individuals.

(4) Article 106 (3) is inapplicable to the re-exportation of a sum of money previously imported with a view to making purchases of a commercial nature, where such purchases have not in fact been effected.

(5) The right of non-residents to re-export bank notes which were previously imported with a view to carrying out commercial transactions but have not been used is not guaranteed by any principle of Community law or by any of the provisions of Community law relating to capital movements or by the rules of Article 106 concerning payments connected with the movement of goods."

Possible limits set by Community law to national rules of criminal law and procedure

The national court wished to know whether penalties of the kind provided for by Italian exchange control legislation were incompatible with the principles of proportionality and non-discrimination which form part of Community law.

The Court ruled that:

"With regard to movements of capital and monetary transfers which the Member States are not obliged to liberalize under the rules of Community law, those rules do not restrict the Member States' power to adopt control measures and to enforce compliance therewith by means of criminal penalties."

Judgment of 11 November 1981

Case 60/81

International Business Machines Corporation v
Commission of the European Communities

(Opinion delivered by Advocate General Sir Gordon Slynn on 30 September 1981)

1. Application for a declaration that a measure is void - Measures open to challenge - Concept - Measures producing binding legal effects - Preparatory measures - Exclusion

   (EEC Treaty, Arts. 173 and 189)

2. Application for a declaration that a measure is void - Measures open to challenge - Concept - Initiation of a procedure for a declaration that the rules on competition have been infringed - Statement of objections - Exclusion

   (EEC Treaty, Art. 173; Regulation No. 17 of the Council, Art. 3; Regulation No. 99/63 of the Commission, Art. 2)

3. Competition - Administrative procedure - Statement of objections - Effects - Difference as against the communication referred to in Article 15 (6) of Regulation No. 17

   (Regulation No. 17 of the Council, Art. 15 (6); Regulation No. 99/63 of the Commission, Art. 2)

1. In order to ascertain whether measures are acts within the meaning of Article 173 it is necessary to look to their substance, as the form in which they are cast is, in principle, immaterial in this respect.

   Measures producing binding legal effects of such a kind as to affect the applicant's interests by clearly altering his legal position constitute acts or decisions open to challenge by an application for a declaration that they are void.

   Measures of a purely preparatory character may not themselves be the subject of an application for a declaration that they are void.

2. Neither the initiation of a procedure for a declaration that the Community rules on competition have been infringed nor a statement of objections may be considered, on the basis of their nature and the legal effects they produce, as being decisions within the meaning of Article 173 of the EEC Treaty which may be challenged in an action for a declaration that they are void. In the context of the administrative procedure as laid down by Regulations No. 17 and No. 99/63, they are procedural measures adopted preparatory to the decision which represents their culmination.

3. A statement of objections does not compel the undertaking concerned to alter or reconsider its marketing practices and it does not have the effect of depriving it of the protection hitherto available to it against the application of a fine, as is the case when the Commission informs an undertaking, pursuant to Article 15 (6) of regulation No. 17, of the results of the preliminary examination of an agreement which has been notified by the undertaking. Whilst a statement of objections may have the effect of showing the undertaking in question that it is incurring a real risk of being fined by the Commission, that is merely a consequence of fact, and not a legal consequence which the statement of objections is intended to produce.

* * * *

NOTE

By application lodged at the Court Registry on 18 March 1981, IBM, whose headquarters are in Armonk, New York, United States of America, brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that the measure or measures of the Commission of which IBM was notified in a letter dated 19 December 1980, initiating a procedure against IBM pursuant to Articles 85 and 86 of the EEC Treaty (competition) and notifying IBM of a statement of objections, or the statement of objections itself, are void. The letter, signed by the Commission's Director General for Competition, was sent to IBM after a lengthy inquiry by the Commission in connexion with some of the marketing practices of IBM and its subsidiaries in order to determine whether or not such practices constitute an abuse of a dominant position on the market in question within the meaning of Article 86 of the EEC Treaty.

The letter informed IBM that the Commission had initiated against the company a procedure under Article 3 of Regulation No. 17 of the Council and that it was about to take a decision concerning infringements of Article 86. That letter contained a statement of objections to which the company was requested to reply in writing within a specified period and stated that it would be given an opportunity to explain its point of view in the course of a hearing. IBM took the view that the measures notified to it in the letter of 19 December 1980 were vitiated by a number of defects and requested the Commission to terminate the procedure. Following the Commission's refusal to do so, IBM brought the present action to have the measures in question declared void.

IBM's action is based on the submission that the measures which it challenges do not meet the minimum legal criteria which have been laid down for such measures, and have made it impossible for IBM to raise a defence. IBM considers that the measures impugned amount to an unlawful exercise of its powers by the Commission inasmuch as they have not been the subject of a collegiate decision adopted by all the members of the Commission together. Finally, IBM maintains that the measures in question offend against the international legal principles of comity between nations and non-interference in internal affairs, because the conduct of IBM which is the subject of complaint occurred in the main outside the Community, in particular in the United States of America where it is also the subject of legal proceedings.

The Commission, supported by Memorex S.A., intervening, lodged an objection of inadmissibility under Article 91 (1) of the Rules of Procedure.

The Court decided to adjudicate on the objection of inadmissibility without going into the substance of the case.

In support of the objection the Commission and the intervener Memorex submit that <u>the measures in question are procedural steps</u> paving the way for the final decision and do not constitute decisions capable of being challenged under Article 173 of the EEC Treaty.

IBM maintains that the initiation of a procedure and notification of the objections amount to decisions within the meaning of Article 173 of the EEC Treaty by reason of their legal nature and their consequences.

According to Article 173 of the EEC Treaty proceedings may be brought for a declaration that acts of the Council and the Commission other than recommendations or opinions are void.

That remedy is available in order to ensure that in the interpretation and application of the Treaty the law is observed, and it would be inconsistent with that objective to interpret restrictively the conditions under which the action is admissible. In order to ascertain whether the measures in question are acts within the meaning of Article 173 it is necessary to look to their substance.

According to the consistent case-law of the Court, any measure the legal effects of which are binding on, and capable of affecting the interests of the applicant, is an act or decision which may be the subject of an action for a declaration that it is void. However, the form of such acts is immaterial as regards the question whether they are open to challenge under that article.

In the case of acts or decisions adopted by a procedure involving several stages, in particular where they are the culmination of an internal procedure, it is clear from the case-law that an act is open to review only if it is a measure definitively laying down the position of the Commission or the Council on the conclusion of that procedure, and not a provisional measure intended to pave the way for the final decision.

The effects and the legal character of the initiation of an administrative procedure pursuant to the provisions of Regulation No. 17 and of the notification of objections must be determined in the light of the purpose of such acts in the context of the Commission's administrative procedure in matters of competition.

The procedure was designed to enable the undertakings concerned to communicate their views and to provide the Commission with the fullest information possible before it adopted a decision affecting the interests of an undertaking. Its purpose is to create procedural guarantees for the benefit of the latter. For that reason, and in order to guarantee observance of the principle of the right to be heard, it is necessary to ensure that the undertaking concerned has the right to submit its observations on conclusion of the inquiry on all the Commission's objections.

In support of its submission that the application is admissible IBM relies on a number of effects arising from the initiation of a procedure and from communication of the statement of objections.

In its reply, the Court states that some of those effects amount to no more than the ordinary effects of any procedural step and, apart from the procedural aspect, do not affect the legal position of the undertaking concerned.

A statement of objections does not compel the undertaking concerned to alter or reconsider marketing practices and it does not have the effect of depriving it of the protection hitherto available to it against the application of a fine.

An application for a declaration that the initiation of a procedure and a statement of objections are void might make it necessary for the Court to arrive at a decision on questions on which the Commission has not yet had an opportunity to state its position and would as a result anticipate the arguments on the substance of the case, confusing different procedural stages both administrative and judicial. It would thus be incompatible with the system of the division of powers between the Commission and the Court and of the remedies laid down by the Treaty.

It follows that neither the initiation of a procedure nor a statement of objections may be considered, on the basis of their nature and the legal effects they produce, as being decisions within the meaning of Article 173 of the EEC Treaty which may be challenged in an action for a declaration that they are void. They are merely procedural measures paving the way for the decision which represents their culmination.

The Court:

1. Dismissed the application as inadmissible;
2. Ordered the applicant to pay the costs including the costs of the intervener, Memorex S.A., and the costs resulting from IBM's applications for the adoption of interim measures and the production of information and documents concerning the Commission's initiation of the procedure.

Judgment of 12 November 1981

Joined Cases 212 to 217/80

Amministrazione delle Finanze dello Stato v
Meridionale Industria Salumi S.r.l. and Others
Ditta Italo Orlandi & Figlio and Ditta Vincenzo Divella v
Amministrazione delle Finanze dello Stato

(Opinion delivered by Mrs Advocate General Rozès on 8 October 1981)

1. Measures adopted by institutions - Temporal applicability - Procedural rules - Substantive rules - Distinction - Retroactivity of a substantive rule - Conditions.

2. European Communities - Own resources - Post-clearance recovery of import duties or export duties - Regulation No. 1697/79 - Retroactivity - None

   (Council Regulation No. 1697/79)

1. Although procedural rules are generally held to apply to all proceedings pending at the time when they enter into force, this is not the case with substantive rules. On the contrary, the latter are usually interpreted as applying to situations existing before their entry into force only in so far as it clearly follows from their terms, objectives or general scheme that such an effect must be given to them. This interpretation ensures respect for the principles of legal certainty and the protection of legitimate expectation, by virtue of which the effect of Community legislation must be clear and predictable for those who are subject to it.

2. Regulation No. 1697/79 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties does not apply to payment of import or export duties made before the date of its entry into force, namely 1 July 1980.

NOTE

The Corte Suprema di Cassazione /Supreme Court of Cassation/ referred to the Court for a preliminary ruling a number of questions on the interpretation of Council Regulation (EEC) No. 1697/79 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties.

The questions were raised in the course of proceedings brought by a number of traders against the Amministrazione delle Finanze dello Stato (hereinafter referred to as the "Amministrazione"). The traders had challenged amended notices issued by the Amministrazione prior to the date on which the above-mentioned regulation entered into force, that is to say 1 July 1980. The notices had required them to pay a sum equal to the difference between the agricultural levy calculated according to the rate applicable on the day of acceptance of the import declaration and that corresponding to the most favourable rate in force between the import declaration and the marketing of the goods. The Amministrazione claimed that the most favourable rate had been applied in error.

The Court had held by its judgment of 27 March 1980 in Joined Cases 66, 127 and 128/79 that in so far as no provisions of Community law were relevant, it was for the national legal system of each Member State to lay down the detailed rules and conditions for the collection of Community revenues in general but that such procedures and conditions might not make the system for collecting Community charges and dues less effective than that for collecting national charges and dues of the same kind.

Since that judgment was delivered before Regulation No. 1697/79 entered into force, the specific purpose of these cases was to discover whether the Community legislation which had meanwhile entered into force should be applied in this case.

In its first question, the national court asked in substance whether Regulation No. 1697/79 applied to payments of import or export duties made before the date on which the regulation entered into force. The object of Regulation No. 1697/79 is to determine the conditions under which the post-clearance recovery is undertaken of import or export duties on goods entered for a customs procedure involving the obligation to pay such duties for which payment has not been required of the person liable for payment.

Since the regulation does not contain any transitional provision, in order to determine its temporal effect it is necessary to have recourse to generally accepted principles of interpretation and to have regard to the wording, purpose and general scheme of its provisions.

Whilst it may be generally considered that procedural rules apply to all proceedings pending at the time when those rules enter into force, that is not so in the case of substantive rules. On the contrary, the latter are usually interpreted as applying to situations existing before their entry into force only in so far as it clearly follows from their wording, purpose or general scheme that such effect must be attributed to them.

That interpretation ensures respect for the principles of legal certainty and the protection of legitimate expectation which require that Community law should be clear and predictable for those subject to it. Consequently, the provisions of a regulation may not be regarded as having retroactive effect unless sufficiently clear indications lead to such a conclusion.

It is clear from those considerations that the regulation applies only to import or export transactions for which the payment of duties was made on or after 1 July 1980.

The other questions, which were put only in the event of an affirmative answer to the first question, do not need to be answered.

The Court ruled as follows:

"Council Regulation No. 1697/79 of 24 July 1979 does not apply to payments of import duties or export duties made before 1 July 1980".

Judgment of 19 November 1981

Analog Devices GmbH v Hauptzollamt München

(Opinion delivered by Mr Advocate General Capotorti on 8 October 1981)

Common Customs Tariff - Tariff headings - "Electronic micro-circuits" within the meaning of heading 85.21 - Note 5(B) to Chapter 85 - Interpretation of the concepts referred to therein: "miniaturized discrete components", "moulded modules" and "similar types", "hybrid integrated circuits".

1. The expression "discrete components" within the meaning of Note 5(B)(a) to Chapter 85 of the Common Customs Tariff must be interpreted as denoting physical units consisting of a single electric circuit element and having a single electrical function such as, for example, diodes, transistors or resistors.

2. The condition of "miniaturization" within the meaning of Note 5(B) must be understood as meaning that, regard being had to the normal technical possibilities in existence in the electronics industry at the time of importation, the appearance of the modules reveals the manufacturer's effort to save space by utilizing components of small dimensions and by grouping them in a certain density.

3. The concept of "moulded modules" and "similar types" within the meaning of Note 5(B)(a) must be interpreted as referring to processes resulting in the manufacture of modules constituting a unit the components of which cannot, regard being had to the normal technical possibilities in existence in the electronics industry at the time of importation, be separated, in particular for the purpose of repair, except by means the cost of which is disproportionate to the value of the module. The concept of "moulded module" relates to any process which consists in incorporating the elements of the module in a cast in such a way as to create an indivisible physical entity, in the sense described above, in the form of a block.

4. Note 5(B)(c) must be interpreted as meaning that hybrid integrated circuits include modules comprising all kinds of elements obtained by semi-conductor technology, as well as modules consisting, apart from their components manufactured by thin- or thick-film technology, exclusively of discrete components in the sense described above. The various components of a hybrid integrated circuit must be combined in such a way that, regard being had to the normal technical possibilities in existence in the electonics industry at the time of importation, they cannot be separated, in particular for the purpose of repair, except by means the cost of which is disproportionate to the value of the module.

* * * *

NOTE

The Finanzgericht München /Finance Court, Munich/ referred to the Court for a preliminary ruling a question on the interpretation of Note 5 (B) to Chapter 85 of the Common Customs Tariff in the version adopted by Regulation (EEC) No. 1/72 of the Council of 20 December 1971 amending Regulation (EEC) No. 950/68 on the Common Customs Tariff.

That question was raised in connexion with a dispute between Analog Devices GmbH and the Federal customs authorities and concerns the classification for tariff purposes of electronic circuits (modules) designed for incorporation in automatic data-processing machines and other electrical equipment. The plaintiff in the main action imported modules into the Federal Republic of Germany during the years 1971 to 1973 and in 1977. It considers that those modules are to be classified, in accordance with the use for which they are intended, under the tariff heading corresponding to the relevant machine or equipment.

According to the customs authorities, however, they are to be classified, in the case of the modules imported during the year 1971, as "mounted transistors and similar semi-conductor devices" under heading 85.21 C of the Common Customs Tariff in the version contained in Regulation (EEC) No. 1/71 of the Council of 17 December 1970 amending Regulation (EEC) No. 950/68 on the Common Customs Tariff and, in the case of the modules imported from 1 January 1972, as "electronic micro-circuits" under heading 85.21 D of the Common Customs Tariff in the version adopted by Regulation (EEC) No. 1/72 of the Council of 20 December 1971 replacing former heading 85.21 C.

The Finanzgericht München referred the following question to the Court for a preliminary ruling:

"How are the expressions:

1. 'Discrete miniaturized components' (subparagraphs (a) and (c));
2. 'Moulded module type', 'similar types' and 'which are combined' (subparagraph (a)); and
3. 'In which ... elements, so obtained by ... semi-conductor technology ... are combined, to all intents and purposes indivisibly' (subparagraph (c)),

in Note 5 (B) to Chapter 85 of the Common Customs Tariff to be interpreted?"

In reply the Court ruled as follows:

"1. The term 'discrete components' within the meaning of Note 5 (B) (a) to Chapter 85 of the Common Customs Tariff must be interpreted as denoting physical units constituting a single electrical circuit element and having a single electrical function, such as, for example, diodes, transistors or resistors.

2. The condition of 'miniaturization' within the meaning of Note 5 (B) must be understood as denoting that, having regard to the normal technical possibilities existing in the electronics industry at the time of importation, the appearance of the modules reveals the manufacturer's effort to save space by utilizing small components and by grouping them in a certain density.

3. The concepts of 'moulded modules' and 'similar types' within the meaning of Note 5 (B) (a) must be interpreted as referring to processes involving the manufacture of modules constituting a unit the components of which cannot, having regard to the normal technical possibilities existing in the electronics industry at the time of importation, be separated, in particular for the purpose of repairs, except by performing operations the cost of which is disproportionate to the value of the module. The concept of 'moulded module' relates to any process consisting in encasing the elements of the module in a block cast in such a way as to form an indivisible physical unit, in the sense described above, which is in the form of a module.

4. Note 5 (B) (c) must be interpreted as meaning that hybrid integrated circuits contain modules comprising all kinds of elements obtained by semi-conductor technology, including those consisting exclusively of discrete components, in the sense described above, apart from those components manufactured by thin or thick film technology. The various components of a hybrid integrated circuit must be combined in such a way that, having regard to the normal technical possibilities existing in the electronics industry at the time of importation, they cannot be separated, in particular for the purpose of repairs, except by performing operations the cost of which is disproportionate to the value of the module."

Judgment of 25 November 1981

Case 4/81

Hauptzollamt Flensburg v Hermann C. Andresen GmbH & Co. KG

(Opinion delivered by Mr Advocate General Reischl on 15 October 1981)

1. Tax provisions - Internal taxation - Provisions of the Treaty - Scope - Charge not of a fiscal nature - Exclusion - Limits

   (EEC Treaty, Art. 95)

2. Tax provisions - Internal taxation - Concept - Element of the sale price of a product subject to a monopoly and not in the nature of a fiscal charge - Exclusion

   (EEC Treaty, Art. 95)

1. The scope of Article 95 of the EEC Treaty may not be so extended as to allow any kind of compensation between a tax created so as to apply to imported products and a charge of a different nature imposed, for example, for economic purposes on the similar domestic product.

   There may be an exception to that principle only where the imported product and the similar domestic product are both equally subject to a government tax which is introduced and quantified by the public admiinistration.

2. The term "taxation", contained in Article 95 of the EEC Treaty, must be regarded as covering, in so far as the selling price for spirits fixed by a national monopoly is concerned, only that part of the price which the monopoly is required by law to remit to the State Treasury as a tax on spirits, determined as to amount, to the exclusion of all other elements or charges, economic or other, included in the calculation of the monopoly selling price.

NOTE

The Bundesfinanzhof /Federal Finance Court/ referred to the Court for a preliminary ruling two questions on the interpretation of Article 95 of the EEC Treaty in order to enable it to assess the compatibility with that provision of levying a tax charge referred to as the "Monopolausgleichspitze" /margin contained in the monopoly equalization duty/ on imported spirit pursuant to the tax legislation in force in the Federal Republic of Germany during the period prior to the adoption of the Law of 2 May 1976 amending the Law on the Spirits Monopoly.

It emerges from the order for reference that on 12 January 1976 the respondent in the main action declared for home use a consignment of blended spirit from Belgium consisting of 90% ethyl alcohol, comparable to German monopoly spirit, and 10% spirit derived from wine (the latter constituent not being at issue).

It must be recalled that at the time when the goods in question were imported, imported spirit was subject to a tax referred as the "Monopolausgleich" /monopoly equalization duty/, which was composed of two elements, namely the equivalent of the tax on spirits amounting to DM 1 500 per hectolitre and the Monopolausgleich amounting to DM 80 per hectolitre. The latter part of the tax charge was the equivalent, in the calculation of the selling price of monopoly spirit, of the Preisspitze /price margin/, which was obtained by deducting from the monopoly's selling price of DM 1 833 per hectolitre the amount of the tax on spirits and the "basic price" of the spirit fixed by the administration at DM 253 per hectolitre.

Andresen contests the compatibility with Article 95 of the Treaty of charging the Monopolausgleichspitze on imported spirit on the ground that that charge was the equivalent of an element contained in the monopoly's selling price, namely the Preisspitze, which in fact was not of a fiscal nature but represented the monopoly's administrative costs and other economic charges.

Andresen successfully brought an action before the Finanzgericht /Finance Court/ Hamburg, against whose judgment the Hauptzollamt appealed claiming in substance that the element of the monopoly's selling price corresponding to the Monopolausgleichspitze is proportional to officially determined amounts and, under the special conditions of a fiscal monopoly, is passed on to its customers as an integral part of the monopoly's selling price. According to the Hauptzollamt, there can therefore be no doubt that there are elements equivalent to the Monopolausgleichspitze contained in the monopoly's selling price which are indisputably of a fiscal nature, with the result that there is no discrimination against imported spirit.

The Bundesfinanzhof considers that there is some doubt as to whether the element referred to as the "Preisspitze", which is equivalent to the Monopolausgleichspitze charged on imported spirit, may be regarded, either wholly or partly, as a tax charge.

In order to resolve that problem, the Bundesfinanzhof referred to the Court the following two questions:

"Does the expression 'taxation imposed on a similar domestic product', within the meaning of the first paragraph of Article 95 of the Treaty establishing the European Economic Community cover a charge arising from the selling price fixed by the administration of the spirits monopoly for monopoly spirit used in the manufacture of such a product?

Is such a charge to be regarded as taxation within that meaning only in so far as that part of the selling price, which the monopoly administration is bound under statutory provisions to remit to the State Treasury as a tax on spirits is concerned, or does that part of the selling price which is retained by the monopoly administration to cover its costs also constitute such taxation?"

In reply the Court ruled as follows:

"The term 'taxation', contained in Article 95 of the EEC Treaty, must be regarded as covering, in so far as the selling price for spirits fixed by a national monopoly is concerned, only that part of the price which the monopoly is required by law to remit to the State Treasury as a tax on spirits, determined as to amount, to the exclusion of all other elements or charges, economic or other, included in the calculation of the monopoly's selling price".

Judgment of 3 December 1981

Case 1/81

Pfizer Inc. v Eurim-Pharm GmbH

(Opinion delivered by Mr Advocate General Capotorti on 8 October 1981)

Free movement of goods - Industrial and commercial property - Trade-mark right - Protection - Limits - Trade-mark lawfully affixed to a product in a Member State - Re-packaging by a third party and importation into another Member State - Opposition by the proprietor - Not permissible (EEC Treaty, Art. 36)

The essential function of a trade-mark is to guarantee the identity of the origin of the marked product to the consumer or final user by enabling him to distinguish without any possibility of confusion between that product and products which have another origin. This guarantee of origin means that the consumer or final user may be certain that a trade-marked product which is offered to him has not been subject at a previous stage in the marketing process to interference by a third person, without the authorization of the proprietor of the trade-mark, affecting the original condition of the product.

Therefore, the proprietor of a trade-mark right may not rely on that right in order to prevent an importer from marketing a pharmaceutical product manufactured in another Member State by the subsidiary of the proprietor and bearing the latter's trade-mark with his consent, where the importer, in re-packaging the product, confined himself to replacing the external wrapping without touching the internal packaging and made the trade-mark affixed by the manufacturer to the internal packaging visible through the new external wrapping, at the same time clearly indicating on the external wrapping that the product was manufactured by the subsidiary of the proprietor and re-packaged by the importer.

NOTE

The Landgericht /Regional Court/ Hamburg referred to the Court for a preliminary ruling two questions on the interpretation of Article 36 of the EEC Treaty. The questions arose in proceedings between two undertakings in the pharmaceuticals sector, one of which, Pfizer, the plaintiff in the main proceedings and the proprietor of a specified trade-mark in several Member States of the Communities, is seeking to prevent the other, Eurim-Pharm, the defendant in the main proceedings, which purchased a product bearing that mark which had been put into circulation in a Member State, from distributing it in another Member State after re-packaging it.

The product in question, an antibiotic called "Vibramycin", is marketed in the Federal Republic of Germany by the German subsidiary of Pfizer and is protected by a registered trade-mark of which Pfizer is the proprietor; the British subsidiary manufactures the same product and markets it in different packagings at prices considerably lower than those applied in the Federal Republic of Germany. Eurim-Pharm marketed in the latter country Vibramycin purchased in the United Kingdom in original packages, adding an outer wrapping on which it wrote "Wide-spectrum antibiotic - manufacturer: Pfizer Ltd., Sandwich, Kent, G.B. - Importer: Eurim-Pharm, 8229 Piding. Inside the box the importer placed a leaflet giving information about the medicinal product, in accordance with the German legal provisions.

Since the higher court considered that exercise of the trade-mark right was in the circumstances excluded by Articles 30 and 36 of the Treaty, the Landgericht submitted the following questions for a preliminary ruling:

"1. Is the proprietor of a trade-mark protected in his favour in Member State A entitled under Article 36 of the EEC Treaty, in reliance upon this right, to prevent an importer from buying from a subsidiary undertaking of the proprietor of the trade-mark medicinal preparations to which the proprietor's trade-mark has been lawfully affixed with his consent in Member State B of the Community and which have been placed on the market under that trade-mark, from re-packaging those products in accordance with the different practices of doctors in prescribing medicaments prevailing in Member State A and from placing those products on the market in Member State A in an outer packaging designed by the importer on the reverse side of which there is a transparent window through which is visible the label of the proprietor of the trade-mark which is on the reverse side of the blister strip directly surrounding the product?

2. Is it sufficient, for the purpose of establishing that there is an unlawful restriction of trade as envisaged by the second sentence of Article 36 of the EEC Treaty, for the use of the national trade-mark right in connexion with the marketing system adopted by the proprietor of the trade-mark objectively to lead to a partitioning of the markets between Member States, or is it necessary, on the contrary, for it to be shown that the proprietor of the trade-mark exercises his trade-mark right in connexion with the marketing system which he employs with the ultimate objective of bringing about an artificial partitioning of the markets?"

First question

It is appropriate to observe that, according to the case-law of the Court, although the Treaty does not affect the existence of rights recognized by the legislation of a Member State in the field of industrial and commercial property, the exercise of those rights may nevertheless, according to the circumstances, be subject to the prohibitions contained in the Treaty.

It should be borne in mind that the essential function of a trade-mark is to guarantee to the consumer or final user the identity of the origin of the trade-marked product, by enabling him to distinguish without any possibility of confusion between that product and others of a different origin.

The right conferred on the proprietor of the trade-mark to prevent any use of the trade-mark which is liable to detract from the guarantee of origin falls within the specific objective of the trade-mark right.

In this case however the trade-mark is not being used in a manner liable to detract from the guarantee of origin since, according to the findings of the national court and the terms of the question raised by it, a parallel importer has re-packaged a pharmaceutical product merely by adding an outside wrapping, leaving the internal packaging untouched and making the trade-mark affixed by the manufacturer to the internal packaging visible through the new outside wrapping. In those circumstances the re-packaging does not in fact entail any risk of exposing the product to interference or influences which might affect its original condition and the consumer is not therefore liable to be deceived as to the origin of the product.

The second question

In view of the answer given to the first question, the second question need not be considered.

The Court, in answer to the questions submitted, ruled that Article 36 of the EEC Treaty must be interpreted to the effect that the proprietor of a trade-mark right may not rely on that right to prevent an importer from marketing a pharmaceutical product manufactured in another Member State by the subsidiary of the proprietor and bearing the latter's trade-mark with his consent, where the importer, in re-packaging the product, merely replaced the external wrapping without touching the internal packaging and made the trade-mark affixed by the manufacturer to the internal packaging visible through the new external wrapping, at the same time clearly indicating on the external wrapping that the product was manufactured by the subsidiary of the proprietor and re-packaged by the importer.

Judgment of 8 December 1981

Case 181/80

Procureur Général at the Cour d'Appel de Pau and Others v José Arbelaiz-Emazabel

(Opinion delivered by Mr Advocate General Capotorti on 15 September 1981)

1. International agreements - Agreements entered into by Member States - 1964 London Fisheries Convention - Powers of the Community regarding conservation of the resources of the sea - Enforceability against other parties to the Convention

   (London Fisheries Convention of 9 March 1964, Arts. 5 and 10)

2. Fisheries - Conservation of the resources of the sea - Community provisions applicable to Spanish vessels - Licensing system - Discrimination against Spanish fishermen - None

   (Council Regulations No. 373/77 and No. 746/77)

3. Fisheries - Conservation of the resources of the sea - Community provisions applicable to Spanish vessels - Interim régime falling within the framework of relations between the Community and Spain - Supersedes prior international obligations between certain Member States and Spain - Effects

   (Council Regulations No. 373/77, No. 746/77 and No. 2160/77; Agreement between EEC and Spain of 15 April 1980)

1. It is clear from Articles 5 and 10 of the London Fisheries Convention of 9 March 1964 that the parties thereto were aware of the existence of mutual commitments with regard to fisheries assumed within the framework of the Community by its Member States and that they had approved the principle of conservation measures and recognized the need to adopt appropriate rules to enforce them in the zone referred to in the Convention. Consequently the parties must have known that as from a particular time the power to adopt conservation measures under Article 5 of the Convention would, as far as the Member States of the Community were concerned, be exercised by the Community institutions.

2. A licensing system of the kind introduced with regard to Spanish fishermen by Regulation No. 746/77 is merely a necessary means of ensuring the effectiveness of the system of catch quotas introduced by the Community by Regulation No. 373/77, it being clear that the catches taken by fishing vessels of non-member countries cannot be checked in the neighbouring coastal ports since the vessels normally return to their ports of origin to land their catches. Therefore the introduction of such a licensing system was not per se likely to accord less favourable treatment to Spanish fishermen than to the fishermen of Community countries, to whom the catch quotas also applied.

3. The interim régime which the Community set up under its own rules falls within the framework of the relations established between the Community and Spain in order to resolve the problems inherent in conservation measures and the extension of fishery limits and in order to ensure reciprocal access by fishermen to the waters subject to such measures. Those relations, which were confirmed by the Agreement on Fisheries concluded between the Community and Spain and were progressively developed with the concurrence of the Spanish authorities following the decisions which the Community and the Member States thereof adopted in 1976 in order to deal with the increasingly urgent need to conserve the living resources of the sea and to take into account the general evolution of international law in the field of sea fishing, replaced the prior international obligations existing between certain Member States, such as France, and Spain.

   Accordingly, Spanish fishermen may not rely on prior international agreements between France and Spain in order to prevent the application of the interim regulations adopted by the Community in the event of any incompatibility between the two categories of provisions.

* * * *

NOTE

A question on the validity and application to Spanish nationals of Council Regulation No. 2160/77 of 20 September 1977 laying down certain interim measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain was raised in criminal proceedings against the captain of a Spanish vessel charged with having on 3 November 1977 fished in French territorial waters off Bayonne between 6 and 12 miles from the coast without having a fishing licence as required by Article 3 of the Regulation No. 2160/77.

The French court released the accused, holding that he was authorized to fish in the 6 to 12 mile zone by the General Fishing Agreement made between France and Spain by an exchange of letters dated 20 March 1967 which was still in force at the relevant time.

According to that agreement Spanish nationals "have a permanent right to take fish" of all species off the Atlantic Coast from the mouth of the Bidassoa up to the parallel of the northern cape of Belle-Ile.

The Cour d'Appel rejected the argument that Regulation No. 2160/77 does not disregard the Franco-Spanish agreement since it does not prohibit Spanish vessels from fishing but is confined to regulating the exercise thereof. It held that the said regulation, which had not been notified to Spain prior to its adoption, imposed very severe restrictions on the fishing rights of Spanish vessels and discriminated against them since the vessels of the Community States did not appear to be licensed.

The Procureur Général at the Cour d'Appel, Pau, maintained that it followed from the provisions of the London Convention and from the Franco-Spanish agreement that France was entitled to regulate fishing by Spanish vessels in the 6 to 12 mile zone since that was stated in the French decree of 23 February 1968.

It was alleged that that decree was repealed by implication by the Community regulations in relation to the preservation and management of fishing applicable to Spanish vessels and being part of the law of the Member States.

The Cour de Cassation considered that having regard to the prior international obligations there were serious doubts whether the Community regulations were valid and, if they were valid, whether when they prescribed new conditions for fishing by Spanish vessels in the 6 to 12 mile zone they were applicable to Spanish nationals.

The Court of Justice before which the matter was brought cited its previous case-law in the judgment of Kramer of 13 July 1976. In that judgment the Court stated that since the Community had not yet fully exercised its functions in relation to fishing the Member States had the power to assume certain international commitments in respect of the conservation of the biological resources of the sea and they had the right to ensure the application of those commitments within the area of their jurisdiction.

The Court stated that the power of the Member States was of a transitional nature and terminated on 31 December 1978. During that period the Community institutions had to determine fishing rights. The London Convention was ratified by France on 5 July 1965 at a time when the Community had not yet adopted any regulation in the matter. France was accordingly able validly to conclude the Convention and the bilateral agreement with Spain in 1967 pursuant to the Convention.

Placed in that context the question seeks to ask whether the international commitments so contracted by France stand in the way of the validity of the Community regulations fixing as from February 1977 interim measures for the conservation of fishery resources or prevent their being unaware that as from a certain date the power to adopt conservation measures pursuant to Article 5 of the Convention would be exercised by the Community institutions in relation to Member States of the Community.

The Community established a system of conservation of the resources of the sea at a time when the international law in relation to fishing was undergoing profound change and the Member States in the Council took account thereof in deciding to extend their fishing zone to 200 miles from the coast.

The Council decided that from 1 January 1977 the exploitation of the fishery resources in such zones by fishing vessels of non-member countries would be governed by agreements between the Community and the non-member countries concerned. Negotiations between the Commission and Spain started on 3 December 1976. They led to a fishing agreement between the EEC and the Government of Spain signed on 15 April 1980.

While awaiting the results of those negotiations the Community adopted interim measures extending the Community system of quotas for catches to all fishermen of non-member countries including Spanish fishermen.

The object of the agreement according to Article 1 (2) thereof is to lay down principles and rules governing all the conditions for fishing by the vessels of each party "in the fishing zone falling under the jursidiction of the other party". The agreement allows each party to take in the fishing zone falling under its jurisdiction measures necessary to ensure a rational management of the biological resources of the sea including fixing quotas for catches and making licences mandatory.

Until the definite entry into force of the agreement the validity of the various Community regulations governing fishing by Spanish vessels in the fishing zones of the Member States must be assessed in the light of all the events which have occurred since the resolution of the Council of 3 November 1976.

A number of regulations have been made adopting certain interim measures for conservation and management of fishery resources (Council Regulation No. 373/77) and introducing a system of licences (Council Regulatin No. 746/77). Subsequent regulations relating to interim conservation measures applicable to Regulation 2160/77 which applied at the relevant time have generally maintained the system of quotas for catches together with the grant of licences for the whole period of the negotiations on the fishing agreement between the Community and Spain. The Spanish authorities have collaborated in implementing the interim system throughout the period during which it applied.

It follows from all those considerations that the interim system established by its own rules falls within the framework of the relations established between the Community and Spain to resolve the problems inherent in measures of conservation and extension of fishing zones to ensure reciprocally access of fishermen to the waters the subject of such measures.

Those relations which found expression in the fishery agreement between the Community and Spain were substituted for the international commitments previously existing between certain Member States such as France and Spain.

It follows that the Spanish fishermen cannot rely on previous international commitments between France and Spain to resist the application of interim regulations made by the Community if there is any incompatibility between the two categories of provisions.

The Court held that consideration of the question raised revealed no factor likely to affect the validity of Council Regulation No. 2160/77 of 30 September 1977 laying down certain interim measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain. The provisions of that regulation apply to Spanish nationals.

Judgment of 8 December 1981

Joined Cases 180 and 266/80

José Crujeiras Tome v Procureur de la République
Procureur de la République v Anton Yurrita

(Opinion delivered by Mr Advocate General Capotorti on 15 September 1981)

Fisheries - Conservation of the resources of the sea - Community provisions applicable to Spanish vessels - Interim régime falling within the framework of relations between the Community and Spain - Supersedes the previous régime - Effects

(Council Regulations No. 1744/78 and 1719/80; Agreement between the EEC and Spain of 15 April 1980)

The interim régime established by the Community under its own rules falls within the framework of the relations established between the Community and Spain in order to resolve the problems inherent in conservation measures and the extension of fishery limits and in order to ensure reciprocal access by fishermen to the waters subject to such measures. Those relations were substituted for the régime which previously applied in those zones in order to take account of the general development of international law in relation to fishing on the high seas and the increasingly urgent need to conserve the living resources of the sea.

Accordingly, Spanish fishermen may not rely on prior international agreements between France and Spain in order to prevent the application of the interim regulations adopted by the Community in the event of any incompatibility between the two categories of provisions.

* * * *

NOTE

The problem raised is the same as in the previous case save as regards the interim regulations challenged.

The national court here referred to the Court the question of the validity of Council Regulations Nos. 1744/78 and 1719/80 and whether they apply to Spanish nationals.

Regulation No. 1719/80 was adopted at a time when the Community and Spain were already applying the agreement as a temporary measure.

Regulation No. 1744/78 which was adopted during the final stage of the negotiations between the Community and Spain on the basis of the agreement was part of a series of Community regulations which determined certain interim measures of conservation pending the agreement.

The Court held that consideration of the question raised revealed no factor likely to affect the validity of Council Regulations No. 1744/78 of 24 July 1978 extending certain interim measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain to 30 September 1978 and No. 1719/80 of 30 June 1980 laying down for 1980 certain measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain. The provisions of those regulations apply to Spanish nationals.

Judgment of 9 December 1981

Case 193/80

Commission of the European Communities v Italian Republic

(Opinion delivered by Advocate General Sir Gordon Slynn on 15 September 1981)

1. Action for failure of a State to fulfil its obligations - Subject-matter of the dispute - Amendment during the oral procedure - not permissible

   (EEC Treaty, Art. 169)

2. Free movement of goods - Quantitative restrictions - Measures having equivalent effect - Prohibition - Whether subject to the prior approximation of laws - Not so subject

   (EEC Treaty, Arts. 30 and 100)

3. Free movement of goods - Quantitative restrictions - Measures having equivalent effect - Legislation applicable to national and imported products alike - Protective effect favouring a typically national product - Prohibition

   (EEC Treaty, Art. 30)

4. Free movement of goods - Quantitative restrictions - Measures having equivalent effect - Legislation restricting the designation "vinegar" to wine-vinegar alone - Not permissible

   (EEC Treaty, Art. 30)

5. Free movement of goods - Quantitative restrictions - Measures having equivalent effect- Prohibition against importing and marketing vinegars of agricultural origin other than those obtained from the acetic fermentation of wine - Designation "vinegar" restricted to wine-vinegar

   (EEC Treaty, Art. 30)

1. The Commission cannot be permitted during the oral procedure to widen the scope of an ambiguously worded application to establish the failure of a State to fulfil an obligation to include an issue which was expressly excluded from the beginning of the procedure instituted under Article 169 and which was not considered by the parties, either before or during the written procedure before the Court.

2. The fundamental principle of a unified market and its corollary, the free movement of goods, may not under any circumstances be made subject to the condition that there should first be an approximation of national laws for if that condition had to be fulfilled the principle would be reduced to a mere cipher. Moreover the purposes of Articles 30 and 100 are different.

   It follows that the fact that there are no common rules or harmonization directives on the production and marketing of specific goods is not sufficient to remove national legislation governing them from the scope of the prohibition enacted in Article 30 of the Treaty.

3. Even if national legislation on the marketing of a product applies to national and imported products alike it does not escape the prohibition enacted in Article 30 of the Treaty if it in fact produces protective effects by favouring a typically national product and to the same extent putting various categories of products from other Member States at a disadvantage.

4. It may be seen from the relevant Community provisions and in particular from heading 22.10 of the Common Customs Tariff, which is also used in Annex II to the Treaty, that the term vinegar does not cover wine-vinegar alone which, moreover, is the subject of a specific subheading. It follows that vinegar is a generic term and it would not be compatible with the objectives of the Common Market and in particular with the fundamental principle of the free movement of goods for national legislation to be able to restrict a generic term to one national variety alone to the detriment of other varieties produced, in particular, in other Member States.

5. National legislation which prohibits the marketing and importation of vinegars of agricultural origin other than those originating in the acetic fermentation of wine and which restricts the designation "vinegar" to wine-vinegar is not necessary to fulfil the requirements of the protection of health, fair trading or the protection of consumers and therefore constitutes a measure having an effect equivalent to a quantitative restriction which is prohibited by Article 30 of the Treaty.

* * * *

NOTE

The Commission brought an action for a declaration that the Italian Republic failed to fulfil its obligations under Articles 30 and 36 of the EEC Treaty by "prohibiting the importation and marketing under the description 'vinegar' of vinegar other than that made form wine".

Italian law prohibits on pain of fine or imprisonment the transport, holding for sale, marketing or handling in any manner whatsoever for use, directly or indirectly, for human consumption of products containing acetic acid not originating in the acetic fermentation of wine. The description 'vinegar' is reserved to products obtained form the acetic fermentation of wines. The provisions apply to products imported from abroad.

The Commission took the view that there was an obstacle to the free movement of goods within the Community and sent the Italian Government a reasoned opinion followed later by a second.

The first opinion observed that the above-mentioned rules amounted to a measure having an effect equivalent to quantitative restrictions on import contrary to Article 30 of the Treaty for which there was no justification under Article 36 since it was difficult to maintain and in the event it had not been shown that vinegar from alcohol of agricultural origin was more harmful to health than vinegar from wine.

The Italian Government while maintaining that its law was as a whole compatible with Community law concentrated discussion on the respective descriptions of "vinegar" and "vinegar from wine".

The Commission thereupon sent the Italian Government a second reasoned opinion "relating to the prohibition from using the description 'vinegar' for any product other than that obtained from the acetic fermentation of wine" and observed that by prohibiting the use of the description "vinegar" for any product other than that obtained from the acetic fermentation of wine the Italian Republic had failed to fulfil its obligations under the Treaty.

Together the two opinions cover the prohibition of describing as vinegar any product other than that obtained from the acetic fermentation of wine and the prohibition of marketing or importing fermented vinegar obtained from any product other than wine.

Having regard to the history of the case the Court considered that it was not concerned with the question of the description and marketing of synthetic vinegar.

(a) The prohibition of importing or marketing vinegars of agricultural origin other than vinegar from wine.

The Italian Government contends that there is no harmonization of the laws of the Member States in relation to vinegar, the Italian law does not discriminate, and the law is prompted by considerations of public health and prevention of fraud. The Commission ought at least to have attempted harmonization by making a proposal pursuant to Article 100 before taking steps under Articles 20 to 36 of the Treaty.

That argument must be rejected. The fundamental principle of the unity of the market and its corollary, free movement of goods, cannot in any circumstances be made to depend on the prior harmonization of national laws, for to do so would rob the principle of any meaning.

The absence of common rules or directives on harmonization in relation to the manufacture or marketing of particular products is not sufficient to remove them from the scope of the prohibition in Article 30 of the Treaty.

The Italian Government alleges in the second place that the rules in question are not discriminatory in that they cover both domestic products and imported products. It further complains that the Commission has not discussed the question whether the prohibition of import is not a necessary and legitimate consequence of rules adopted by the State in the exercise of its legislative powers in relation to the marketing of products. In answer to that argument the Court says that the system adopted by Italy nevertheless results in protection. It has been adopted so that it allows the import into Italy only of vinegar from wine and closes the frontier to all other categories of vinegar of agricultural origin; it thus favours a typical national product and in the same way works against various categories of natural vinegar produced in other Member States.

It is not possible to accept the argument based on the protection of public health as put forward by the Italian Government for that submission is not justified in relation to agricultural vinegars: it is not denied that they have no harmful substances and are generally consumed in other Member States and thus they must be regarded as not harmful to health as the Court has found in the judgment in the case of Gilli in respect of vinegar from apples.

(b) The reservation of the description "vinegar" to wine.

The Commission maintains that the Italian rules infringe the EEC Treaty by reserving the description "vinegar" to vinegar from wine. It observes that in the eyes of Italian consumers that requirement depreciates natural vinegars produced by the fermentation of substances other than wine and that those vinegars become "almost unsaleable". That measure is therefore likely directly or indirectly to impede intra-Community trade.

The Italian Government pleads protection of consumers who in Italy from "age-long tradition" consider all vinegars as vinegars from wine on the basis of the meaning of the word "aceto" (vinegar). They therefore run the risk of being misled as to the basic quality of the raw material and the final product.

That argument cannot be accepted. It is incompatible with the objectives of the Common Market and in particular with the fundamental principle of free movement of goods for a national law to reserve a generic term to a single national variety to the detriment of other varieties produced in other Member States.

The Court declared that by prohibiting the marketing and import of vinegars of agricultural origin other than those from the acetic fermentation of wine and by reserving the description "vinegar" to vinegar from wine the Italian Republic had failed to fulfil its obligations under Article 30 et seq. of the EEC Treaty.

Judgment of 16 December 1981

Case 244/80

Pasquale Foglia v Mariella Novello

(Opinion delivered by Advocate General Sir Gordon Slynn on 9 July 1981)

1. Preliminary questions - Jurisdiction of national court - Assessment of need to obtain an answer - Exclusive application of Community law

   (EEC Treaty, Art. 177)

2. Preliminary questions - Jurisdiction of Court of Justice - Limits - Questions submitted within the framework of procedural devices arranged by the parties - Examination by the Court of Justice of its own jurisdiction

   (EEC Treaty, Art. 177)

3. Member States - Application of Community law by a national court - Action relating to compatibility of Community law with the legislation of another Member State - Possibility of taking proceedings against the Member State concerned - Appraisal on basis of the laws of the State in which the court is situated and of international law

4. Preliminary questions - Jurisdiction of the Court of Justice - Question designed to allow the national court to determine whether legislative provisions of another Member State are in accordance with Community law - Parties to the national proceedings - Special care to be taken by the Court of Justice

   (EEC Treaty, Art 177)

5. Preliminary questions - Jurisdiction of the Court of Justice - Conditions for exercise - Nature and objective of proceedings before national courts - No effect

   (EEC Treaty, Art. 177)

1. According to the intended rôle of Article 177 of the EEC Treaty it is for the national court - by reason of the fact that it is seised of the substance of the dispute and that it must bear the responsibility for the decision to be taken - to assess, having regard to the facts of the case, the need to obtain a preliminary ruling to enable it to give judgment. In exercising that power of appraisal the national court, in collaboration with the Court of Justice, fulfils a duty entrusted to them both of ensuring that in the interpretation and application of the Treaty the law is observed. Accordingly the problems which may be entailed in the exercise of its power of appraisal by the national court and the relations which it maintains within the framework of Article 177 with the Court of Justice are governed exclusively by the provisions of Community law.

2. The duty assigned to the Court by Article 177 is not that of delivering advisory opinions on general or hypothetical questions but of assisting in the administration of justice in the Member States. It accordingly does not have jurisdiction to reply to questions of interpretation which are submitted to it within the framework of procedural devices arranged by the parties in order to induce the Court to give its views on certain problems of Community law which do not correspond to an objective requirement inherent in the resolution of a dispute. A declaration by the Court that it has no jurisdiction in such circumstances does not in any way trespass upon the prerogatives of the national court but makes it possible to prevent the application of the procedure under Article 177 for purposes other than those appropriate for it.

   Furthermore, whilst the Court of Justice must be able to place as much reliance as possible upon the assessment by the national court of the extent to which the questions submitted are essential, it must be in a position to make any assessment inherent in the performance of its own duties, in particular in order to check, as all courts must, whether it has jurisdiction.

3. In the absence of provisions of Community law, the possibility of taking proceedings before a national court against a Member State other than that in which that court is situated, whose legislation is the subject of a disagreement as to whether it is compatible with Community law, depends on the procedural law of the State in which the court is situated and on the principles of international law.

4. In the case of preliminary questions intended to permit the national court to determine whether provisions laid down by law or regulation in another Member State are in accordance with Community law the degree of legal protection may not differ according to whether such questions are raised in proceedings between individuals or in an action to which the State whose legislation is called in question is a party, but in the first case the Court of Justice must take special care to ensure that the procedure under Article 177 of the EEC Treaty is not employed for purposes which were not intended by the Treaty.

5. The conditions in which the Court of Justice performs its duties under Article 177 of the EEC Treaty are independent of the nature and objective of proceedings brought before the national courts. Article 177 refers to the "judgment" to be given by the national court without laying down special rules as to whether or not such judgments are of a declaratory nature.

* * * *

NOTE

The Pretore, Bra, referred to the Court five questions for a preliminary ruling on the interpretation of Article 177 and of Article 95 of the EEC Treaty.

The order was made in connexion with a dispute pending before the Pretore which had already given rise to an initial request for the interpretation of Articles 92 and 95 of the EEC Treaty and had resulted in the judgment of 11 March 1980 in Case 104/79 (Foglia v Novello [1980] ECR 745).

The main action conerns the costs incurred by the plaintiff, Mr Foglia, a wine dealer in Piedmont (Italy) in the dispatch of some cases of Italian liqueur wines purchased by the defendant, Mrs Novello and sent at her request to a recipient in Menton (France).

The contract of sale between Foglia and Novello stipulates that Novello should not be liable for any duties claimed by the Italian or French authorities contrary to the provisions on the free movement of goods. Foglia adopted the similar clause in his contract with Danzas, the carrier. That clause provided that Foglia should not be liable for such unlawful charges or charges which were not due.

The subject-matter of the dispute was restricted exclusively to the sum paid as a consumption tax, which both Foglia and Novello refused to pay, when the liqueur wines were imported into France.

Since the arguments advanced by Novello were understood by the Pretore as calling in question the validity of French legislation concerning the consumption tax on liqueur wines in relation to the EEC Treaty, he asked the Court of Justice a series of questions on the interpretation of Article 95 and, secondarily, of Article 92 of the Treaty.

In its judgment of 11 March 1980, the Court held that it had no jurisdiction to give a ruling on the questions submitted by the national court.

That judgment was challenged by the defendant in the main action who contended that the Court of Justice had interfered with the discretionary power reserved to the Italian court.

The Pretore considered that it was necessary to refer the matter once again to the Court by asking it certain questions on the interpretation of Article 177 of the Treaty with a view to obtaining a more precise and reliable assessment of the scope and significance of the judgment of 11 March 1980.

The first question

In his first question, the Pretore sought an indication of the limits set to the power of appraisal reserved by the Treaty to the national court on the one hand and to the Court on the other as regards the formulation of questions submitted for a preliminary ruling and the evaluation of matters of fact and of law relevant to disputes as to the substance, in particular where a national court is called upon to give a "declaratory judgment."

The third and fourth questions refer more particularly to cases in which questions of interpretation are raised in order to enable the Court to resolve disputes on the compatibility with Community law of national legal provisions adopted either by the state of the forum or, as in the present case, by another Member State.

In that connexion, the Pretore asks:

Whether, if legal provisions of other Member States are called in question before the courts of a Member State, there is a general principle in the system of Community which requires or enables the court before which such a dispute is brought to challenge the authorities of the State concerned before deciding whether to submit a reference for a preliminary ruling to the Court of Justice;

Whether the degree of protection arising in favour of individuals under the procedure provided for by Article 177 differs according to whether an objection is raised in connexion with proceedings between private individuals or proceedings involving the authorities of the State whose legislation is called in question.

On the first point, the Court has had occasion to emphasize that Article 177 is based on co-operation involving a distribution of functions between the national court and the Court of Justice, to ensure the proper application and uniform interpretation of Community law in all the Member States.

It is for the national court to determine, having regard to the facts, whether, to enable it to give judgment, it is necessary to obtain an answer to a preliminary question.

In order to permit the Court to fulfil its function in accordance with the Treaty, national courts must explain, where they are not obvious, the reasons why they consider that an answer to their question is necessary to resolve the dispute.

It must be emphasized that Article 177 justifies the Court not in formulating advisory opinions on general or hypothetical questions but in contributing to the administration of justice in the Member States.

The Court therefore has no jurisdiction to answer questions of interpretation referred to it in connexion with procedural arrangements made by the parties in order to compel the Court to adopt a position on certain theoretical problems of Community law.

The Court must be placed in a position to make any assessment inherent in its function, in particular in order to ascertain whether it has jurisdiction as every court is obliged to do.

As the third and fourth questions submitted by the Pretore reveal, special problems may arise as regards the application of Article 177 when questions of interpretation are raised by the national court in order to enable it to determine whether the legislative measures adopted by a Member State are in conformity with Community law.

In reply to the third and fourth questions described above, the Court drew attention to the fact that every individual whose rights are impaired by measures adopted by a Member State which conflict with Community law must have an opportunity to seek the protection of a competent court and that, for its part, that court must be free to seek clarification on the scope of the relevant provisions of Community law.

It also emphasizes that a court to which a question is referred, in connexion with a dispute between individuals, concerning the compatibility with Community law of another Member State's legislation, is not necessarily in a position to offer individuals effective legal protection in relation to that legislation.

The Court of Justice must be very much on its guard when a question is referred to it, in connexion with a dispute between individuals, which is intended to enable the court making the reference to appraise the conformity with Community law of another Member State's legislation.

In reply to the questions submitted to it on the interpretation of Article 177, the Court held that:

"1. Although, in accordance with the general plan of Article 177, it is for the national court to appraise the need to obtain an answer to questions of interpretation which are raised in relation to the circumstances of fact and of law which characterize the cases before it, it is nevertheless for the Court of Justice to consider, where necessary, in order to ascertain whether it has jurisdiction, the conditions in which cases are referred to it by the national court.

2. In the absence of relevant provisions of Community law, the possibility of taking proceedings before a national court against a Member State other than the State in which that court is situated depends both on the laws of the latter State and on principles of international law.

3. In the case of preliminary questions intended to permit the national court to determine whether provisions laid down by law or regulation in another Member State are in accordance with Community law the degree of legal protection cannot differ according to whether such questions are raised in proceedings between individuals or in an action to which the State whose legislation is called in question is a party. In any event in the first case the Court of Justice must take particular care to ensure that the procedure under Article 177 is not employed for purposes which were not intended by the Treaty."

In its fifth question the Pretore, Bra, returns to the first question asked in its first order on the interpretation of Article 95 of the Treaty.

In its judgment of 11 March 1980 the Court found that the parties shared the same view concerning the legality of the French legislation in question and that in reality they intended, by the expedient of a particular clause inserted into their contract, to obtain a ruling by an Italian court that the French legislation was invalid, even though French law provided for adequate legal remedies.

The Court decided that to reply to the questions asked in such circumstances exceeded the task entrusted to it by Article 177 of the Treaty.

In its second order for reference the Pretore gives particular emphasis to the fact that the defendant had requested it to give a "declaratory judgment."

In reply to the fifth question the Court ruled as follows:

> "Since the fact referred to by the Pretore, Bra, in his second order making a reference to the Court of Justice does not reveal any new fact which would justify the Court in taking a different view of its jurisdiction, it is for the Pretore, within the framework of the collaboration between a national court and the Court of Justice, to ascertain in the light of the considerations set out in this judgment whether it is necessary to obtain an answer from the Court to the fifth question and, if so, to indicate to the Court any new factors which might justify the Court in taking a different view of its jurisdiction."

Judgment of 16 December 1981

Case 269/80

Regina v Robert Tymen

(Opinion delivered by Mr Advocate General Reischl on 11 November 1981)

1. Fisheries - Conservation of the resources of the sea - Exclusive power of the Community - Non-exercise - Adoption of national conservation measures - Conditions - Obligation to consult the Commission and to abide by its views

   (Act of Accession, Art. 102)

2. Member States - Division of powers between the Community and the Member States - Proposal for Community action made by the Commission - Approval of a unilateral national measure identical in content - Not possible

3. Fisheries - Conservation of the resources of the sea - Exclusive power of the Community - Adoption of national conservation measures - Express objections put forward by the Commission to a proposed measure - Withdrawal - Conditions

4. Community law - National legislative measure contrary to Community law - Conviction in criminal proceedings - Incompatibility with Community law.

1. The power to adopt, as part of the common fisheries policy, measures relating to the conservation of the resources of the sea has belonged fully and definitively to the Communities since the expiration on 1 January 1979 of the transitional period laid down by Article 102 of the Act of Accession so that after that date the Member States are no longer entitled to exercise any power of their own in this matter and may henceforth only act as trustees of the common interest, in the absence of appropriate action on the part of the Council. In a situation characterized by the inaction of the Council and by the maintenance, in principle, of the conservation measures in force the Member States not only have an obligation to undertake detailed

consultations with the Commission and to seek its approval in good faith but also a duty not to lay down national conservation measures in spite of objections, reservations or conditions which may be formulated by the Commission.

2. A proposal submitted by the Commission to the Council with a view to taking concerted Community action cannot be considered as constituting in itself approval of a unilateral national measure, even of one having the same content, which is adopted in a sphere coming within the powers of the Community. The lawfulness of national measures adopted in a sphere within which the powers of the Community apply may not be recognized solely by reason of the existence of a Community proposal which is identical in principle. That would not only be contrary to legal certainty but would lead to a distortion of the division of powers between the Community and the Member States and would thus adversely affect the essential balances established by the Treaty.

3. Where, with regard to fishery conservation measures adopted during the period in which the Council had not yet exercised the powers which it possesses, the Commission has put forward express objections to the national measure contemplated, such objections may be considered to have been withdrawn only when the Commission has clearly and expressly indicated that it no longer intends to insist on them.

4. Where criminal proceedings are brought by virtue of a national measure which is held to be contrary to Community law a conviction in those proceedings is also incompatible with that law.

NOTE

The Court of Appeal, Criminal Division, London, referred a number of questions to the Court for a preliminary ruling on the interpretation of Article 102 of the Act of 22 January 1972 Concerning Conditions of Accession and the Adjustments to the Treaty and certain other provisions of Community law in relation to a United Kingdom measure concerning fisheries.

Those questions were raised in criminal proceedings against the master of a French trawler, Mr Tymen, for the infringement of the Fishing Nets (North-East Atlantic) (Variation) Order 1979 by having on board nets having a mesh-size less than certain prescribed minimum sizes.

It should be recalled that the United Kingdom orders in relation to fisheries have led to two actions for failure to fulfil its obligations under the Treaty, brought by France. The judgments of 4 October 1979 (Case 141/78 France v United Kingdom) and 5 May 1981 (Case 804/79 Commission v United Kingdom) declared that the United Kingdom had failed to fulfil its obligations under the Treaty.

Since the Court of Appeal considered that a ruling of the Court of Justice was necessary to enable it to decide whether the United Kingdom order of 1979 was compatible with Community law, it asked first whether Member States still had power to adopt conservation measures in relation to fishing of the kind of those of the United Kingdom order in question after 31 December 1978.

As the Court found in its judgment of 5 May 1981, power to adopt, as part of the Common Fisheries Policy, measures relating to the conservation of the resources of the sea has belonged fully and definitively to the Communities since the expiration on 1 January 1979 of the transitional period laid down by Article 102 of the Act of Accession.

The Court found in that judgment that, in a situation characterized by the inaction of the Council and by the maintenance, in principle, of the conservation measure in force, the Member States not only have an obligation to undertake to consult the Commission but also the duty not to lay down national conservation measures in spite of objections, reservations or conditions which may be formulated by the Commission.

The United Kingdom claims that the Commission had in essence opposed the date of entry into force of the order referred to by the national court without putting forward objections as to its content. Since the Commission had submitted to the Council at the same time, that is in June 1979, proposals which in substance were identical and which were to enter into force on 1 September 1979, it by implication approved the order with effect from that date.

The criticisms advanced by the Commission were based on the consideration that measures of that nature could not be introduced without affording fishermen a reasonable time within which to adapt themselves to them.

The Court observes that a proposal submitted by the Commission to the Council with a view to taking concerted Community action cannot be considered as constituting in itself approval of a unilateral national measure, even of one having the same content, which is adopted in a sphere coming within the powers of the Community.

That would not only be contrary to legal certainty but would lead to a distortion of the division of powers between the Community and the Member States and would thus adversely affect the essential balances established by the Treaties.

In a second question the national court inquires in substance whether individuals may be prosecuted under a measure which is found to be contrary to Community law.

The same question has already formed the subject-matter of the judgment of 16 February 1978. In that judgment, which, like the present case, concerned a breach of national fisheries provisions, the Court found that where criminal proceedings are brought by virtue of a national measure which is held to be contrary to Community law a conviction in those proceedings is also incompatible with that law.

The Court, in answer to the questions put to it, held that:

"1. After the expiry of the period referred to in Article 102 of the Act of Accession a Member State does not have power to adopt and bring into force, without appropriate prior consultation with the Commission and notwithstanding objections, reservations or conditions formulated by the Commission, a fishery conservation measure of the kind which forms the subject-matter of the Fishing Nets (North East Atlantic) (Variation) Order 1979 (SI 1979 No. 744).

2. Where criminal proceedings are brought by virtue of a national measure which is held to be contrary to Community law a conviction in those proceedings is also incompatible with that law."

Judgment of 17 December 1981

Joined Cases 197 to 200/80, 243, 245 and 247/80

Ludwigshafener Walzmühle Erling KG and Others v
Council and Commission of the European Communities

(Opinion delivered by Mr Advocate General Van Themaat on 19 November 1981)

1. Action for damages - Autonomous form of action - Difference from action for annulment

   (EEC Treaty, Art. 178 and second paragraph of Art. 215)

2. Action for damages - Objection of inadmissibility on the ground that no action was brought before the national courts

3. Non-contractual liability - Conditions - Legislative measure - Sufficiently serious breach of a superior rule of law

   (EEC Treaty, second paragraph of Art. 215)

4. Agriculture - Common organization of the markets - Fixing of agricultural prices - Discretionary powers of the Community institutions

   (EEC Treaty, third subparagraph of Article 40 (3))

5. Agriculture - Common Agricultural Policy - Objectives - Reconciliation thereof - Obligations of the Community institutions

   (EEC Treaty, Art. 39)

1. The action for damages under Article 178 and the second paragraph of Article 215 of the EEC Treaty was established as an autonomous form of action with a particular purpose to fulfil within the system of actions and the exercise of it is subject to conditions imposed in view of the specific objective thereof. That form of action is different from an action for annulment in that it does not seek the cancellation of a specified measure but compensation for damage caused by the institutions in the exercise of their functions; the conditions for actions for damages are laid down with that objective in mind and accordingly are different from those for an action for annulment.

   It follows from the foregoing that, in order to be successful, any party who chooses to pursue an action for damages is obliged to establish fulfilment of all the conditions which must be fulfilled, pursuant to the second paragraph of Article 215 of the Treaty, if the liability of the Community is to be incurred. The fact that some of those conditions may coincide with those applicable to an action for annulment is not therefore a sufficient reason to describe an action by a party in reliance upon Article 178 and the second paragraph of Article 215 as a misuse of procedure.

2. No objection of inadmissibility may be based on the applicants' failure to avail themselves of a form of action in the national courts which was not in fact open to them.

3. Under the second paragraph of Article 215 of the EEC Treaty and the general principles to which that provision refers, Community liability depends on the coincidence of a set of conditions as regards the unlawfulness of the acts alleged against the institutions, the fact of damage and the existence of a direct link in the chain of causality between the wrongful act and the damage complained of.

   Since the measures concerned are legislative measures, The Community does not incur liability unless a sufficiently serious breach of a superior rule of law for the protection of the individual has occurred.

4. In determining their policy with respect to the fixing of agricultural prices, the competent Community institutions enjoy wide discretionary powers regarding not only establishment of the factual basis of their action but also definition of the objectives to be pursued, within the framework of the provisions of the Treaty, and the choice of the appropriate means of action.

   The fact that the Community institutions adopted a policy on agricultural price levels for a long period does not confer upon the traders involved any entitlement to preservation of such advantages as the established policy may have allowed them; nor does that fact impose any limitation on the freedom of the Commission and the Council to adjust their policy in step with data reflecting the evolution of the market and with the objectives pursued.

5. The Community institutions must reconcile the various objectives laid down by Article 39 of the EEC Treaty, a fact which precludes the isolation of any one of those objectives, such as the stabilization of certain situations which have become established, in such a way as to render impossible the realization of other objectives such as the rational development of agricultural production and security of supplies, above all where there is a shortfall of the product concerned.

NOTE

A number of manufacturers of pasta products in the Federal Republic of Germany brought actions for compensation for damage caused to them by the Council and the Commission in fixing the threshold price for durum wheat imported from non-member countries in 1979 too high in relation to the price for common wheat.

The Council and the Commission, supported by the Italian Government, contest the admissibility of the actions on the basis that they are an abuse of the procedure under the second paragraph of Article 173 and further that the legal remedies at the national level have not been used. The Court dismissed the two objections as to admissibility.

Substance

Before considering the submissions of the applicants it is right to recall the principles governing, according to the case-law of the Court, the non-contractual liability of the Community.

The Court stated (judgment in the case of Lütticke of 28 April 1971) that by virtue of the second paragraph of Arricle 215 and the general principles to which that provision refers, the liability of the Community presupposes the existence of a set of circumstances comprising actual damage, a causal link between the damage claimed and the conduct alleged against the institution, and the illegality of such conduct.

The measures which according to the applicants are at the origin of the damage alleged are legislative measures. With regard to such measures, according to similarly established case-law, the Community does not incur liability unless a sufficiently serious breach of a superior rule of law for the protection of the individual has occurred.

Objection to the threshold price for durum wheat fixed for 1979

On this subject the applicants put forward a number of economic and legal considerations intended to show that the Council and Commission in various respects infringed the rules of Community law by fixing the threshold price of durum wheat too high in relation to common wheat at the time in question.

In 1974 a substantial rise in prices on the world market led the Council to raise appreciably the threshold price of durum wheat. The discordant prices led in the manufacture of pasta products to a tendency to substitute common wheat for durum wheat with the result that there was a deterioration in the quality of pasta products, weakening the competitive position on the market of the German manufacturers. The latter are at a disadvantage with regard to neighbouring Italian manufacturers in areas producing durum wheat who were able to obtain supplies at prices close to the intervention price whereas the German manufacturers obtained supplies solely in meal from durum wheat of American origin imported at the threshold price.

In the first place the applicants draw attention to the fact that in the basic Regulation No. 2727/75 the Council recognized the necessity to respect as far as possible in the Community the relationship normally existing on the world market between the prices of durum wheat and those of common wheat by virtue of the possibilities of substituting those two products. In maintaining from 1974 an abnormal disparity between the two prices in question the Council caused abnormal substitution. The applicants consider that the Council ought to have done everything to ensure the disappearance of such an abnormal disparity.

In the second place the applicants allege that to fix the threshold price of durum wheat at an excessively high level infringes the second subparagraph of Article 40 (3) of the Treaty according to which the common organization of the market "shall exclude any discrimination between producers or consumers within the Community". The Council created such discrimination against millers and manufacturers of pasta products in Member States not producing durum wheat; France and Italy were given an advantage.

In the third place the applicants allege that to fix the threshold price for durum wheat at too high a level disregards the principles governing price fixing "which must be based on common criteria and uniform methods of calculation".

Finally, the applicants consider that the Council violated the principle of proportionality in that instead of fixing the threshold price at an artificially high level it could have achieved the objective it was pursuing by other means which were less disadvantageous to the applicants, as, for example, by fixing the threshold prices on a regional basis or extending aid to the producers of the Community to mitigate for them the fall in the threshold price.

The Council and the Commission, supported by the Italian Government, stressed the wide discretion which the institutions of the Community have in relation to agricultural policy and adaptation thereof to the circumstances.

In answer to the first submission of the applicants the defendant institutions stress that there is a fundamental difference between the world market and the Community market in that the world market is governed by the free play of supply and demand whereas the Community market has a common organization intended to maintain price levels in accordance with the political objectives determined by the institutions of the Community pursuant to the Treaty.

As regards the complaints of discrimination and infringing the rules in relation to the fixing of agricultural prices, the defendant institutions draw attention to the fact that cereal prices are fixed in a context of free movement of goods both in relation to raw material and derived products and that there is nothing from the point of view of Community law to prevent German producers from obtaining supplies in other Member States of the Community.

The French and Italian markets are not self-sufficient and producers in those States must also have recourse to durum wheat imported from non-member countries.

As to the alleged infringement of the principle of proportionality, the institutions draw attention to the fact that the solutions proposed by the applicants are impracticable: to fix threshold prices on a regional basis would be directly contrary to the unity of the Common Market and to extend the system of aids would impose new and intolerable burdens on the Community budget.

Finally, the defendant institutions contend that the legal rules cited by the applicants cannot in any event be regarded as "superior rules of law for the protection of individuals".

The Court considers that the arguments put forward by the applicants are not of such a nature to challenge the legality of the measures of the Council and Commission which are at the origin of the actions.

As to the first submission of the applicants it should be observed that the arguments in relation to the state of the world market and the Community market do not reveal any manifest error in the assessment by the Commission and Council of the circumstances prevailing on the world market on the one hand and on the other hand of the conditions of production characterizing the Community market.

As to the economic objective pursued by the Council in fixing the difference in the threshold prices of durum wheat and common wheat it is not possible to accept that the institutions have exceeded their discretion in determining the difference in price levels having regard to the chronic surplus production of common wheat and the need to stimulate the Community production of durum wheat.

As to the argument based on Article 39 of the Treaty, it should be observed that, according to established case-law of the Court, the institutions must reconcile the various objectives defined in Article 39 which does not allow the singling-out of one of those objectives, such as the stabilization of certain established situations, to the extent of making the achievement of other aims impossible.

As regards the second and third submissions based on the principle of non-discrimination, those arguments cannot be accepted in the context of the common organization of the markets. The latter does not allow all users of durum wheat to obtain supplies on equal conditions.

It should also be observed that in itself recourse to differentiation in the various prices fixed by the Community appears to be a means particularly well-adapted to the general mechanism of the organization of the market and the objective pursued namely in the present case to develop the cultivation of durum wheat to lead to a better general structure of the Community production.

It is therefore right to conclude that far from having established a "serious breach of a superior rule of law for the protection of individuals" the applicants have not succeeded in showing any illegality on the part of the Council or the Commission.

Damage and causal relationship

The applicants claim from the Community various sums by way of damages. An examination by the Court shows that the applicants have not established any of the conditions which must be met for the Community to incur liability.

The Court dismisses the actions.

Judgment of 17 December 1981

Case 272/80

Criminal proceedings against
Frans-Nederlandse Maatschappij voor Biologische Producten B.V.

(Opinion delivered by Mrs Advocate General S. Rozès on 14 October 1981)

Free movement of goods - Exceptions - Protection of the health of humans - Rules governing approval of plant protection products - Requirement of approval for imported products which have already been approved in another Member State - Whether permissible - Limits

(EEC Treaty, Arts. 30 and 36)

It follows from Article 30 in conjunction with Article 36 of the EEC Treaty that a Member State is not prohibited from requiring plant protection products to be subject to prior approval, even if those products have already been approved in another Member State. The authorities of the importing State are however not entitled unnecessarily to require technical or chemical analyses or laboratory tests when the same analyses or tests have already been carried out in another Member State and their results are available to those authorities or may at their request be placed at their disposal.

A Member State operating an approvals procedure must ensure that no unnecessary control expenses are incurred if the practical effects of the control carried out in the Member State of origin satisfy the requirements of the protection of public health in the importing Member State. On the other hand, the mere fact that those expenses weigh more heavily on a trader marketing small quantities of an approved product than on his competitor who markets much greater quantities does not justify the conclusion that such expenses constitute arbitrary discrimination or a disguised restriction within the meaning of Article 36.

NOTE

The Gerechtshof [Regional Court of Appeal], The Hague, referred to the Court for a preliminary ruling a question on the interpretation of Articles 30 and 36 of the EEC Treaty in order to enable it to assess the compatibility with Community law of the Netherlands legislation on the approval of disinfectant products.

The question was raised in the course of an appeal lodged against a judgment at first instance by which the company in question was fined for a contravention of Article 2 of the Law on Insecticides and Herbicides which prohibits the sale, storage or use of a disinfectant product which is not approved pursuant to the Law. The company had imported into or sold or supplied in the Netherlands a certain quantity of disinfectants containing an active toxic substance. The disinfectant had been lawfully marketed in France but had not received the approval required in the Netherlands. The purpose of the system of approval in force in the Netherlands is to protect public health.

Under the legislation in force at the time when the relevant events took place the costs of the laboratory examinations were to be borne by the person requesting them.

The company concerned claimed that the rules in question were incompatible with the provisions of Community law which prohibits quantititative restrictions on imports and measures having equivalent effect and that they could not therefore provide the legal basis for the criminal proceedings instituted against it.

Those circumstances led the Gerechtshof to refer to the Court the following question:

> "Is the scheme of the Bestrijdingsmiddelenwet of 1962 compatible with Article 30 of the EEC Treaty in so far as that Law prohibits the putting into free circulation in the Netherlands of a product, coming from another Member State in which that product has been lawfully put into circulation and meeting the legislative requirements of that State, which afford the same protection to the requirements of public health as the Bestrijdingsmiddelenwet of 1962?".

The Commission submits that in the absence of Community rules on this matter the Member States retain freedom of action in the interest of public health.

Whilst they do not deny the disruption of intra-Community trade which such national rules may constitute, the Danish, Italian, Netherlands and British Governments base the legality of this type of rules on the exception contained in Article 36 of the EEC Treaty which covers requirements for the protection of public health.

Under Article 30 of the Treaty quantitative restrictions on imports and all measures having equivalent effect are prohibited between Member States. However, that rule contains a reference inter alia to Article 36, under the terms of which the provisions of Articles 30 to 34 inclusive are not to preclude prohibitions or restrictions on imports justified inter alia on grounds of "the protection of health and life of humans, animals or plants". It is not disputed that the national rules in question are intended to protect public health and that they therefore come within the exception provided for by Article 36.

However, whilst a Member State is free to subject a product of the type in question which has already been approved in another Member State to a further examination and approval procedure, the authorities of the Member States are nevertheless obliged to contribute to a reduction in the controls in intra-Community trade. In reply the Court ruled that the combined effect of Articles 30 and 36 of the Treaty was that a Member State was not prohibited from requiring prior approval for disinfectant products even if those products had already been approved in another Member State. However, the authorities of the importing State are not entitled to require unnecessary technical or chemical analyses or laboratory tests when the same analyses and tests have already been carried out in another Member State and the results thereof are at the disposal of the authorities and may at their request be placed at their disposal.

Judgment of 17 December 1981

Case 279/80

Criminal proceedings against Alfred John Webb

(Opinion delivered by Advocate General Sir Gordon Slynn on 21 October 1981)

1. Freedom to provide services - Services - Concept - Provision of man-power

   (EEC Treaty, Art. 60, first paragraph)

2. Freedom to provide services - Restrictions - Prohibition - Direct effect

   (EEC Treaty, Arts. 59 and 60)

3. Freedom to provide services - Restrictions justified by general good - Permissibility - Conditions

   (EEC Treaty, Arts. 59 and 60)

4. Freedom to provide services - Undertakings providing man-power - Pursuit of activity - Licensing system - Lawfulness - Conditions

   (EEC Treaty, Arts. 59 and 60)

1. Where an undertaking hires out, for remuneration, staff who remain in the employ of that undertaking, no contract of employment being entered into with the user, its activities constitute an occupation which satisfies the conditions laid down in the first paragraph of Article 60 of the EEC Treaty. Accordingly they must be considered a "service" within the meaning of that provision.

2. The essential requirements of Article 59 of the Treaty became directly and unconditionally applicable on the expiry of the transitional period. Those essential requirements abolish all discrimination against the person providing the service by reason of his nationality or the fact that he is established in a Member State other than that in which the service is to be provided.

3. The freedom to provide services is one of the fundamental principles of the Treaty and may be restricted only by provisions which are justified by the general good and which are imposed on all persons or undertakings operating in the Member State in which the service is to be provided in so far as that interest is not safeguarded by the provisions to which the provider of the service is subject in the Member State of his establishment.

4. Article 59 of the Treaty does not preclude a Member State which requires agencies for the provision of man-power to hold a licence from requiring a provider of services established in another Member State and pursuing such activities on the territory of the first Member State to comply with that condition even if he holds a licence issued by the State in which he is established, provided, however, that in the first place when considering applications for licences and in granting them the Member State in which the service is provided makes no distinction based on the nationality of the provider of the services or his place of establishment, and in the second place that it takes into account the evidence and guarantees already produced by the provider of the services for the pursuit of his activities in the Member State in which he is established.

* * * *

NOTE

The Hoge Raad der Nederlanden referred to the Court of Justice three questions for a preliminary ruling on the interpretation of Articles 59 and 60 of the Treaty with regard to the Netherlands legislation governing the provision of manpower.

Those questions were raised in criminal proceedings relating to a breach of Article 1 of the Royal Decree of 10 September 1970. That provision prohibits the provision of manpower without a licence from the Minister for Social Security.

The accused in the main proceedings, A.J. Webb, is a director of a British company established in the United Kingdom and is licensed under British law to provide manpower. The company is concerned in particular with sending technical staff to the Netherlands. The staff is recruited by the company and for a consideration made available on a temporary basis to undertakings in the Netherlands without there being any contract of employment between the staff and the undertakings.

The court of first instance found that without a licence issued by the Netherlands' Minister for Social Security the said company had in three instances in February 1978 in the Netherlands for consideration made workers available to Netherlands undertakings for the purpose of performing current work otherwise than in pursuance of a contract of employment with those undertakings.

The Hoge Raad before which the case came on appeal in cassation considered that judgment depended on whether the Netherlands' legislation in question was compatible with the rules of Community law in relation to freedom to provide services and in particular with Articles 59 and 60 of the EEC Treaty and accordingly referred the following questions to the Court:

First question

The national court basically asks whether the term "services" in Article 60 of the Treaty includes the provision of manpower within the meaning of the Netherlands' legislation.

According to the first paragraph of Article 60 of the Treaty services are considered to be "services" where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons. The business of making manpower available for consideration without there being a contract of employment with the user constitutes an activity satisfying the conditions of the first paragraph of Article 60.

Second and third questions

Basically it is asked whether Article 59 of the Treaty prohibits a Member State from requiring an undertaking to have a licence to provide manpower in the territory of that State where the undertaking is established in another Member State and has a licence issued by that State.

According to the first paragraph of Article 59 of the Treaty restrictions on freedom to provide services within the Community are to be progressively abolished during the transitional period in respect of nationals of Member States. The requirements of Article 59 of the Treaty have become directly applicable and unconditional on the expiry of the said period.

Those requirements involve the elimination of any discrimination against a person providing a service by reason of his nationality or the fact that he is established in a Member State other than that in which the service is provided.

The intention of the third paragraph of Article 60 is to make it possible for the person providing a service to pursue his activity in the Member State where the service is provided without discrimination in relation to nationals of that State.

The Court found in the judgment of 18 January 1979 (Joined Cases 110 and 111/78 Ministère Publique v van Wesemael) that having regard to the particular nature of certain services specific requirements imposed on the person providing services cannot be regarded as incompatible with the Treaty where they have as their purpose the application of rules governing those types of activities. Nevertheless, as a fundamental principle of the Treaty, freedom to provide services cannot be restricted except by rules justified in the general interest.

It must be recognized in that respect that the provision of manpower is a particularly sensitive area from the employment point of view and socially. Because of the particular nature of the employment ties inherent in that type of activity its pursuit directly affects both relations on the employment market and the legitimate interests of the workers concerned.

It follows that the Member States are at liberty and have a legitimate political choice in the general interest of making the provision of manpower in their territory subject to licence which may be refused where there are reasons to fear that such activity may adversely affect good relations in the employment market or the interests of the workers in question are not sufficiently assured. Having regard to the differences which may exist between the conditions of the employment market from one Member State to another and the diverse criteria applicable to the pursuit of such kind of activity it cannot be doubted that the Member State where the services are to be provided is entitled to require a licence issued according to the same criteria as for its own nationals.

Nevertheless such measure goes beyond the aim pursued where the requirements to which the issue of a licence is subject are the same as the requirements and guarantees required in the State of establishment.

The Court, in ruling on the questions put to it, held:

"1. The term 'services' in Article 60 of the EEC Treaty includes the provision of manpower within the meaning of the 'Wet op het ter beschikking stellen van arbeidskrachten'.

2. Article 59 does not prevent a Member State which makes undertakings providing manpower subject to licence from requiring a person providing services and established in another Member State where he pursues such activity from complying therewith even if the person has a licence issued by the State of establishment provided nevertheless on the one hand that in considering applications for licences and their grant the Member State where the services are to be provided makes no distinction by reason of nationality or place of establishment of the person providing the services and on the other that it takes account of the requirements complied with and guarantees already given by the person providing the services to pursue his activity in the Member State of establishment."

Judgment of 17 December 1981

Case 2/81

Criminal proceedings against Albert Clément, Gérard Ces and Others

(Opinion delivered by Mrs Advocate General Rozès on 19 November 1981)

Agriculture - Common organization of the markets - Wine - Coupage of wines imported from non-member countries - Prohibition - Wines intended for vinegar-making - Exclusion

(Regulation No. 816/70 of the Council, Art. 26 (4))

Article 26 (4) of Regulation No. 816/70, which prohibits the coupage of wines imported from non-member countries, is one of a set of provisions relating to the coupage of wines intended to be marketed with a view to direct human consumption and must consequently be interpreted as applying to wines intended for the same purpose, to the exclusion of wines intended for vinegar-making.

* * * *

NOTE

The Tribunal de Grande Instance [Regional Court], Paris, has referred a question to the European Court of Justice for a preliminary ruling on the interpretation of Article 26 of Regulation (EEC) No. 816/70 of the Council laying down additional provisions for the common organization of the market in wine.

Certain wine merchants were prosecuted by the customs authorities for having "imported without a declaration prohibited goods with the help of bills, certificates or any false, inaccurate, incomplete or inapplicable documents."

The accused are charged with having imported from the Netherlands wines intended for vinegar-making under internal Community transit documents and with having declared them as originating in the country from which they had come, whereas they ought to have been declared as originating in "non-member countries."

The wines in question were Greek and Algerian wines imported into the Netherlands before 1 June 1970 (the date on which the Community rules in question came into force) and which were blended in the Netherlands.

Article 26 (4) of Regulation No. 816/70 concerning wine imported from non-member countries prescribes that "The coupage of an imported wine with a Community wine and the coupage on Community territory of imported wines shall be prohibited except by way of derogation to be decided by the Council, acting ... on a proposal from the Commission."

The national court felt obliged to ask for a preliminary ruling on the question "whether the provisions of Article 26 (4) of Regulation (EEC) No. 816/70 of 28 April 1970 apply to wines intended for vinegar-making."

It is clear from an analysis of the relevant provisions that the description "wine suitable for yielding a table wine" is reserved for wines produced within the Community. Article 26 (4) thus forms part of a body of provisions relating to the coupage of wines intended to be marketed for direct human consumption and must therefore be interpreted as covering wines intended for the same purpose, and as excluding wines intended for vinegar-making.

The Court has replied to the question referred to it and has held that:

"The provisions of Article 26 (4) of Regulation No. 816/70 of the Council of 28 April 1980 laying down additional provisions for the common organization of the market in wine (Official Journal, English Special Edition 1970 (I), p.234) do not apply to wines intended for vinegar-making."

Judgment of 17 December 1981

Case 22/81

Regina v Social Security Commissioner ex parte Norman Ivor Browning

(Opinion delivered by Advocate General Sir Gordon Slynn on 19 November 1981)

Social security for migrant workers - Old-age and death insurance - Pension supplement - Guarantee of minimum income - Minimum benefit - Concept

(Regulation No. 1408/71 of the Council, Art. 50)

Article 50 of Regulation No. 1408/71 is to be interpreted as meaning that a "minimum benefit" exists only where the legislation of the State of residence includes a specific guarantee the object of which is to ensure for recipients of social security benefits a minimum income which is in excess of the amount of benefit which they may claim solely on the basis of their periods of insurance and their contributions.

* * * *

NOTE

The High Court of Justice referred to the Court for a preliminary ruling two questions on the interpretation of Article 50 of Regulation No. 1408/71 of the Council on the application of social security schemes to employed persons, with particular reference to the meaning of the expression "minimum benefit".

The respondent in the appeal before the High Court of Justice, Robert Stanley, an Irish national living in the United Kingdom, completed periods of insurance first in his country of origin and later in the United Kingdom. On reaching pensionable age in 1973 he was awarded a

retirement pension; pursuant to Article 50 of Regulation No. 1408/71 a supplement was added to the pension equal to the "difference" between the total of the benefit payable under the regulation and the amount of the "minimum benefit".

The Insurance Officer considered that the "minimum benefit" was the benefit payable under the United Kingdom legislation and that the "difference" referred to in Article 50 was the difference between that benefit and the pension which would have been payable if all the periods of insurance had been completed in the United Kingdom.

On 27 January 1977 the Insurance Officer adopted a decision altering his earlier decision and withdrawing from Mr Stanley the extra payment which he had previously been awarded under Article 50 of the regulation.

Mr Stanley lodged an appeal against that decision and the matter finally came before the High Court of Justice, which, contrary to the opinion of the National Insurance Commissioner, took the view that the "minimum benefit" referred to in Article 50 of the regulation was in fact unknown to United Kingdom legislation.

Those circumstances led the national court to refer to the Court questions on the interpretation of the expression "minimum benefit".

The Court ruled as follows:

"Article 50 of Regulation No. 1408/71 is to be interpreted as meaning that a "minimum benefit" exists only where the legislation of the State of residence includes a specific guarantee the object of which is to ensure for recipients of social security benefits a minimum income which is in excess of the amount of benefit which they may claim solely on the basis of their periods of insurance and their contributions."

Judgment of 17 December 1981

Joined Cases 30 to 34/81

Commission of the European Communities v Italy

(Opinion delivered by Mrs Advocate General Rozès on 2 December 1981)

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

(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 resulting from Community directives.

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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, L - 2920, 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
FRANCE	Editions A. Pedone, 13 Rue Soufflot, 75005 Paris
FEDERAL REPUBLIC OF GERMANY	Carl Heymann's Verlag, 18-32 Gereonstrasse, 5000 Köln 1
GREECE	
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, L 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, L - 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, L - 2985, Luxembourg.

C. GENERAL LEGAL INFORMATION AND DOCUMENTATION

I. Digest of case-law relating to the European Communities

The Court of Justice has commenced publication of the "Digest of case-law relating to the European Communities" which will present in systematic form all the case-law of the Court of Justice of the European Communities and also a selection of decisions given by the courts of Member States. Its design follows that of the "Repertoire de la Jurisprudence relative aux Traités instituant les Communautés Européennes/ Europäische Rechtsprechung" prepared by H.J. Eversen and H. Sperl until 1976 (English edition 1973 to 1976 by J. Usher). The Digest will be produced in all the languages of the Community. It will be published in loose-leaf binders and periodical supplements will be issued.

The Digest will be made up of four series, concerning the following fields, which will appear and may be purchased separately:

A Series : Cases before the Court of Justice of the European Communities, excluding matters dealt with in the C and D Series.

B Series : Cases before the courts of Member States, excluding matters dealt with in the D Series.

C Series : Cases before the Court of Justice of the European Communities concerning officials of the European Communities.

D Series : Cases before the Court of Justice of the European Communities and before the courts of Member States concerning the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters. (This series replaces the "Synopsis of case-law" published in successive parts by the Documentation Branch of the Court which has now been discontinued).

The first part of the A Series will be published during 1982, starting with the French language edition. This part will contain the decisions of the Court of Justice of the European Communities given during the period 1977 to 1979. Periodical supplements will be published.

The first part of the D Series will appear in Autumn 1981.

It relates to the case-law of the Court of Justice of the European Communities from 1976 to 1979 and the case-law of courts of the Member States from 1973 to 1978. The first supplement will deal with the 1980 case-law of the Court of Justice and the 1979 case-law of national courts.

The price of the first part of the D Series (about 700 pages, binder included) is:

Bfr	2 000	Lit	63 000
Dkr	387	Hfl	136
FF	290	DM	123
Dr	3 000	£stg	25.60
£Ir	33.40	US$	55

The price of the subsequent parts will be fixed on the basis of the price of the first part.

Orders should be sent either to the Office for Official Publications of the European Communities, 5 Rue du Commerce, L-2985, Luxembourg, or to one of the addresses given under B1 above.

II. 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 (L - 2920, 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. No Greek version is available.

The first three documents are published in all the official languages of the Community.

III. Publications by the Library of the Court of Justice

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).

No. / Currency	1977/1	1978/1	1978/2	1979/1	79/80
Bfr	100	100	100	100	100
FF	10	14	14.60	14.50	14.50
Lit	1 250	2 650	2 800	3 000	3 000
Hfl	7.25	7	6.90	6.85	6.80
DM	8	6.50	6.25	6.25	6.10
Dkr	16	17.25	18	19.50	20
£stg	1.10	1.70	1.60	1.50	1.30
£Ir	-	-	-	1.70	1.70
Dr	-	-	-	-	150

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 (L - 2920, Luxembourg), by registered post.

Any lawyer who is entitled to practice 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
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

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

I. COUNTRIES OF THE COMMUNITY

BELGIUM

73 Rue Archimède
1040 Brussels (Tel. 7350040)

DENMARK

4 Gammel Torv
Postbox 144
1004 Copenhagen (Tel. 144140)

FEDERAL REPUBLIC OF GERMANY

22 Zitelmannstrasse
5300 Bonn (Tel. 238041)

102 Kurfürstendamm
1000 Berlin 31 (Tel. 892 40 28)

FRANCE

61 Rue des Belles Feuilles
75782 Paris CEDEX 16 (Tel. 5015885)

GREECE

2, Vassilissis Sofias
T.K. 1602
Athens 134 (Tel. 743982)

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39, Molesworth Street
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OFFICE FOR OFFICIAL PUBLICATIONS
OF THE EUROPEAN COMMUNITIES

L - 2985 Luxembourg

Catalogue number: DY-AA-82-004-EN-C