Information on the Court of Justice of the European Communities

1981 – I

I N F O R M A T I O N

on

THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

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1981

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COMPOSITION OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

for the judicial year 1981

(from 1 January 1981 to 18 March 1981)

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Order of precedence

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

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

COMPOSITION OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

for the judicial year 1981

(from 18 March 1981 to 31 March 1981)

*

Order of precedence

*

J. Mertens de Wilmars, President of the Court

P. Pescatore, President of the Second Chamber

Lord A.J. Mackenzie Stuart, President of the Third Chamber

G. Reischl, First Advocate General

T. Koopmans, President of the First Chamber

A. O'Keeffe, Judge

F. Capotorti, Advocate General

G. Bosco, Judge

A. Touffait, Judge

O. Due, Judge

U. Everling, Judge

A. Chloros, Judge

Sir Gordon Slynn, Advocate General

S. Rozes, Advocate General

A. Van Houtte, Registrar

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 14 January 1981

Case 140/79

Chemial Farmaceutici S.p.A. v DAF S.p.A.

(Opinion delivered by Mr Advocate General Mayras on 29 April 1980)

1. Revenue provisions - Internal taxation - System of differential taxation - Permissibility - Conditions - Pursuit of objectives compatible with Community Law - Not of a discriminatory or protective nature

   (EEC Treaty, Art. 95)

2. Revenue provisions - Internal taxation - System of differential taxation for denatured synthetic alcohol and denatured alcohol obtained by means of fermentation - Permissibility - Conditions - Identical application of the system to imported products - More heavily-taxed product exclusively imported - Equivalent economic effect on the structure of national production

   (EEC Treaty, Art. 95, first and second paragraphs)

1. In its present stage of development Community law does not restrict the freedom of each Member State to lay down tax arrangements which differentiate between certain products on the basis of objective criteria, such as the nature of the raw materials used or the production processes employed. Such differentiation is compatible with Community law if it pursues economic policy objectives which are themselves compatible with the requirements of the Treaty and its secondary law and if the detailed rules are such as to avoid any form of discrimination, direct or indirect, in regard to imports from other Member States or any form of protection of competing domestic products.

2. Tax arrangements which impose heavier charges on denatured synthetic alcohol than on denatured alcohol obtained by fermentation on the basis of the raw materials and the manufacturing processes employed for the two products are not at variance with the first paragraph of Article 95 of the EEC Treaty if they are applied identically to the two categories of alcohol originating in other Member States.

Where, by reason of the taxation of synthetic alcohol, it has been impossible to develop profitable production of that type of alcohol on national territory, the application of such tax arrangements cannot be considered as constituting indirect protection of national production of alcohol obtained by fermentation within the meaning of the second paragraph of Article 95 of the EEC Treaty on the sole ground that their consequence is that the product subject to the heavier taxation is in fact a product which is exclusively imported from other Member States of the Community.

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NOTE

The Pretura di Castell'Arquato submitted two questions to the Court on the interpretation of Article 95 of the EEC Tresty in order to be able to assess the compatibility with the requirements of the Treaty of the system of differential taxation applied by Italian legislation to denatured synthetic ethyl alcohol and denatured ethyl alcohol produced by fermentation.

Those questions arose in the context of civil litigation concerning the performance of a contract concluded between 18 July and 27 July 1978 between the plaintiff in the main action, Chemial Farmaceutici S.A., and a producer and importer of alcohol, DAF S.A., for the delivery of a consignment of imported denatured synthetic alcohol. The Italian State increased the taxes on denatured synthetic alcohol in August 1978. The DAF company informed Chemial Farmaceutici that it considered the contract concluded in July null and void unless Chemial was prepared to bear the burden of the additional amount of tax.

Chemial insisted on performance of the contract according to the terms agreed on, arguing that the increase in tax, since it was a question of imported synthetic alcohol in this instance, was illegal as being contrary to the law of the European Community.

The Pretura was persuaded to submit the following questions to the Court:

1A. Is the first paragraph of Article 95 of the Treaty of Rome to be interpreted in such a manner as to render unlawful and therefore prohibited a national system of taxation which provides for the application to a product imported from the EEC (synthetic ethyl alcohol exclusively intended, after denaturing, for chemical and industrial use and therefore not suitable for human consumption) of a special duty far greater than that applied to a domestic product with the same characteristics and the same tariff classification (22.08/300) (ethyl alcohol from fermentation also intended, after denaturing, for chemical and industrial use and not suitable for human consumption) for the sole reason that the raw materials from which the two types of alcohol are extracted are different and the methods of extraction are therefore different?

1B. Is the national system of taxation unlawful as described above even if, theoretically, it does not apply to the same product in a discriminatory manner depending on the raw material from which it is extracted and under that system both imported and home-produced synthetic ethyl alcohol are taxed to the same extent and, analogously, both imported ethyl alcohol from fermentation and the domestic product are subject to the same charge?

2. If the answer to Question 1 is in the negative and alternatively, is the second paragraph of Article 95 of the Treaty of Rome to be interpreted in such a manner as to render unlawful and therefore prohibited - because it protects domestic production to the detriment of Community production - a national system of taxation applied in accordance with the criteria referred to in Question 1 and on the products mentioned in that question taking into account the fact that the product subject to the greater charge (synthetic ethyl alcohol) is exclusively imported from the other States of the EEC whilst that subject to the lesser charge (ethyl alcohol from fermentation) is produced in Italy and competes with the former?

The plaintiff in the main action submitted that the application of a differential rate of taxation on alcohol produced by fermentation (manufactured in Italy) and synthetic alcohol (imported) constituted patent fiscal discrimination prohibited by Article 95 of the Treaty.

This fiscal discrimination was, it was argued, established by the Italian Law solely for the purpose of a protectionist policy incompatible with the Common Market.

For its part, the Commission considered that denatured synthetic alcohol imported from the other Member States should, as a product similar to denatured alcohol produced by fermentation, be subject to the same rate of taxation as the latter.

The Italian Government pointed out that the Court has recognized that Member States may establish differential systems of taxation, even for identical products, on the basis of objective criteria, and if there is no discriminatory or protectionist element.

The Court ruled that the system challenged in the national court is consistent with those requirements. In fact, the differential taxation of synthetic alcohol and alcohol produced by fermentation in Italy is due to an economic choice which seeks to encourage the production of alcohol based on agricultural products and, as a corollary, to discourage the conversion into alcohol of ethylene derived from petroleum in order to reserve that raw material for other more important economic uses. Thus it is a question of a legitimate choice of economic policy implemented by means of taxation. The application of that policy does not lead to any discrimination, since although it has the effect of discouraging imports of synthetic alcohol into Italy, it also has the consequence of preventing the development in Italy itself of alcohol production on the basis of ethylene, which, technically, is perfectly possible.

The Court replied to the questions submitted by ruling that:

1. A fiscal system which consists in taxing denatured synthetic alcohol more havily than denatured alcohol produced by fermentation depending on the raw material and on the processes used in the manufacture of each product is not contrary to the first paragraph of Article 95 of the EEC Treaty if those provisions are applied identically to those two categories of alcohol originating in other Member States.

2. The application of such a system of taxation cannot be regarded as constituting indirect protection of national production of alcohol by means of fermentation within the meaning of the second paragraph of Article 95 of the EEC Treaty, solely by reason of the fact that a consequence thereof is that the product subject to the greater charge is in fact a product exclusively imported from the other Member States of the Community, if as a result of the taxation of synthetic alcohol the production of that type of alcohol in a manner which is economically worthwhile has not been able to develop within national territory.

Judgment of 14 January 1981

Case 46/80

Vinal S.p.A. v Orbat S.p.A.

(Opinion delivered by Mr Advocate General Reischl on 11 November 1980)

1. Tax provisions - Internal taxation - System of differential taxation - Permissibility - Conditions - Pursuit of objectives compatible with Community law - Absence of any discriminatory or protective nature

   (EEC Treaty, Art. 95)

2. Tax provisions - Internal taxation - System of differential taxation of denatured synthetic alcohol and denatured alcohol obtained by fermentation - Permissibility - Conditions - Identical application to imported products - More heavily taxed product exclusively an imported one - Equivalent economic effect on the structure of national production

   (EEC Treaty, Art. 95, first and second paras.)

1. In its present stage of development Community law does not restrict the freedom of each Member State to lay down tax arrangements which differentiate between certain products on the basis of objective criteria, such as the nature of the raw materials used or the production processes employed. Such differentiation is compatible with Community law if it pursues objectives of economic policy which are themselves compatible with the requirements of the Treaty and its secondary law and if the detailed rules are such as to avoid any form of discrimination, direct or indirect in regard to imports from other Member States or any form of protection of competing domestic products.

2. Tax arrangements which impose heavier charges on denatured synthetic alcohol than on denatured alcohol obtained by fermentation on the basis of the raw materials and the manufacturing processes employed for the two products are not at variance with the first paragraph of Article 95 of the EEC Treaty if they are applied identically to the two categories of alcohol originating in other Member States. Such tax arrangements are justified even though the products in question, whilst derived from different raw materials, are capable of being put to the same uses and have the same practical application.

Where by reason of the taxation of synthetic alcohol, it has been impossible to develop profitable production of that type of alcohol on national territory, the application of such tax arrangments cannot be considered as constituting indirect protection of national production of alcohol obtained by fermentation within the meaning of the second paragraph of Article 95 of the EEC Treaty on the sole ground that their consequence is that the product subject to the heavier taxation is in fact a product which is exclusively imported from other Member States of the Community.

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NOTE

This case is identical to Case 140/79. See note thereon.

Judgment of 14 January 1981

Case 819/79

Federal Republic of Germany v Commission of the European Communities

(Opinion delivered by Mr Advocate General Capotorti on 25 November 1980)

1. Agriculture - Common Agricultural Policy - Financing by EAGGF - Decision on clearance of accounts - Subject-matter - Aid paid contrary to Community rules - Non-compliance with formalities as to proof and supervision - Charging to EAGGF - Not possible

   (Regulation No. 729/70 of the Council, Art. 5 (2) (b))

2. Agriculture - Common organization of the markets - Milk and milk products - Aid for skimmed-milk powder intended for animal feed - Denaturing - Detailed rules on supervision - Mandatory nature

   (Regulation No. 990/72 of the Commission, Art. 3 (2))

3. Measures adopted by the institutions - Regulations - Uniform application - Obligations of Member States

4. Measures adopted by the institutions - Obligation to state reasons - Extent - Decision on clearance of accounts in respect of expenditure financed by the EAGGF

   (EEC Treaty, Art. 190)

1. The function of a Commission decision relating to the clearance of accounts in respect of expenditure financed by the EAGGF is to establish whether the expenditure was incurred by the national authorities in accordance with Community provisions. In cases where Community rules authorize payment of aid only on condition that certain formalities relating to proof or supervision are observed, aid paid in disregard of that condition is not in accordance with Community law and the expenditure incurred therein may not, in principle, be charged to the EAGGF.

2. In order to ensure effective supervision of the proper conduct of denaturing operations and to prevent the same product from benefiting more than once from the aid, Regulation No. 990/72 on detailed rules for granting aid for skimmed-milk powder for use as feed provides for on-the-spot checks on denaturing undertakings. Article 3 (2) of the regulation requires undertakings carrying out denaturing to give certain information to the competent national agency before proceeding with the denaturing. Member States must comply with the system of supervision thus laid down.

3. The provisions of Community regulations must be uniformly applied in all the Member States and have, so far as possible, the same effect throughout the territory of the Community. The position is no different where a regulation lays down specific measures of supervision but leaves to Member States the task of ensuring their observance by appropriate administrative measures.

4. The extent of the duty to state reasons, laid down by Article 190 of the Treaty, depends on the nature of the act in question and on the context in which it is adopted.

A decision relating to the clearance of accounts in respect of expenditure financed by the EAGGF and refusing to charge to it a proportion of the expenditure declared does not require a detailed statement of reasons where the Government concerned was closely involved in the process by which the contested decision was made and was therefore aware of the reason for which the Commission considered that the disputed amount might not be charged to the EAGGF.

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NOTE

The Federal Republic of Germany sought the annulment of Commission Decision No. 79/895/EEC of 12 October 1979 concerning the clearance of the accounts presented by the Federal Republic of Germany in respect of the European Agricultural Guidance and Guarantee Fund, Guarantee Section, expenditure for 1973, in so far as the Commission did not make chargeable to the Fund an amount of DM 8 335 232.61 in respect of aid for the denaturing of skimmed-milk powder. The Community rules provide for the aid in respect of skimmed-milk powder to be paid only on proof that the skimmed-milk powder has been denatured or used for the manufacture of compound feeding-stuffs. A whole series of controls apply to those measures and the Member States must for their part take the supervisory measures needed to ensure that the provisions laid down by the regulation are complied with.

According to the first submission, the contested decision infringed the provisions of Regulation No. 990/72 by refusing to recognize as complying with those provisions the supervision of the denaturing carried out by the German authorities. The file shows that during the period under consideration the system of supervising the denaturing established by the German authorities was not based principally on physical supervision on the premises (as required by the Commission's decision), but rather on checking the accounts of the undertakings which carry out denaturing.

The Court stated that it is necessary to bear in mind in the first place that the aim of a Commission decision concerning the clearance of accounts in respect of expenditure financed by the Guidance and Guarantee Fund is to ascertain that the expenditure has been incurred by the national departments in accordance with the Community provisions. Where the Community rules authorize payment of aid only on condition that certain formalities relating to proof or supervision are observed, aid paid in disregard of that condition is not in accordance with Community law and the resulting expenditure cannot in principle be made chargeable to the Fund.

It is not necessary to consider the merits of the argument put forward by the German Government to the effect that the system of supervision set up in the Federal Republic of Germany is more effective than that prescribed by the Community rules. In fact, the provisions of the Community regulations are required to be applied uniformly in all the Member States and to have, so far as possible, the same effect throughout the territory of the Community.

The first submission must therefore be rejected.

According to the second submission, the Commission had approved the system of supervision operated in the Federal Republic of Germany and it is therefore obliged to recognize the aid paid by the German Government as chargeable to the Fund. In support of that submission the German Government refers to an information meeting held in May 1974, in the course of which the representatives of the Commission confirmed that the German system of supervision offered considerable advantages and was compatible

with Community law. The Court held that that submission must be rejected, whatever may have been the scope of the declarations referred to, since the failure to comply with the provisions of Community law in 1973 cannot be ascribed to the Commission's conduct subsequent to that date.

A third submission to the effect that the contested decision did not contain a sufficient statement of the reasons on which it was based, as required by the Treaty, was also rejected.

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

Judgment of 14 January 1981

Case 35/80

Denkavit Nederland B.V. v Produktschap voor Zuivel

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

1. Agriculture - Common organization of the markets - Milk and milk products - Aids for skimmed milk and skimmed-milk powder for use as animal feed - Fixing an "appropriate relationship" between the aids - Power of appraisal of the Community institutions

   (Regulation No. 986/68 of the Council, Art. 2 (1)(d) and Art. 2a (3), second sentence; Commission Regulation No. 1049/78)

2. Agriculture - Common organization of the markets - Milk and milk products - Aids for skimmed milk and skimmed-milk powder for use as animal feed - Fixing an "appropriate relationship" between the aids - Criteria

   (Regulation No. 986/68, Art. 2a (3), second sentence)

3. Agriculture - Common organization of the markets - Milk and milk products - Aids for skimmed milk and skimmed-milk powder for use as animal feed - Fixing - Obligation to fix a maximum price for skimmed milk sold by dairies - None

   (Regulation No. 986/68 of the Council, Art. 2 (1)(a))

4. Acts of the institutions - Regulations - Obligation to state reasons - Implementing regulation - Reference to basic regulation

   (EEC Treaty, Art. 190)

1. The determination of an appropriate relationship within the meaning of the second sentence of Article 2a (3) of Regulation No. 986/68 between the aid for skimmed milk and the aid for skimmed-milk powder for use as animal feed depends upon a complex assessment which precludes the application of the criterion mentioned in Article 2 (1)(d) of that regulation, which rests on observance of a fixed relationship between the aids in question. On the contrary, it implies that the Community authorities enjoy a margin of discretion in the matter which permits them to lay down the relationship between the aid for skimmed milk and the aid for skimmed-milk powder having regard to all the market information listed in Article 2a (1) and to adjust that relationship in accordance with the requirements of the common organization of the market to which the products involved are subject.

2. Within the context of the determination of an "appropriate relationship" within the meaning of the second sentence of Article 2a (3) of Regulation No. 986/68 between the aid for skimmed milk and skimmed-milk powder for use as animal feed, the reasons which are such as to justify the size of the gap to be created between the aid for skimmed milk and the aid for skimmed-milk powder may not be based on the particular position of certain undertakings or groups of undertakings concerned but must stem from the sector concerned as a whole and from a comprehensive assessment of the relationships subsisting in the Common Market between the one product and the other.

3. Article 2 (1)(a) of Regulation No. 986/68 does not require that a maximum price must always be fixed for skimmed milk sold by dairies to farms which use it as feed whenever the relationship between the aid for skimmed milk and skimmed-milk powder is fixed in such a manner that skimmed milk benefits from a relatively larger aid than that granted for skimmed-milk powder. The fact that Commission Regulation No. 1049/78 does not provide for the fixing of such a price does not therefore affect the validity of that regulation.

4. The statement of the reasons upon which a regulation is based must be regarded and assessed in the context of the body of legislation of which that measure forms an integral part. Therefore, the requirements of Article 190 of the EEC Treaty are satisfied if an implementing regulation contains an explicit reference to provisions of the basic regulation and thus allows recognition of the criteria which were taken into account when the regulation was adopted.

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NOTE

The College van Beroep voor het Bedrijfsleven submitted several questions to the Court on the interpretation of Regulation No. 986/68 of the Council laying down general rules for granting aid for skimmed milk and skimmed-milk powder for use as feed.

Those questions were raised in the context of a dispute between a manufacturer of compound feeding-stuffs for animals and the Produktschap voor Zuivel (the Intervention Agency in the Netherlands). The dispute concerns the amount of aid for skimmed-milk powder granted to the said manufacturer by that agency in respect of the quantities of that product used between 1 December and 15 December 1978. The manufacturer brought an action to challenge the decision by which the Intervention Agency granted it the aforesaid aid, arguing in particular that that decision is based on a regulation which, because it provides for higher aid for skimmed milk than for skimmed-milk powder, is contrary to Regulation No. 986/68 of the Council, is insufficiently reasoned and entails discrimination incompatible with the Treaty.

In order to solve that problem in connexion with the validity of Commission Regulation No. 1049/78 the national court submitted to the Court of Justice a series of questions on the interpretation of Community law, to which the Court replied by ruling that:

1. The words "appropriate relationship" in the second subparagraph of Article 2 a (3) of Regulation No. 986/68 of the Council do not mean that the aid for skimmed milk and the aid for skimmed-milk powder, where those products are intended for animal feed and are other than the products referred to in Article 2 (1) (d), must necessarily be fixed at such levels that the relationship between those aids is equal to the relationship between 1 kilogram of skimmed-milk powder and the quantity of skimmed milk from which 1 kilogram of skimmed-milk powder can be obtained. Therefore Commission Regulation No. 1049/78, being based on a correct interpretation of that provision, does not disclose any factor of such a kind as to invalidate it in this respect.

2. By fixing the rates of the aids at levels such that the relationship between the aid for skimmed milk and the aid for skimmed-milk powder used in animal feed stood at 9.77, the Commission did not, in adopting Regulation No. 1049/78, exceed the limits of the margin of discretion which it enjoys by virtue of Article 2 a of Regulation No. 986/68 when fixing the amounts payable by way of aid for those products.

3. Article 2 (1) (a) of Regulation No. 986/68 of the Council does not mean that a minimum price must always be fixed for skimmed milk sold to farms where it is used as feed, when the relationship between the aids for skimmed milk and skimmed-milk powder is fixed at a ratio such that skimmed milk enjoys relatively higher aid than that granted for skimmed-milk powder. Therefore the fact that Commission Regulation No. 1049/78 does not provide for such a price to be fixed does not affect the validity of that regulation.

4. Placed in the context of Regulation No. 986/68, within which it was adopted, Regulation No. 1049/78 satisfies the requirement of a statement of reasons laid down by Article 190 of the Treaty.

Judgment of 20 January 1981

Joined Cases 55 and 57/80

Musik-Vertrieb Membran GmbH and K-tel International v GEMA

(Opinion delivered by Mr Advocate General Warner on 11 November 1980)

1. Free movement of goods - Treaty provisions - Application to sound recordings incorporating protected musical works

   (EEC Treaty, Art. 30)

2. Free movement of goods - Industrial and commercial property - Copyright - Application of Article 36 of the Treaty

   (EEC Treaty, Art. 36)

3. Free movement of goods - Industrial and commercial property - Copyright - Protection - Limits - Sound recordings marketed in a Member State with the consent of the owner of the copyright - Importation into another Member State - Prevention - Not permissible

   (EEC Treaty, Arts. 30 and 36)

4. Free movement of goods - Industrial and commercial property - Copyright - Protection - Limits - Sound recordings marketed in a Member State with the consent of the owner of the copyright - Importation into another Member State - Difference between the royalties payable in the two States - Additional fees not exigible by a copyright management society

   (EEC Treaty, Arts. 30 and 36)

1. Sound recordings, even if incorporating protected musical works, are products to which the system of free movement of goods provided for by the EEC Treaty applies.

2. The expression "protection of industrial and commercial property", occurring in Article 36 of the EEC Treaty, includes the protection conferred by copyright, especially when exploited commercially in the form of licences capable of affecting distribution in the various Member States of goods incorporating the protected literary or artistic work.

3. The proprietor of an industrial or commercial property right protected by the law of a Member State cannot rely on that law to prevent the importation of a product which has been lawfully marketed in another Member State by the proprietor himself or with his consent. The same applies as respects copyright, commercial exploitation of which raises the same issues as that of any other industrial or commercial property right. Accordingly neither the copyright owner or his licensee, nor a copyright management society acting in the owner's or licensee's name, may rely on the exclusive exploitation right conferred by copyright to prevent or restrict the importation of sound recordings which have been lawfully marketed in another Member State by the owner himself or with his consent.

4. The existence of a disparity between national laws which is capable of distorting competition between Member States cannot justify a Member State's giving legal protection to practices of a private body which are incompatible with the rules concerning the free movement of goods.

   Articles 30 and 36 of the EEC Treaty preclude the application of national legislation under which a copyright management society empowered to exercise the copyrights of composers of musical works reproduced on gramophone records or other sound recordings in another Member State is permitted to invoke those rights where those sound recordings are distributed on the national market after having been put into circulation in that other Member State by or with the consent of the owners of those copyrights, in order to claim the payment of a fee equal to the royalties ordinarily paid for marketing on the national market less the lower royalties paid in the Member State of manufacture.

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NOTE

The Bundesgerichtshof /Federal Court of Justice/ has referred to the Court of Justice a preliminary question on the interpretation of Articles 30 and 36 of the Treaty. This question was raised in the context of two cases between GEMA (Gesellschaft für Musikalische Aufführungs- und Mechanische Vervielfältugungsrechte, the German performing right association) and two undertakings which imported into the Federal Republic sound recordings containing musical works protected by copyright. The first case concerns gramophone records and cassettes from various countries including Member States of the Community; in the second case a consignment of 100 000 records was imported from the United Kingdom. The sound recordings from other Member States were manufactured and marketed in these Member States with the consent of the proprietor of the copyright in the musical works in question but the necessary licences were granted and the corresponding royalties calculated by the proprietors on the sole basis of distribution in the country of manufacture.

GEMA claimed that the importation of such recordings into German territory constitutes an infringement of the copyrights which it is required to protect on behalf of their proprietors. Consequently it considers that it is entitled to damages in the form of payment of the licence fees collected for placing them on the German market subject to deduction of the lower licence fees previously paid in respect of marketing in the Member States where they were manufactured.

The national court raises the point whether such an exercise of copyright, which is lawful under German domestic law, is compatible with the requirements of the Treaty on the free movement of goods.

The settled case-law of the Court indicates that the proprietor of an industrial and commercial property right protected by the law of a Member State may not rely upon that law in order to prevent the marketing of a product which has been lawfully distributed on the market of another Member State by the proprietor of that right himself or with his consent. These decisions also cover the case of a proprietor or of a licensee and a performing right association acting on behalf of the proprietor or licensee as the commercial exploitation of the copyright raises the same problems as that of any other industrial or commercial property right.

In fact GEMA has maintained that its claim before the German courts does not concern the prohibition or restriction of the marketing of the sound recordings in question on German territory but only the balance of the licences paid for all distribution of such articles on the German market. Since GEMA has nevertheless claimed damages for the alleged infringement of copyright its claims are in any event based upon the sole right of the proprietor of the copyright to exploit it, which permits him to prohibit or restrict the free movement of the products incorporating the protected musical work.

GEMA, which claims the difference between the rate paid in the other Member States and that charged on the German market, endeavours in fact to neutralize the differences in price resulting from conditions existing in the other Member States and thereby to eliminate the economic advantage arising for importers of sound recordings from the establishment of the Common Market.

It must further be remarked that within the framework of that Common Market the proprietor is able freely to choose the place, in any of the Member States, in which he places his work on the market; he may make that choice in terms of his own interest. In those circumstances it is impossible to permit a performing right association to claim in respect of the importation into another Member State payment of an additional fee in terms of the difference in the levels of fees existing in the various Member States.

The Court consequently replied to the question with the following ruling:

> Articles 30 and 36 of the Treaty must be interpreted to mean that they preclude the application of a national law which permits a performing right association entrusted with the exploitation of the copyrights of composers of musical works recorded on gramophone records or other sound recording media in another Member State from relying on such rights in order to claim, in cases of the distribution of such recordings on the national market, when they have been placed in free circulation in that other Member State by the proprietors of the copyright or with their consent, payment of a fee corresponding to the licence fees usually collected on marketing on the national market subject to deduction of the lower licence fees paid in the Member State of manufacture.

Judgment of 22 January 1981

Case 58/80

Dansk Supermarked A/S v Imerco A/S

(Opinion delivered by Mr Advocate General Capotorti on 20 November 1980)

1. Free movement of goods - Industrial and commercial property - Rights - Protection - Limits - Exhaustion of rights - Goods covered by a copyright or a trade-mark - Lawful marketing in a Member State - Prohibition of importation into another Member State - Not permissible

   (EEC Treaty, Arts. 30 and 36)

2. Free movement of goods - Quantitative restrictions - Measures having equivalent effect - Legislation on unfair competition - Application to imported goods - Fact of importation incapable of amounting to an act of unfair competition

   (EEC Treaty, Art. 30)

3. Free movement of goods - Provisions of Treaty - Mandatory nature - Derogations agreed between individuals - Not permissible

1. It is clear from Article 36 of the EEC Treaty, in particular the second sentence, as well as from the context, that whilst the Treaty does not affect the existence of rights recognized by the legislation of a Member State in matters of industrial and commercial property, yet the exercise of those rights may none the less, depending on the circumstances, be restricted by the prohibitions of the Treaty. Inasmuch as it provides an exception to one of the fundamental principles of the Common Market, Article 36 in fact admits exceptions to the free movement of goods only to the extent to which such exceptions are justified for the purpose of safeguarding rights which constitute the specific subject-matter of that property. The exclusive right guaranteed by the legislation on industrial and commercial property is exhausted when a product has been lawfully distributed on the market in another Member State by the actual proprietor of the right or with his consent.

   Hence judicial authorities of a Member State may not prohibit, on the basis of a copyright or of a trade-mark, the marketing on the territory of that State of a product to which one of those rights applies if that product has been lawfully marketed on the territory of another Member State by the proprietor of such rights or with his consent.

2. Community law does not in principle have the effect of preventing the application in a Member State to goods imported from other Member States of the provisions on marketing in force in the State of importation. It follows that the marketing of imported goods may be prohibited if the conditions on which they are sold constitutes an infringement of the marketing usages considered proper and fair in the Member State of importation.

   However, the actual fact of the importation of goods which have been lawfully marketed in another Member State cannot be considered as an improper or unfair act since that description may be attached only to offer or exposure for sale on the basis of circumstances distinct from the importation itself

3. It is impossible in any circumstances for agreements between individuals to derogate from the mandatory provisions of the Treaty on the free movement of goods.

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NOTE

The Højesteret /Supreme Court/ of Denmark referred to the Court of Justice a preliminary question on the interpretation of the same Community provisions as those concerned in the foregoing cases in order to establish whether certain national legislation on copyright, trade-marks and marketing applies to goods imported from another Member State.

Imerco A/S, the defendant in the main action, is an organization of Danish hardware merchants. On the occasion of its fiftieth anniversary it had manufactured in the United Kingdom a china service decorated with representations of Danish royal castles and bearing

on the reverse side "Imerco Fiftieth Anniversary". Imerco stipulated that the sale of that service should be reserved exclusively to its members. It was nevertheless agreed between Imerco and the English manufacturer that substandard items (some 20% of the production run) might be marketed by the manufacturer in the United Kingdom but export to Denmark was completely excluded.

Dansk Supermarked A/S, the appellant in the main action, owns a number of Danish supermarkets. It was able to obtain a number of services marketed in the United Kingdom and offered them for sale in Denmark at prices appreciably lower than those of the services sold by Imerco's members.

Imerco instituted proceedings before the competent Danish courts in order to prohibit the marketing of the services in question, claiming that Dansk Supermarked's acts were contrary to fair trading practices and that it had infringed Danish legislation on copyright and trade-marks. Dansk Supermarked on the other hand contended that the said provisions of Community law precluded the application of the Danish provisions. In order to settle that contention the Højesteret submitted to the Court of Justice the following question: "Do the provisions of the EEC Treaty or measures in implementation thereof preclude the application to the case of the Danish laws on copyright, trade-marks and marketing?"

With regard to the legislation on the protection of rights in trade-marks and copyrights the Court refers to its settled case-law and holds that such a derogation from the free movement of goods can only be permitted in so far as it is justified on grounds of the protection of industrial and commercial property (Article 36 of the EEC Treaty). The exclusive right guaranteed by the national provisions on industrial and commercial property is exhausted when a product has been lawfully distributed on the market of another Member State by the proprietor of the right himself or with his consent.

With regard to commercial practices the Court recalls its prior decisions in accordance with which the actual importation of goods which have been lawfully marketed in another Member State cannot be considered as an improper or unfair measure since that description can only be attached to marketing on the basis of circumstances distinct from the importation as such. Furthermore, it is impossible for individuals to contract out of the binding provisions of the Treaty on the free movement of goods.

The operative part of the judgment is as follows:

1. Articles 30 and 36 of the EEC Treaty must be interpreted to mean that the courts of a Member State may not prohibit on the basis of a copyright or of a trade-mark the marketing on the territory of another Member State by the proprietor of such rights or with his consent.

2. Article 30 of the EEC Treaty must be interpreted to mean that the importation as such into a Member State of goods lawfully marketed in another Member State cannot be classified as an improper or unfair commercial practice, subject however to the possible application of legislation of the State of importation against such practices on the grounds of the circumstances or methods of marketing such goods as distinct from the act of importation as such and

   that an agreement between individuals intended to prevent the importation of such goods may not be relied upon or taken into consideration in order to classify the marketing of such goods as an improper or unfair commercial practice.

Judgment of 27 January 1981

Case 1251/79

Italian Republic v Commission of the European Communities

(Opinion delivered by Mr Advocate General Reischl on 16 December 1980)

1. Agriculture - Common organization of markets - Wine - Aid for long-term storage of table wine - Conditions for grant - "Conclusion" of storage contract - Concept

   (Regulation No. 816/70 of the Council, Art. 5 (5); Regulation No. 1437/70 of the Commission, Art. 8 (1) as amended by Regulation No. 176/72)

2. Agriculture - Common Agricultural Policy - Expenditure due to erroneous interpretation of Community law - Financing by the EAGGF - Conditions - Error attributable to an institution of the Community

   (Regulation No. 729/70 of the Council)

1. Entitlement to aid for the long-term storage of table wine cannot be established before it has even been determined that the conditions governing the aid have been fulfilled. Hence the reference to the "conclusion" of the storage contract in the amended version of Article 8 (1) of Regulation No. 1437/70 as a condition governing the grant of the aid must be taken to mean that the contract does not become perfect until the preparation of the instrument whose written form is laid down by Article 9 of the aforesaid regulation, after verification of all the relevant information by the intervention agency.

2. Upon the occasion of the clearance of the accounts presented by the Member States the Commission is not obliged to charge to the EAGGF expenditure incurred on the basis of an erroneous interpretation of Community law unless the error may be attributed to an institution of the Community.

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NOTE

The Italian Republic brought an action before the Court for a declaration that Commission Decision No. 79/898 of 12 October 1979 concerning the clearance of the accounts presented by the Italian Republic in respect of the European Agricultural Guidance and Guarantee Fund, Guarantee Section, Expenditure for 1973, is void, in so far as the Commission did not accept as chargeable to the Fund an amount of Lit 604 863 175 in respect of the payment of aid in relation to long-term storage contracts for wine for the 1971/1972 wine-growing year.

The expenditure which is the subject of the application represents the amount of the aid paid by the AIMA (Azienda di Stato per gli Interventi nel Mercato Agricolo), which is the Italian intervention agency competent to conclude the storage contracts and to pay the aid relating thereto, in respect of the long-term storage contracts for table wine for the 1971/1972 wine-growing year.

By the contested decision, the Commission refused to charge that expenditure to the Fund, having established that the Italian authorities had not observed the rules to which the grant of the aid in question was subject, in that they entered into long-term contracts after 15 February 1972, which was the final date for the conclusion of those contracts under the applicable Community legislation.

The Italian Government puts forward three submissions in support of its application. First, it puts forward an argument based on the interpretation of the applicable Community regulations. The Italian Government explains that the act to which it refers as the "formal stipulation" of the contract by the AIMA could only occur at the end of a procedure involving different stages (submission of an application by the producer concerned - verification at the place of storage of the correctness of the information, drawing up by the AIMA of a list of specifications). The Italian Government admits that, in the case of the long-term contracts referred to in the application, that "formal stipulation" occurred after the final date of 15 February 1972.

The Italian Government maintains that the contracts in question were "concluded" between 16 December 1971 and 15 February 1972, even if their "formal stipulation" occurred subsequently. It relies for that purpose on the general rules of the law of contract, according to which a contract is concluded at the point when the intentions of the two parties concur. The Court emphasizes that the long-term storage aid for table wine is intended to allow the removal from the market, in a situation of considerable surplus, of the excess quantities from the very beginning of a wine-growing year until the following wine-harvests, in particular, in order to stabilize the markets.

The requirement that the long-term contracts must be concluded in the period between 16 December and 15 February of the same wine-growing year, and

also the period of validity of nine months laid down for those contracts, are aimed at achieving that objective. It is in that context that the concept of "conclusion" of the contract must be understood. Under those circumstances, an interpretation of the concept of "conclusion" of the contract which would permit a right to the Community aid to be established, even before it was determined that the conditions governing that aid were fulfilled, cannot be accepted. The result would be that the actions needed in order to check whether those conditions were fulfilled could take place at any time during the nine-month period of validity laid down for the contract, or even after the expiration of that period.

There are therefore no grounds to draw a distinction between the "conclusion" of the contract and its "formal stipulation".

Secondly, the Italian Government claims that the Commission made possible the conclusion of the long-term contracts after the date of 15 February 1972. The retroactive effect of this regulation would have no meaning if the contracts had nevertheless to be concluded before that date. That argument cannot be accepted because the period during which the contracts must be concluded (16 December - 15 February) was not altered by the amendment made.

The third and final submission concerns the protection of legitimate expectation. The Italian Government maintains that the Commission adopted Regulation (EEC) No. 176/72 in order to take account of the difficulties encountered by the AIMA. This final submission was not accepted either.

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

Judgment of 27 January 1981

Case 70/80

Tamara Vigier v Bundesversicherungsanstalt für Angestellte

(Opinion delivered by Mr Advocate General Reischl on 10 December 1980)

1. Social security for migrant workers - Community rules - Scope - Declarations by Member States - Effects

   (Regulation No. 1408/71 of the Council, Art. 5)

2. Social security for migrant workers - Community rules - Scope - German Law on the reparation of injustice perpetrated under National Socialism in the field of social insurance - Included

   (Regulation No. 1408/71 of the Council, Art. 1 (j) and Art. 4 (4))

3. Social security for migrant workers - Continued voluntary or optional insurance - Admission - Status of insured person under national legislation lacking - Duty to take into account insurance periods completed in another Member State - None

   (Regulation No. 1408/71 of the Council, Art. 9 (2))

1. The fact that a domestic law is not mentioned in the declaration made by a Member State pursuant to Article 5 of Regulation No. 1408/71 does not mean that that law must be deemed to lie outside the scope of the regulation.

2. Legislation, such as the German Law on the reparation of injustice perpetrated under National Socialism in the field of social insurance, which forms part of the body of law governing the social insurance of workers in a Member State and which makes no provision for a discretionary assessment of the personal situation and needs of the individual concerned, comes within the scope of Regulation No. 1408/71 and is not excluded by virtue of the provisions of Article 4 (4) of that regulation.

3. Where national legislation makes affiliation to a social security scheme conditional on prior affiliation by the person concerned to the national social security scheme, Regulation No. 1408/71 does not compel Member States to treat as equivalent insurance periods completed in another Member State and those which must have been completed previously on national territory.

Consequently, Article 9 (2) of Regulation No. 1408/71 must be construed as meaning that it does not require a social insurance institution of a Member State to take into account periods of insurance completed under the legislation of another Member State when the worker concerned has never paid, in the first Member State, the contribution required by law in order to create his status as an insured person under the legislation of that Member State.

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NOTE

The main proceedings concern an action brought by Tamara Vigier, a French national who was born in Germany in 1922, but is residing at present in France, against the German social insurance institution.

The plaintiff in the main proceedings left Germany in 1933 at the age of ten. She is a victim of persecution within the meaning of the German Federal Law on reparation and by virtue thereof received compensation for loss of educational opportunity. She works in France and is affiliated to the French social security scheme. The German law allows victims of persecution, who have completed an insurance period of at least 60 calendar months, to pay back-dated contributions under certain conditions for certain periods not extending beyond 31 December 1955. The order for reference indicates that in order to have the status of an insured person under that provision, the person concerned must have paid at least one contribution to the competent German institution.

In December 1975 the plaintiff applied to the defendant in the main proceedings for authorization to pay backdated voluntary contributions in respect of pension and invalidity insurance.

That application was rejected on the ground that since Mrs Vigier did not have the status of an insured person, she did not satisfy the conditions laid down by the German law for the backdated payment of the contributions.

When her action was dismissed, the plaintiff claimed that the contested judgment was based on a wrong application of Article 9 (2) of Regulation (EEC) No. 1408/71 of the Council. She maintained that under that provision the periods of insurance which she completed in France should be taken into account, as if they were periods of insurance completed under the German legislation.

In those circumstances the Bundessozialgericht /Federal Social Court/ referred two questions on the interpretation of Regulation (EEC) No. 1408/71 to the Court of Justice of the European Communities for a preliminary ruling.

The German court first of all expressed doubts as to whether the body of rules on the reparation of injustice committed by the National Socialist Régime in the field of German social insurance comes within the scope of Regulation (EEC) No. 1408/71, and whether the effect of Article 9 (2) of the said regulation is that the nationals of the Member States of the Community, who reside outside the Federal Republic of Germany, may replace the whole 60-month period of previous insurance and the contribution required by the German law by contributions paid in other Member States in order to acquire the status of an insured person.

The Court considers the defendant's argument correct whereby the provisions of the German law fall within the field of social security within the meaning of Article 51 of the Treaty and of Article 1 (j) of Regulation (EEC) No. 1408/71.

The Court ruled that legislation, such as the Gesetz zur Regelung der Wiedergutmachung nationalsozialistischen Unrechts in der Sozialversicherung, which forms part of the body of law in a Member State on the social insurance of workers and makes no provision for a discretionary assessment of the personal situation and needs of the individual concerned, comes within the scope of Regulation (EEC) No. 1408/71 of the Council and is not excluded by virtue of Article 4 (4) of that regulation.

The second question raised concerns the interpretation of Article 9 (2) of Regulation (EEC) No. 1408/71.

That article provides that where, under the legislation of a Member State, admission to voluntary or optional continued insurance is conditional upon completion of periods of insurance, the periods of insurance or residence completed under the legislation of any other Member State are to be taken into account, to the extent required, as if they were completed under the legislation of the first State. The case-law of the Court, and in particular its judgment of 24 April 1980 (in Case 110/79, Coonan /1980/ ECR) indicate that where national legislation makes affiliation to a social security scheme conditional on prior affiliation by the person concerned to the national social security scheme, Regulation (EEC) No. 1408/71 does not compel the Member States to treat insurance periods completed in another Member State as equivalent to those which were completed previously on national territory.

The Court ruled that Article 9 (2) of Regulation (EEC) No. 1408/71 must be construed as meaning that it does not require a social insurance institution of a Member State to take into account periods of insurance completed under the legislation of another Member State when the worker concerned has never paid, in the first Member State, the contribution required by law in order to establish the person's status as an insured person under the legislation of that Member State.

Judgment of 28 January 1981

Case 32/80

Officier van Justitie v J.A.W.M.J. Kortmann

(Opinion delivered by Mr Advocate General Capotorti on 29 October 1980)

1. Free movement of goods - Derogation - Protection of the health of humans - Pharmaceutical products - Parallel imports - Inspections - Lawfulness - Conditions

   (EEC Treaty, Art. 36)

2. Free movement of goods - Derogation - Monitoring procedure justified within the meaning of Article 36 of the Treaty - Charging of fees - Not permissible

   (EEC Treaty, Art. 36)

3. Free movement of goods - Customs duties - Charges having equivalent effect - Registration fees payable by parallel importers of pharmaceutical products - Classification

   (EEC Treaty, Arts. 9, 12 and 13)

4. Taxation provisions - Internal taxation - Discriminatory taxation - Classification of a charge having equivalent effect - Criteria

   (EEC Treaty, Arts. 9, 12, 13 and 95)

5. Taxation provisions - Internal taxation - Discrimination - Unequal incidence of a tax on the costs of undertakings by reason of particular features of their economic structure - Irrelevant

   (EEC Treaty, Art. 95)

1. In the case of imported pharmaceutical products which have already been registered at the request of the manufacturer or the duly appointed importer, Article 36 does not prevent national authorities from checking whether the products imported in parallel are identical to those which have already been registered or, where variants of the same medicinal product are placed on the market, whether the differences between those variants have no therapeutic effect.

That check must however extend only to verifying whether the products so conform and the Member State in question must have required the manufacturer or authorized importer to provide full information regarding the different forms in which the medicinal products in question are manufactured or marketed in the various Member States by either the manufacturer himself, subsidiary or related undertakings, or undertakings manufacturing such products under licence.

2. A monitoring procedure which is in accordance with the requirements of Article 36 of the EEC Treaty is not deprived of its justification, within the meaning of that provision, by virtue of the fact that it gives rise to the collection of fees. On the other hand such fees may not be considered compatible with the Treaty on the sole ground that they are charged in consequence of a measure adopted by the State which is justified within the meaning of Article 36. The exemption provided for in Article 36 in fact relates exclusively to quantitative restrictions on imports or exports or measures having equivalent effect. It may not be extended to customs duties or to charges having equivalent effect which, as such, fall outside the compass of Article 36.

3. Fees demanded of a parallel importer of pharmaceutical products either in the form of a single fee on the occasion of the registration of the pharmaceutical products which he proposes to import or in the form of an annual fee charged in order to meet the costs of procedures intended to check whether the products subsequently marketed are identical to the registered product do not constitute charges having an effect equivalent to customs duties where those fees form part of a general system of internal fees charged both on occasion of the registration of medicinal products produced in the Member State in question and on the occasion of the registration of medicinal products imported either directly by the manufacturer or his appointed importer or as what are known as parallel imports and where such fees are charged, in the case of parallel imports, in accordance with criteria identical or comparable to the criteria employed in determining the fees on domestic products.

4. A discriminatory internal tax does not automatically constitute a charge having an effect equivalent to a customs duty. A charge in the form of an internal tax may not be considered as a charge having an effect equivalent to a customs duty unless the detailed rules governing the levying of the charge, or its use if the charge in question is allocated to a particular use, are such that in fact it is imposed solely on imported products to the exclusion of domestic products.

5. Article 95 of the EEC Treaty is complied with where an internal tax applies in accordance with the same criteria, objectively justified by the purpose for which the tax was introduced, to domestic products and imported products so that it does not result in the imported product's bearing a heavier charge than that borne by the similar domestic product. The fact that a charge which meets those criteria has different effects on the cost prices of the various undertakings by reason of particular features of the economic structure of such undertakings which manufacture or market such products is irrelevant to the application of that provision.

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NOTE

The Arrondissementsrechtbank [District Court] Roermond referred a question to the Court of Justice of the European Communities for a preliminary ruling on the interpretation of Article 36 of the EEC Treaty. That question is raised in connexion with criminal proceedings instituted against a Netherlands trader, a "parallel" importer of pharmaceutical products to the Netherlands, charged with having either possessed with a view to their supply or sold, supplied or marketed a number of proprietary pharmaceutical products without their prior registration provided for by the Netherlands Law on the supply of medicaments. The accused failed to fulfil that requirement because registration gives rise to the payment of two fees, one a single fee and the other an annual fee, and he considers that the requirement to pay the said fees, which he considers excessive, constitutes a measure having an effect equivalent to a quantitative restriction on importation, which is incompatible with Article 30 of the Treaty and cannot be justified by reliance upon the exception provided for by Article 36.

In order to be able to determine whether the national rules are in accordance with the Community law, inasmuch as they require the payment of those fees, the Arrondissementsrechtbank referred the following question to the Court of Justice:

In a situation in which:

(a) certain pharmaceutical products are lawfully in free circulation in one or more Member States in the sense that the permits required under national law for those pharmaceutical products have been issued to the manufacturers, or where appropriate to those who are responsible for putting the pharmaceutical products into circulation in each of the Member States, and

(b) third parties may be aware that such permits have been granted in each of the Member States because the fact has been officially published or has become generally known by some other means, and

(c) a (parallel) importer of medicaments established in one of the Member States imports into the Member State in which he is established the pharmaceutical products which are in circulation as described above,

do the exceptions to the rules relating to the free movement of goods within the EEC, particularly Article 36 of the EEC Treaty in so far as it relates to the protection of the health and life of humans, justify the authorities of the importing Member State permitting imports of those pharmaceutical products only on payment of a registration charge, and if so, what standards should be applied to the amount and frequency of the payments and the system governing payments?

The Court stated that it was necessary, when considering the conformity of such fees,to have regard to Articles 9 and 13 or, where appropriate, to Article 95 of the Treaty, and ruled:

1. A monitoring procedure which is in accordance with the requirements of Article 36 of the EEC Treaty is not as such deprived of its justification for the purposes of that provision by virtue of the fact that it gives rise to the collection of fees of the kind described by the national court.

2. Such fees are not justified on the sole ground that they are charged on the occasion of a measure adopted by the State which is justified within the meaning of Article 36 of the EEC Treaty.

3. Fees demanded of a parallel importer of medicinal products either in the form of a single fee on the occasion of the registration of the medicinal products which he proposes to import or in the form of an annual fee charged in order to meet the costs of procedures intended to check whether the products subsequently marketed are identical to the registered product do not constitute charges having an effect equivalent to customs duties where such charges form part of a general system of internal fees charged both on occasion of the registration of medicinal products produced in the Member State in question and on the occasion of the registration of imported medicinal products either directly by the manufacturer or his authorized importer or by means of what is known as parallel imports and where such charges are applied, in the case of parallel imports, in accordance with criteria identical or comparable to the criteria employed in determining the charges on domestic products.

4. Article 95 of the EEC Treaty is complied with when an internal charge applies in accordance with the same criteria which are objectively justified by the purpose for which the charge was introduced to domestic products and to imported products so that it does not result in imposing on the imported product a charge heavier than that applicable to the similar domestic product. The fact that a charge which meets those criteria has different effects on the cost prices of the various undertakings by reason of particular features of the economic structure of such undertakings which manufacture or market such products is irrelevant to the application of that provision.

Judgment of 3 February 1981

Case 90/79

Commission of the European Communities v French Republic

(Opinion delivered by Mr Advocate General Warner on 4 December 1980)

1. Free movement of goods - Customs duties - Charges having equivalent effect - Concept - Charges having equivalent effect and internal taxation - Distinction

   (EEC Treaty, Arts. 9, 12, 13 and 95)

2. Tax provisions - Internal taxation - Charge borne by imported products in the absence of identical or similar domestic products - Classification

   (EEC Treaty, Art. 95)

1. The prohibition of charges having an effect equivalent to customs duties covers any charge exacted at the time of or on account of importation which, being borne specifically by an imported product to the exclusion of the similar domestic product, has the result of altering the cost price of the imported product thereby producing the same restrictive effect on the free movement of goods as a customs duty. The essential feature of a charge having an effect equivalent to a customs duty which distinguishes it from an internal tax therefore resides in the fact that the former is borne solely by an imported product as such whilst the latter is borne both by imported and domestic products.

2. A charge which is borne by a product imported from another Member State, when there is no identical or similar domestic product, does not constitute a charge having equivalent effect but internal taxation within the meaning of Article 95 of the Treaty if it relates to a general system of internal dues applied systematically to categories of products in accordance with objective criteria irrespective of the origin of the products.

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NOTE

The Commission brought an action for a declaration that the French Republic, by imposing levies on the importation of reprographic equipment, had failed to fulfil its obligations under Articles 12 and 113 of the Treaty and under the provisions of the regulation on the Common Customs Tariff.

The French Finance Law for 1976 introduced a tax ("levy on the use of reprography") of 3% on sales and appropriations for their own use of reprographic equipment by undertakings which manufactured them or had them manufactured in France, and on imports of such equipment. A subsequent decree gave a specific list of that equipment which includes certain offset printing machines, hectographic duplicators and stencil duplicators, special photographic equipment for the copying of documents, microfiche scanners linked to copying equipment, optical photographic equipment, thermo-copying equipment and some contact photo-copying equipment.

The sums raised by means of the levy are allocated exclusively to the Centre Nationale des Lettres and are added to the other income of the Centre which uses them amongst other things to subsidize the publication of quality works and the purchase of books by libraries. The French Government says that this allocation of funds represents a kind of collective compensation which helps to make good, if only to a limited extent, the loss of income by authors and publishers due to the increasingly frequent use of reprography.

Since national production of all of the different types of reprographic equipment represents only a very small percentage (about 1% in recent years) of total production marketed in France, the Commission came to the conclusion that the levy in issue in practice is borne only by imported products and that it accordingly contravened Article 12 of the Treaty, so far as it applies to equipment from other Member States, and Article 113 of the Treaty as well as the provisions of the Common Customs Tariff where it applies to equipment originating from non-member countries.

The Court did not adopt that classification of the levy as a tax having an effect equivalent to a customs duty. As the Court has already held in established case-law, even a charge which is borne by a product imported from another Member State, when there is no identical or similar national product, does not constitute a tax having an equivalent effect but internal taxation within the meaning of Article 95 of the Treaty if it relates to a general system of internal dues applied systematically to categories of products in accordance with objective criteria irrespective of the origin of the products. The particular features of the levy in issue allow it to be said that it is part of such a general system, especially as it comes under a fiscal arrangement whose origin lies in the breach made in legal systems for the protection of copyright by the increase in the use of reprography and which is designed to subject the users of those processes to a charge which makes up for that which they would normally have to pay.

The Court:

(1) dismissed the action as unfounded;

(2) ordered the applicant to pay the costs.

Judgment of 3 February 1981

Case 95/80

Societe Havraise Dervieu-Delahais and Others v
Directeur General des Douanes et Droits Indirects

(Opinion delivered by Mr Advocate General Capotorti on 3 December 1980)

1 Agriculture - Monetary compensatory amounts - Application - Products whose price is dependent on that of products subject to intervention arrangements - Concept of price dependence - Relationship of competition

(Regulation No. 974/71 of the Council, Art. 1 (2) (b))

2. Agriculture - Monetary compensatory amounts - Application - Risk of disturbances in trade - Assessment by the Commission - Criteria - Identical compensatory amounts for all products within the same group - Consideration of peculiarities of a product

(Regulation No. 974/71 of the Council, Art. 1 (3), Commission Regulation No. 652/76)

1. The concept of price dependence to which Article 1 (2) (b) of Regulation No. 974/71 makes reference describes not only the direct derivation of the price of a given product from that of a product subject to intervention arrangements but also the dependence of the price of a product on prices which prevail as a whole on the market concerned and of which the level is sustained by the various intervention arrangements. That dependence may result from, inter alia, a relationship of competition between a given product and other products forming part of the same organization of the market.

2. In the assessment of the existence or the risk of disturbances in trade affecting a given sector of the agricultural market, the examination may not be confined to the position of a given product without other competing products' being taken into consideration at the same time, and that throughout the whole of the Common Market. Since the exclusive function of compensatory amounts is to compensate for the effect of monetary fluctuations without changing the relationships established between competing products, the Commission was legitimately entitled to consider, at least as a starting point, that all products belonging to the same group defined by the same tariff subheading must be subjected to the same compensatory amount in order to avoid disturbance of the market. From that it follows that even proof of the fact that a given product has very special characteristics from the point of view of its production, price and markets, does not permit the conclusion that the Commission is under an automatic obligation to sever that product from the rest of the group of which it forms part by placing it directly outside the system of monetary compensatory amounts.

NOTE

The Tribunal d'Instance [District Court] of the First Arrondissement, Paris, submitted for a preliminary ruling a question relating to the validity of provisions in Community regulations which subjected exports of Roquefort cheese from France to the levying of monetary compensatory amounts.

That question was put in the context of an action instituted against the Directeur Général des Douanes by several companies and natural persons who are producers and exporters of Roquefort with a view to obtaining reimbursement of monetary compensatory amounts paid during the period between 1976 and 1979.

The list of those amounts includes, inter alia, tariff subheading 04.04 C, blue-veined cheese, which embraces all the blue cheeses. Consequently, exports of Roquefort bore a compensatory amount until the entry into force of the Commission Regulation of 20 April 1979.

The plaintiffs in the main proceedings argued that Roquefort was wrongly included in the system of compensatory amounts. According to the plaintiffs, Roquefort cheese is in fact a product obtained from sheep' milk through specific processes which are unique to its manufacture and which is sold at a price significantly higher than that of other blue cheeses and does not display the relationship of dependance, in relation to other milk products subject to intervention measures, required by the Community regulations as a condition for the inclusion of the given product in the system of compensatory amounts.
It is therefore the case that Roquefort is and always has been "wholly unconnected to the Community agri - monetary system".

Under the terms of Regulation No. 974/71 the introduction of monetary compensatory amounts is subject to a threefold condition so far as products which are not directly covered by intervention measures are concerned. Those products must be governed by the common organization of the market; their price must be dependent on that of one or more products which are covered by intervention measures; and disturbances in the agricultural trades concerned must have been discerned or be foreseeable.

The fact that Roquefort is obtained from sheeps' milk does not take it outside the common organization of the market in milk which encompasses all cheeses irrespective of the raw material used for their manufacture.

The concept of dependence points not only to the direct derivation of the price of a given product from that of a product subject to intervention measures but also to the dependence of the price of a product on prices which prevail as a whole on the market concerned and whose level is sustained by the various intervention measures.
That dependence may result from, inter alia, a relationship of competition between a given product and other products forming part of the same organization of the market. That relationship of dependence also exists in the case of Roquefort which is in competition with all cheeses and especially with blue cheeses.

> In regard to the assessment of the existence or the risk of disturbances concerning the sector of the market under consideration, that examination may not be confined to the position of a given product without the other products concerned being taken into consideration at the same time.

It is not necessary to sever Roquefort from the measures in question in spite of its special nature and in the instant case the Commission did not overstep the margin of discretion which it enjoys.

The Court ruled that consideration of the question put by the Tribunal d'Instance of the First Arrondissement, Paris, has disclosed no factor of such a kind as to affect the validity of Commission Regulation No. 652/76 of 24 March 1976 changing the monetary compensatory amounts following changes in exchange rates for the French franc inasmuch as it fixed monetary compensatory amounts applicable without distinction to all cheeses falling within tariff subheading 04.04 C of the Common Customs Tariff, including Roquefort cheese.

Judgment of 4 February 1981

Case 44/80

Commission of the European Communities v Italian Republic

(Opinion delivered by Mr Advocate General Reischl on 16 December 1980)

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

(EEC Treaty, Art. 169)

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

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NOTE

In this case a declaration was sought that the Italian Republic had failed to fulfil its obligations under the EEC Treaty by failing to implement within the due time Council Directive No. 76/116 of 18 December 1975 on the approximation of the laws of the Member States relating to fertilizers and Commission Directive No. 77/535 of 22 June 1977 on the approximation of the laws of the Member States relating to methods of sampling and analysis for fertilizers.

The Court declared that by failing to adopt, within the prescribed period, the provisions needed in order to comply with Council Directive No. 76/116 of 18 December 1975 and Commission Directive No. 77/535 of 22 June 1977, the Italian Republic had failed to fulfil one of its obligations under the Treaty.

Judgment of 4 February 1981

Case 45/80

Commission of the European Communities v Italian Republic

(Opinion delivered by Mr Advocate General Reischl on 16 December 1980)

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

(EEC Treaty, Art. 169)

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

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NOTE

This case concerned the failure by the Italian Republic to fulfil its obligations arising from its non-implementation of Council Directive No. 76/767 of 27 July 1976 on the approximation of the laws of the Member States relating to common provisions for pressure vessels and methods of inspecting them.

The Court declared that by failing to adopt, within the prescribed period, the provisions needed in order to comply with Council Directive No. 76/767 of 27 July 1976, the Italian Republic had failed to fulfil one of its obligations under the Treaty.

Judgment of 5 February 1981

Case 50/80

Joszef Horvath v Hauptzollamt Hamburg-Jonas

(Opinion delivered by Mr Advocate General Capotorti on 27 November 1980)

Common Customs Tariff - Customs duties - Application to drugs which have been smuggled in and destroyed as soon as discovered - Not permissible - Prosecution of offences - Powers of Member States

Ad valorem customs duty cannot be determined for goods which are of such a kind that they may not be put into circulation in any Member State but must on the contrary be seized and taken out of circulation by the competent authorities as soon as they are discovered.

Accordingly, the introduction of the Common Customs Tariff no longer leaves a Member State the power to apply customs duties to drugs which have been smuggled in and destroyed as soon as they were discovered but it does leave it full freedom to take criminal proceedings in respect of offences committed, with all the attendant consequences, including fines.

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NOTE

The Finanzgericht [Finance Court] Hamburg referred to the Court for a preliminary ruling four questions concerning the customs value of goods which were fraudulently brought on to the customs territory of the Community. The dispute in the main action concerns the determination of the customs duty chargeable on a quantity of heroin bought on the black market in Amsterdam and discovered at the frontier crossing-point between the Netherlands and Germany. The heroin was seized and destroyed, and the smuggler was sentenced by a German criminal court to five years' imprisonment. The German customs authorities subsequently demanded a sum of DM 1 296 as customs duties on the goods fraudulently imported.

The fourth question, in respect of which the national Court has indicated that an affirmative reply would make consideration of the other questions unnecessary, is worded as follows: "Are the provisions of the EEC Treaty on the customs union (Article 9 (1) and Articles 12 and 29) to be interpreted as meaning that a Member State is not entitled to levy customs duty on unlawfully imported drugs which have subsequently been destroyed when all the other Member States do not levy customs duty on drugs which have been unlawfully imported but seized and destroyed? Might the levying of customs duty in one Member State alone also infringe Article 7 of the EEC Treaty?".

It should be borne in mind that a product such as heroin is not seized and destroyed simply because the importer has not complied with customs formalities, but above all because it is a drug whose harmfulness is well-known and which is prohibited from being imported and marketed in all the Member States with the exception of a strictly-controlled and limited trade for authorized use for pharmaceutical purposes.

If in those circumstances the classification of the Common Customs Tariff includes such a product, it can only be intended to apply to its importation with a view to its authorized use. An ad valorem customs duty may not in fact be fixed for goods of such a nature that they may not be put into circulation in any of the Member States but must, on the contrary, be seized and taken off the market by the competent authorities as soon as they are discovered.

The Court ruled that the setting up of the Common Customs Tariff no longer leaves a Member State the power to apply customs duties to drugs which have been smuggled in and destroyed as soon as they were discovered but does leave it full freedom to take criminal proceedings in respect of offences committed, with all the attendant consequences, including fines.

Judgment of 5 February 1981

Case 53/80

Officier van Justitie v Koninklijke Kaasfavriek Eyssen B.V.

(Opinion delivered by Mr Advocate General Warner on 27 November 1980)

Free movement of goods - Derogations - Protection of health of humans - Prohibition of the addition of nisin to processed cheese - Permissibility in relation to Community rules on preservatives in foodstuffs intended for human consumption - Restriction of the prohibition to products intended for sale on the domestic market of the State concerned - Arbitrary discrimination - Disguised restriction - None

(EEC Treaty, Art. 36; Council Directive No. 64/54/EEC, Art. 6 (b)

The provisions of the EEC Treaty regarding the free movement of goods do not, at the present stage of Community rules on preservatives in foodstuffs intended for human consumption, preclude national measures by a Member State, which, on the ground of the protection of health and in accordance with Article 36 of the Treaty, prohibit the addition of nisin to processed cheese sold on the domestic market other than processed cheese intended for export to other Member States.

In view of the uncertainties prevailing in the various Member States regarding the maximum level of nisin which must be prescribed in respect of each preserved product intended to satisfy the various dietary habits, it does not appear that such a prohibition, although restricted only to products intended for sale on the domestic market of the State concerned, constitutes "a means of arbitrary discrimination or a disguised restriction on trade between Member States" within the meaning of Article 36 cited above.

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NOTE

The question was raised in the context of a prosecution by the Netherlands authorities of a Netherlands manufacturer producing processed cheese for both sale on the domestic market and export to other Member States for having in stock, with a view to their resale in the Netherlands, quantities of processed cheese intended to be marketed and for human consumption containing an additive, nisin, which is not one of those authorized by the applicable Netherlands legislation.

Nisin is an antibiotic which slows down the process of deterioration of the product. The presence of nisin in processed cheese is prohibited in the Netherlands.

The accused asserted that the quantities of nisin used did not present any danger to public health and that the addition of that substance to cheeses is authorized in other Member States.

The national court was led to refer to the Court a question which seeks to ascertain whether the provisions of the Treaty on the freedom of movement of goods within the Community, bearing in mind Article 36 of the Treaty, must be construed as precluding national rules prohibiting the addition of nisin to products such as processed cheese, and whether such a prohibition is compatible with the Treaty, especially as they apply only to products intended for sale on the national market and do not cover products intended for export to other Member States.

It must be noted that the addition of nisin to processed cheese is not regulated uniformly in all the Member States. In view of that diversity of rules it is incontestable that the prohibition or the authorization, depending on the Member State, as regards adding nisin to processed cheese, constitutes a measure having an effect equivalent to a quantitative restriction.

Article 36 of the Treaty allows certain derogations justified on the ground of "the protection of health of humans". But the assessment of risks to the health of humans presents difficulties and uncertainties. That may help to explain the lack of uniformity of national laws of the Member States concerning the use of this preservative and at the same time justify the limited scope which the prohibition on using the said additive in a specific product, such as processed cheese, has in certain Member States, including the Netherlands.

The Court ruled in answer to the question put by the national court that the provisions of the EEC Treaty regarding the free movement of goods do not, at the present stage of Community rules on preservatives in foodstuffs intended for human consumption, preclude national measures by a Member State, which, on the grounds of the protection of health, in pursuance of Article 36 of the Treaty, prohibit the addition of nisin to home-produced or imported processed cheese, even if they limit such a prohibition only to products intended for sale on the domestic market of the said State.

Judgment of 5 February 1981

Case 108/80

Ministère Public v René Joseph Kugelmann

(Opinion delivered by Mr Advocate General Reischl on 17 December 1980)

Approximation of legislation - Preservatives which may be used in foodstuffs intended for human consumption - Duty of Member States - Scope - Right of individuals to rely upon the provisions of Directive No. 64/54/EEC - Limits

(Council Directive No. 64/54/EEC)

At the present stage in the approximation of legislation in the field of preservatives, Member States are not bound to authorize for use in foodstuffs all the substances the use of which is permitted by Directive No. 64/54/EEC. They have retained a certain discretion to determine their own rules concerning the addition of preservatives to foodstuffs, subject to the twofold condition that no preservative may be authorized unless it appears in the list annexed to the directive and that the use of a preservative which is listed there may not be totally prohibited except in special cases where there is no technological necessity.

In these circumstances, an individual who is prosecuted for using sorbic acid in certain foodstuffs intended for human consumption cannot rely upon the provisions of Directive No. 64/54/EEC authorizing the use of that preservative if the applicable national legislation permits the use thereof in other foodstuffs intended for human consumption.

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NOTE

The Cour d'Appel [Court of Appeal], Colmar, referred to the Court a question for a preliminary ruling on the interpretation of Council Directive No. 64/54 on the approximation of the laws of the Member States concerning the preservatives authorized for use in foodstuffs intended for human consumption.

The dispute in the main action concerns proceedings against a company director charged with having sold, with knowledge of their intended use, products, namely decorative gelée containing sorbic acid or its derivatives, likely to adulterate foodstuffs used for human consumption.

The Tribunal de Première Instance [Court of First Instance] had found that sorbic acid or its derivatives are preservatives whose use is prohibited in prepared meat products. The Cour d'Appel wondered whether such a rule was not contrary to Community law, particularly Directive No. 64/54.

The question put by the Cour d'Appel is whether the fact that the national legislation of a Member State prohibits the use of a preservative used in foodstuff intended for human consumption, when the use of that preservative is authorized by Directive No. 64/54, constitutes a breach of Community law which may be relied on by a Community citizen prosecuted for adulteration of foodstuffs with sorbic acid.

The Court replied by ruling that a person prosecuted for having used sorbic acid in foodstuffs intended for human consumption may not rely on the provisions of Directive No. 64/54 authorizing the use of that preservative if the applicable national legislation permits the use of sorbic acid in other foodstuffs intended for human consumption.

Judgment of 5 February 1981

Case 154/80

Staatssecretaris van Financiën v
Cooperatieve Aardappelenbewaarplaats G.A.

(Opinion delivered by Mr Advocate General Warner on 18 December 1980)

Tax provisions - Harmonization of legislation - Turnover taxes - Common system of value added tax - Provision of services - Basis of assessment - Consideration, directly linked to the service, capable of being expressed in money and having a subjective value

(Council Directive No. 67/228, Arts. 2 and 8 (a): Annex A, point 13)

A provision of services is taxable within the meaning of the Second Directive on the harmonization of legislation of Member States concerning turnover taxes, when the service, in the terms of Art. 2 of that instrument, is provided against payment and the basis of assessment for such a service consists, in the terms of Article 8 (a) as amplified by point 13 of Annex A, of everything received in return for the provision of the service. There must therefore be a direct link between the service provided and the consideration received. Such consideration must be capable of being expressed in money and have a subjective value since the basis of assessment for the provision of services is the consideration actually received and not a value assessed according to objective criteria.

Therefore there can be no question of any consideration within the meaning of Article 8 (a) of the directive in the case of a co-operative association running a warehouse for the storage of goods which does not impose any storage charge on its members for the service provided.

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NOTE

The Hoge Raad [Supreme Court] of the Netherlands referred to the Court for a preliminary ruling a question concerning the interpretation of the Second Council Directive on the common system of value added tax.

The question was raised in the context of a dispute, between the Staatssecretaris van Financiën and an agricultural co-operative association which runs a potato warehouse, over the fact that, having decided not to collect any storage charge for 1975 and 1976 from its members for the storage of potatoes, the association considered that those services, provided for no consideration, should not be subject to value added tax.

The fiscal authorities nevertheless took the view that the co-operative had charged consideration to its members owing to the reduction in the value of their shares as a result of the non-collection of the storage charges for the two years in question.

The national court asked whether in such a case there is consideration within the meaning of the opening words and paragraph (a) of Article 8 of the Second VAT Directive.

The Court examined the relevant provisions of the directive and found that a provision of a service is taxable when that service is provided for consideration and that the basis of taxation for such a service consists of everything received in return for the service. There must therefore be a direct link between the service provided and the consideration received which does not occur in a case where the consideration consists of an unascertained reduction in the value of the shares possessed by the members of the co-operative and such a loss of value may not be regarded as a counter-payment received by the co-operative providing the services.

The Court ruled that there can be no question of any consideration within the meaning of the opening words and paragraph (a) of Article 8 of the Second Directive No. 67/228 of the Council of 11 April 1967, on the harmonization of legislation of Member States concerning turnover taxes - Structure and procedures for application of the common system of value added tax, in the case of a co-operative association running a warehouse for the storage of goods which does not impose any storage charge on its members for the services provided.

Judgment of 17 February 1981

Case 133/80

Commission of the European Communities v Italian Republic

(Opinion delivered by Mr Advocate General Reischl on 28 January 1981)

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

(EEC Treaty, Art. 169)

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

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NOTE

The Commission of the European Communities instituted proceedings for a ruling that the Republic of Italy, by its failure to enact within the prescribed period the provisions necessary to comply with Council Directive No. 77/62/EEC of 21 December 1976 co-ordinating procedures for the award of public supply contracts, has failed to fulfil its obligations under the EEC Treaty.

The circumstances relied upon by the Italian Republic do not constitute a sufficient defence against the failure to fulfil the obligation complained of. According to the settled case-law of the Court of Justice a Member State may not rely upon its own national legal system to justify failure to fulfil obligations arising under Community directives.

The Court rules that the Italian Republic, by failing to enact within the prescribed period the provisions necessary to comply with Council Directive No. 77/62/EEC, has failed to fulfil one of its obligations under the Treaty.

Judgment of 17 February 1981

Case 171/80

Commission of the European Communities v Italian Republic

(Opinion delivered by Mr Advocate General Reischl on 28 January 1981)

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

(EEC Treaty, Art. 169)

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

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NOTE

The Commission submitted an application to the Court of Justice for a ruling that the Italian Republic has failed to fulfil one of its obligations under the Treaty by failing to enact within the period prescribed the provisions necessary to comply with Council Directive No. 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations.

The Court rules that the Italian Republic, by failing to enact within the prescribed period the provisions necessary to comply with Council Directive No. 76/769/EEC, has failed to fulfil one of its obligations under the Treaty.

Judgment of 19 February 1981

Case 104/80

Kurt Beeck v Bundesanstalt für Arbeit

(Opinion delivered by Mr Advocate General Reischl on 18 December 1980)

1. Social security for migrant workers - Family allowances - Frontier worker - Acquisition of entitlement to benefits in the State of employment pursuant to Community law

   (Regulation No. 1408/71 of the Council, Art. 13 (2)(a) and Art. 73 (1))

2. Social security for migrant workers - Family allowances - Community rules on overlapping - Application removing entitlement to benefits afforded by national legislation alone - Not permissible

3. Social security for migrant workers - Family allowances - Community rules on overlapping - Article 10 (1)(a) of Regulation No. 574/72 - Benefits payable by the State of residence - Suspension of entitlement to benefits in the State of employment - Suspension restricted to the amount received in the State of residence

   (Regulation No. 574/72 of the Council, Art. 10 (1)(a) as amended by Regulations Nos. 878/73 and 1209/76)

1. By virtue of Articles 73 and 13 (2)(a) of Regulation No. 1408/71 taken together a frontier worker residing with his wife and children in a Member State other than the State of employment acquires an entitlement under Community law to family allowances in the latter State.

2. A rule designed to prevent the overlapping of family allowances is applicable only to the extent to which it does not, without cause, deprive those concerned of the benefit of an entitlement to benefits conferred on them by the legislation of a Member State.

3. Article 10 (1)(a) of Regulation No. 574/72 as amended suspends payment of family benefits or family allowances payable under the legislation of the State of employment only up to the amount received, in respect of the same period and the same member of the family, in the State of residence by the spouse pursuing a professional or trade activity within the territory of that State.

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NOTE

Questions concerning the interpretation of various provisions of Regulation (EEC) No. 1408/71 were submitted within the context of an action between on the one hand a frontier worker, a German national, residing in Denmark with his wife and two children who works in Flensburg in the Federal Republic of Germany and travels each day from his Danish residence to his place of work where he has no dwelling whilst his wife is employed in Denmark and receives there a family allowance (børnetilskud) in respect of their two children, and on the other the Bundesanstalt für Arbeit /Federal Employment Office/ Flensburg, which rejected the applicant's claim for the payment in the Federal Republic of half of the amount of any German family allowances which may be payable in respect of his second son in accordance with the Federal German Law on family allowances /Bundeskindergeldgesetz/ in accordance with which half of the dependent child allowance may be granted where the benefit in the other Member State does not exceed 75% of the Kindergeld.

This case led the Sozialgericht /Social Court/ Schleswig to refer three preliminary questions to the Court of Justice:

1. Is a German national who resides with his wife and children in Denmark and is employed in the Federal Republic but returns daily from his place of work to his residence in Denmark, and whose wife is employed also in Denmark, entitled to receive a family allowance under the national laws of the Federal Republic of Germany pursuant to Article 20 in conjunction with Article 4 and Article 1 of Regulation No. 1408/71 of the Council of 14 June 1971 as a "frontier worker" within the meaning of those overriding provisions of European law?

2. Is such an employed person also so entitled if, independently of European law, he is already treated under national law as if he had his habitual residence in the Federal Republic of Germany?

3. Is the national German entitlement to the family allowance of a worker residing in Denmark totally suspended under Article 10 (1) (a) of Regulation No. 574/72 on the implementation of Regulation No. 1408/71 /as amended by Article 1 (5) of Regulation No. 878/73/ if his wife receives the Danish family allowance (børnetilskud) for those children in Denmark, although Article 8 (2) of the German Bundeskindergeldgesetz /Federal Law on Family Allowances/ provides for payment of a family allowance to the extent of the difference between the Danish and the German family allowances?

The Court replied to these questions with the following ruling:

1. Under the joint provisions of Articles 73 and 13 (2) (a) of Regulation No. 1408/71, a frontier worker residing with his wife and children in a Member State other than the State of employment, is entitled in the latter State to family allowances under Community law.

2. Article 10 (1) (a) of Regulation No. 574/72 as amended suspends the grant of entitlement to family benefits or family allowances payable under the legislation of the State of employment only up to the amount received, for the same period and in respect of the same member of the family, in the State of residence by the spouse pursuing a professional or trade activity in the territory of that State.

Judgment of 19 February 1981

Case 130/80

Criminal proceedings against Fabriek voor Hoogwaardige Voedingsprodukten Kelderman B.V.

(Opinion delivered by Mr Advocate General Capotorti on 18 December 1980)

1. Free movement of goods - Quantitative restrictions - Measures having equivalent effect - Marketing of a product - Disparities between national laws - Obstacles to intra-Community trade - Permissibility - Conditions and limits

   (EEC Treaty, Arts. 30 and 36)

2. Free movement of goods - Quantitative restrictions - Measures having equivalent effect - Concept - Marketing of bread - Fixing of minimum and maximum limits for dry matter

   (EEC Treaty, Art. 30)

3. Free movement of goods - Quantitative restrictions - Measures having equivalent effect - Power of the national administration to grant exemptions - No effect on whether a measure is prohibited

   (EEC Treaty, Art. 30)

1. In the absence of common or harmonized rules, obstacles to intra-Community trade resulting from disparities between national laws on the manufacture and marketing of a product must be accepted in so far as those provisions may be recognized as being necessary in order to satisfy imperative requirements relating in particular to the protection of public health, fair trading and consumer protection.

2. The concept of measures having an effect equivalent to quantitative restrictions on imports appearing in Article 30 of the Treaty must be understood as meaning that rules laid down by law in a Member State which require the quantity of dry matter in bread to fall within specified sets of limits are covered by that article where they apply to the importation of bread lawfully produced and marketed in another Member State.

3. A measure caught by the prohibition provided for by Article 30 of the EEC Treaty does not escape that prohibition simply because the competent authority is empowered to grant exemptions, even if that power is freely applied to imported products. Freedom of movement is a right whose enjoyment may not be dependent upon a discretionary power or on a concession granted by the national administration.

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NOTE

The question was submitted in the context of criminal proceedings instituted against an importer charged with having sold on the Netherlands market a brioche originating in the French Republic, the dry-matter content of which amounted to 300 grams in a product weighing 400 grams.

The Netherlands authorities treated the brioche as bread and found that the dry-matter content did not come within the limits laid down by the Netherlands Broodbesluit /Bread Order/. This prompted the national court to refer the following question to the Court of Justice:

> "Must the concept of 'measures having an effect equivalent to quantitative restrictions on imports' in Article 30 of the EEC Treaty be interpreted as extending to the requirement laid down in Article 10 of the Broodbesluit /Bread Order/ (Warenwet /Food and Drugs Act/) that the quantity of dry matter in a loaf must fall within certain limits, with the result that traditional products from other Member States, the dry-matter content of which exceeds the limits laid down, may not be marketed in the Netherlands?"

Following its previous judgments the Court recalls that obstacles to intra-Community trade arising from differences in national provisions on the marketing of the products in question must be permitted in so far as such provisions may be considered necessary for the protection of imperative requirements concerning in particular the protection of public health, honesty in commercial transactions and the protection of consumers. With regard to the protection of public health the Government of the Netherlands stated that it wished to ensure that its nationals received sufficient nourishing substances. Nevertheless it recognized that public health was not endangered.

With regard to the protection of consumers it was contended that the Broodbesluit prevented the consumer from being misled as to the actual quality of the bread.

The Court replies that it is easy to inform the consumer by other sufficient means, such as labelling.

Consequently the Court considers that the obstacle to the marketing in the Netherlands of bread lawfully produced and marketed in another Member State is not justified on any grounds of public interest.

The Court ruled that the concept of "measure having an effect equivalent to quantitative restrictions on imports" appearing in Article 30 of the Treaty must be understood as meaning that that provision covers a requirement laid down by regulation of a Member State that the quantity of dry matter in bread must fall within specified limits in cases in which that requirement applies to the importation of bread lawfully produced and marketed in another Member State.

Judgment of 25 February 1981

Case 56/80

Firma A. Weigand v Schutzverband Deutscher Wein e.V.

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

Agriculture - Common organization of the market - Wine - Description and presentation of wines - Prohibition of "misleading information" - Scope (Council Regulation No. 355/79, Arts. 8 (c), 18 (c) and 43)

The expression "misleading information" employed in Articles 8 (c) and 18 (c) of Regulation No. 355/79 laying down general rules for the description and presentation of wines and grape musts and the expressions "confusion" and "false impression" occurring in Article 43 of the same regulation must be interpreted as covering not only descriptions which are liable to be confused with the description of a particular small locality ("Lage") but also all descriptions which are liable to induce the public to believe that the description in question is the name, or part of the name, of a wine-growing local administrative area ("Weinbauort") which does not in fact exist or the name of a small locality ("Lage") which does not in fact exist.

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NOTE

The main action is between the undertaking Weigand, which trades in wines and the Schutzverband Deutscher Wein e.V. /Association for the Protection of German Wines/.

Weigand trades in quality wines produced in specified regions under various descriptions, including "Klosterdoktor" and "Schlossdoktor". Both descriptions have been registered trade-marks in Germany since 1930. The Association instituted proceedings against Weigand on the ground that the descriptions in question are misleading both for the purposes for the German Law on wine and of the Law on unfair competition because they give the impression that they are descriptions of a specific vineyard or group of vineyards ("Lage"). According to the Association the descriptions "Klosterdoktor" and "Schlossdoktor" call to mind the description "Doktor" well known as the name of a vineyard or group of vineyards and occurring frequently in German wine-growing regions.

The words "Schloss" and "Kloster", which call to mind buildings, also constitute geographical references; the German law provides that any trader who in the course of his business furnishes for the purposes of competition misleading information, in particular as to the quality, origin and method of manufacture of goods, may be required to cease employing such information.

The Oberlandesgericht /Regional Court/ Karlsruhe ordered Weigand to cease marketing wine bearing the description "Klosterdoktor" or "Schlossdoktor". Weigand claimed before the Bundesgerichtshof /Federal Court of Justice/ that German law does not apply to this case since the descriptions chosen are lawful under the provisions of Community law governing the description of wines - the descriptions in dispute are in fact purely brand names which cannot cause confusion with any real statement of origin.

This prompted the Bundesgerichtshof to refer the following question to the Court:

Must the word "confusion" in Article 43 (1) of Regulation (EEC) No. 355/79 and/or the words "misleading information" in Articles 8 (c) and 18 (c) of the regulation, as distinct from the words "false impression" in Article 43 (2) of the regulation, be interpreted as covering only cases in which: purchasers may confuse a brand name with another specific brand name or description (in the present case, a description of a locality) or (b) are confusing descriptions or false or misleading information to be understood as covering descriptions or information which induce the public to believe that what is being represented is the name, or part of the name, of a vineyard or group of vineyards, which does not in fact exist or of a wine-producing locality which does not in fact exist?

The Court emphasizes that Regulation No. 355/79 applies systematically to all practices capable of adversely affecting the fairness of marketing operations with regard to the description as such of wines and to advertising.

The common aim of these provisions is to eliminate in the marketing of wines all practices of such a nature as to create false impressions, regardless of whether such practices cause for traders or consumers confusion with existing products or mistaken views as to origin or characteristics which do not in fact exist.

The Court replied to the question submitted by ruling that the words "misleading information" which are used in Articles 8 (c) and 18 (c) of Regulation No. 355/79 and the words "confusion" and "false impression" which appear in Article 43 of the same regulation must be interpreted as referring not only to descriptions capable of being confused with information concerning a specified place ("Lage") but further to all descriptions capable of inducing the public to believe that the name in question, or part thereof, is of a wine-producing locality which does not in fact exist, or the description of a vineyard or group of vineyards which does not in fact exist.

Judgment of 10 March 1981

Joined Cases 36 and 71/80

Irish Creamery Milk Suppliers Association and Others v
Government of Ireland and Others
Martin Doyle and Others v An Taoiseach and Others

(Opinion delivered by Mr Advocate General Warner on 17 December 1980)

1. Questions referred for a preliminary ruling - Reference to the court - Stage of the proceedings at which reference should be made - Discretion of the national judge

   (EEC Treaty, Art. 177)

2. Agriculture - Common organization of the markets - Price system - National intervention - Tax under a national incomes policy levied on the value of certain agricultural products - Admissibility - Conditions - Appraisal by the national judge

3. Free circulation of goods - Customs duties - Charges having equivalent effect - Concept - Tax levied on exported and non-exported livestock - Exclusion

   (EEC Treaty, Arts. 9, 12, 16)

1. The need to provide an interpretation of Community law which will be of use to the national court makes it essential to define the legal context in which the interpretation requested should be placed. From that aspect it might be convenient in certain circumstances for the facts in the case to be established and for questions of purely national law to be settled at the time the reference is made to the Court of Justice so as to enable the latter to take cognizance of all the features of fact and law which may be relevant to the interpretation of Community law which it is called upon to give.

   However those considerations do not in any way restrict the discretion of the national court in deciding at what stage in the proceedings pending before it a question should be referred to the Court for a preliminary ruling.

2. A temporary national duty intended to be borne by agricultural producers as part of an incomes policy dividing tax burdens among the various sectors of the working population, but applied in the form of an indirect tax on the value of certain agricultural products subject to common organizations of the markets at the time of their delivery for processing, storage or export and payable either by the exporter or by the processing or storage undertaking, who are entitled to recover the amount of the duty from the producers, is not, in principle, incompatible with the provisions of the EEC Treaty on agricultural policy, or with Community rules on the common organization of the markets.

   Such incompatibility would, however, exist if and in so far as the duty had the effects of impeding the proper functioning of the machinery established as part of the relevant common organizations for the formation of common prices and to regulate market supplies.

   It is for the national court to decide whether, and if so to what extent, the duty which it is called upon to consider in fact has such effects.

3. Even if it is applied to livestock exported on the hoof when they are delivered for export, a national duty does not fall within the prohibition of charges having an effect equivalent to customs duties on exports if it is also applied, systematically and in accordance with the same criteria, to livestock which are not being exported, at the time of their delivery for slaughter.

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NOTE

The High Court of Ireland referred to the Court for a preliminary ruling two questions, one of which concerns the interpretation of Article 177 of the EEC Treaty whilst the other seeks elucidation on the features of interpretation of Community law which it requires in order to decide whether a temporary excise duty of 2% imposed by the Government of Ireland in 1979 on the value of certain agricultural products is in conformity with that law.

The duty in question was imposed from 1 May to 31 December 1979 on fresh milk and live bovine animals, and from 1 August to 31 December 1979 on certain cereals, namely wheat, oats and barley, as well as on sugar-beet.

The duty was applicable to such products at the time of delivery for processing, storage or export. It did not apply to imported products. The duty, paid to the Revenue Commissioners, was payable either by the exporter or by the processing or storage undertaking.

Two associations of Irish agricultural producers, together with a number of processing undertakings and a cattle exporter, brought actions against the Government of Ireland for a declaration that the duty was incompatible with Community law.

As the Government of Ireland argued that a reference to the Court was premature at that stage in the procedure, the first question concerns the interpretation of the Treaty.

It is worded as follows: Was the decision by the High Court, at this stage of the hearing, to refer to the European Court under Article 177 of the Treaty the question set out in paragraph 2 below a correct exercise on the part of the High Court of its discretion pursuant to the said article?

In answer to that question the Court ruled that under Article 177 of the EEC Treaty the decision at what stage in proceedings before it a national court should refer a question to the Court of Justice for a preliminary ruling was a matter for the discretion of the national court.

The second question reads as follows: Is a national tax, such as that in issue in the present case, contrary to the Treaty establishing the European Economic Community and, in particular, to Articles 9, 11, 12, 16 and 17 or 38 to 46 of the said Treaty, or to any of them, or to Council Regulations Nos. 804/1968, 805/1968, 3330/1974 and 2727/1975, or to any of them?

The purpose of this question from the High Court is to elicit the features of interpretation of Community law necessary in order to decide whether the duty is compatible with Community law, and in particular with the provisions of the Treaty prohibiting charges having an effect equivalent to customs duties, with those relating to the Common Agricultural Policy and with the regulations on the common organization of the markets in the sectors covering the products subject to the duty.

In reply to the second question raised the Court ruled as follows:

A temporary national duty intended to be borne by agricultural producers as part of an incomes policy dividing tax burdens among the various sectors of the working population, but applied in the form of an indirect tax on the value of certain agricultural products subject to common organizations of the markets at the time of their delivery for processing, storage or export and payable either by the exporter or by the processing or storage undertaking, who were entitled to recover the amount of the duty from the producers, was not, in principle, incompatible with the provisions of the EEC Treaty on agricultural policy, or with Community rules on the common organization of the markets.

Such incompatibility would, however, exist if and in so far as the duty had the effect of impeding the proper functioning of the machinery established as part of the relevant common organizations for the formation of common prices and to regulate market supplies.

It is for the national court to decide whether, and if so to what extent, the duty which it is called upon to consider has in fact had such effects.

A duty such as that described above even if it is applied to bovine animals exported on the hoof when they are delivered for export, does not fall within the prohibition of charges having an effect equivalent to customs duties on exports if it is also applied, systematically and in accordance with the same criteria, to bovine animals which are not being exported, at the time of their delivery for slaughter.

Judgment of 11 March 1981

Case 69/80

Susan Jane Worringham and Margaret Humphreys v Lloyds Bank Ltd

(Opinion delivered by Mr Advocate General Warner on 11 December 1980)

1. Social security - Men and women - Pay - Concept - Contributions paid by an employer to a retirement benefits scheme.

   (EEC Treaty, Art. 119).

2. Social policy - Men and women - Pay - Concept - Same scope in Article 119 of the Treaty and in Directive No. 75/117.

   (EEC Treaty, Art. 119; Council Directive No. 75/117, Art. 1).

3. Social policy - Men and women - Equal pay - Principle - Direct effect - Discrimination arising from contributions paid by an employer to a retirement benefits scheme.

   (EEC Treaty, Art. 119).

1. A contribution to a retirement benefit scheme which is paid by an employer on behalf of employees by means of an addition to the gross salary and which therefore helps to determine the amount of that salary constitutes "pay" within the meaning of the second paragraph of Article 119 of the EEC Treaty.

2. Directive No. 75/117/EEC is based on the concept of "pay" as defined in the second paragraph of Article 119 of the EEC Treaty. Although Article 1 of the directive explains that the concept of "same work" contained in the first paragraph of Article 119 of the Treaty includes cases of "work to which equal value is attributed", it in no way affects the concept of "pay" contained in the second paragraph of Article 119 but refers by implication to that concept.

3. Article 119 of the EEC Treaty applies directly to all forms of discrimination which may be identified solely with the aid of the criteria of equal work and equal pay referred to by the article in question, without national or Community measures being required to define them with greater precision in order to permit of their application. The forms of discrimination which may be thus judicially identified include cases where men and women receive unequal pay for equal work carried out in the same establishment or service, public or private.

This is the case where the requirement to pay contributions to a retirement benefits scheme applies only to men and not to women and the contributions payable by men are paid by the employer on their behalf by means of an addition to the gross salary the effect of which is to give men higher pay within the meaning of the second paragraph of Article 119 than that received by women engaged in the same work or work of equal value.

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NOTE

The Court of Appeal, London, referred to the Court of Justice several questions for a preliminary ruling on the interpretation of Article 119 of the EEC Treaty (Equal treatment for men and women) and also of the directives on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women and on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Those questions were raised in the course of proceedings between two female workers and their employer, Lloyds Bank Ltd. (hereinafter referred to as "Lloyds") on the ground that the latter had failed to fulfil its obligations under the Equal Pay Act 1970 by not paying female staff under 25 years of age the same gross salary as that of male staff of the same age engaged in the same

work. It is clear from the file on the case that Lloyds applies to its staff two retirement benefits schemes, one for men and one for women. Under these retirement benefits schemes the member contracts out of the earnings-related part of the State pension scheme and this is replaced by a contractual scheme.

The unequal pay alleged in this case before the national court originates, according to the plaintiffs in the main action, in the provisions of these two retirement benefits schemes relating to the requirement to contribute for staff who have not yet attained the age of 25. Men under 25 years of age are required to contribute 5% of their salary to their scheme whereas women are not required to do so. In order to cover the contribution payable by men, Lloyds adds an additional 5% to the gross salary paid to those workers which is then deducted and paid directly to the trustees of the retirement benefits scheme on behalf of those workers.

The amount of the salary in which the above-mentioned 5% contribution is included helps to determine the amount of certain benefits and social advantages such as redundancy payments, unemployment benefits and family allowances, as well as mortgage facilities.

The case led the Court of Appeal to refer to the Court a number of questions on interpretation.

Question 1

Are

(a) contributions paid by an employer to a retirement benefits scheme; or

(b) rights and benefits of a worker under such a scheme:

"pay" within the meaning of Article 119 of the EEC Treaty?

The Court answered in the affirmative.

Question 3

The national court asked whether, if the answer to Question 1 was in the affirmative, Article 119 of the EEC Treaty ... had direct effect in the Member States so as to confer enforceable Community rights upon individuals in the circumstances of the present case.

The Court has stated in its case-law (judgment of 8 April 1976 in Case 43/75, Defrenne /1976/ ECR 455 and judgment of 27 March 1980 in Case 129/79, Macarthys Limited /1980/ ECR 1275), that Article 119 of the Treaty applies directly, and without the need for more detailed implementing measures on the part of the Community or the Member States, to all forms of discrimination which may be identified solely with the aid of the criteria of equal work and equal pay referred to by the article in question. This is the case where the requirement to pay contributions applies only to men and not to women and the contributions payable by men are paid by the employer in their name by means of an addition to the gross salary the effect of which is to give men higher pay than women engaged in the same work or work of equal value.

The temporal effects of this judgment

Lloyds requested the Court to consider the possibility of limiting the temporal effect of the interpretation given by this judgment to Article 119 of the Treaty so that this judgment "cannot be relied on in order to support claims concerning pay periods prior to the date of the judgment".

It maintains that the problem of the compatibility of the national law with Community law was raised only at the stage of the appeal before the Employment Appeal Tribunal and that acknowledgement by the Court of the direct effect of Article 119 of the Treaty would lead to "claims for the retrospective adjustment of pay scales covering a period of years".

As the Court acknowledged in its above-mentioned judgment in the Defrenne case, although the consequences of any judicial decision must be carefully taken into account, it would be impossible to go so far as to diminish the objectivity of the law and thus compromise its future application on the ground of the repercussions which might result, as regards the past, from such a judicial decision.

In the same judgment the Court admitted that a temporal restriction on the direct effect of Article 119 of the Treaty might be taken into account exceptionally in that case but held that in this case the conditions for a derogation had not been fulfilled.

The Court ruled:

(1) A contribution to a retirement benefits scheme which is paid by an employer in the name of employees by means of an addition to the gross salary and which therefore helps to determine the amount of that salary constitutes "pay" within the meaning of the second paragraph of Article 119 of the EEC Treaty.

(2) Article 119 of the Treaty may be relied upon before the national courts and these courts have a duty to ensure the protection of the rights which this provision vests in individuals, in particular in a case where, because of the requirement imposed only on men or only on women to contribute to a retirement benefits scheme, the contributions in question are paid by the employer in the name of the employee and deducted from the gross salary whose amount they determine.

Judgment of 18 March 1981

Case 139/80

Blanckaert & Willems P.V.B.A. v Luise Trost

(Opinion delivered by Mr Advocate General Reischl on 5 February 1981)

Convention on Jurisdiction and the Enforcement of Judgments - Special jurisdiction - Disputes arising out of "the operations of a branch, agency or other establishment" - Branch or other establishment - Concept - Commercial agent - Exclusion - Conditions

(Convention of 27 September 1968, Art. 5 (5)).

An independent commercial agent who merely negotiates business /Handelsvertreter (Vermittlungsvertreteter)7, inasmuch as his legal status leaves him basically free to arrange his own work and decide what proportion of his time to devote to the interests of the undertaking which he agrees to represent and whom that undertaking may not prevent from representing at the same time several firms competing in the same manufacturing or marketing sector, and who, moreover, merely transmits orders to the parent undertaking without being involved in either their terms or their execution, does not have the character of a branch, agency or other establishment within the meaning of Article 5 (5) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

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NOTE

This case concerns the interpretation of Article 5 (5) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters. According to that provision which derogates from the general rule of the forum domicilii (Article 2), the defendant domiciled in a Contracting State may be sued in another Contracting State "as regards a dispute arising out of the operation of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated".

The facts are as follows: The undertaking Blanckaert and Willems /hereinafter referred to as "Blanckaert"/, a Belgian furniture manufacturer and the defendant in the main action, has since 1960 had a business association with the German undertaking, Hermann Bey /hereinafter referred to as "Bey"/, which it entrusted with the establishment in the Federal Republic of Germany of a sales network for the furniture which Blanckaert manufactures. On the authority of Blanckaert, Bey entered into a commercial agency contract with the Trost undertaking /hereinafter referred to as "Trost"/ for the Rhine and Ruhr, Eifel and South Westphalia area. Under the terms of the contract Trost was to work as the direct representative of Blanckaert and receive from them a commission of 5%.

In December 1976, Blanckaert terminated its contract with Trost which led to an action by the latter for payment of commission and agent's adjustment fees.

The Landgericht Aachen declined jurisdiction but the Oberlandesgericht Köln, hearing the appeal, held that the conditions for the international jurisdiction of the Landgericht Aachen were fulfilled under Article 5 of the Convention because the amounts claimed were attributable to the operation of that agency.

The action led the Bundesgerichtshof on hearing the appeal on a point of law to refer to the Court of Justice of the European Communities questions on the interpretation of Article 5 (5) of the Convention.

The question asks in substance whether a commercial agent /Handelsvertreter/ (business negotiator /Vermittlungsvertreter/) within the meaning of Article 84 et seq. of the German Handelsgesetzbuch /Commercial Code/ is to be considered as an "agency" or "other establishment" within the meaning of Article 5 (5) of the Convention.

On the basis of its previous case-law of 6 October 1976 (Case 14/76, De Bloos) and of 22 November 1978 (Case 33/78, Somafer), the Court ruled:

> An independent commercial agent who merely negotiates business /Handelsvertreter (Vermittlungsvertrete)/, inasmuch as his legal status leaves him basically free to arrange his own work and decide what proportion of his time to devote to the interests of the undertaking which he agrees to represent and whom that undertaking may not prevent from representing at the same time several firms competing in the same manufacturing or marketing sector, and who, moreover, merely transmits orders to the parent undertaking without being involved in either their terms or their execution, does not have the character of a branch, agency or other establishment within the meaning of Article 5 (5) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

Judgment of 25 March 1981

Case 61/80

"Cooperatieve Stremsel- en Kleurselfabriek v Commission of the European Communities"

(Opinion delivered by Mr Advocate General Warner on 18 February 1981)

1. Competition - Agreements, decisions and concerted practices - Exclusive purchasing obligation imposed by a co-operative on its members - Adverse effect on competition

   (EEC Treaty, Art. 85 (1))

2. Agriculture - Agricultural products - Products listed in Annex II to the Treaty - Concepts - Interpretation - Reference to the Explanatory Notes to the Customs Co-operation Council Nomenclature

   (EEC Treaty, Art. 38 (3) and Annex II)

3. Agriculture - Rules of competition - Regulation No. 26 - Scope - Products not listed in Annex II to the Treaty - Exclusion

   (EEC Treaty, Art. 42 and Annex II; Regulation No. 26 of the Council)

1. The rules of a production co-operative, which require its members to obtain from it all the supplies of certain products which they need and which reinforce that obligation by stipulating the payment of a not inconsiderable sum in the event of resignation or expulsion, have clearly as their objective to prevent members from obtaining supplies from other suppliers of those products or from making them themselves should those alternatives offer advantages from the point of view of quality or price. Where a co-operative is virtually the only supplier of the products in question on the market of a Member State such rules are of such a nature as to prevent competition at the supply level between producers holding a large part of the Community market and also tend to rule out the possibility of creating a competitive situation on the whole of the national market in those products.

2. Since there are no Community provisions explaining the concepts contained in Annex II to the EEC Treaty and that annex adopts word for word certain headings of the Customs Co-operation Council Nomenclature, it is appropriate to refer to the said Explanatory Notes in order to interpret that annex.

3. The scope of Regulation No. 26 applying certain rules of competition to production of and trade in agricultural products was restricted by Article 1 thereof to the production of and trade in the products listed in Annex II to the Treaty. That regulation may not therefore be applied to the manufacture of a product which does not come under Annex II even if it is a substance ancillary to the production of another product which itself comes under that annex.

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NOTE

The Coöperatieve Stremsel-en Kleurselfabriek [hereinafter referred to as "the Co-operative"] which produces rennet of animal origin and colouring agents for cheese, and which is based in the Netherlands, brought an action seeking the annulment of the Commission's decision of 5 December 1979 relating to a proceeding under Article 85 of the EEC Treaty.

Article 1 of the decision in question stated that the exclusive purchasing arrangements established by the statutes of the Co-operative and the obligation laid down in those statutes requiring payment on withdrawal from the Co-operative of a sum proportional to the quantity of rennet purchased each year from the Co-operative constitute infringements of Article 85 (1) of the Treaty. Article 2 of the decision declared that application of Article 85 (3) was refused. Article 3 of the decision required the Co-operative and its members to ensure that the infringements were terminated.

According to the contested decision, the Co-operative manufactures 100% of Netherlands production of rennet and about 90% of the production of colouring agents for cheese, and its members represent approximately 90% of the Netherlands industry in dairy products.

As far as trade within the Community in rennet, including synthetic rennet, is concerned the decision stated that between 1976 and 1978 the Netherlands imported 16 tonnes of rennet from other Member States whereas the quantities imported by other Member States ranged from 113 to 745 tonnes.

In its decision the Commission stated that both the exclusive purchasing arrangements and the obligation to pay a specified amount on withdrawal from the Co-operative constitute an appreciable restriction of competition within the Common Market and are liable to have a noticeable effect on trade between Member States since they have the effect of preventing members of the Co-operative, who represent more than 90% of the Netherlands dairy product industry, from purchasing the product in question from other suppliers, particularly those located in other Member States.

The Commission conceded that the first two conditions in Article 85 (3) were fulfilled in that the establishment of the Co-operative has contributed to improving production of the products in question and consumers have had a fair share of the resulting benefit.

The third and fourth conditions were not fulfilled, however, because in the first place less restrictive arrangements may be found for achieving the benefits obtained by the Co-operative, and in the second place competition has been virtually eliminated on almost the entire Netherlands market in the products in question.

Article 85 (1)

The Co-operative denied that the exclusive purchasing obligation appreciably restricted competition in the Common Market. The object of the obligation is not to restrict competition but to encourage the best production of rennet and to ensure supplies for members of the Co-operative.

The Co-operative also claimed that the exclusive purchasing obligation was not liable to affect trade between the Member States. It also asserted that the payment to be made when a member is excluded or withdraws from the Co-operative did not constitute a serious obstacle for anyone wishing to change his supplier.

The Commission replied that according to information which has not been contested members of the Co-operative now have 90% of the Netherlands production of cheese and that in itself is liable to obstruct competition.

Article 85 (3)

The Co-operative maintained that the exclusive purchasing obligation and the obligation to make payment in the event of withdrawal constitute in fact measures which are indispensable for creating the advantages recognized by the Commission in its decision and that they do not enable the Co-operative to eliminate competition within a substantial area of the Common Market.

The Commission replied that provisions as stringent as a 100% obligation to purchase, reinforced by an obligation to pay on withdrawal or exclusion a sum of money which is not negligible, are not essential in order to attain the objectives referred to in Article 85 (3).

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

Judgment of 25 March 1981

Case 109/80

C. Toneman B.V. v Minister for Economic Affairs

(Opinion delivered by Mr Advocate General Reischl on 26 February 1981)

Common commercial policy - Community quantitative quotas - Requirement of publication prescribed by Article 4 of Regulation No. 1023/70 - Not applicable to quotas to be opened by Member States in regard to State-trading countries

(Regulation No. 1023/70 of the Council, Art. 4; Council Decision No. 75/210, first paragraph of Art. 1, as amended by Art. 3 of Decision No. 79/252)

The requirement of publication contained in Article 4 of Regulation No. 1023/70 establishing a common procedure for administering quantitative import quotas, whose provisions, pursuant to Article 1 thereof, govern Community quotas, does not apply to national quotas to be opened by Member States pursuant to the first paragraph of Article 1 of Decision No. 75/210 on unilateral import arrangements in respect of State-trading countries, as amended by Article 3 of Decision No. 79/252.

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NOTE

The main action was brought by the Toneman undertaking against the Minister for Economic Affairs of the Netherlands on the ground of the refusal by the competent Netherlands authority to grant import licences for handkerchiefs from Czechoslovakia.

In 1979 quota restrictions were introduced for handkerchiefs imported into the Netherlands from Czechoslovakia, based on imports of handkerchiefs in 1977. The importer in question had not imported any handkerchiefs from Czechoslovakia during the reference period and therefore the import licences requested by him for 1979 were refused.

The College van Beroep voor het Bedrijfsleven [administrative court of last instance in matters of trade and industry] considered that a decision in the case depended on the interpretation of the Community provision concerning quotas and referred to the Court for a preliminary ruling questions concerning the interpretation of Article 4 of Regulation No. 1023/70 of the Council with regard to the consequences of a failure to observe that provision.

The Court ruled that Article 4 of Regulation No. 1023/70 of the Council of 25 May 1970 does not apply to the import quotas to be opened by the Member States in respect of State-trading countries pursuant to Article 3 of Council Decision No. 79/252 of 21 December 1978.

Judgment of 26 March 1981

Case 114/80

Dr Ritter GmbH & Co. v Oberfinanzdirektion Hamburg

(Opinion delivered by Mr Advocate General Reischl on 12 March 1981)

1. Common Customs Tariff - Tariff headings - "Other non-alcoholic beverages" within the meaning of subheading 22.02 - Concept - Definition - Objective and verifiable criteria - Basic ingredients - Not relevant

2. Common Customs Tariff - Tariff headings - "Other non-alcoholic beverages" within the meaning of subheading 22.02 - Concept - Tonic composed of brewer's yeast, water and citrus fruit juice - Included

1. In conformity with the structure of the Common Customs Tariff the expression "other non-alcoholic beverages" in subheading 22.02 is to be understood as being a generic concept embracing all liquids intended for human consumption in so far as they are not included in any other specific classification.

   The scope of the concept must be determined on the basis of criteria which are both objective and verifiable. It is not permissible, therefore, to make its scope dependent on purely subjective, variable factors such as the manner in which the product is taken or the purpose for which it is consumed.

   Moreover, the classification of a product as a beverage within the meaning of tariff subheading 22.02 cannot depend on the basic ingredients used.

   "Beverages", within the meaning of subheading 22.02, must be understood as signifying any liquid suitable, and intended, for human consumption, regardless of the quantity in which it is absorbed or the special purposes for which various kinds of liquids may be consumed.

2. The concept of "other non-alcoholic beverages" in subheading 22.02 of the Common Customs Tariff must be interpreted as including a product composed of brewer's yeast, water and 3.9% natural citrus fruit juice, put up in liquid form and potable, and intended to be taken several times daily in small quantities for the improvement of health.

Judgment of 31 March 1981

Case 96/80

Mrs J.P. Jenkins v Kingsgate (Clothing Productions) Lrd.

(Opinion delivered by Mr Advocate General Warner on 28 January 1981)

1. Social policy - Men and women - Equal pay - Principle - Hourly rate of pay for part-time work lower than that for full-time work - Permissibility - Conditions - Indirect discrimination against female employees - Prohibition - National court to decide.

   (EEC Treaty, Art. 119).

2. Social policy - Men and women - Equal pay - Principle - Direct effect - Hourly rate of pay for part-time work lower than that for full-time work - Existence of discrimination based on sex to be established by the national courts.

   (EEC Treaty, Art. 119).

3. Social policy - Men and women - Equal pay - Principle - Same content and scope in Article 119 of the Treaty and in Directive No. 175/117.

   (EEC Treaty, Art. 119; Council Directive No. 75/117, Art.1).

1. The fact that work paid at time rates is remunerated at an hourly rate which varies according to the number of hours worked per week does not offend against the principle of equal pay laid down in Article 119 of the Treaty in so far as the difference in pay between part-time work and full-time work is attributable to factors which are objectively justified and are in no way related to any discrimination based on sex. It is for the national courts to decide in each individual case whether, regard being had to the facts of the case, its history and the employer's intention, a pay policy represented as a difference based on weekly working hours is or is not in reality discrimination based on the sex of the worker.

Therefore a difference in pay between full-time workers and part-time workers does not amount to discrimination prohibited by Article 119 of the Treaty unless it is in reality merely an indirect way of reducing the level of pay of part-time workers on the ground that that group of workers is composed exclusively or predominantly of women.

2. Article 119 of the Treaty applies directly to all forms of discrimination which may be identified solely with the aid of criteria of equal work and equal pay referred to by the article in question, without national or Community measures being required to define them with greater precision in order to permit of their application. The forms of discrimination which may be thus judicially identified include cases where men and women receive unequal pay for equal work carried out in the same establishment or service, public or private. Where the national court is able, using the criteria of equal work and equal pay, without the operation of Community or national measures, to establish that the payment of lower hourly rates of remuneration for part-time work than for full-time work represents discrimination based on difference of sex the provisions of Article 119 of the Treaty apply directly to such a situation.

3. Article 1 of Council Directive No. 75/117 which is principally designed to facilitate the practical application of the principle of equal pay outlined in Article 119 of the Treaty in no way alters the content or scope of that principle as defined in the Treaty.

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NOTE

This case deals with a series of questions which were referred to the Court for a preliminary ruling on the interpretation of Article 119 of the EEC Treaty in connexion with equal pay for men and women.

The main action was concerned with a dispute between a female employee working part-time and her employer, a manufacturer of women's clothing, against whom she claimed that she was receiving an hourly rate of pay lower than that paid to one of her male colleagues employed full-time on the same work.

The Industrial Tribunal, hearing the case at first instance, held that in the case of part-time work the fact that the weekly working hours amounted, as in that case, to 75% of the full working hours was sufficient to constitute a "material difference" between part-time work and full-time work.

According to the order making the reference the part-time workers employed by the employer in question were all female with the exception of a sole male part-time worker who had just retired and who at the time had been authorized to continue working, exceptionally and for short periods, after the normal age of retirement.

The national court was therefore principally concerned to know whether a difference in the level of pay for work carried out part-time and the same work carried out full-time might amount to discrimination of a kind prohibited by Article 119 of the Treaty when the category of part-time workers was exclusively or predominantly comprised of women.

Where the hourly rate of pay differs according to whether the work is part-time or full-time it is for the national courts to decide in each individual case whether, regard being had to the facts of the case, its history and the employer's intention, a pay policy such as that which is at issue in the main proceedings although represented as a difference based on weekly working hours is or is not in reality discrimination based on the sex of the worker.

On the first group of questions the Court ruled that: "A difference in pay between full-time workers and part-time workers does not amount to discrimination prohibited by Article 119 of the Treaty unless it is in reality merely an indirect way of reducing the level of pay of part-time workers on the ground that that group of workers is composed exclusively or predominantly of women".

The national court also asked whether the provisions in Article 119 of the Treaty were directly applicable in the circumstances of the case.

The Court ruled that:

"Where the national court is able, using the criteria of equal work and equal pay, without the operation of Community or national measures, to establish that the payment of lower hourly rates of remuneration for part-time work than for full-time work represents discrimination based on difference of sex the provisions of Article 119 of the Treaty apply directly."

Judgment of 31 March 1981

Case 99/80

Maurice Galinsky v Insurance Officer

(Opinion delivered by Mr Advocate General Warner on 11 February 1981)

1. Social security for migrant workers - Worker - Concept

(Regulation of the Council No. 1408/71, Arts. 1 (a) and 2 (1))

2. Social Security for migrant workers - Family allowances - Old-age pensioners - Community scheme - Matters covered - Old-age benefits granted to self-employed workers on the basis of national legislation alone - Exclusion

(Regulation of the Council No. 1408/71, Art. 77)

1. A person who has been compulsorily insured as a self-employed worker in one Member State but who is compulsorily insured as an employed worker in another Member State must be considered as a worker within the meaning of Articles 1 (a) and 2 (1) of Regulation No. 1408/71 throughout the Community.

2. Article 77 of Regulation No. 1408/71, which governs family allowances for old-age pensioners and increases in or supplements to such pensions in respect of their dependent children must be interpreted to mean that the expression "pensions for old age" does not cover old-age benefits granted in a Member State to a person who was insured there under a social security scheme applicable to self-employed persons if such benefits are based on the legislation of that Member State alone without the application of the provisions of the said regulation.

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NOTE

The case before the national authorities concerns the refusal of the competent British social security institution to grant to a recipient of an old-age pension, the appellant in the main proceedings, increases in that pension in respect of his dependent children.

The old-age pension in question is at the full rate and the recipient is entitled to it under British legislation alone. The recipient worked in the United Kingdom as a self-employed person until 1964 and was covered by compulsory insurance from 1948 to 1964 under the British national insurance scheme applicable to self-employed persons. After emigrating to the Netherlands in 1964 he continued to pay contributions to the British scheme on a voluntary basis as a non-employed person.

From 1964 he was compulsorily insured as an employed person under the Netherlands social security scheme. When he attained the age of 65 he qualified for an old-age pension in the Netherlands under the General Law on Old Age together with the family allowances granted to the recipients of that pension.

In support of his claim before the British authorities Mr Galinsky argued that the applicable British legislation makes provision for increases in the retirement pension in respect of dependent children.

This case prompted the National Insurance Commissioner to submit a series of preliminary questions to the Court of Justice.

The first question concerns the persons covered by Regulation No. 1408/71. It must be observed that a person who has been compulsorily insured as a self-employed worker in one Member State but who is compulsorily insured as an employed person in another Member State must be considered as a worker throughout the Community.

In those circumstances the second question raises the problem whether the expression "pensions for old age" employed in Article 77 covers an old-age benefit granted in a Member State to a person who was insured there under a social security scheme applicable to self-employed persons under the legislation of that Member State alone and without reference to the provisions of Regulation No. 1408/71.

It should be observed first of all that Regulation No. 1408/71 applies, according to the recitals in the preamble thereto, to nationals of Member States insured under social security schemes for employed persons.

The appellant in the main proceedings claimed that the Court has accepted that insurance periods completed under the social security scheme applicable to employed persons in one Member State may be taken into consideration for the acquisition of a right to benefits to be granted to self-employed persons in another Member State.

Such a situation does not, however, correspond to the position in this case. This case concerns a worker who has exercised his right to freedom of movement and has acquired, as an employed person in the Member State in which he has established himself and his family, an old-age pension together with family allowances under the legislation of that Member State, and then claims in another Member State the rights which he had previously acquired as a compulsorily insured self-employed person.

In such a case the rights claimed as family allowances relate to old-age benefits which are available under a social security scheme applicable to self-employed persons and not to the employed persons referred to in Regulation No. 1408/71.

The Court in settling the questions submitted to it by the National Insurance Commissioner ruled that since Article 77 of Regulation No. 1408/71 governs family allowances for old age pensioners and increases in or supplements to such pensions in respect of dependent children it must be interpreted to mean that the expression "pensions for old age" does not cover old-age benefits granted in a Member State to a person who was insured there under a social security scheme applicable to self-employed persons if such benefits are based on the legislation of that Member State alone without the application of the provisions of the said regulation.

A N A L Y T I C A L T A B L E

page

FREE MOVEMENT OF GOODS

SOCIAL POLICY
(male and female workers)

SOCIAL SECURITY FOR MIGRANT WORKERS

TAX PROVISIONS

GENERAL INFORMATION ON THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

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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, 2985 Luxembourg
NETHERLANDS	N.V. Martinus Nijhoff, 9 Lange Voorhout, 's-Gravenhage
UNITED KINGDOM	Hammick, Sweet & Maxwell, 16 Newman Lane, Alton, Hants, GU 34 2PJ
OTHER COUNTRIES	Office for Official Publications of the European Communities, 2985 Luxembourg

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

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

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 Traites instituant les Communautes Europeennes/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	26.60
£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 (Boîte Postale 1406, Luxembourg, Grand Duchy of Luxembourg).

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

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

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

Quarterly bulletin containing the summaries and a brief resume 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

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 question referred.

During a period of two months the Council, the Commission, the Member States and the parties to the national proceedings may submit observations or statements of case to the Court of Justice, after which they are summoned to a hearing at which they may submit oral observations, through their Agents in the case of the Council, the Commission and the Member State or through lawyers who are entitled to practise before a court of a Member State, or through university teachers who have a right of audience under Article 36 of the Rules of Procedure.

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

(b) Direct actions

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

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

The application must contain:

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

The application should also be accompanied by the following documents:

The decision the annulment of which is sought, or, in the case of proceedings against an implied decision, by documentary evidence of the date on which the request to the institution in question was lodged;
A certificate that the lawyer is entitled to practise before a court of a Member State;
Where an applicant is a legal person governed by private law, the instrument or instruments constituting and regulating it, and proof that the authority granted to the applicant's lawyer has been properly conferred on him by someone authorized for the purpose.

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

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

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

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

E. ORGANIZATION OF PUBLIC SITTINGS OF THE COURT

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

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

Public holidays in Luxembourg

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

New Year's Day	1 January
Easter Monday	variable
Ascension Day	variable
Whit Monday	variable
May Day	1 May
Robert Schuman Memorial Day	9 May
Luxembourg National Day	23 June
Assumption	15 August
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)

IRELAND

39, Molesworth Street
Dublin 2 (Tel. 712244)

ITALY

29 Via Poli
00187 Rome (Tel. 6789722)

61 Corso Magenta
20100 Milan (Tel. 803171 ext. 210)

LUXEMBOURG

Jean Monnet Building
Centre Européen
Luxembourg-Kirchberg (Tel. 43011)

NETHERLANDS

29 Lange Voorhout
The Hague (Tel. 469326)

UNITED KINGDOM

20, Kensington Palace Gardens
London W8 4QQ (Tel. 7278090)

4, Cathedral Road
P.O. Box 15
Cardiff CF1 9SC (Tel. 371631)

7, Alva Street
Edinburgh EH2 4PH (Tel. 2252058)

Windsor House, Block 2, 7th floor
9/15 Bedford Street,
Belfast

II. NON-MEMBER COUNTRIES

CANADA

Inn of the Provinces
Office Tower (Suite 1110)
350 Sparks Street
Ottawa Ont. K1R 7S8
(Tel. (613) 2386464)

CHILE

1177 Avenida Ricardo Lyon
Casilla 10093
Santiago 9 (Tel. 250555)

JAPAN

Kowa 25 Building
8-7 Sanbancho
Chiyoda-Ku
Tokyo 102 (Tel. 2390441)

PORTUGAL

35 rua da Sacramento à Lapa
1200 Lisbon (Tel. 66 75 96)

SPAIN

Oficina de Prensa e
Información CE
Centro Serrano 41, 5° Piso
Madrid 1

SWITZERLAND

Case Postale 195
37-39 Rue de Vermont
1211 Geneva 20 (Tel. 349750)

THAILAND

10th floor Thai Military Bank
Building
34, Phya Thai Road
Bangkok (Tel. 282 1452)

TURKEY

13, Bogaz Sokak, Kavaklidere
Ankara (Tel. 276145)

USA

2100 M Street, NW, Suite 707
Washington DC 20037
(Tel. 202.8629500)

1, Dag Hammarskjöld Plaza
245 East 47th Street
New York NY 10017
(Tel. 212.3713804)

VENEZUELA

Quinta Bienvenida, Valle Arriba,
Calle Colibri, Distrito Sucre
Caracas (Tel. 925056)


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