Commission of the European Communities

Directorate-General XXI

Customs Union and Indirect Taxation

Reports

of

Cases before the Court

Judgements in Taxation matters

XXI Nr.926/89-En. Edition August 1989

Recapitulation of cases before the European Court of Justice

INDEX OF PRINCIPAL JUDGEMENTS OF THE COURT OF JUSTICE IN THE AREA OF TAXATION

No. of case	Date of judgment	Parties involved	Procedure concerned		Object	Community legislation in question	Reference Court Reports	Page
6.60	16.12.1960	Jean.E.Humblet/Belgian State	Art. 16 Prot. ECSC		Art. 11b of the protocol on the privileges and immunities of the ECSC	Art. 11 Prot. Privileges etc.	1960,559	1
2/3.62	14.12.1962	Commission/Luxembourg and Belgium	Art. 169		The issue of import licences for ginger bread	Art. 9,12,95,169, 226 EEC	1962,425	5
10.65	8.7.1965	Waldemar Deutschmann/Federal Republic of Germany	Art. 177		The issue of import licences	Art. 95	1965,469	9
45.64 *	1.12.1965	Commission/Italian Republic	Art. 169		Repayment pf internal taxation on the export of products of the engineering industry	Art. 96	1965,857	11
48.65	1.3.1966	Alfons Lüttick GmbH and Others/Commission	Art. 173-177		Failure to fulfil an obligation under the Treaty	Art. 95	1966,19	13
57.65	16.6.1966	Alfons Lüttick GmbH/Hauptzollamt Saarlouis	Art. 177		Establishing average rates	Art. 12,13,95	1966,205	15
28.67	3.4.1968	Firma Molkerei-Zentrale Westfalen/Lippe GmbH/ Hauptzollamt Paderborn	Art. 177		Taxation on imported products	Art. 95,97	1968,143	17
7.67	4.4.1968	Milchwerke H.Wöhrmann und Sohn KG/Hauptzollamt Bad Reichenhall	Art. 177		Tax having an effect equal to a customs duty	Art. 12 § 2, Regl. 13/64	1968,177	21
13.67	4.4.1968	Firma Kurt A. Becher/Hauptzollamt München-Landsbergerstrasse	Art. 177		Cumulative multi-stage tax	Art. 95,97 § 1	1968,187	23
20.67	4.4.1968	Firma Kunstmühle Tivoli/Hauptzollamt Würzburg	Art. 177		Tax having an effect equivalent to a customs duty	Art. 20 § 1, 95	1968,199	25
25.67	4.4.1968	Firma Milch-, Fett- und Eierkontor GmbH/Hauptzollamt Saarbrücken	Art. 177		Cumulative multi-stage tax-average rate	Art. 12,13,95,97	1968,207	27
27.67	4.4.1968	Firma Fink-Frucht GmbH/Hauptzollamt München - Landsbergerstrasse	Art. 177		Taxation of imported products	Art. 30,95	1968,223	29
31.67	4.4.1968	Firma August Stier/Hauptzollamt Hamburg - Erious	Art. 177		Taxation of imported products Art. 95	Art. 95	1968,235	33
34.67	4.4.1968	Firma Gebrüder Lück/Hauptzollamt Köln-Rheinau	Art. 177		Cumulative multi-stage tax-average rate	Art. 95,97	1968,245	35
29.68	24.6.1969	Milch-, Fett- und Eierkontor HmbH/Hauptzollamt Saarbrücken	Art. 177		Cumulative multi-stage tax - average rate	Art. 97	1969,165	37
24.68	1.7.1969	Commission/Italian Republic	Art. 169		Creation of new customs duties	Art. 9,12,95	1969,193	41
2/3.69	1.7.1969	Sociaal fonds voor de Diamantarbeiders/SA Ch.Brachfeld and Sons and Chougol Diamants Co.	Art. 177		Creation of new customs duties	Art. 9,12,95	1969,211	43
16.69	15.10.1969	Commission/Governmanet of the Italian Republic	Art. 169		Taxation of imported portable spirits on the bais of a national alcoholic content	Art. 95	1069,377	47
45. 64 **	19.11.1969	Commission/Italian Republic	Art. 169		Repayment of internal taxation on the export of products of the engineering industry	Art. 96	1969,433	49
7.69	10.3.1970	Commission/Government of the Italian Republic	Art. 169		Obligations of Member States	Art. 95,96	1970,111	51
28.69	15.4.1970	Commission/Government of the Italian Republic	Art. 169		Differential taxation of cocoa	Art. 95 § 1	1970,187	53

(* see also: Judgment of the Court of 19.11.1969: case 45/64

(** see also: Judgment of the Court of 1.12.1965: case 45/64

No. of case	Date of judgment	Parties involved	Procedure concerned		Object	Community legislation in question	Reference Court Reports	Page
77.69	5.5.1970	Commission/Kingdom of Belgium	Art. 169		Differential taxation of wood	Art. 95	1970,237	55
47.69	25.6.1970	Government of the French Republic/Commission	Art. 93 § 2		State aids	Art.92,93,95	1970,487	57
9.70	6.10.1970	Franz Grad/Finanzamt Traunstein	Art. 177		Application of common system of turnover tax concurrently with specific taxes levied instead of turnover taxes	1st and 3rd dir. VAT, Dec. 65/271/ EEC	1970,825	59
20.70	21.10.1970	Transports Lesage & Cie/Hauptzollamt Freiburg	Art. 177		VAT	1st and 3rd dir. VAT, Dec.65/271/EEC	1970,861	63
23.70	21.10.1970	Erich Haselhorst/Finanzamt Düsseldorf-Altstadt	Art. 177		VAT	1st and 3rd Dir. VAT, Dec. 65/271/ EEC	1970,881	57
4.69	28.4.1971	Alfons Lütticke GmbH/Commission	Art. 175		Establishing average rate	Art. 38,97,138,215	1971,325	71
29.72	14.12.1972	S.p.A.Marimex/Italian Finance Administration	Art. 177		Sanitary Inspections	Art. 9,36, Regl. 805/68 art.22	1972,1309	73
54.72	20.2.1973	Fonderie Officine Riunite "FOR"/Vereinigte Kammgarn - Spinnereien "VKS"	Art. 177		Principle of non-discrimination	Art. 95	1973,193	75
77.72	19.6.1973	Carmine Capolongo/Azienda Agricola Maya	Art. 177		Contributo Ente Nazionale per la Cellulosa e per la Carta	Art. 13 § 2, 92 § 1,	1973,611	77
34.73	10.10.1973	F.lli Variola S.p.A./Amministrazione italiana delle Finanze	Art. 177		Unloading charge	Art. 9,13 § 2, 189	1973,891	79
39.73	11.10.1973	Rewe-Zentralfinanz / GmbH/Direktor der Landwirtschaftskammer Westfalen-Lippe	Art. 177		Phyto-sanitary examination	Art. 13 § 2	1973,1039	83
27.74	22.10.1973	Demag Ag/Finanzamt Duisburg-Süd	Art. 177		Internal taxation-concept	Art. 95	1974,1037	85
48.74	10.12.1974	Mr Charmasson/Minister for economic Affairs and Finance (Paris)	Art. 177		National organization and common organization of the agricultural market	Art. 40 § 2	1974,1383	87
51.74	23.1.1975	P.J. Van der Hulst's Zonen/Productschap voor Siergewassen	Art. 177		Flower bulbs	Art. 16, Regl. 234/ 68, ect.	1975,79	89
94.74	18.6.1975	Industria Gomma Articoli Vari, IGAV/Ente Nazionale per la Cellulosa e per la Carta, ENCC	Art. 177		System of importation of paper,cardboard and pulp into Italy	Art. 13 § 2, 95	1975,699	93
59.75	3.2.1976	Pubblico Ministero/Flavia Marghera and Others	Art. 177		Adjustment of monopolies	Art. 37	1976,91	95
45.75	17.2.1976	Rewe-Zentrale des Lebensmittel- Grosshandels GmbH/ Hauptzollamt Landau-Pfalz	Art. 177		German Spirits Monopoly	Art. 39,95	1976,181	97
91.75	17.2.1976	Hauptzollamt Göttingen and Bundesfinanzminister/ Wolfgang Miritz GmbH & Co.	Art. 177		Interpretation of Art. 12 and 37	Art. 12, 37	1976,217	101
111.75	20.5.1976	Impresa Costruzioni Comm. Quirino Mazzalai/Ferrovia del Renon	Art. 177		Art. 6 of the 2nd VAT Dir.	2nd VAT Div.	1967,657	103
127.75	22.6.1976	Bobie Getränkevertrieb GmbH/Hauptzollamt Aachen-Nord	Art. 177		Differential taxation of imported beers	Art. 95 § 1	1976,1079	105
35.76	15.12.1976	Simmenthal S.p.A./Italian Minister for Finance	Art. 177		Veterinary and public health inspections	Art. 9,30,36,95, Regl.14/64, Dir. 64/432, 64/433 Regl. 805/68	1976,1871	107

No. of case	Date of judgment	Parties involved	Procedure concerned		Object	Community legislation in question	Reference Court Reports	Page
46.76	25.1.1977	W.J.G.Bauhuis/The Netherlands State	Art. 177		Veterinary and public health inspections	Art. 9,12,13,16, 36,95, Dir. 64/432	1977,5	111
51.76	1.2.1977	Verbond van Nederlandse Ondernemingen/Inspecteur der Invoerrechten en Accijzen	Art. 177		Capital Goods	2nd VAT Dir.	1977, 113	115
20.76	16.2.1977	Schöttle & Söhne OHG/Finanzamt Freudenstadt	Art. 177		Interpretation of Art. 95 EEC	Art. 95	1977,247	119
74.76	22.3.1977	Iannelli & Volpi S.p.A./Ditta Paolo Meroni	Art. 177		State aids	Art. 30,92,93,95	1977,557	121
78.76	22.3.1977	Firma Steinike und Weinlig/Federal Republic of Germany	Art. 177		State aids	Art. 9,92,93,94,95	1977,595	125
77.76	25.5.1977	Fratelli Cucchi/Avez S.p.A.	Art. 177		Sugar	Art. 9, 13 § 2,95 Regl.3330/74	1977,987	129
105.76	25.5.1977	Interzuccheri S.p.A./Ditta Rezzano e Cavassa	Art. 177		Charges having equivalent effect	Art.9, 13 § 2,95 Regl. 3330/74	1977,1029	133
13.77	16.11.1977	NV GB-INNO-BM/Vereniging van de Kleinhandelaars in Tabak (ATAB)	Art. 177		Tobacco products	Art. 5,30,86,90 Dir.72/464/EEC	1977,2115	135
106 77	9.3.1978	Amministrazione delle Finanze dello Stato/ Simmenthal S.p.A.	Art. 177		Discarding by the National Court of a law contrary to Community Law	Art. 189	1978,629	139
142.77	29.6.1978	Statens Kontrol med Aedle Metaller/Preben Larsen	Art. 177		Charge for the control of articles of precious metal	Art. 16,95,99,100	1978,1543	141
148.77	10.10.1978	H.Hansen jun. & O.C. Balle GmbH & Co./Hauptzollamt Flensburg	Art. 177		Taxation of Spirits	Art. 95,227	1978,1787	145
120.78	20.2.1979	Rewe-Zentral AG/Bundes- monopolverwaltung für Branntwein	Art. 177		Measures having an effect equivalent to quantitative restrictions	Art. 30,36,37 2nd Dir.TVA	1979,649	147
86.78	13.3.1979	S.A. des Grandes Distilleries Peureux/Directeur des Services Fiscaux de la Haute-Saône et du Territoire de Belfort	Art. 177		French alcohol monopoly	Art. 37,95	1979,897	149
91.78	13.3.1979	Hansen GmbH & Co./Hauptzollamt Flensburg	Art. 177		Taxation of Spirits	Art. 37,92,93, dec. 70/549	1979,935	151
132.78	31.5.1979	Denkavit Loire S.a.r.l./French State (Customs Authorities)	Art. 177		Charges having equivalent effect	Art. 9,12,13,16,95	1979,1923	155
126.78	12.6.1979	N.V.Nederlandse Spoorwegen/Staats-secretaris van Financiën	Art. 177		Cash-on-delivery commission	Dir. 67/228/EEC 2nd VAT Dir.	1979,2041	157
181/229.78	12.6.1979	Ketelhandel P.van Paassen B.V./Staatssecretaris van Financiën/Inspecteur der Invoerrechten en Accijnzen; Minister van Financiën /Denkavit Dienstbetoon B.V.	Art. 177		A single entity for tax purposes	Dir. 67/228/EEC 2nd VAT Dir.	1979,2063	159
161.78	27.6.1979	Advokatrådet as representative of P.Conradsen A/S / Ministeriet for Skatter of Afgifter	Art. 177		Capital duty on raising of Capital	Dir. 69/335/EEC	1979,2221	161
21.79	8.1.1980	Commission/Italian Republic	Art. 169		Regenerated petroleum products	Art. 95, Dir. 75/ 439/EEC art.13	1980, 1	165

No. of case	Date of judgment	Parties involved	Procedure concerned		Object	Community legislation in question	Reference Court Reports	Page
168.78	27.2.1980	Commission/French Republic	Art. 169		Tax arrangements applicable to spirits	Art. 95	1980,347	167
169.78	27.2.1980	Commission/Italian Republic	Art. 169		Tax arrangements applicable to spirits	Art. 95	1980,385	171
170.78*	27.2.1980	Commission/United Kingdom of Great Britain and Nothern Ireland	Art. 169		Tax arrangements applicable to wine	Art. 95	1980,417	175
171.78	27.2.1980	Commission/Kingdom of Denmark	Art. 169		Tax arrangements applicable to spirits	Art. 95,99	1980,447	179
55.79	27.2.1980	Commission/Ireland	Art. 169		Taxation of alcohol	Art. 95,99,100	1980,481	183
68.79	27.2.1980	Hans Just I/S / Danish Ministry for Fiscal Affairs	Art. 177		Tax arrangements applicable to spirits	Art. 95	1980,501	187
104.79	11.3.1980	Pasquale Foglia/Mariella Novella	Art. 177		Tax system applicable to liqueur wines	Art. 92,95	1980,745	191
73.79	21.5.1980	Commission/Italian Republic	Art. 169		Internal taxation "sovrapprezzo"	Art. 92,93,95	1980,1534	193
823.79	9.10.1980	Criminal proceedings/Giovanni Carciati	Art. 177		Free movements of goods - Temporary importation of motor vehicles	Dir.67/228/EEC Dir.77/388/EEC	1980,2773	197
26.80	30.10.1980	Schneider-Import GmbH & Co. KG/Hauptzollamt Mainz	Art. 177		Tax arrangements applicable to spirits - exemptions for small distilleries	Regl.3330/74 Art. 95	1980,3470	199
140.79	14.1.1981	Chemical Farmaceutici S.p.A./Daf S.p.A.	Art. 177		Taxation of denatured alcohol	Art. 95	1981,1	203
46.80	14.1.1981	S.p.A. Vinal/S.p.A. Orbat	Art. 177		Taxation of denatured alcohol	Art. 95	1981,77	205
52.80	28.01.1981	Officier van Justitie / J.A.W.M.J. Kortmann	Art. 177		Pharmaceutical product - Parallel imports	Art.36,9,12,13 Art.95	1981, 251	209
154.80	5.2.1981	Staatssecretaris van Financiën/Coöperatieve Aardappelenbewaarplaats G.A.	Art. 177		VAT - Provision of services	Dir. 67/228/EEC	1981,445	213
153.80	7.5.1981	Rumhaus Hansen GmbH & Co./Hauptzollamt Flensburg	Art. 177		Tax arrangements applicable to spirits - Charging of reduced taxes	Art. 95	1981,1165	215
142/143.80	27.5.1981	Amministrazione delle Finanze dello Stato/Essevi S.p.A. and Carlo Salengo	Art. 177		System of taxation applicable to spirits	Art. 92,93,95	1981,1413	217
158.80	7.7.1981	Rewe-Handelsgesellschaft Nord mbH and Rewe-Markt Steffen/Hauptzollamt Kiel	Art. 177		Butter-buying cruises	Regl. 1544/69, 3061/78, art. 190 Regl. 3023/77 Dir. 69/169, 72/230, 78/1032/EEC	1981,1805	221
4.81	25.11.1981	Hauptzollamt Flensburg/Hermann C. Andresen GmbH & Co. KG	Art. 177		Fiscal system for spirits	Art. 95	1981,2835	227
244.80	16.12.1981	Pasquale Foglia/Mariella Novello	Art. 177		Tax arrangements applying to liqueur wines	Art. 177,95	1981,3045	229
8.81	19.1.1982	Ursula Becker/Finanzamt Münster-Innenstadt	Art. 177		Effect of Directives	Art. 189, Dir.77/388	1982,53	233
89.81	1.4.1982	Staatssecretaris van Financiën /Hong Kong Trade Development Council	Art. 177		Refund of value added tax	Dir. 67/228/EEC	1982,1277	237
17.81	29.4.1982	Pabst & Richarz KG/Hauptzollamt Oldenburg	Art. 177		Tax system applicable to spirits	Art. 37,92,95	1982,1331	239
15.81	5.5.1982	Gaston Schul Douane Expediteur B.V./Inspecteur der Invoerrechten en Accijnzen Roosendaal	Art. 177		Turnover tax on the importation of goods supplied by private persons	Art. 12, 13 § 2, 95, Dir. 77/388/EEC	1982,1409	243
		(* see also: Judgment of the Court of 12 .7.1983 case 170/78						

No. of case	Date of judgment	Parties involved	Procedure concerned		Object	Community legislation in question	Reference Court Reports	Page
255.81	10.6.1982	R.A. Grendel GmbH/Finanzamt für Körperschaften in Hamburg	Art. 177		Direct effect of Directives - Value added Tax - Exemption	Dir. 77/388/EEC	1982,2301	247
222.81	1.7.1982	B.A.Z. Bausystem AG/Finanzamt München für Körperschaften	Art. 177		Value-added-tax - Interest on account of late payment	Dir. 67/228/EEC art. 8 § 2	1982,2527	249
216.81	15.7.1982	Cogis (Compagnia Generale Interscambi) / Amministrazione delle Finanze dello Stato	Art. 177		Tax treatment of whisky	Art. 95	1982,2701	251
270.81	15.7.1982	Felicitas Rickmers-Linie KG & Co./Finanzamt für Verkehrsteuern, Hamburg	Art. 177		Capital duties on the raising of capital-Nominal amount of company shares	Art. 189, Dir. 69/335/EEC	1982,2771	253
104.81	26.10.1982	Hauptzollamt Mainz/C.A. Kupferberg & Cie. KG a.A.	Art. 177		Free trade agreements - Tax discrimination	Art. 95, 228, EEC Portugal Agreement	1982,3641	257
41.82	7.12.1982	Commission/Italian Republic	Art. 169		Failure of a State to fulfil an obligation - Directive on the excise duty on manufactured tobacco	Art. 169, 189	1982, 4213	263
319.81	15.3.1983	Commission/Italian Republic	Art. 169		Failure of a State to fulfil its obligations - Taxation of spirits	Art. 95	1983,601	265
38.82	26.4.1983	Hauptzollamt Flensburg/Firma Hansen GmbH & Co.	Art. 177		Tax arrangements applicable to spirits Charging of reduced taxes	Art. 95	1983,1271	269
90.82	21.6.1983	Commission/French Republic	Art. 169		Fixing of retail selling prices of manufactured tobacco	Art. 30,37, Dir. 72/464/EEC	1983,2011	271
170.78*	12.7.1983	Commission/United Kingdom of Great Britain and Northern Ireland	Art. 169		Tax arrangements applying to wine	Art. 95	1983,2265	275
278.82	14.2.1984	Rewe-Handelsgesellschaft Nord mbH and Rewe-Markt Herbert Kureit/Hauptzollamt Flensburg, Itzehoe and Lübeck-West	Art. 169		Customs duty and tax exemptions applicable to goods contained in travellers' personal luggage - Goods purchased on ferries	Regl. 1544/69, 3061/78, 1818/75, 2780/78, Dir.69/169/EEC	1984,721	279
325.82	14.2.1984	Commission/Federal Republic of Germany	Art. 169		Failure of a State to fulfil its obligations - Exemptions from turnover tax and excise duties for goods contained in travellers' personal luggage - "Butter-buying cruises"	Dir. 69/169/EEC	1984,777	285
70.83	22.2.1984	Gerda Kloppenburg/Finanzamt Leer	Art. 177		Effect of directives - Retroactive effect of an amendment	Dir. 77/388/EEC 6 VAT Dir.	1984,1075	289
294.82	28.2.1984	Senta Eiberger/Hauptzollamt Freiburg	Art. 177		Import turnover tax - Smuggled drugs	Dir. 67/228/EEC, Dir. 77/388/EEC	1984,1177	291
324.82	10.4.1984	Commission/Kingdom of Belgium	Art. 169		Failure of a Member State to fulfil its obligations - Sixth Directive on turnover-taxes - Taxable amount -	Dir. 77/388/EEC	1984,1861	293
280.83	5.6.1984	Commission/Italian Republic	Art. 169		Implementation of a Directive - Taxes which affect the consumption of manufactured tobacco	Dir. 79/32/EEC	1984,2361	295
42.83	10.7.1984	Dansk Denkavit A.p.S./Ministeriet for Skatter of og Afgifter	Art. 169		Turnover tax (VAT): Internal System - Rules applicable to imports	Art. 95, Dir. 77/388/EEC	1984,2649	297
		(* see also: Judgment of the Court of 27.2.1980: case 170/78						

No. of case	Date of judgment	Parties involved	Procedure concerned		Object	Community legislation in question	Reference Court Reports	Page
279.83	3.10.1984	Commission/Italian Republic	Art. 169		Implementation of a directive - Mutual assistance in relation to VAT	Dir. 79/1071/EEC Dir. 76/308/EEC	1984,3403	299
134.83	11.12.1984	Criminal proceedings against Jan Gerrit Abbink	Art. 177		Temporary importation of motor vehicles - Exemption from import duty	Dir. 83/182/EEC Art. 177	1984,4097	301
253.83	15.1.1985	Sektkellerei C.A. Kupferberg & Cie. KG a.A./ Hauptzollamt Mainz	Art. 177		Tax system with regard to spirits	Art. 37, 95	1985,157	303
5.84	13.2.1985	Direct Cosmetic Ltd./Commissioners of Customs and Excise	Art. 177		Sixth Directive on the harmonization of VAT - Taxable amount	Dir. 77/388/EEC	1985,617	305
268.83	14.2.1985	D.A.Rompelman and E.A. Rompelman - Van Deelen, Amsterdam/Minister van Financiën	Art. 177		Harmonization of VAT - Sixth Directive - Concept of taxable person	Dir. 77/388/EEC	1985,655	307
54.84	21.3.1985	Michaël Paul/Hauptzollamt Emmerich	Art. 177		Frontier-zone travel - Duty-free imports	Regl. 1544/69, 3061/78, Dir. 69/ 169, 72/230/EEC	1985,915	309
112.84	9.5.1985	Michaël Humblot/Directeur des Services Fiscaux	Art. 177		Article 95 - Special tax on motor vehicles	Art. 95	1985,1367	311
139.84	14.5.1985	Van Dijk's Boekhuis B.V./Staatssecretaris van Financiën	Art. 177		VAT - Work on customers' materials - Book repairs	Dir. 67/228/EEC Dir. 77/388/EEC	1985,1405	31.
47.84	21.5.1985	Staatssecretaris van Financiën, The Hague/Gaston Schul - Douane - Expediteur B.V., Wemhout, the Netherlands	Art. 177		Turnover tax on the importation of goods supplied by private persons	Art. 95, Dir. 77/ 388/EEC	1985,1491	315
277.83	3.7.1985	Commission/Italian Republic	Art. 169		Reduction of the tax on alcohol used in the production of "Marsala"	Art. 95	1985,2049	319
168.84	4.7.1985	Gunther Berkholz/Finanzamt Hamburg - Mitte-Altstadt	Art. 169		Sixth Directive on the harmonization of VAT - Fixed establishment	Dir. 77/388/EEC	1985,2251	321
16.84	10.7.1985	Commission/Kingdom of the Netherlands	Art. 169		VAT - Taxable amount in the case of movable goods traded in by way of part-payment	Dir. 77/388/EEC	1985,2355	325
17.84	10.7.1985	Commission/Ireland	Art. 169		VAT - Basis of assessment in the case of movable goods traded in by way of part-payment	Dir. 77/388/EEC	1985,2375	327
278.83	11.7.1985	Commission/French Republic	Art. 169		Value-added tax - Taxation of sparkling wines	Art. 95	1985,2503	329
107.84	11.7.1985	Commission/Federal Republic of Germany	Art. 169		Value-added tax - Exemptions provided for postal authorities	Art. 95	1985,2655	331
249.84	3.10.1985	Ministre Public and the Ministry of Finance/ Venceslas Profant	Art. 177		Value-added tax on imports - Application to private cars	Dir. 77/388/EEC art. 12,13	1985,3237	333
295.84	27.11.1985	Rousseau Wilmot S.A., Caudry/Caisse de Compensation de l'Organisation Autonome Nationale de l'Industrie et du Commerce (ORGANIC), Valbonne	Art. 177		National levies based on turnover	Dir. 77/388/EEC	1985,3759	337

No. of case	Date of judgment	Parties involved	Procedure concerned		Object	Community legislation in question	Reference Court Reports	Page
283.84	23.01.86	Trans Tirreno Express S.p.A./Ufficio Provinciale IVA, Sassari	Art. 177		Common system of Value-added tax - Territorial scope	Dir. 77/388/EEC	1986,231	339
39.85	23.01.86	G.Bergeres-Becque/Chef de Service Interrégional des douanes	Art. 177		Turnover tax on importation of goods by private persons	Art. 95	1986,259	343
106.84	04.03.86	Commission/Kingdom of Denmark	Art. 169		Taxation of Spirits - Fruit wines	Art. 95	OJC 80/86	347
243.84	04.03.86	John Walker and Sons Ltd./Ministeriet for Skatter og Afgifter	Art. 177		Taxation of Spirits - Fruit wines of the liqueur type	Art. 95	OJC 80/86	349
73.85	08.07.86	Hans-Dieter and Ute Kerrutt, Markgröningen/Finanzamt Mönchen.gladbach-Mitte	Art. 177		Turnover tax-"Banherrenmodell" (a co-proprietors' building scheme)	Dir. 77/388/EEC	OJC 199/86	351
200.85	16.12.86	Commission / Italian Republic	Art. 169		Differential rates of value - added tax for diesel - engined motor vehicles	Art. 95	OJC 15/84	353
253.84	15.01.87	Groupement Agricole d'Exploitation en Commun (GAEC)/ Council and Commission of the European Communities.	Art. 178, 215		Action for damages	Dir. 77/388	OJC 34/87	355
235.85	26.05.87	Commission / the Kingdom of the Netherlands	Art. 169		Persons subject to VAT - Bodies governed by public law - Notaires and sheriffs officers.	Dir. 77/388 art. 2,4(1)	OJC 108/87	357
290-86	26.3.87 removal	Commission / Federal Republic of Germany	Art. 169		Failure of a Member State: paying own-resource - the supply of transport services for the Deutsche Bundespost	Dir. 77/388/EEC	OJ C 136/87	359
196.85	07.04.87	Commission / the French Republic	Art. 169		Taxation of natural sweet wines and liqueur wines.	Art. 95	OJC 123/87	361
273-86	8.4.87	Atletiek Vereniging "NEA Volharding" / Inpecteur der Invorrechten en Accynzen te Alkmaar	Art. 177		Service: the supply of food and drink by a sports club to its members in a canteen.	Dir. 77/388/EEC, art. 13. A.2.b	OJ C 165/87	363
184-85	7.5.87	Commission/Italian Republic	Art. 169		Consumer tax on bananas	Art. 95	OJC 203/87	365
193-85	7.5.87	Cooperativa Co-Frutta srl/Amministrazione delle Finanze dello Stato	Art. 169		Consumer tax on bananas	Art. 9,12,95	OJC 152/87	367
356-85	9.7.87	Commission/Kingdom of Belgium	Art. 169		Taxation of wine and beer	Art. 95	OJC 205/87	369
433-85	17.9.87	Jacques Feldain/Directeur des Services Fiscaux du Département du haut-Rhin	Art. 177		Article 95 - Differential tax on motor vehicules	Art. 95	OJC 274/87	371
112-86	12.11.87	Amro Aandelen Fonds/inspecteur der Registratie en Successie (Inspector of Registration and Death Duties)	Art. 177		Indirect taxes on the raising of capital - Definition of capital company	Dir. 69/335/EEC art. 3 (2)	OJC 334/87	373
124-86	24.11.87	Commission/Italian Republic	Art. 169		Failure of a Member State to fulfil its obligations - Failure to implement in national law Counc.Dir.83/183/EEC - Tax exempt.applic.to permanent imports from a M.S. of the personal prop. of individuals	Dir. 83/183/EEC	OJC 334/87	375

No. of case	Date of judgment	Parties involved	Procedure concerned		Object	Community legislation in question	Reference Court Reports	Page
125-86	24.11.87	Commission/Italian Repbulic	Art. 169		Failure of a Member State to fulfi its obligations-Failure to implement in national law Council.Dir. 83/181/EEC-Exemption from vAT on the final importation of certain goods	Dir. 83/181/EEC	OJC 334/87	377
36-86	2.2.88	Ministry of Fiscal Affairs/Investeringsforeningen Dansk Sparinvest	Art. 177		Indirect taxes on the raising of capital	Dir. 69/335/EEC	OJC 55/88	379
6-86	3.2.88 removal	The Ministre des Finances and Procureur du Roi / Ahmet Sikier and Mehmet Sikier	Art. 177		Payment of VAT on the importation of presents the value of which exceeds 45.000 Bfrs.	Association Agreement between Turkey and the EEC.	OJ C 67/88	381
391-85	4.2.88	Commission/Kingdom of Belgium	Art. 169		Failure of a State to fulfil its obligations - Failure to comply with a judgment of the Court - Sixth VAT Directive - Taxable amount	Dir. 77/388/EEC	OJC 63/88	383
353-85	23.2.88	Commission/united Kingdom of Great Britain and Northern Ireland	Art. 169		Value added tax - Goods supplied in the exercise of a medical or paramedical profession	Dir. 77/388/EEC art. A 1 (c)	OJC 74/88	385
331-85	25.2.88	Les fils de Jules Bianco SA/Director General for Customs and Indirect Taxes	Art. 177		Recovery of undue payments - Evidence that charges on the price of goods have not been passed on	EEC Treaty	OJC 74/88	387
376-85	25.2.88	"	Art. 177		"	EEC Treaty	OJC 74/88	389
378-85	25.2.88	J Girard Fils SA/Director General for Customs and Indirect Duties	Art. 177		"	EEC Treaty	OJC 74/88	391
299-86	25.2.88	Criminal proceedings against Rainer Drexl	Art. 177		Turnover tax levied on the importation of goods by individuals	Art. 95	OJC 74/88	393
252-86	3.3.88	Gabriel Bergandi/directeur général des impôts (Direction des Services Fiscaux de la Manche	Art. 177		Value added tax - Gaming machines	Art.30,95 Dir.77/388/EEC art. 33	OJC 78/88	395
102-86	8.3.88	Commissioners of Customs and Excise/ Apple and Pear Development Council	Art. 177		Common system of Value added tax Supply of services effected for consideration	Dir. 77/388/EEC art. 2	OJ C 89/88	397
165-86	8.3.88	Leesportefeuille "Intiem" CV/Staatssecretaris van Financiën	Art. 177		Second and sixth VAT Directives - Taxation of goods supplied to the employees of a taxable person	Dir.67/228/EEC art .1 (a) Dir.77/388 EEC art. 17 (2)(A)	OJ C 90/88	399
104-86	24.3.88	Commission/Italian Republic	Art. 169		National taxes contrary to Community law - Recovery of undue payment - Proof that the tax has not been passed on in the price of goods - Partial withdrawal after the close of the oral procedure	Art. 5,9 and seq. and 95	OJ C 105/88	401

No. of case	Date of judgment	Parties involved	Procedure concerned		Object	Community legislation in question	Reference Court Reports	Page
202-87	27.4.88 removal	Commission/Ireland	Art.169		Excise duty for domestically manufactured table waters	Art. 95 (1)	OJ C 152/88	403
76-87	28.4.88	Georges Seguela/Directeur des Services fiscaux, Saint Brieuc	Art. 177		Article 95 - Differential tax on motor vehicules	Art. 95	OJ C 142/88	405
86 à 89-87	28.4.88	Albert Lachkar, Jean Bayon, Jean-Marie Bayon and Pierre Dellestable	Art. 177			Art. 95	OJ C 142/88	407
149-87	28.4.88	François Sargos/Administration des Impôts (Directeur des Services fiscaux of Meurthe-et-Moselle	Art. 177			Art. 95	OJ C 142/88	409
391 à 394-87	19.5.88 removal	Jean-Marie Melicque, Tilt Automatique Sarl and Maître Charli, Centre International d'Amusements SA and Meaux Loisirs Sarl/Directeur des Services fiscaux de Seine-et-Marne	Art. 177		Entertainments tax and state tax levied on the exploitation of automatic machines (apart from VAT)	Dir. 77/388/EEC and 33	OJ C 163/88	411
122-87	24.5.88	Commission/Italian Republic	Art. 169		Failure by a Member State to fulfil an obligation - Exemption from value added tax on veterinary services	Dir. 77/388/CEE art. 13(A) (1) (c)	OJ C 156/88	413
29-87	14.6.88	Dansk Denkavit ApS / Landbrugsministeriet (Ministry of Agriculture)	Art. 177		Additives infeedingstuffs	Dir. 70/524/EEC, Dir. 73/103/EEC, art. 30,9.95	OJ C 180/88	415
415-85	21.6.88	Commission/Ireland	Art. 169		Value added tax - Zero-rating	Dir. 77/388/CEE art. 27 and 28 (2)	OJ C 190/88	417
416-85	21.6.88	Commission/United Kingdom	Art. 169		Value added tax - Zero-rating	Dir.77/388/CEE art. 28(2) Dir. 67/228/EEC art. 17	OJ C 190/88	419
257-86	21.6.88	Commission/Italian Republic	Art. 169		Exemption from value-added tax in respect of samples of low value - Transposition into national law of Directive 77/388/EEC	Dir. 77/388/EEC art. 14(1) Art.95 EEC	OJ C 190/88	421
10-87	21.6.88	Queen/Commissioners of Customs and Excise ex parte Tattersalls Limited	Art. 177		Value-added tax - Exemption for temporary imports	Dir. 85/362/EEC art. 10(c) 11(b) 17th VAT Direct.	OJ C 193/88	423
59-88	22.6.88	SEE Crespin Sàrl / Direction Générale des Impôts	Art. 177		Value added Tax - Automatic games	Dir. 77/388/EEC	OJ C 213/88	425

No. of case	Date of judgment	Parties involved	Procedure concerned		Object	Community legislation in question	Reference Court Reports	Page
3-86	28.6.88	Commission/Italian Republic	Art. 169		Failure by a State to fulfil its obligations - Sixth Directive, Article 25(3) and (5) - Flat rate system of compensation for cattle, swine and milk	Dir. 77/388/CEE art. 25(3) and 25(5)	OJ C 199/88	427
240-87	29.6.88	Christian Deville/Administration des Impôts /Tax administration/	Art. 177		National tax levied in breach of Community law - Limitation imposed, subsequent to a judgment of the Court, on the possibilities of bringing proceedings for recovery (Case 112/84)	Art. 95	OJ C 199/88	429
269.86	5.7.88	W.J.R. Mol/Inspecteur der Invoerrechten en Accijnzen Leeuwarden	Art. 177		VAT charged on illegal supply of drugs effected within a Member State	Dir.77/388/EEC, art.2	OJC 211/88	431
289.86	5.7.88	Vereniging Happy Family Rustenburgerstraat/Inspecteur der Omzetbelastingen Amsterdam	Art. 177		"	Case 294/82 Dir.77/388/EEC, art.2 (1)	OJC 211/88	433
127.86	6.7.88	Ministère public + Ministère des finances du Roy. de Belgique/Yves Ledoux	Art. 177		Value added tax - Temporary importation of a motor vehicule for professional and private use	Dir.77/388/EEC	OJC 211/88	435
138.86	12.7.88	Direct Cosmetics Ltd/Commissioners of Customs and Excise	Art. 177		Sixth VAT Directive - Authorization of derogating mesures - Validity	Dir.77/388/EEC art. 27 art. 11	OJ C 205/88	437
139.86	12.7.88	Laughtons Photographs Ltd. Commissioners of Customs and Excise	Art. 177		"	Dir.77/388/EEC, art. 11, 27	OJ C 205/88	439
169.87	13.7.88	Commission/French Republic	Art. 169		Fixing of the price of manufactured tobacco	Dir.72/464/EEC; art. 171 EEC	OJ C 211/88	441
298.86	14.7.88	Commission/kingdom of Belgium	Art. 159		Retail sale price system for manufactured tobacco	Dir.72/464/EEC art.5 (1)	OJ C 215/88	443
123.87	14.7.88	Léa Jorion (née Jeunhomme)/ Belgian State	Art. 177		Sixth Dir. 77/388/EEC - Right to deduct. VAT - Method of invoicing	Dir.77/388/EEC	OJ C 222/88	445
207.87	14.7.88	Gerd Weissgerber/Finanzamt Neustadt an der Weinstrasse	Art. 177		Exempt. from VAT - Passing on VAT down the comm. chain	Dir.77/388/EEC	OJ C 215/88	447
330.87	14.7.88	Société Anonyme d'Etude et de Gestion Immob. (EGI) / Etat Belgian State	Art. 177		Sixth Dir. 77/388/EEC - Right to deduct VAT-Methode of invoicing	Dir.77/388/EEC	OJ C 222/88	449

No. of case	Date of judgment	Parties involved	Procedure concerned		Object	Community legislation in question	Reference Court Reports	Page
267/86	21.9.88	Pascal van Eycke / S.A. ASPA	Art. 177		State mesure granting exemption from tax in respect of income from savings deposits - Competition between banks as regards interest paid	Art. 59 to 66, 85, 86 and 95	OJ C 269/88	451
50/87	21.9.88	Commission / French Republic	Art. 169		Failure of a Member State tofulfil its obligations-Articles 17 to 20 of Coucil Directive 77/388/EEC of 17 May 1977-Restriction of the right to deduct VAT on let buildings	Dir. 77/388/EEC art. 17 to 20	OJ C 269/88	453
212/87	22.9.88	Union Nationale Interprofessionnelle des légumes de conserve (Unilec) / Etablissement Larroche Frères	Art. 177		Joint trade agreement on agricultural products-Minimum price-legality of fee	Art. 39,42,85.1 and 95	OJ C 271/88	455
103/87	27.10.88 removal	Commission / Italian Republic	Art. 169		Credit-cards	Dir. 77/388/EEC art. 13.B.d	OJ C 324/88	457
230/87	23.11.88	Naturally Yours Cosmetics Limited / The Commissioners of Customs and Excise	Art. 177		Common system of value added tax - Taxable amount - supplies of goods and services.	Dir. 77/388/EEC art. 11.A.1 (a)	OJ C 330/88	459
84 to 87/88	7.12.88 removal	Société Simatic (84 to 86/88) and Léon André (87/88) / Directeur des Services Fiscaux, Aveyron.	Art. 177		Value added tax - Automatic games	Dir. 77/388/EEC art. 33	OJ C 25/89	461
353/87	2.2.89	Commission / Italian Republic	Art. 169		Failure to fulfil obligations - VAT Directive - Transposition	Dir. 84/386/EEC, Dir. 77/388/EEC	OJ C 66/89	463
203/87	21.2.89	Commission / Italian Republic	Art. 169		Temporary derogation from VAT arrangements	Dir. 77/388/EEC	OJ C 68/89	465
317/86	15.3.89	Philippe Lambert / Directeur des Services Fiscaux de l'Orne	Art. 177		Value added tax - Automatic games	Dir. 77/388/EEC	OJ C 92/89	467
48-49/87	15.3.89	Marie-Thérèse Charbonnelle / Directeur Général des Impôts + Sarl Willot / Directeur Général des Impôts	Art. 177		Value added tax - Automatic games	Dir. 77/388/EEC	OJ C 92/89	469
285/87	15.3.89	Etablissements Dico et Compagnie Sàrl / Directeur des Services Fiscaux de Nîmes	Art. 177		Value added tax - Automatic games	Dir. 77/388/EEC, art. 33	OJ C 92/89	471
363 to 367/87	15.3.89	SOFEL Sàrl (363/87), Jean-Pierre Auber (364/87), J.P. Auber (365/87), SOFEL Sàrl (366/87) and Pellerey Sarl (367/87). Directeur des Services Fiscaux de Haute-Savoie	Art. 177		Value added tax - Automatic games	Dir. 77/388/EEC art. 33	OJ C 92/89	473
51/88	15.3.89	Knut Hamann / Finanzamt Hamburg Eimsbuttel	Art. 177		VAT - Forms of transport - Ocean-going sailing yacht	Dir. 77/388/EEC art. 9.2.(d)	OJ C 92/89	475

No. of case	Date of judgment	Parties involved	Procedure concerned		Object	Community legislation in question	Reference Court Reports	Page
65-88	15.3.89	Louis Garcia / Directeur des Services Fiscaux, Gard	Art. 177		Value added tax - Automatic games	Dir. 77/388/EEC, art. 33	OJ C 92/89	477
78 to 80-88	15.3.89	Pellerey Dispaly Sàrl (78(88), Safel Sàrl (79/88), and Jean Mentreau (80/88) / Directeur des Services Fiscaux de la Haute-Savoie	Art. 177		Value added tax - Automatic games	Dir. 77/388/EEC, art. 33	OJ C 92/89	479
105-88	15.3.89 removal	Commission / French Republic	Art. 169		Tax-rules for automatic gaming machines	Dir. 77/388/EEC, art. 18,(4) Dir. 84/517/EEC	OJ C 116/89	481
60-88	26.4.89 removal	Commission / Kingdom of Denmark	Art. 169		Ristrictions on travellers duty free allowances	Dir. 69/169.EEC, Dir. 85/348/EEC, art. 95	OJ C 150/89	483
15-88	25.5.89	SpA Maxi di / Ufficio del Registro di Bolzano	Art. 177		Indirect taxes on the raising of capital	Dir. 69/335/EEC, art. 11	OJ C 153/89	485
348-87	15.6.89	Stichting Uitvoering Financiële Acties (SUFA) / Straatssecretaris van Financiën	Art. 177		Sixth Directive on value added tax Exemption.	Art. 13(A)(1)(f) of Dir. 77/388/ EEC	OJ C 183/89	487
50-88	27.6.89	Dr. Heinz Kühne / Finanzamt München (Tax Office Munich) III	Art. 177		VAT - Taxation of private use of a business car purchased second-hand in circumstances where the residual proportion of the VAT was not deductible	Dir. 77/388/EEC, 6(2), art. 17(2) and art. 11(1) (a), 2 or 3(b)	OJ C 188/89	489
323-87	11.7.89	Commission / Italian Republic	Art. 169		Taxation of rum	Art. 95	OJ C 198/89	491
93-88	13.7.89	Wisselink en Co BV / Secretary of State for Finance	Art. 177		First, second and Sixth directives turnover-tax - Special consumption tax on passenger cars.	Dir. 67/227/EEC Dir. 67/228/EEC Dir. 77/388/EEC	OJ C 207/89	493
94-88	13.7.89	Abemÿ BV, Hart Nibbrig en Greeve BV and Others / Secretary of State for Finance	Art. 177		First, second and Sixth directives on turnover-tax - Special consumption tax on passenger cars.	Dir. 67/227/EEC Dir. 67/228/EEC Dir. 77/388/EEC	OJ C 207/89	495
173-88	13.7.89	Skatteministeriet / Morten Henriksen, Avokat	Art. 177		Turnover tax - Exemption.	Dir. 77/388/EEC, art. 13 B b)	OJ C 207/89	497

JUDGMENT OF THE COURT
16 DECEMBER 1960

Jean-E. Humblet
v Belgian State

Case 6/60

Summary

1. *Interpretation — Provisions establishing guarantees for the protection of rights — Interpretation in favour of the individual concerned.*

2. *Procedure — Interpretation or application of the Protocol on the Privileges and Immunities of the ECSC — Jurisdiction of the Court in relation to Member States — Limits.*
   (ECSC Treaty, Articles 31 and 43; Protocol on the Privileges and Immunities of the ECSC, Article 16)

3. *Procedure — Interpretation or application of the Protocol on the Privileges and Immunities of the ECSC — Infringement of that Protocol by a Member State — Right of action of a Community official who has been prejudiced — Prior exhaustion of other Community procedures*
   (Protocol on the Privileges and Immunities of the ECSC, Article 16)

4. *Procedure — Interpretation or application of the Protocol on the Privileges and Immunities of the ECSC — Exclusive nature of the Court's jurisdiction— Right of action — Prior exhaustion of rights of recourse to national courts.*
   (Protocol on the Privileges and Immunities of the ECSC, Article 16)

5. *Officials of the ECSC — Privileges and immunities — exemption from taxation — Individual right*
   (Protocol on the Privileges and Immunities of the ECSC, Articles 11 and 13).

6. *Officials of the ECSC — Privileges and immunities — Exemption from taxation — Scope — Determination of the rate applicable to other income — Assessment on the joint income of an official of the ECSC and of his spouse*
   (Protocol on the Privileges and Immunities of the ECSC, Article 11)

7. *Obligations of the Member States — Measure by a Member State contrary to the Treaty — Ruling by the Court — Consequences*
   (ECSC Treaty, Article 86)

1. In case of doubt a provision establishing guarantees for the protection of rights cannot be interpreted in a restrictive manner to the detriment of the individual concerned.

2. The Court's jurisdiction to rule on any dispute relating to the application of the Protocol on the Privileges and Immunities of the ECSC does not enable it to interfere directly in the legislation or ad-

1 – Language of the case: French.

ministration of the Member States. Therefore the Court cannot, on its own authority, annul or repeal laws of a Member State or administrative measures adopted by its authorities.

3. An official of the ECSC who regards himself as prejudiced by the infringement by a Member State of the privileges and immunities conferred on him may bring an action against that State under Article 16 of the Protocol on the Privileges and Immunities of the ECSC without having previously exhausted other procedures provided for by Community law.

4. The jurisdiction of the Court of Justice provided for by Article 16 of the Protocol on the Privileges and Immunities of the ECSC is exclusive; an application brought under this provision is not inadmissible merely because the applicant has not exhausted his rights of recourse to the courts of his own country beforehand.

5. The privileges and immunities of officials of the ECSC, in particular exemption from national taxes, although provided in the public interest of the Community, are granted directly to those officials and confer an individual right on them.

6. The Protocol on the Privileges and Immunities of the ECSC prohibits any measure by a Member State imposing on an official of the Community any taxation, whether direct or indirect, which is based in whole or in part on the payment of the salary and emoluments to that official by the Community.

   Consequently the taking into account of this remuneration for the calculation of the rate applicable to other income of that person is also prohibited.

   The taking into account of this remuneration for the purpose of calculating the rate applicable to the income of the spouse of an official of the ECSC where the national legislation applicable provides for assessment on the joint income of the spouses is likewise prohibited. .

7. If the Court finds that a legislative or administrative measure adopted by the authorities of a Member State is contrary to Community law, that State is obliged by virtue of Article 86 of the ECSC Treaty to rescind the measure in question and to make reparation for any unlawful consequences thereof.

In Case 6/60

JEAN-E. HUMBLET, an official of the ECSC, with an address for service in Luxembourg at 7 rue du Fort-Rheinsheim,

applicant,

assisted by Paul Orianne, Advocate at the Cour d'Appel, Brussels,

v

BELGIAN STATE, with an address for service in Luxembourg at the Belgian Embassy, 9 boulevard du Prince-Henri,

defendant,

represented by the Minister for Finance, with Georges Laloux, Deputy Adviser at the Department of Direct Taxation (Conseiller Adjoint à l'Administration Centrale des Contributions Directes) of the Ministry for Finance, acting as Agent, assisted by Jules Fally, Advocate at the Cour de Cassation of Belgium,

Application for the interpretation of Article 11 (b) of the Protocol on the Privileges and Immunities of the ECSC,

THE COURT

hereby:

1. **Dismisses the application of the applicant seeking the annulment of the tax assessment in question, a declaration that it is void and of no effect and an order that the defendant should repay the amounts paid, including the penalty imposed for the incomplete declaration of income and payment of compensatory interest.**

2. **Rules that the other conclusions in the application are admissible and are well-founded in that:**

   (a) **The Protocol on the Privileges and Immunities of the European Coal and Steel Community prohibits the Member States from imposing on an official of the Community any taxation whatsoever which is based in whole or in part on the payment of the salary to that official by the Community.**

   (b) **The Protocol also prohibits the taking into account of this salary in order to determine the rate of tax applicable to other income of an official.**

   (c) **The same applies to the case of an assessment on the joint income of an official of the Community and of his spouse in respect of tax payable on the income of the latter.**

   (d) **Consequently, the tax demanded in the Notice and Extract from the income tax register sent to the applicant on 18 or 19 December 1959 (Articles 913, 321) by the Collector of Taxes at Engis in the sum of FB 9035 is contrary to the Protocol in so far as it is based on the existence of salary and emoluments paid to the applicant by the ECSC.**

3. **Orders the defendant to pay the costs.**

JUDGMENT OF THE COURT
14 DECEMBER 1962[1]

Commission of the European Economic Community v Grand Duchy of Luxembourg and Kingdom of Belgium[2]

Joined Cases 2 and 3/62

Summary

1. *Procedure — Obligations of the Member States of the EEC — Failure to fulfil those obligations — Powers of the Commission — Procedures for obtaining derogations — No effect upon the exercise of those powers*
   (EEC Treaty, Articles 169, 226)

2. *Obligations of Member States of the EEC — Failure to fulfil those obligations — Request for* a posteriori *derogation — Effect*

3. *Customs duties — Elimination — Prohibition of the creation of new duties — Strict nature of this prohibition*
   (EEC Treaty, Articles 9, 12)

4. *Customs duties — Elimination — Charges having equivalent effect — Concept*
   (EEC Treaty, Articles 9, 12)

5. *Policy of the EEC — Common rules — Tax provisions — Taxation within the meaning of Article 95 of the EEC Treaty — Scope of that Article*

6. *Common Market — Community procedures — Unilateral decisions to be avoided*

1. Procedures for seeking a derogation such as those provided for by Article 226 of the EEC Treaty, the outcome of which depends upon the view taken by the Commission, are entirely distinct in both their nature and effects from the warning procedure available to the Commission under Article 169 and cannot therefore in any way frustrate the latter procedure.

2. A request for derogation from the general rules of the Treaty cannot have the effect of legalizing unilateral measures which conflict with those rules and cannot therefore legalize retroactively the initial infringement.

3. It follows from the clarity, certainty and unrestricted scope of Articles 9 and 12, from the general scheme of their provisions and of the Treaty as a whole, that the prohibition of new customs duties, linked with the principles of the free movement of products, constitutes an essential rule and that in consequence any exception, which moreover is to be narrowly interpreted, must be clearly stipulated.

4. A charge having equivalent effect within the meaning of Articles 9 and 12 of the EEC Treaty, whatever it is called and whatever its mode of

1 — Language of the Case: French.
2 — CMLR.

application, may be regarded as a duty imposed unilaterally either at the time of importation or subsequently, and which, if imposed specifically upon a product imported from a Member State to the exclusion of a similar domestic product, has, by altering its price, the same effect on the free movement of products as a customs duty.

This concept, far from being an exception to the general rule prohibiting customs duties, is on the contrary necessarily complementary to it and enables it to be made effective.

The concept of a charge having equivalent effect, invariably linked to that of 'customs duties', is evidence of a general intention to prohibit not only measures which obviously take the form of the classic customs duty but also all those which, presented under other names or introduced by the indirect means of other procedures, would lead to the same discriminatory or protective results as customs duties.

5. Although the first paragraph of Article 95 by implication allows 'taxation' on an imported product, it is only to the limited extent to which the same taxation is imposed equally upon similar domestic products. The field of application of this Article cannot be extended to the point of allowing compensation between a tax burden created for the purpose of imposition upon an imported product and a tax burden of a different nature, for example economic, imposed on a similar domestic product.

6. To resolve the difficulties which might arise in a given economic sector, the Member States wished Community procedures to be established in order to prevent unilateral intervention by national administrations.

In Cases 2 and 3/62

COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY, represented by Hubert Ehring, Legal Adviser of the European Executives, acting as Agent, with an address for service in Luxembourg at the Chambers of Henri Manzanarès, Secretary of the Legal Service of the European Executives, 2 Place de Metz,

applicant,

v

1. GRAND DUCHY OF LUXEMBOURG (Case 2/62) represented by Jean Rettel, Legal Adviser attached to the Ministry of Foreign Affairs, acting as Agent, with an address for service in Luxembourg at the Ministry of Foreign Affairs, 5 rue Notre-Dame,

and

2. KINGDOM OF BELGIUM (Case 3/62) represented by its Deputy Prime Minister and Minister of Foreign Affairs, having appointed as its Agent

Jacques Karelle, Director of the Ministry of Foreign Affairs and Foreign Trade, assisted by Marcel Verschelden, Advocate of the Cour d'Appel of Brussels, with an address for service in Luxembourg at the Belgian Embassy, 9 Boulevard du Prince-Henri,

defendants,

Application for a ruling on the legality of:

— Increases in the special duty levied by Belgium and Luxembourg on the issue of import licences for gingerbread; and

— The extension of that duty to products similar to gingerbread under Heading No 19.08 of the Common Customs Tariff;

which is contested on the ground that they were introduced after 1 January 1958;

THE COURT

hereby

1. **Rules that Applications 2 and 3/62 brought by the Commission of the European Economic Community against the Grand Duchy of Luxembourg and the Kingdom of Belgium are admissible and well founded;**

2. **Declares that the increases in the special duty determined by Luxembourg and Belgium on the issue of import licences for gingerbread, and the extension of that duty to products similar to gingerbread coming under Heading No 19.08 of the Common Customs Tariff, introduced after 1 January 1958, are contrary to the Treaty;**

3. **Orders the defendants to pay the costs.**

JUDGMENT OF THE COURT
8 JULY 1965[1]

Waldemar Deutschmann
v Federal Republic of Germany

(Reference for a preliminary ruling by the Verwaltungsgericht, Frankfurt-am-Main)

Case 10/65

Summary

Policy of the EEC — Common Rules — Tax provisions — Import licences — Charges imposed on the issue of such licences do not constitute taxation within the meaning of Article 95 of the EEC Treaty

A charge imposed on the issue of an import licence without which importation would not be possible is not governed by Article 95 of the EEC Treaty, since such a charge has the same effect upon the free movement of goods as a customs duty.
Cf. summary, para. 5, Joined Cases 2 and 3/62, Rec. 1962, p. 818.

In Case 10/65

Reference to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht, Frankfurt-am-Main, for a preliminary ruling in the action pending before that court between

WALDEMAR DEUTSCHMANN undertaking of Essen/Ruhr, assisted by Messrs Ditges and Ehle, 7 von Grootestraße, Cologne-Marienburg,

plaintiff,

v

FEDERAL REPUBLIC OF GERMANY, represented by the President of the 'Außenhandelsstelle für Erzeugnisse der Ernährung und Landwirtschaft' (Office for Foreign Trade in Foodstuffs and Agricultural Products) of Frankfurt-am-Main,

defendant,

on the interpretation of Article 95 of the EEC Treaty,

1 — Language of the Case: German.
2 — CMLR.

THE COURT

hereby rules:

1. **A charge imposed on the issue of an import licence without which importation would not be possible is not governed by Article 95 of the EEC Treaty;**
2. **The decision as to costs is a matter for the Verwaltungsgericht, Frankfurt-am-Main.**

JUDGMENT OF THE COURT
1 DECEMBER 1965[1]

Commission of the European Economic Community
v Italian Republic[2]

Case 45/64

Summary

1. *Obligations of Member States — Failure to fulfil such obligations — Measures adopted by the Commission — Subject-matter — Grounds*
   (EEC Treaty, Article 169)

2. *Policy of the EEC — Tax provisions — Export of products to another Member State — Internal taxation — Taxation imposed directly or indirectly on the products — Concept — Repayment — Legality*
   (EEC Treaty, Article 96)

3. *Policy of the EEC — Tax provisions — Export of products to another Member State — Internal taxation — Repayment — Flat rate system — Legality — Proof — Onus of proof*

1. In the case of a failure of a Member State to fulfil its obligations under the Treaty, the various measures adopted by the Commission in the administrative stage of the procedure and that before the Court must relate to the same failure and be based on the same grounds.
2. As used in Article 96, the expression 'directly' must be understood to refer to taxation imposed on the finished product, whilst the expression indirectly' refers to taxation imposed during the various stages of production on the raw materials or semi-finished products used in the manufacture of the product.
   Duties which are not imposed directly or indirectly on exported products cannot be the subject of the repayment provided for in Article 96.
3. In the application of Article 96, it is for a Member State which employs a flat rate system of repayments of internal taxation to establish that such a system remains within the mandatory limits of the Article, both as regards the nature of the taxation to be repaid and the amount of such repayment on each of the products affected by the measure in question.

In Case 45/64

COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY, represented by its Legal Adviser, Giuseppe Marchesini, acting as Agent, with an address for

1 — Language of the Case: Italian.
2 — CMLR.

service in Luxembourg at the offices of Henri Manzanarès, Secretary of the Legal Department of the European Executives, 2 place de Metz,

applicant,

ITALIAN REPUBLIC, represented by Adolfo Maresca, Minister Plenipotentiary, Deputy Head of the Diplomatic Legal Department of the Foreign Ministry, acting as Agent, assisted by Pietro Peronaci, Deputy State Advocate-General, with an address for service in Luxembourg at the Italian Embassy, 5 rue Marie-Adèlaïde,

defendant,

Application for a ruling that, by allowing certain products of the engineering industry exported to other Member States to benefit from a repayment of internal taxation which contravened Article 96 of the Treaty establishing the European Economic Community either by reason of the nature of the tax or of the method of repayment, the Italian Republic has failed to fulfil an obligation under the said Treaty,

THE COURT

hereby:

1. **Rules that, by granting repayment of internal taxation on the products of the engineering industry exported to the territory of other Member States in respect of registration, stamp and mortgage duties, charges on licences and concessions and on motor vehicles and advertising, the Italian Republic has failed to fulfil its obligation under Article 96 of the Treaty;**
2. **Orders that within three months from the date on which this judgment is given the Italian Republic shall show that the amount of the flat rate repayment of internal taxation imposed on the products of the engineering industry exported to the territory of other Member States does not exceed the amount of such taxation;**
3. **Orders that on the expiry of this period the oral procedure on the second submission of the application shall be reopened at the request of the party which first requests it;**
4. **Orders the defendant to bear half the costs, the remainder of which are reserved.**

JUDGMENT OF THE COURT
1 MARCH 1966[1]

Alfons Lütticke GmbH and Others v Commission of the European Economic Community[2]

Case 48/65

Summary

Member States of the EEC — Failure to fulfil an obligation arising under the Treaty — Application to the Commission to initiate the procedure provided for in Article 169 of the EEC Treaty — Refusal of the Commission — Application for annulment — Inadmissibility

An application for the annulment of a measure by which the Commission has arrived at a decision on an application to initiate the procedure laid down to deal with the failure of a Member State to fulfil an obligation under the EEC Treaty is inadmissible, since the initiation of this procedure is part of the administrative stage thereof and no measure taken by the Commission during this stage has any binding force.

In Case 48/65

(1) ALFONS LÜTTICKE GMBH, having its registered office at Köln-Deutz,

(2) DR OTTO SUWELACK NACHF. KG, having its registered office at Billerbeck (Westphalia), represented by its partner bearing personal liability, Wolfgang Suwelack,

(3) KURT SIEMERS & Co., having its registered office in Hamburg, assisted by Peter Wendt, Advocate of the Hamburg Bar, with an address for service in Luxembourg at the office of Félicien Jansen, huissier, 21 rue Aldringer,

applicants,

v

COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY, represented by its Legal Adviser, Jochen Thiesing, acting as Agent, with an address for service in Luxembourg at the office of Henri Manzanarès, Secretary of the Legal Department of the European Executives, 2 place de Metz,

defendant,

1 — Language of the Case: German.
2 — CMLR.

Application, principally, for the annulment of a decision of the Commission of the EEC and, alternatively, against the failure of that body to act, each application concerning the imposition, by the Federal Republic of Germany, of a turnover equalization tax on dairy products imported after 1 January 1962,

THE COURT

hereby:

1. **Dismisses Application 48/65 as inadmissible;**
2. **Orders the applicants to pay the costs of the action.**

JUDGMENT OF THE COURT
16 JUNE 1966[1]

Alfons Lütticke GmbH v Hauptzollamt Saarlouis (Reference for a preliminary ruling by the Finanzgericht des Saarlandes)

Case 57/65

Summary

1. Member States of the EEC — Absolute obligation under the Treaty — Concept — Rights of individuals — Protection of such rights by national courts

2. Policy of the EEC — Common rules — Tax provisions — Internal taxation of one Member State imposed on the products of other Member States — Prohibition of discrimination as compared with charges on the domestic products of that State — Entry into force of this rule — Its nature and consequences — Rights of individuals — Protection of such rights by national courts
(EEC Treaty, Article 95)

3. Deleted

4. Customs duties and internal taxation — Joint applicability to the same case of provisions relating thereto — Impossibility of such joint application
(EEC Treaty, Articles 12, 13, 95)

5. Policy of the EEC — Common rules — Tax provisions — Internal taxation — Charges intended to offset its effect — Nature of internal taxation
(EEC Treaty, Article 95)

1. Cf. para. 7, summary, Case 6/64, Rec. 1964, p. 1145.
2. The first paragraph of Article 95 has direct effects and creates individual rights which national courts must protect.
   As a result of the third paragraph of Article 95, the first paragraph of that Article applies to the provisions in existence at the time of the entry into force of the Treaty only from the beginning of the second stage of the transitional period.
3. Deleted.
4. Articles 12 and 13, on the one hand, and Article 95 on the other cannot be applied jointly to one and the same case.
5. A charge intended to offset the effect of internal taxation thereby takes on the internal character of the taxation whose effect it is intended to offset.

In Case 57/65

Reference to the Court of Justice under Article 177 of the EEC Treaty by the Finanzgericht des Saarlandes (Second Chamber) for a preliminary ruling in the action pending before that court between

1 — Language of the Case: German.

ALFONS LÜTTICKE GMBH of Köln-Deutz, represented by its representative ad litem, Peter Wendt, Bieberstraße 3, Hamburg 13,

plaintiff,

and

HAUPTZOLLAMT SAARLOUIS,

defendant,

THE COURT

hereby rules:

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

2. **As a result of the third paragraph of Article 95, the first paragraph of that Article applies to provisions in existence at the time of the entry into force of the Treaty only form the beginning of the second stage of the transitional period;**

and declares that the decision on costs in the present proceedings is a matter for the Finanzgericht des Saarlandes.

JUDGMENT OF THE COURT
3 APRIL 1968[1]

Firma Molkerei-Zentrale Westfalen/Lippe GmbH v Hauptzollamt Paderborn[2] (Reference for a preliminary ruling by the Bundesfinanzhof)

Case 28/67

Summary

1. *European Economic Community — Nature — Natural or legal persons having rights and obligations — Individuals — Provisions of the Treaty having direct effect — Concept*

2. *Policy of the EEC — Common rules — Tax provisions — Internal taxation imposed by one Member State on products from other Member States — Prohibition on discrimination as compared with the tax burden on the domestic products of that State — Nature and consequences of this rule — Rights of individuals — Protection of such rights by national courts*
   (EEC Treaty, Article 95)

3. *Policy of the EEC — Common rules — Tax provisions — Internal taxation imposed by one Member State on products from other Member States — Prohibition on discrimination as compared with charges on the domestic products of that State — A 'direct or indirect' tax to be widely interpreted — Taxation imposed on similra domestic products — Concept*
   (EEC Treaty, Article 95)

4. *Policy of the EEC — Common rules — Tax provisions — Cumulative multi-stage tax — Average rates for imported products or groups of imported products within the meaning of the first paragraph of Article 97 — No individual rights*

5. *Policy of the EEC — Common rules — Tax provisions — Cumulative multi-stage tax — Average rates for imported products or groups of imported products — Establishment by Member States — Validity*
   (EEC Treaty, Article 97)

1. The Community constitutes a new legal order, for the benefit of which the States have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only the Member States but also their nationals. Independently of the legislation of Member States, Community law not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the Treaty but also by reason of obligations which the Treaty imposes in a clearly defined way upon individuals as well as upon the Member States and upon the institutions of the Community. In this connexion, it

1 — Language of the Case: German.
2 — CMLR.

is necessary and sufficient that the very nature of the provision of the Treaty in question should make it ideally adapted to produce direct effects on the legal relationship between Member States and those subject to their jurisdiction.
Cf. paragraph 3, summary, Case 26/62 [1963] E.C.R 2.

2. The first paragraph of Article 95 produces direct effects and creates individual rights which national courts must protect. Nevertheless, Article 95 does not restrict the powers of the competent national courts to apply, from among the various procedures available under national law, those which are appropriate for the purpose of protecting individual rights conferred by Community law. In particular when internal taxation is incompatible with the first paragraph of Article 95 only beyond a certain amount, it is for the national court to decide, according to the rules of its national law, whether this illegality affects the taxation as a whole or only so much of it as exceeds that amount.
Cf. paragraph 2, summary, Case 57/65, Rec. 1966, p. 294.

3. The terms 'directly or indirectly' appearing in the first paragraph of Article 95 of the EEC Treaty must be widely interpreted. By internal taxation imposed directly or indirectly on similar domestic products, this provision refers to all taxation which is actually and specifically imposed on the domestic product at all earlier stages of its manufacture and marketing or which correspond to the stage at which the product is imported from other Member States.

4. The first paragraph of Article 97, which applies where Member States operating a turnover tax according to a cumulative multi-stage tax system have actually exercised the right therein granted to them, does not, in the present state of Community law, create individual rights which national courts must protect. It is therefore not for national courts to appraise whether average rates established by Member States conform to the principles of Article 95.

5. In States which have exercised the power made available to them by Article 97, rates are considered as 'average rates' if they are established as such by the States in question, without prejudice to the operation of the second paragraph of that article.

In Case 28/67

Reference to the Court under Article 177 of the EEC Treaty by the Bundesfinanzhof (Federal Finance Court) for a preliminary ruling in the action pending before that court between

FIRMA MOLKEREI-ZENTRALE WESTFALEN/LIPPE GMBH, Trockenmilchwerk,

and

HAUPTZOLLAMT (Principal Customs Office) PADERBORN,

on the interpretation of Articles 95 and 97 of the EEC Treaty,

THE COURT

in answer to the questions referred to it by the Bundesfinanzhof, by order of that court of 18 July 1967, hereby rules:

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

2. **By the expression 'internal taxation imposed directly or indirectly on similar domestic products' the first paragraph of Article 95 refers to all taxation which is actually and specifically imposed on the domestic product at all earlier stages of its manufacture and marketing or which correspond to the stage at which the product is imported from other Member States;**

3. **The first paragraph of Article 97, which applies where Member States operating a turnover tax according to the cumulative multi-stage tax system have actually exercised the right therein granted to them and established average rates does not create individual rights which national courts must protect;**

4. **In States which have exercised the power made available to them by Article 97, rates are considered as 'average rates' if they are established as such by the States in question, without prejudice to the operation of the second paragraph of that article;**

and declares:

It is for the court referring the matter to give a ruling on the costs of the present case.

JUDGMENT OF THE COURT
4 APRIL 1968[1]

Milchwerke H. Wöhrmann und Sohn KG v Hauptzollamt Bad Reichenhall (Reference for a preliminary ruling by the Finanzgericht, Munich)

Case 7/67

Summary

Agriculture — Common agricultural policy — Common organization of the markets — Milk and milk products — Importation from third countries — Charge by way of turnover tax — Not a charge having an effect equivalent to a customs duty — Legality
(Regulation No 13/64/EEC of the Council of 5 February 1964, Article 12(2))

A tax imposed on the importation of products from third countries does not constitute a charge having an effect equivalent to a customs duty within the meaning of Article 12(2) of Regulation No 13/64 on the progressive establishment of a common organization of the markets in milk and milk products when it is imposed as a charge under the national system of turnover tax.

Cf. paragraph 5, summary, Case 57/65, Rec. 1966, p. 295.

In Case 7/67

Reference to the Court under Article 177 of the EEC Treaty by the Finanzgericht (Finance Court), Munich, for a preliminary ruling in the action pending before that court between

FIRMA MILCHWERKE H. WÖHRMANN UND SOHN KG, Appeldoorn,

and

HAUPTZOLLAMT (Principal Customs Office) BAD REICHENHALL,

on the interpretation of Article 12(2) of Regulation No 13/64/EEC of the Council on the progressive establishment of a common organization of the markets in milk and milk products (Official Journal, 27 February 1964, p. 549),

THE COURT

in answer to the questions referred to it by the Finanzgericht, Munich, by order of that court dates 15 February 1967, hereby rules:

A tax imposed on the importation of products originating in third countries does not constitute a charge having an effect equivalent to a customs duty within the meaning of Article 12(2) of Regulation No 13/64 on the progressive establishment

of a common organization of the markets in milk and milk products when it is imposed as a charge under the national system of turnover tax;

and declares:

It is for the court making the reference to decide on the costs in the present case.

JUDGMENT OF THE COURT
4 APRIL 1968[1]

Firma Kurt A. Becher
v Hauptzollamt München-Landsbergerstraße[2]
(Reference for a preliminary ruling by the Finanzgericht, Munich)

Case 13/67

Summary

1. Policy of the EEC — Common rules — Tax provisions — Cumulative multi-stage tax — Average rates for imported products or groups of imported products within the meaning of the first paragraph of Article 97 — No individual rights

2. Policy of the ECC — Common rules — Tax provisions — Internal taxation imposed by one Member State on products from other Member States — Concept (EEC Treaty, Article 95)

1. Cf. paragraph 4, summary, Case 28/67. 2. Cf. paragraph 3, summary, Case 28/67.

In Case 13/67

Reference to the Court under Article 177 of the EEC Treaty by the Finanzgericht (Finance Court), Munich, for a preliminary ruling in the action pending before that court between

FIRMA KURT A. BECHER, Munich,

and

HAUPTZOLLAMT (Principal Customs Office) MÜNCHEN-LANDSBERGERSTRASSE,

on the interpretation of Articles 95 and 97 of the EEC Treaty,

THE COURT

in answer to the questions referred to it by the Finanzgericht, Munich, by order of that court of 26 April 1967,

refers to the interpretation given in its judgment in Case 28/67, namely:

1. On the first question:

The first paragraph of Article 97, which applies where Member States operating a turnover tax according to the cumulative multi-stage tax system have actually exercised the right therein granted to them and established average rates, does not create individual rights which national courts must protect;

2. On the second question:

1 — Language of the Case: German.
2 — CMLR.

In States which have exercised the power made available to them by Article 97, rates are considered as 'average rates' if they are established as such by the States in question, without prejudice to the operation of the second paragraph of that article;

3. **On the third question:**

By the expression 'internal taxation imposed directly or indirectly on similar domestic products' the first paragraph of Article 95 refers to all taxation which is actually and specifically imposed on the domestic product at all earlier stages of its manufacture and marketing or which correspond to the stage at which the product is imported from other Member States;

and declares:

It is for the Finanzgericht, Munich, to make an order as to the costs of the present proceedings.

JUDGMENT OF THE COURT
4 APRIL 1968[1]

Firma Kunstmühle Tivoli v Hauptzollamt Würzburg[2] (Reference for a preliminary ruling by the Finanzgericht, Munich)

Case 20/67

Summary

1. Policy of the EEC — Common rules — Tax provisions — Imports from third countries — Inapplicability of Article 95 of the EEC Treaty

2. Agriculture — Common agricultural policy — Common organization of the markets — Turnover equalization tax — Not a charge having an effect equivalent to that of custom duties
(Regulation No 19 of the Council of the EEC on the progressive establishment of the market in cereals, Article 20(1))

1. Since the provisions of Article 95 of the Treaty establishing the European Economic Community relate only to products originating in Member States, they cannot be applied to imports from a third country.

2. A tax which is levied within the framework of turnover tax legislation and is designed to place all categories of products, whatever their origin, in a comparable fiscal situation does not, in the absense of any protective intention, constitute a charge having an effect equivalent to a customs duty within the meaning of Article 20(1) of Regulation No 19 on the progressive establishment of a common organization of the market in cereals.

Cf. paragraph 1, summary, Case 7/67.

Cf. paragraph 5, summary, Case 57/65, Rec. 1966, p. 295.

In Case 20/67

Reference to the Court under Article 177 of the Treaty establishing the European Economic Community by the Finanzgericht, Munich, (a court with jurisdiction in taxation matters) for a preliminary ruling in the action pending before that court between

FIRMA KUNSTMÜHLE TIVOLI, Munich,

and

HAUPTZOLLAMT (Principal Customs Office) WÜRZBURG,

on the interpretation of Regulation No 19 of the Council on the progressive establishment of a common organization of the market in cereals (Official Journal of 20 April 1962, p. 933 et seq.)

1 — Language of the Case: German.
2 — CMLR.

THE COURT

in answer to the questions referred to it by the Finanzgericht, Munich, by order of that court of 17 May 1967, hereby rules:

A tax imposed on the importation of products originating in third countries does not constitute a charge having an effect equivalent to a customs duty within the meaning of Article 20(1) of Regulation No 19 on the progressive establishment of a common organization of the market in cereals when it is imposed as a charge under the national system of turnover tax;

and declares:

It is for the court making the reference to decide on the costs of the present proceedings.

JUDGMENT OF THE COURT
4 APRIL 1968[1]

Firma Milch-, Fett- und Eierkontor GmbH v Hauptzollamt Saarbrücken[2] (Reference for a preliminary ruling by the Finanzgericht of the Saarland)

Case 25/67

Summary

1. *Policy of the EEC — Common rules — Tax provisions — Cumulative multi-stage tax — Average rates for imported products within the meaning of the first paragraph of Article 97 — No individual rights*

2. *Policy of the EEC — Common rules — Tax provisions Cumulative multi-stage tax — Average rates for imported products or groups or imported products — Establishment by Member States — Validity*
   (EEC Treaty, Article 97)

3. *Customs duties and internal taxation — Joint applicability to the same case of provisions relating thereto — Impossibility of such joint application*
   (EEC Treaty, Article 12, 13 and 95)

4. *Policy of the EEC — Common rules — Tax provisions — Taxation intended to put national products and imported products in a comparable tax position — Nature of internal taxation*
   (EEC Treaty, Article 95)

1. Cf. paragraph 4, summary, Case 28/67.
2. Cf. paragraph 5, summary, Case 28/67.
3. Cf. paragraph 4, summary, Case 57/65, Rec. 1966, p. 295.
4. A tax which is levied within the framework of turnover tax legislation and is designed to place all categories of products both domestic and imported in a comparable tax situation constitutes 'internal taxation' within the meaning of Article 95.

In Case 25/67[3]

Reference to the Court under Article 177 of the Treaty establishing the European Economic Community by the Finanzgericht (Finance Court) (the competent court in taxation matters) of the Saarland for a preliminary ruling in the action pending before that court between

1 — Language of the Case: German.
2 — CMLR.
3 — In this case the Court on 16 May 1968 made an order similar to that in Case 13/67

FIRMA MILCH-, FETT- UND EIERKONTOR GMBH, Hamburg,

and

HAUPTZOLLAMT (Principal Customs Office) SAARBRÜCKEN,

on the interpretation of Articles 95 and 97 of the EEC Treaty,

THE COURT

in answer to the questions referred to it by the Finanzgericht of the Saarland, by order of that court of 19 June 1967, hereby rules:

1. **The first paragraph of Article 97, which applies where Member States operating a turnover tax according to the cumulative multi-stage system have actually exercised the right therein granted to them, does not create individual rights which national courts must protect;**
2. **In States which have exercised the power made available to them by Article 97 rates are considered as 'average rates' if they are established as such by the States in question, without prejudice to the operation of the second paragraph of that article;**
3. **A tax which is levied within the framework of turnover tax legislation and is designed to place all categories of products both domestic and imported in a comparable tax situation constitutes 'internal taxation' within the meaning of Article 95;**

and declares:

It is for the court making the reference to decide upon the costs of the present proceedings.

JUDGMENT OF THE COURT
4 APRIL 1968[1]

Firma Fink-Frucht GmbH
v Hauptzollamt München-Landsbergerstraße[2]
(Reference for a preliminary ruling by the Finanzgericht, Munich)

Case 27/67

Summary

1. *Policy of the EEC — Common rules — Tax provisions — Internal taxation imposed by one Member State on products from other Member States — Absence of similar domestic products or other products capable of being protected — Permissibility*
(EEC Treaty, Article 95)

2. *Quantitative restrictions and taxes — Different nature — Joint application of provisions thereon to the same case — Not permissible*
(EEC Treaty, Articles 30, 95)

3. *Policy of the EEC — Common rules — Tax provisions — Internal taxation imposed by one Member State on products from other Member States — Similarity between such products — Concept*
(EEC Treaty, first paragraph of Article 95)

4. *Policy of the EEC — Common rules — Tax provisions — Internal taxation imposed by one Member State on products from other Member States — Taxation of such a nature as to afford indirect protection to products other than similar products — Prohibition — Individual rights — Protection of such rights by national courts*
(EEC Treaty, first paragraph of Article 95)

5. *Policy of the EEC — Common rules — Tax provisions — Internal taxation imposed by one Member State on products from other Member States — Taxation of such a nature as to afford indirect protection to products other than similar products — Prohibition — Nature of the prohibition — Conditions of application — Powers of national courts*
(EEC Treaty, second pargaraph of Article 95)

1. The provisions of Article 95 of the EEC Treaty do not prohibit Member States from imposing internal taxation on products imported from other Member States when there are no similar domestic products or other domestic products capable of being protected.

2. Internal taxation imposed under the conditions referred to in paragraph 1 above on products imported from other Member States does not come within the prohibition on quantitative restrictions and measures having equivalent effect, within the meaning of Article 30 of the EEC Treaty.
One and the same tax cannot be both a measure having an effect equivalent to a

1 — Language of the Case: German.
2 — CMLR.

quantitative restriction and internal taxation.

3. Similarity between products within the meaning of the first paragraph of Article 95 exists when the products in question are normally to be considered as coming within the same fiscal, customs or statistical classification, as the case may be.

4. The second paragraph of Article 95 of the Treaty is capable of producing direct effects and creating individual rights which national courts must protect.

5. The second paragraph of Article 95 is complementary to the first. It prohibits the imposition of any internal taxation which imposes a higher charge on an imported than on a domestic product which competes with the imported product, although it is not similar to it within the meaning of the first paragraph of Article 95. The prohibition also applies in the absence of direct competition where the internal taxation subjects the imported product to a specific fiscal charge in such a way as to protect certain activities distinct from those used in the manufacture of the imported product. However, the said second paragraph is only applicable when the various economic relationships envisaged by it are not merely fortuitous, but lasting and characteristic.
The effects of a tax on the economic relationships referred to in the second paragraph of Article 95 must be assessed in the light of the objectives of Article 95, which are to ensure normal conditions of competition and to remove all restrictions of the fiscal nature capable of hindering the free movement of goods within the Common Market.
The Treaty does not prevent national courts from deciding, where necessary, the level below which the tax in question would cease to have the protective effects prohibited by the Treaty and from drawing all appropriate conclusions therefrom.

In Case 26/67

Reference to the Court under Article 177 of the Treaty establishing the European Economic Community by the Finanzgericht (Finance Court), Munich, for a preliminary ruling in the action pending before that court between

FIRMA FINK-FRUCHT GMBH, Frankfurt-am-Main,

and

HAUTPZOLLAMT (Principal Customs Office) MÜNCHEN-LANDSBERGERSTRASSE,

THE COURT

in answer to the questions referred to it by the Finanzgericht, Munich, by an order of that court of 12 July 1967 hereby rules:

1. **Neither Article 95 nor Article 30 of the Treaty establishing the European Economic Community prohibits Member States from imposing internal taxation on products imported from other Member States when there are no similar domestic products or other domestic products capable of being protected;**

2. **The second paragraph of Article 95 of the Treaty is capable of producing direct effects and creating individual rights which national courts must protect;**

3. **(a) Similarly between products within the meaning of the first paragraph of Article 95 exists when the products in question are normally to be considered as coming within the same fiscal, customs or statistical classification, as the case may be;**
   (b) The second paragraph of Article 95 is complementary to the first. It prohibits the imposition of any internal taxation which imposes a higher

charge on an imported than on a domestic product which competes with the imported product, although it is not similar to it within the meaning of the first paragraph of Article 95. The prohibition also applies in the absence of direct competition where the internal taxation subjects the imported product to a specific fiscal charge in such a way as to protect certain activities distinct from those used in the manufacture of the imported product;

and declares:

The decision on costs in these proceedings is a matter for the Finanzgericht, Munich.

JUDGMENT OF THE COURT
4 APRIL 1968[1]

Firma August Stier
v Hauptzollamt Hamburg-Ericus
(Reference for a preliminary ruling by the Finanzgericht, Hamburg)

Case 31/67

Summary

1. Policy of the EEC — Common rules — Tax provisions — Taxation — Taxation forming part of a general tax applying without distinction to domestic and imported products — Nature of internal taxation
(EEC Treaty, Article 95)

2. Policy of the EEC — Common rules — Tax provisions — Internal taxation imposed by a Member State on products from Member States — Absence of similar domestic products or other products capable of being protected — Permissibility — Limits of right of Member State to impose taxation
(EEC Treaty, Article 95)

1. Taxation levied within the framework of legislation relating to the turnover tax applying without distinction to all categories of products, whether domestic or imported, does not constitute a specific tax on imported products even if charged at the moment of importation.

   Cf. paragraph 4, summary, judgment in Case 25/67, [1968] E.C.R.

2. The provisions of Article 95 of the EEC Treaty do not prohibit Member States from imposing internal taxation on imported products from other Member States when there is no similar domestic product or other domestic product capable of being protected. Nevertheless it would not be permissible for Member States to impose on such products charges of such an amount that the free movement of goods within the Common Market would be impeded as far as those products were concerned. Such a restraint on the free movement of goods cannot however be presumed to exist when the rate of taxation remains within the general framework of the national system of taxation of which the tax in question is an integral part.

   Cf. paragraph 1, summary, judgment in Case 27/67.

In Case 31/67

Reference to the Court under Article 177 of the EEC Treaty by the Finanzgericht (Finance Court), Hamburg, for a preliminary ruling in the action pending before that court between

1 — Language of the Case: German.

FIRMA AUGUST STIER, Hamburg,

and

HAUPTZOLLAMT (Principal Customs Office) HAMBURG-ERICUS,

on the interpretation of the Treaty establishing the EEC, especially Article 95 thereof,

THE COURT

in answer to the questions referred to it by the Finanzgericht, Hamburg, by order of that court dated 11 August 1967, hereby rules:

1. **The provisions of Article 95 of the Treaty establishing the European Economic Community do not prohibit Member States from imposing internal taxation on imported products originating in other Member States when there is no similar domestic product or other domestic products capable of being protected;**

2. **In the cases referred to in paragraph 1 above, the Treaty does not have the effect of restricting the freedom of Member States to fix rates of taxation which remain within the general framework of the national system of internal taxation of which the tax in question forms part;**

and declares:

It is for the court making the reference to decide as to the costs in this action.

JUDGMENT OF THE COURT
4 APRIL 1968[1]

Firma Gebrüder Lück v Hauptzollamt Köln-Rheinau (Reference for a preliminary ruling by the Finanzgericht, Düsseldorf)

Case 34/67

Summary

1. *Policy of the EEC — Common rules — Tax provisions — Cumulative multi-stage tax — Average rates for imposed products or groups of imported products within the meaning of the first paragraph of Article 97 — No individual rights*

2. *Policy of the EEC — Common rules — Tax provisions — Taxation imposed on domestic products — Concept*
   (EEC Treaty, Article 95)

3. *Policy of the EEC — Common rules — Tax provisions — Rights conferred on individuals by Community law — Powers of national courts for the purpose of protecting such rights*
   (EEC Treaty, Article 95)

1. Cf. paragraph 4, summary, Case 28/67.

2. The concept of taxation imposed on a domestic product within the meaning of Article 95 of the Treaty means the tax burden which results from the application of the rate of tax fixed by law.

3. Article 95 of the Treaty has the effect of excluding the application of any national measure incompatible with it. However, the Article does not restrict the powers of the competent national courts to apply, from among the various procedures available under national law, those which are appropriate for the purpose of protecting the individual rights conferrd by Community law. Particularly when an internal tax is incompatible with the first paragraph of Article 95 only beyond a certain amount, it is for the national court to decide, according to the rules of its national law, whether the illegality affects the whole tax or only so much of it as exceeds that amount. It is also for that court to decide whether the rules of national law which conflict with the said provision must be repealed or whether they are void as from 1 January 1962, or to select any other solution.

   Cf. paragraph 2, summary, Case 28/67.

In Case 34/67

Reference to the Court under Article 177 of the EEC Treaty by the IVth Senate of the Finanzgericht (Finance Court), Düsseldorf, for a preliminary ruling in the action pending before that court between

1 — Language of the Case: German.

FIRMA GEBRÜDER LÜCK, Cologne-Braunsfeld,

and

HAUPTZOLLAMT (Principal Customs Office) KÖLN-RHEINAU

on the interpretation of Articles 95 and 97 of the EEC Treaty,

THE COURT

in answer to the questions referred to it by the Finanzgericht, Düsseldorf, by order of that court of 6 September 1967, hereby rules:

1. **The first paragraph of Article 97, applicable where Member States levying a turnover tax calculated on a cumulative multi-stage tax system in fact exercise the option which it gives to them, does not create rights which national courts must protect;**

2. **Taxation imposed on a domestic product within the meaning of Article 95 of the Treaty means taxation imposed at the rate which results from the application of the law;**

3. **Article 95 of the Treaty does not restrict the powers of the competent national courts to apply, from among the various procedures available under national law, those which are appropriate for the purpose of protecting the individual rights conferred by Community law.**

and declares:

The decision as to costs in these proceedings is a matter for the court making the reference.

JUDGMENT OF THE COURT
24 JUNE 1969[1]

Milch-, Fett- und Eierkontor GmbH
v Hauptzollamt Saarbrücken[2]
(Reference for a preliminary ruling by the Finanzgericht of the Saarland)

Case 29/68

Summary

1. *Procedure — Preliminary ruling — National court — Interpretation of the Court of Justice binding — Right to make a further reference to the Court of Justice*
   (EEC Treaty, Article 177)

2. *Policy of the EEC — Common rules — Tax provisions — Cumulative multi-stage tax — Average rates for imported products or groups of imported products — Establishment by Member States — Object of this power*
   (EEC Treaty, Article 97)

3. *Policy of the EEC — Common rules — Tax provisions — Cumulative multi-stage tax — Average rates for imported products or groups of imported products — Establishment by Member States — Powers of national courts of the Commission and of other Member States*
   (EEC Treaty, Article 97)

4. *Policy of the EEC — Common rules — Tax provisions — Cumulative multi-stage tax — Average rates for imported products or groups of imported products — Concept*
   (EEC Treaty, Article 97)

5. *Policy of the EEC — Common rules — Tax provisions — Cumulative multi-stage tax — Average rates for imported products or groups of imported products — Establishment by Member States — Form*
   (EEC Treaty, Article 97)

6. *Policy of the EEC — Common rules — Tax provisions — Cumulative multi-stage tax — Average rates for imported products or groups of imported products — Rate for one stage as an average rate — Possibility — Contrary to Articles 95 and 97 — Without effect on the character of this rate as an 'average rate'*
   (EEC Treaty, Article 97)

7. *Policy of the EEC — Common rules — Tax provisions — Cumulative multi-stage tax — Average rates for imported products or groups of imported products — Composition of groups of products liable to an average rate — Without effect on the character of this rate as an 'average rate'*
   (EEC Treaty, Article 97)

1. An interpretation given by the Court of Justice under Article 177 of the EEC Treaty binds the national court hearing the case concerned. It is for the national court, however, to decide whether it is sufficiently enlightened

1 — Language of the Case: German.
2 — CMLR.

by the preliminary ruling given or whether it is necessary to make a further reference to the Court.

2. The power made available by Article 97 permits the States concerned to tax an imported product at a single rate deemed to correspond to the aggregate tax burden borne by domestic products.

3. In order to enable the national court to decide whether the case before it is governed by Article 97, it is only necessary for it to be in a position to decide, on the one hand, whether the said case involves a turnover tax calculated on a cumulative multi-stage tax system and, on the other hand, whether the Member State has actually exercised the power made available to it by the said article. If the national court can establish the existence of these two factors, it merely remains for the Commission and the other Member States to put into operation the machinery provided for them by the second paragraph of Article 97 and by Articles 169, 170 and 173, to review the legality of the measures adopted or have it reviewed.
The question whether the power made available by Article 97 has actually been exercised in a particular case is, from the point of view of Community law, a question which national courts must decide within the context of national law.

4. If a State has exercised the power made available to it by Article 97, the rates which it has established are governed by that provision, even where it could be shown that they do not correspond to the aggregate tax burden borne by domestic products.
In States which have exercised the power made available by Article 97, an 'average rate' is any rate established as such by the State concerned, even if it was established prior to the entry into force of the Treaty.

5. In order to establish an average rate within the meaning of Article 97 of the EEC Treaty, it is sufficient that the body which is competent in accordance with the legal system of a Member State should declare that an existing rate of tax is an average rate.

6. Under a cumulative multi-stage tax system, a rate applicable to a single stage of marketing may constitute an average rate within the meaning of Article 97 of the EEC Treaty. As far as national courts are concerned, infringement of Articles 95 and 97 would not mean that the rate in question was no longer an 'average rate', but would merely render it liable to the measures laid down in the second paragraph of Article 97.

7. By permitting Member States to establish average rates for groups of products the Treaty merely intended to indicate that the States are not bound to establish separate rates for each product. Nothing in Article 97 allows the conclusion to be drawn that the status of 'average rate' depends on the composition of the groups covered by the rate in question.
Consequently, Article 97 does not exclude the possibility that products liable to a rate of turnover equalization tax which does not differ from the general rate may form a group of products within the meaning of that article.

In Case 29/68

Reference to the Court under Article 177 of the Treaty establishing the European Economic Community by the Finanzgericht (Finance Court), of the Saarland for a preliminary ruling in the action pending before that court between

MILCH-, FETT- UND EIERKONTOR GMBH, Hamburg,

and

HAUPTZOLLAMT (Principal Customs Office) SAARBRÜCKEN,

on the interpretation of the said Treaty and especially Articles 95 and 97,

THE COURT

in answer to the questions referred to it by the Finanzgericht of the Saarland by an order of that court of 4 October 1968, hereby rules:

On Question 1(a):

(a) The power made available by Article 97 of the EEC Treaty permits the States concerned to tax an imported product at a single rate deemed to correspond to the aggregate tax burden borne by domestic products;

(b) The question whether, in a particular case, this power has actually been exercised is, from the point of view of Community law, a question which national courts must decide within the context of national law;

(c) If a State has exercised this power, the rates which it has established are governed by Article 97, even where it could be shown that they do not correspond to the aggregate tax burden borne by domestic products.

On Question 1(b):

Under a cumulative multi-stage tax system, a rate of tax introduced before the entry into force of the EEC Treaty may constitute an 'average rate' within the meaning of Article 97 and it is possible that a rate applicable to a single stage of marketing may constitute an 'average rate' within the meaning of that article;

On Question 2(a):

In order to establish an average rate within the meaning of Article 97, it is sufficient that the body which is competent in accordance with the legal system of a Member State has declared that an existing tax rate is an average rate.

On Questions 3 and 4:

Article 97 does not exclude the possibility that products liable to a rate of turnover equalization tax which does not differ from the general rate may form a group of products within the meaning of the said Article 97.

JUDGMENT OF THE COURT
1 JULY 1969[1]

Commission of European Communities
v Italian Republic[2]

Case 24/68

Summary

1. Customs duties — Elimination — Purpose
(EEC Treaty, Articles 9, 12)

2. Customs duties — Elimination — Charges having equivalent effect — Concept — Identity in the Treaty and in the regulations — National taxation and charges having equivalent effect — Distinction
(EEC Treaty, Articles 9, 12, 95)

3. Customs duties — Elimination — Creation of new charges prohibited — Absolute nature of such prohibition
(EEC Treaty Articles 9, 12)

1. Customs duties are prohibited independently of any consideration of the purpose for which they were introduced and the destination of the revenue obtained therefrom.

2. (a) Any pecuniary charge, however small and whatever designation and mode of application, which is imposed unilaterally on domestic or foreign goods when they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect within the meaning of Articles 9, 12, 13 and 16 of the Treaty, even if it is not imposed for the benefit of the State, is not discriminatory or protective in effect or if the product on which the charge is imposed is not in competition with any domestic product.

(b) The regulations relating to the common organization of the agricultural markets are not intended to confer on the concept of a charge having equivalent effect a scope different from that which it has within the framework of the Treaty itself, especially as, when those regulations take account of the particular conditions for establishing a common market in agricultural products, they pursue the same objectives as Articles 9 to 13 of the Treaty which they implement.

3. (a) The prohibition of new customs duties or charges having equivalent effect, linked to the principle of the free movement of goods, constitutes a fundamental rule which, without prejudice to the other provisions of the Treaty, does not permit of any exceptions.

(b) It follows from Articles 95 et seq. that the concept of a charge having equivalent effect does not include taxation which is imposed

1 — Language of the Case: Italian.
2 — CMLR.

in the same way within a State on imported products and similar domestic products, or which falls, in the absence of comparable domestic products, within the framework of taxation of this nature within the limits laid down by the Treaty.
The rendering of specific service may in certain cases warrant the payment of a fee in proportion to the service actually rendered.

In Case 24/68

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Sandro Gaudenzi, acting as Agent, with an address for service in Luxembourg at the offices of Emile Reuter, its Legal Adviser, 4 boulevard Royal,

applicant,

v

ITALIAN REPUBLIC, represented by Adolfo Maresca, Minister Plenipotentiary acting as Agent, assisted by Pietro Peronaci, assistant to the Avvocato Generale dello Stato (State Advocate-General), with an address for service in Luxembourg at the Embassy of the Italian Republic,

defendant,

Application for a ruling that the Italian Republic has failed to fulfil its obligations under the Treaty establishing the European Economic Community, by levying a charge called a statistical levy (diritto di statistica) on goods exported to the other Member States contrary to Article 16 of the said Treaty, and by levying a charge called a statistical levy on goods subject to the regulations of the Council concerning various common organizations of the agricultural markets and imported from other Member States, contrary to the said regulations;

THE COURT

hereby declares:

1. **On levying on exports to other Member States of the Community the charge provided for by Article 42 of the Decree of the President of the Republic No 723 of 26 June 1965, the Italian Republic has failed to fulfil its obligations under Article 16 of the Treaty establishing the European Economic Community;**

2. **In levying on imports from other Member States the charge provided for by Article 42 of the Decree of the President of the Republic No 723 of 26 June 1965 on goods subject to the regulations of the Council relating to certain common organizations of the agricultural markets, the Italian Republic has failed to fulfil its obligations under Article 189 of the Treaty and Articles 21(1) of Regulation No 120/67/EEC, 19(1) of Regulation No 121/67/EEC, 13(1) of Regulation No 122/67/EEC, 13(1) of Regulation No 123/67/EEC, 22(1) of Regulation No 804/68/EEC, 22(1) of Regulation No 805/68/EEC, 23(1) of Regulation No 359/67/EEC, and 3(1) of Regulation No 136/66/EEC;**

3. **The defendant is ordered to pay the costs.**

JUDGMENT OF THE COURT
1 JULY 1969[1]

Sociaal Fonds voor de Diamantarbeiders v SA Ch. Brachfeld and Sons and Chougol Diamond Co.[2] (Reference for a preliminary ruling by the Vrederechter, Antwerp)

Joined Cases 2 and 3/69

Summary

1. Customs duties — Elimination — Purpose
(EEC Treaty, Articles 9, 12)

2. Customs duties — Elimination — Charges having equivalent effect — Concept
(EEC Treaty, Articles 9, 12)

3. Customs duties and charges having equivalent effect — Elimination — Introduction of new duties and charges prohibited — Absolute nature of such prohibition — National taxation and charges having equivalent effect — Distinction
(EEC Treaty, Articles 9, 12, 95)

4. Customs duties — Elimination — Immediate effects of the provisions relating thereto
(EEC Treaty, Articles 9, 12, 17, 95)

5. Common customs tariff — Pecuniary charges imposed by States on imports from third countries before the introduction of that tariff — Permissibility

1. Customs duties are prohibited independently of any consideration of the purpose for which they were introduced and the destination of the revenue obtained therefrom.

2. Any pecuniary charge, however small and whatever its designation and mode of application, which is imposed unilaterally on domestic or foreign goods when they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect within the meaning of Articles 9 and 12 of the Treaty, even if it is not imposed for the benefit of the State, is not discriminatory or protective in effect or if the product on which the charge is imposed is not in competition with any domestic product.

3. (a) The prohibition of new customs duties or charges having equivalent effect, linked to the principle of the free movement of goods, constitutes a fundamental rule which, without prejudice to the

1 — Language of the Case: Dutch.
2 — CMLR.

other provisions of the Treaty, does not permit of any exceptions.

(b) It follows from Articles 95 et seq. that the concept of a charge having equivalent effect does not include taxation which is imposed in the same way within a State on imported products and similar domestic products, or which falls, in the absence of comparable domestic products, within the framework of general internal taxation, or which is intended to compensate for taxation of this nature within the limits laid down by the Treaty.
The rendering of a specific service may in certain specific cases warrant the payment of a fee in proportion to the service actually rendered.

4. The provisions of the Treaty laying down prohibitions on customs duties and charges having equivalent effect impose precise and clearly-defined obligations on Member States which do not require any subsequent intervention by Community or national authorities for their implementation. For this reason, these provisions directly confer rights on individuals concerned.

5. Without prejudice to any limitations which might be imposed in order to attain the objectives of the common customs tariff, pecuniary charges other than customs duties in the strict sense applied by a Member State before the introduction of that tariff on goods imported directly from third countries are not, according to the Treaty, incompatible with the requirements concerning the gradual alignment of national customs tariffs on the common external tariff.

In Joined Cases 2 and 3/69

Reference to the Court under Article 177 of the EEC Treaty by the Vrederechter, Antwerp (Second Canton), for a preliminary ruling in the action pending before that court between

SOCIAAL FONDS VOOR DE DIAMANTARBEIDERS, Antwerp,

and

SA CH. BRACHFELD & SONS, Antwerp,

(Case 2/69)

SOCIAAL FONDS VOOR DE DIAMANTARBEIDERS, Antwerp,

and

CHOUGAL DIAMOND Co., Antwerp,

(Case 3/69)

on the interpretation of Articles 9, 12, 13, 18, 37 and 95 of the Treaty,

THE COURT

in answer to the questions referred to it by the Vrederechter, Antwerp, by judgment of that court dated 24 December 1968, hereby rules:

1. **The concept of a charge having equivalent effect referred to in Articles 9 and 12 of the EEC Treaty includes any pecuniary charge, other than a customs duty in the strict sense, imposed on goods circulating within the Community by reason of the fact that they**

cross a frontier, in so far as such a charge is not permitted by a specific provision of the Treaty;

2. Without prejudice to any limitations which might be imposed in order to attain the objectives of the common customs tariff, pecuniary charges other than customs duties in the strict sense applied by a Member State before the introduction of that tariff on goods imported directly from third countries are not, according to the Treaty, incompatible with the requirements concerning the gradual alignment of national customs tariffs on the common external tariff.

JUDGMENT OF THE COURT
15 OCTOBER 1969[1]

Commission of the European Communities
v Government of the Italian Republic[2]

Case 16/69

Summary

1. *Internal taxation — Non-discrimination — Potable spirits (EEC Treaty, Article 95)*

2. *Agriculture — Potable spirits — not an agricultural product (Regulation No 7)*

3. *Agriculture — Establishment of the Common Market — Exceptions — Strict interpretation*

1. The taxation of potable spirits imported from one Member State on the basis of a notional alcoholic content amounts to discrimination incompatible with Article 95 of the EEC Treaty.

2. As potable spirits are not agricultural products (Regulation No 7 (a) of 18 December 1959) they are not subject to the provisions of Articles 39 to 46 of the Treaty.

3. In agriculture the permitted derogations from certain rules laid down for the establishment of the Common Market are exceptions and as such must be strictly interpreted.

In Case 16/69

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Cesare Maestripieri, acting as Agent, with an address for service in Luxembourg at the offices of Émile Reuter, Legal Advisor of the Commission, 4 boulevard Royal,

applicant,

v

GOVERNMENT OF THE ITALIAN REPUBLIC, represented by Adolfo Maresca, Minister Plenipotentiary, acting as Agent, assisted by Pietro Peronaci, Sostituto Avvocato generale della Stato, (Deputy State Advocate-General) with an address for service in Luxembourg at the chancery of the Italian Embassy,

defendant,

1 — Language of the Case: Italian.
2 — CMLR.

Application for a declaration that the Italian Republic by applying a system of taxation which imposes a higher tax burden on potable spirits imported from other Member States than on the corresponding national products has infringed Article 95 of the Treaty establishing the European Economic Community,

THE COURT

hereby:

1. **Declares that the Italian Republic by continuing after 1 January 1962 to levy on potable spirits imported from other Member States frontier dues and all other duties which apply to alcohol in its national territory on the basis of a minimum alcoholic content of 70% has failed to fulfil the obligations imposed upon it by Article 95 of the Treaty establishing the European Economic Community;**
2. **Orders the defendant to bear the costs.**

JUDGMENT OF THE COURT
19 NOVEMBER 1969[1]

Commission of the European Communities
v Italian Republic

Case 45/64

In Case 45/64

COMMISSION OF THE EUROPEAN COMMUNITIES, taking the place of the Commission of the European Economic Community in accordance with Article 9 of the Treaty of 8 April 1965 establishing a Single Council and a Single Commission of the European Communities, represented by its Legal Adviser, Giuseppe Marchesini, acting as Agent, with an address for service in Luxembourg at the offices of its Legal Adviser, Emile Reuter, 4 boulevard Royal,

applicant,

v

ITALIAN REPUBLIC, represented by Adolfo Maresca, Minister Plenipotentiary, Head of the Diplomatic Legal Department of the Foreign Ministry, acting as Agent, assisted by Pietro Peronaci, Deputy State Advocate-General, with an address for service in Luxembourg at the Italian Embassy,

defendant,

Application for a ruling that, by allowing certain products of the engineering industry exported to other Member States to benefit from a repayment of internal taxation which contravened Article 96 of the Treaty establishing the European Economic Community either by reason of the nature of the tax or of the method of repayment, the Italian Republic has failed to fulfil an obligation under the said Treaty,

THE COURT

hereby:

1. **Declares that, by maintaining in force after 31 December 1963 a statutory system which may lead to the payment, to the advantage of products of the engineering industry exported to other Member States, of repayments of internal taxation exceeding the taxation imposed directly or indirectly on the said products, the Italian Republic has failed to fulfil its obligation under Article 96 of the Treaty;**

2. **Orders the defendant to bear the costs of the action, including the costs reserved by the judgment of 1 December 1965.**

1 — Language of the Case: Italian.

JUDGMENT OF THE COURT
10 MARCH 1970[1]

Commission of the European Communities v Government of the Italian Republic[2]

Case 7/69

Summary

Obligations of Member States — Failure to fulfil — Application by the Commission — Subject-matter — Alteration in the course of the proceedings — Inadmissibility
(EEC Treaty, Article 169)

Because of the importance which the Treaty attaches to the action available to the Community against Member States for failure to fulfil obligations, this procedure is in Article 169 surrounded by guarantees which must not be ignored, particularly in view of the obligation imposed by Article 171 on Member States to take as a consequence of this action the necessary measures to comply with the judgment of the Court. Accordingly the Court cannot give judgment on a failure to fulfil an obligation occurring after legislation has been amended during the course of the proceedings without thereby adversely affecting the rights of the Member State to put forward its arguments in defence based on complaints formulated according to the procedure laid down by Article 169. In such circumstances it is for the Commission to commence new proceedings under Article 169 with regard to the effects of the legislation, and if necessary to refer to the Court the specific shortcoming upon which it desires the Court to pronounce.

In Case 7/69

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Giuseppe Marchesini, acting as Agent, with an address for service in Luxembourg at the Chambers of Émile Reuter, 4, boulevard Royal,

applicant,

v

GOVERNMENT OF THE ITALIAN REPUBLIC, represented by Adolfo Maresca, Minister Plenipotentiary, acting as Agent, assisted by Pietro Peronaci, Deputy State Advocate-General, with an address for service in Luxembourg at the Italian Embassy,

defendant,

1 — Language of the Case: Italian.
2 — CMLR.

Application for a declaration that the Italian Republic, by applying a system of turnover tax which places a heavier burden on skin wool and carded or combed wool imported from other Member States of the EEC than on similar domestic products, has failed to fufil the obligation placed on it by Article 95 of the Treaty establishing the European Economic Community,

THE COURT

hereby:

1. **Dismisses the application;**

2. **Orders the parties to bear their own costs.**

JUDGMENT OF THE COURT
15 APRIL 1970[1]

Commission of the European Communities
v Government of the Italian Republic

Case 28/69[2]

Summary

1. *Policy of the EEC — Common rules — Tax provisions — Internal taxation imposed by one Member State on products coming from other Member States — Similarity between such products — Concept*
   (*EEC Treaty, Article 95, first paragraph*)

2. *Policy of the EEC — Common rules — Tax provisions — Internal taxation imposed by one Member State on products coming from other Member States — Principle of non-discrimination — Application*
   (*EEC Treaty, Article 95, first paragraph*)

1. Products which fall under the same classification for tax purposes must be considered as 'similar' within the meaning of the first paragraph of Article 95 of the EEC Treaty.

2. The principle of non-discrimination contained in Article 95 is valid independently of the effect of factors other than taxation on the respective production costs of the products to be compared.

In Case 28/69

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Giuseppe Marchesini, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, Emile Reuter, 4 boulevard Royal,

applicant,

v

GOVERNMENT OF THE ITALIAN REPUBLIC, represented by Adolfo Maresca, Minister

1 — Language of the Case: Italian.
2 — CMLR.

Plenipotentiary, acting as Agent, assisted by Pietro Peronaci, Assistant to the Avvocato Generale dello Stato (State Advocate-General), with an address for service in Luxembourg at the Embassy of the Italian Republic,

defendant,

Application under the second paragraph of Article 169 of the EEC Treaty for a declaration that the Italian Republic has failed to fulfil an obligation under Articles 95 and 96 of the Treaty by imposing on various products imported from other Member States an excise duty exceeding that imposed on similar domestic products, and by granting on exports of various national products a refund of the said duty in excess of the sum actually paid,

THE COURT

hereby:

1. **Rules that by imposing on cocoa powder imported from other Member States an excise duty in excess of that imposed on the similar product produced in Italy by milling cocoa beans imported duty-free under the temporary import system, the Italian Republic has failed to fulfil its obligations under Article 95 of the EEC Treaty;**

2. **Dismisses the second submission;**

3. **Orders the parties to bear their own costs.**

JUDGMENT OF THE COURT
5 MAY 1970[1]

Commission of the European Communities v Kingdom of Belgium

Case 77/69

Summary

1. *Tax provisions — Internal taxation — Domestic products and imported products — Identical rate — Stage of processing of the products — Differential basis — Discrimination*
   (*EEC Treaty, Article 95*)

2. *Member States — Obligations — Failure to fulfil — Liability — Extent — Constitutionally independent institutions*
   (*EEC Treaty, Article 169*)

1. A single flat-rate transference duty which is imposed on national products and imported products at the same rate, but has the effect, by reason of the different basis on which it is applied, of taxing imported products if they have been subjected to processing, more heavily than national products at a similar stage of processing, is of a discriminatory nature and is contrary to the first paragraph of Article 95 of the EEC Treaty.
2. The liability of a Member State under Article 169 arises whatever the agency of the State whose action or inaction is the cause of the failure to fulfil its obligations even in the case of a constitutionally independent institution.

In Case 77/69

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Cesare Maestripieri, acting as Agent, with an address for service in Luxembourg at the offices of its Legal Adviser, Emile Reuter, 4, boulevard Royal,

applicant,

v

KINGDOM OF BELGIUM, represented by Gilbert de Klerck, acting Director of

1 — Language of the Case: French.

Administration at the Ministry for Foreign Affairs and External Trade, acting as Agent, with an address for service in Luxembourg at the Belgian Embassy,

defendant,

Application for a declaration that the Kingdom of Belgium has failed to fulfil its obligations under Article 95 of the EEC Treaty in respect of the flat-rate transference duty on wood,

THE COURT

hereby:

1. **Declares that, by applying a duty at the same rate, as laid down by Article 31–14 of the Royal Decree of 3 March 1927 as amended by the Royal Decree of 3 March 1927 as amended by the Royal Decree of 27 December 1965, to home-grown wood transferred standing or felled and to imported wood calculated on its value at the time of the declaration of entry for home use, the Kingdom of Belgium has failed to fulfil its obligations under Article 95 of the EEC Treaty;**

2. **Orders the defendant to pay the costs.**

JUDGMENT OF THE COURT
25 JUNE 1970[1]

Government of the French Republic
v Commission of the European Communities[2]

Case 47/69

Summary

1. EEC policy — Aids granted by Member States or through State resources — General evaluation by the Commission
(EEC Treaty, Articles 92 and 93)

2. EEC policy — Aids granted by Member States or through State resources — Method of financing — Taxation — Article 95 of the Treaty — Articles 92 and 93 of the Treaty

3. EEC policy — Aids granted by Member States or through State resources — Direct and indirect aid — Method of financing — Connexion between method of financing and aid

4. EEC policy — Aids granted by Member States or through State resources — Method of financing — Quasi-fiscal charge

1. In order to determine whether aid granted by a Member State or through State resources is incompatible with the common market within the meaning of Article 92 (1) and (3), or whether it is being misused, it is necessary to consider all the legal and factual circumstances surrounding that aid, in particular whether there is an imbalance between the charges imposed on the undertakings or producers concerned on the one hand and the benefits derived from the aid in question on the other.

2. Since Articles 92 and 93 on the one hand and Article 95 on the other have different aims, the fact that a national measure satisfies the requirements of Article 95 does not imply that it is valid in relation to other provisions such as those of Articles 92 and 93. When an aid is financed by taxation of certain undertakings or producers, the Commission is required to consider not only whether the method by which it is financed complies with Article 95 of the Treaty but also whether, in conjunction with the aid which it services, it is compatible with the requirements of Articles 92 and 93.

3. In its appraisal the Commission must take into consideration all those factors which directly or indirectly characterize not only aid, properly so-called, for selected national activities but also the indirect aid which may be constituted both by the method of financing and by the close connexion which makes the amount of the aid dependent upon the revenue from the charge.

1 — Language of the Case: French.
2 — CMLR.

It may be that an aid properly so-called can be acknowledged as permissible but that the disturbance which it creates is increased by the method of financing it which would render the scheme as a whole incompatible with a single market and the common interest.

4. A system whereby an aid is serviced by a charge designed for that purpose leads to a system of permanent aids, the amount of which is unforeseeable and difficult to review. If this system were to become general it would have the effect of opening a loophole in Article 92 of the Treaty and of reducing the Commission's possibilities of keeping it under constant review.

In Case 47/69

GOVERNMENT OF THE FRENCH REPUBLIC, represented by His Excellency Renaud Sivan, Ambassador Extraordinary and Plenipotentiary, with an address for service in Luxembourg at the French Embassy,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser Joseph Griesmar, with an address for service in Luxembourg at the offices of Émile Reuter, Legal Adviser to the Commission, 4 boulevard Royal,

defendant,

Application for the annulment of the Commission's decision of 18 July 1969 concerning the French system of aids to the textile industry,

THE COURT

hereby:

1. **Dismisses the application;**

2. **Orders the applicant to bear the costs.**

JUDGMENT OF THE COURT
6 OCTOBER 1970[1]

Franz Grad
v Finanzamt Traunstein[2]
(Reference for a preliminary ruling by the Finanzgericht München)

Case 9/70

Summary

1. *Measures adopted by an institution — Decision — Direct effects — Right of individuals to invoke before courts of law*
   (*EEC Treaty, Article 189*)

2. *Turnover taxes — Application of common system of turnover tax concurrently with specific taxes levied instead of turnover tax — Prohibition directed to Member States — Direct effects as regards individuals*
   (*Council Decision of 12 May 1965, Article 4, Council Directives of 11 April 1967 and 9 December 1969*)

3. *Turnover taxes — Application of common system of turnover tax concurrently with specific taxes levied instead of turnover tax — Prohibition — Date of entry into force*
   (*Council Decision of 13 May 1965, Article 4, Council Directives of 11 April 1967 and 9 December 1969*)

4. *Turnover taxes — Application of common system of turnover tax concurrently with specific taxes levied instead of turnover tax — Prohibition — Scope of application*
   (*Council Decision of 13 May 1965, Article 4, Council Directives of 11 April 1967 and 9 December 1969*)

5. *Procedure Questions referred for preliminary ruling — Jurisdiction of the Court — Limits*
   (*EEC Treaty, Article 177*)

1. It would be incompatible with the binding effect attributed to decisions by Article 189 to exclude in principle the possibility that persons affected may invoke the obligation imposed by a decision. Particularly in cases where, for example, the Community authorities have by means of a decision imposed an obligation in a Member State or all the Member States to act in a certain way, the effectiveness ('l'effet utile') of such a measure would be weakened if the nationals of that State could not invoke it in the courts and the national courts could not take it into consideration as part of Community law. Although the effects of a decision may not be identical with those of a provision contained in a regulation, this difference does not exclude the possibility that the end result,

1 — Language of the Case: German.
2 — CMLR.

namely the right of the individual to invoke the measure before the courts, may be the same as that of a directly applicable provision of a regulation. Therefore, in each particular case, it must be ascertained whether the nature, background and wording of the provision in question, are capable of producing direct effects in the legal relationships between the addressee of the act and third parties.

2. The second paragraph of Article 4 of the Council Decision of 13 May 1965, which prohibits the Member States from applying the common system of turnover tax concurrently with specific taxes levied instead of turnover tax, is capable, in conjunction with the provisions of the Council Directives of 11 April 1967 and 9 December 1969, of producing direct effects in the legal relationships between the Member States to which the decision is addressed and those subject to their jurisdiction and of creating for the latter the right to invoke these provisions before the courts.

3. The prohibition on applying the common system of turnover tax concurrently with specific taxes becomes effective on the date laid down in the Third Council Directive of 9 December 1969, namely on 1 January 1972.

4. Whilst the second paragraph of Article 4 of the Decision of 13 May 1965 provides for the abolition of 'specific taxes' in order to ensure a common and consistent system of taxation of turnover, this objective does not prohibit the imposition on transport services of other taxes which are of a different nature and have aims different from those pursued by the common system of turnover tax. A tax which is not imposed on commercial transactions but merely because goods are carried by road and the basis of assessment of which is not consideration for a service but the physical load expressed in metric tons/kilometres to which the roads are subjected by the activity taxed, does not correspond to the usual form of turnover tax within the meaning of the second paragraph of Article 4 of the Decision of 13 May 1965.

5. It is not for the Court, in the procedure laid down by Article 177 of the EEC Treaty, to assess, from the point of view of Community law, the features of a measure adopted by one of the Member States. On the other hand it is within its jurisdiction to interpret the relevant provision of Community law in order to enable the national court to apply it correctly to the measure in question.

In Case 9/70

Reference to the Court under Article 177 of the EEC Treaty by the Finanzgericht München for a preliminary ruling in the action pending before that court between

FRANZ GRAD, Linz-Urfahr (Austria),

and

FINANZAMT TRAUNSTEIN

on the interpretation of Article 4 of Council Decision No 65/271/EEC of 13 May 1965 and of Article 1 of Council Directive No 67/227/EEC of 11 April 1967, and, in the alternative, of Articles 5, 74, 80, 92 and 93 of the EEC Treaty,

THE COURT

in answer to the questions referred to it by the Finanzgericht München, by order of 23 February 1970, hereby rules:

1. **The second paragraph of Article 4 of the Council Decision of 13 May 1965, which prohibits the Member States from applying the common system of turnover tax concurrently with specific taxes levied instead of turnover tax, is capable, in conjunction with the provisions of the Council Directives of 11 April 1967 and 9 December 1969, of producing direct effects in the legal relationships between the Member States to which the decision is addressed and those subject to their jurisdiction and of creating for the latter the right to invoke these provisions before the courts;**

2. **The prohibition on applying the common system of turnover tax concurrently with specific taxes becomes effective on the date laid down in the Third Council Directive of 9 December 1969, namely on 1 January 1972;**

3. **A tax with the features described by the Finanzgericht which is not imposed upon commercial transactions but merely because goods are carried by road and the basis of assessment of which is not consideration for a service but the physical load expressed in metric tonnes/kilometres to which the roads are subjected through the activity taxed, does not correspond to the usual form of turnover tax within the meaning of the second paragraph of Article 4 of the Decision of 13 May 1965.**

JUDGMENT OF THE COURT
21 OCTOBER 1970[1]

Transports Lesage & Cie v Hauptzollamt Freiburg[2] (Reference for a preliminary ruling by the Finanzgericht Baden-Württemberg, Freiburg)

Case 20/70

Summary

1. *Measures adopted by an institution — Decision — Direct effects — Right of individuals to invoke before courts of law*
   (*EEC Treaty, Article 189*)

2. *Turnover taxes — Application of common system of turnover tax concurrently with specific taxes levied instead of turnover tax — Prohibition directed to Member States — Direct effects as regards individuals*
   (*Council Decision of 13 May 1965, Article 4, Council Directives of 11 April 1967 and 9 December 1969*)

3. *Turnover taxes — Application of common system of turnover tax concurrently with specific taxes levied instead of turnover tax — Prohibition — Date of entry into force*
   (*Council Decision of 13 May 1965, Article 4, Council Directives of 11 April 1967 and 9 December 1969*)

4. *Turnover taxes — Application of common system of turnover tax concurrently with specific taxes levied instead of turnover tax — Prohibition — Scope of application*
   (*Council Decision of 13 May 1965, Article 4, Council Directives of 11 April 1967 and 9 December 1969*)

5. *Procedure — Questions referred for preliminary ruling — Jurisdiction of the Court — Limits*
   (*EEC Treaty, Article 177*)

1. It would be incompatible with the binding effect attributed to decisions by Article 189 to exclude in principle the possibility that persons affected may invoke the obligation imposed by a decision. Particularly in cases where, for example, the Community authorities have by means of a decision, have imposed an obligation on a Member State or all the Member States to act in a certain way the effectiveness ('l'effet utile') of such a measure would be weakened if the nationals of that State could not invoke it in the courts and the national courts could not take it into consideration as part of Community law.

1 — Language of the Case: German.
2 — CMLR.

Although the effects of a decision may not be identical with those of a provision contained in a regulation, this difference does not exclude the possibility that the end result, namely the right of the individual to invoke the measure before the courts, may be the same as that of a directly applicable provision of a regulation. Therefore, in each particular case, it must be ascertained whether the nature, background and wording of the provision in question are capable of producing direct effects in the legal relationships between the addressee of the act and third parties.

2. The second paragraph of Article 4 of the Council Decision of 13 May 1965, which prohibits the Member States from applying the common system of turnover tax concurrently with specific taxes levied instead of turnover tax, is capable, in conjunction with the provisions of the Council Directives of 11 April 1967 and 9 December 1969, of producing direct effects in the legal relationships between the Member States to which the decision is addressed and those subject to their jurisdiction and of creating for the latter the right to invoke these provisions before the Courts.

3. The prohibition on applying the common system of turnover tax concurrently with specific taxes becomes effective on the date laid down in the Third Council Directive of 9 December 1969, namely on 1 January 1972.

4. Whilst the second paragraph of Article 4 of the Decision of 13 May 1965 provides for the abolition of 'specific taxes' in order to ensure a common and consistent system of taxation of turnover, this objective does not prohibit the imposition on transport services of other taxes which are of a different nature and have aims different from those pursued by the common system of turnover tax. A tax which is not imposed on commercial transactions but merely because goods are carried by road and the basis of assessment of which is not consideration for a service but the physical load expressed in metric tonne/kilometers to which the roads are subjected by the activity taxed, does not correspond to the usual form of turnover tax within the meaning of the second paragraph of Article 4 of the Decision of 13 May 1965.

5. It is not for the Court, in the procedure laid down by Article 177 of the EEC Treaty, to assess, from the point of view of Community law, the features of a measure adopted by one of the Member States. On the other hand it is within its jurisdiction to interpret the relevant provision of Community law in order to enable the national court to apply it correctly to the measure in question.

In Case 20/70

Reference to the Court under Article 177 of the EEC Treaty by the Finanzgericht Baden-Württemberg (Freiburg), for a preliminary ruling in the action pending before that court between

TRANSPORTS LESAGE & CIE, Mulhouse (France),

and

HAUPTZOLLAMT FREIBURG

on the interpretation of Article 4 of Council Decision No 65/271/EEC of 13 May 1965 and Article 1 of Council Directive No 67/227/EEC of 11 April 1967,

THE COURT

in answer to the questions referred to it by the Finanzgericht Baden-Württemberg (Freiburg), by order of that court of 29 April 1970, hereby rules:

1. **The second paragraph of Article 4 of the Council Decision of 13 May 1965, which prohibits the Member States from applying the common system of turnover tax concurrently with specific taxes levied instead of turnover tax, is capable, in conjunction with the provisions of the Council Directives of 11 April 1967 and 9 December 1969, of producing direct effects in the legal relationships between the Member States to which the decision is addressed and those subject to their jurisdiction and of creating for the latter the right to invoke these provisions before the courts;**

2. **The prohibition on applying the common system of turnover tax concurrently with specific taxes becomes effective on the date laid down in the Third Council Directive of 9 December 1969, namely on 1 January 1972;**

3. **A tax with the features described by the Finanzgericht which is not imposed upon commercial transactions but merely because goods are carried by road and the basis of assessment of which is not consideration for a service but the physical load expressed in metric tonnes/kilometres to which the roads are subjected through the activity taxed, does not correspond to the usual form of turnover tax within the meaning of the second paragraph of Article 4 of the Decision of 13 May 1965.**

JUDGMENT OF THE COURT
21 OCTOBER 1970[1]

Erich Haselhorst v Finanzamt Düsseldorf - Altstadt[2] (Reference for a preliminary ruling by the Finanzgericht Düsseldorf)

Case 23/70

Summary

1. *Measures adopted by an institution — Decision — Direct effects — Right of individuals to invoke before courts of law*
   (*EEC Treaty, Article 189*)

2. *Turnover taxes — Application of common system of turnover tax concurrently with specific taxes levied instead of turnover tax — Prohibition directed to Member States — Direct effects as regards individuals*
   (*Council Decision of 13 May 1965, Article 4, Council Directives of 11 April 1967 and 9 December 1969*)

3. *Turnover taxes — Application of common system of turnover tax concurrently with specific taxes levied instead of turnover tax — Prohibition — Date of entry into force.*
   (*Council Directives of 11 April 1967 and 9 December 1969*)

4. *Turnover taxes — Application of common system of turnover tax concurrently with specific taxes levied instead of turnover tax — Prohibition — Scope of application*
   (*Council Decision of 13 May 1965, Article 4, Council Directives of 11 April 1967 and 9 December 1969*)

5. *Procedure — Questions referred for preliminary ruling — Jurisdiction of the Court — Limits*
   (*EEC Treaty, Article 177*)

1. It would be incompatible with the binding effect attributed to decisions by Article 189 to exclude in principle the possibility that persons affected may invoke the obligation imposed by a decision. Particularly in cases where, for example, the Community authorities have by means of a decision, imposed an obligation on a Member State or all the Member States to act in a certain way, the effectiveness ('l'effet utile') of such a measure would be weakened if the nationals of that State could not invoke it in the courts and the national courts could not take it into consideration as part of Community law. Although the effects of a decision may not be identical with those of a provision contained in a regulation, this difference does not exclude the possibility that the end result,

1 — Language of the Case: German.
2 — CMLR.

namely the right of the individual to invoke the measure before the courts, may be the same as that of a directly applicable provision of a regulation. Therefore, in each particular case, it must be ascertained whether the nature, background and wording of the provision in question are capable of producing direct effects in the legal relationships between the addressee of the act and third parties.

2. The second paragraph of Article 4 of the Council Decision of 13 May 1965, which prohibits the Member States from applying the common system of turnover tax concurrently with specific taxes levied instead of turnover tax, is capable, in conjunction with the provisions of the Council Directives of 11 April 1967 and 9 December 1969, of producing direct effects in the legal relationships between the Member States to which the decision is addressed and those subject to their jurisdiction creating for the latter the right to invoke these provisions before the courts.

3. The prohibition on applying the common system of turnover tax concurrently with specific taxes becomes effective on the date laid down in the Third Council Directive of 9 December 1969, namely on 1 January 1972.

4. Whilst the second paragraph of Article 4 of the Decision of 13 May 1965 provides for the abolition of 'specific taxes' in order to ensure a common and consistent system of taxation of turnover, this objective does not prohibit the imposition on transport services of other taxes which are of a different nature and have aims different from those pursued by the common system of turnover tax. A tax which is not imposed on commercial transactions but merely because goods are carried by road and the basis of assessment of which is not consideration for a service but the physical load expressed in metric tonnes/kilometers to which the roads are subjected by the activity taxed, does not correspond to the usual form of turnover tax within the meaning of the second paragraph of Article 4 of the Decision of 13 May 1965.

5. It is not for the Court, in the procedure laid down by Article 177 of the EEC Treaty, to assess, from the point of view of Community law, the features of a measure adopted by one of the Member States. On the other hand it is within its jurisdiction to interpret the relevant provision of Community law in order to enable the national court to apply it correctly to the measure in question.

In Case 23/70

Reference to the Court under Article 177 of the EEC Treaty by the Finanzgericht Düsseldorf for a preliminary ruling in the action pending before that court between

ERICH HASELHORST, Düsseldorf,

and

FINANZAMT DÜSSELDORF-ALTSTADT,

on the interpretation of Article 4 of Council Decision No 65/271/EEC of 13 May 1965 and Article 1 of Council Directive No 67/227/EEC of 11 April 1967,

THE COURT

in answer to the questions referred to it by the Finanzgericht Düsseldorf, by order of that court of 20 May 1970, hereby rules:

1. **The second paragraph of Article 4 of the Council Decision of 13 May 1965, which prohibits the Member States from applying the common system of turnover taxes concurrently with specific taxes levied instead of turnover tax, is capable, in conjunction with the provisions of the Council Directives of 11 April 1967 and 9 December 1969, of producing direct effects in the legal relationships between the Member States to which the decision is addressed and those subject to their jurisdiction, and of creating for the latter the right to invoke these provisions before the courts;**

2. **The prohibition on applying the common system of turnover tax concurrently with specific taxes becomes effective on the date laid down in the Third Council Directive of 9 December 1969, namely on 1 January 1972;**

3. **A tax with the features described by the Finanzgericht which is not imposed upon commercial transactions but merely because goods are carried by road and the basis of assessment of which is not consideration for a service but the physical load expressed in metric tonnes/kilometers to which the roads are subjected through the activity taxed, does not correspond to the usual form of turnover tax within the meaning of the second paragraph of Article 4 of the Decision of 13 May 1965.**

JUDGMENT OF THE COURT
28 APRIL 1971[1]

Alfons Lütticke GmbH
v Commission of the European Communities

Case 4/69

Summary

1. *Procedure — Application — Admissibility — Conditions — Reference to other proceedings — Permissibility*
   (Rules of Procedure, Article 38)

2. *Procedure — Action for damages — Independent nature — Result comparable to that of action for failure to act — Permissibility*
   (EEC Treaty, Articles 178, 215)

3. *Liability — Fiscal provisions — Cumulative multi-stage tax — Establishment of average rates — Discretionary power of the State and of the Commission — Exclusion of liability*
   (EEC Treaty, Article 97)

1. An application satisfies the requirements of Article 38 (1) of the Rules of Procedure when it contains all the details necessary to establish with certainty the subject-matter of the dispute and the legal scope of the grounds invoked in support of the submissions. Its admissibility is not affected by reference, in addition, to other proceedings brought before the Court.
2. The action for damages provided for by Article 178 and the second paragraph of Article 215 was established by the Treaty as an independent form of action with a particular purpose to fulfil within the system of actions and subject to conditions for its use conceived with a view to its specific purpose.
   It would be contrary to the independent nature of this action as well as to the efficacy of the general system of forms of action created by the Treaty to regard as a ground of inadmissibility the fact that, in certain circumstances, an action for damages might lead to a result similar to that of an action for failure to act under Article 175.
3. The system provided for by Article 97 implies, on the part of States which have recourse to it, the exercise of a discretion in regard to the assessment of the burden of tax on the domestic product which determines the level of the average rates and the tax procedure.
   It implies, on the part of the Commission, a power of supervision the exercise of which presupposes both a discretion to appraise the factors which the State has taken into consideration and respect for the margin of discretion left to the State concerned.,
   As long as the Commission has not exceeded these discretionary powers, the liability of the Community does not arise.

1 — Language of the Case: German.

In Case 4/69

ALFONS LÜTTICKE GMBH, having its registered office in Germinghausen and a branch office in Cologne-Deutz, represented by Peter Wendt, Advocate of the Hamburg Bar, with an address for service in Luxembourg at the office of Félicien Jansen, huissier, 21 rue Aldringen,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Advisers, Jochen Thiesing and Rolf Wägenbaur, acting as Agents, with an address for service in Luxembourg at the office of its Legal Adviser, Émile Reuter, 4 boulevard Royal,

defendant,

Application for damages under the second paragraph of Article 215 of the EEC Treaty,

THE COURT

hereby:

(1) **Dismisses the application;**

(2) **Orders the applicant to bear the costs.**

JUDGMENT OF THE COURT
14 DECEMBER 1972[1]

S.p.A. Marimex v Italian Finance Administration[2] (Reference for a preliminary ruling by the Tribunale di Trento)

'Sanitary Inspections'

Case 29/72

Summary

1. *Free movement of goods — Restrictions — Abolition — Derogation under Article 36 of the EEC Treaty — Strict interpretation*

2. *Customs duties — Abolition — Charges having equivalent effect — Concept — Fees demanded for sanitary inspections — Prohibition*
(EEC Treaty, Article 9; Regulation No 805/68 of the Council, Article 22)

1. Article 36 must be interpreted strictly since it constitutes a derogation from the basic rule that all obstacles to the free movement of goods between Member States shall be eliminated.

2. The prohibition, in trade between Member States, of all customs duties and of all charges having equivalent effects refers to all charges demanded on the occasion or by reason of importation which, imposed specifically on imported products and not on similar domestic products alter their cost price and thus produce the same restrictive effect on the free movement of goods as a customs duty. Since this prohibition does not admit of any distinction according to the aim in view in levying the pecuniary charges for the abolition of which it provides, it also includes fees determined in accordance with special criteria required because of sanitary inspections carried out by reason of the importation of goods.

In Case 29/72

Reference to the Court under Article 177 of the EEC Treaty by the President of the Tribunale di Trento for a preliminary ruling in the action pending before that before that court between

1 — Language of the Case: Italian.
2 — CMLR.

S.P.A. MARIMEX, whose registered office is at 7 Via Litta, Milan,

and

ITALIAN FINANCE Administration, represented by the Minister for Finance for the time being,

on the interpretation of Article 22 (1) of Regulation (EEC) No 805/68 of the Council of 27 June 1968 (OJ, Special Edition, 1968, I, p. 187) and of Article 95 of the EEC Treaty,

THE COURT

in answer to the question submitted to it by the Tribunale di Trento by order of 17 May 1972, hereby rules:

The pecuniary charges imposed on the grounds of the sanitary inspection of products when they cross the frontier, such charges being determined in accordance with special criteria which are not comparable with the criteria employed in fixing the pecuniary charges upon similar domestic products, are to be considered as charges having an effect equivalent to customs duties.

JUDGMENT OF THE COURT
20 FEBRUARY 1973 [1]

Fonderie Officine Riunite FOR
v Vereinigte Kammgarn-Spinnereien VKS
(preliminary ruling requested by Tribunal de Biella)

Case 54/72

Summary

1. *Preliminary questions — Jurisdiction of the Court — Limits*
   (EEC Treaty, Art. 177)

2. *Taxation provisions — Internal taxation by one Member State on products coming from other Member States — Principle of non-discrimination — Application to the basis of assessment of taxation — Double taxation — Prohibition*
   (EEC Treaty, Art. 95)

1. The Court does not have jurisdiction under Article 177 to settle a dispute relating to the interpretation of a national law.

2. The prohibition of discrimination as laid down by Article 95 relates not only to the rate but also to the basis of taxation. Article 95 of the Treaty must therefore be interpreted as prohibiting as fiscal system under which imported goods are charged twice with turnover tax, thus being treated as the object of two distinct transactions during the course of one operation which, for the same national product at the same marketing stage, would constitute only one chargeable operation.

In Case 54/72

Reference to the Court of Justice, under Article 177 of the EEC Treaty, by the Tribunale at Biella for a preliminary ruling in the action pending before that Court between

FONDERIE OFFICINE RIUNITE, FOR, Biella,

plaintiff,

and

VEREINIGTE KAMMGARN-SPINNEREIEN VKS, Delmenhorst,

defendant,

1 — Language of the Case: Italian.

on the interpretation of Articles 30, 31 and 95 of the Treaty establishing the European Economic Community and Articles 2, 5, 7, 8, and 10 of Council Directive 67/228/EEC of 11 April 1967 (OJ No 71, 14. 4. 1967, p. 1303/67),

THE COURT

in answer to the questions referred to it by the Tribunale at Biella, by order of that court dated 27 July 1972, hereby rules:

Article 95 of the Treaty must be interpreted as prohibiting a taxation system under which imported goods are charged twice with turnover tax, on the footing that they have been the subject of two distinct transactions, on the basis of an operation which, in respect of a similiar domestic product at the same marketing stage, would constitute only one chargeable operation.

JUDGMENT OF THE COURT OF 19 JUNE 1973 [1]

Carmine Capolongo v Azienda Agricola Maya (preliminary ruling requested by the Pretore di Conegliano)

'Contributo Ente Nazionale par le Cellulosa e per la Carta'

Case 77/72

1. *Aids granted by a Member State — Abolition — Direct effect — Conditions (EEC Treaty, Art. 92 (1))*
2. *Preliminary questions — Jurisdiction of the Court — Limits (EEC Treaty, Art. 177)*
3. *Customs duties — Charges having equivalent effect — Abolition — Direct effect (EEC Treaty, Art. 13 (2))*
4. *Customs duties — Charges having equivalent effect — Concept (EEC Treaty, Art. 13 (2))*

1. With regard to systems of aid existing in Member States, the provisions of Article 92 (1) are intended to take effect in the legal systems of Member States, so that they may be invoked before national courts, where they have been put in concrete form by acts having general application provided for by Article 94 or by decisions in particular cases envisaged by Article 93 (2).

2. In exercise of the powers conferred by Article 177, the Court, having to limit itself to giving an interpretation of the provisions of Community law in question, cannot consider legal acts and provisions of national law, the risk being that the reply will correspond only imperfectly to the circumstances of the case.

3. Article 13 (2) comprises a clear and precise prohibition, as from the end of the transitional period at the latest and for all all charges having an effect equivalent to customs duties, on the collecting of the said charges, which prohibition has no reservation allowing States to subject its implementation to a positive measure of domestic law or to an intervention by the institutions of the Community. This prohibition lands itself, by its very nature, to producing direct effects in the legal relations between Member States and their subjects.

4. Any tax demanded at the time of or by reason of importation and which, being imposed specifically on an imported product to the exclusion of the similar domestic product, results

1 — Language of the Case: Italian.

in the same restricitve consequences on the free movement of goods as a customs duty by altering the cost price that product is prohibited even if it is intended to finance the activities of a public agency.

On the other hand, financial charges do not constitute charges having an equivalent effect when they fall within a general system of internal, taxation applying systematically to domestic and imported products according to the same criteria, unless they are intended exclusively to support activities which specifically benefit the taxed domestic product.

In Case 77/72

Reference to the Court of Justice under Article 177 of the EEC Treaty by the Pretore of Conegliano for a preliminary ruling in the action pending before that court between

CARMINE CAPOLONGO, proprietor of the undertaking of the same name, of Bassano del Grappa,

plaintiff in the main action,

and

AZIENDA AGRICOLA MAYA, Pieve de Soligo,

defendant in the main action,

on the interpretation of Articles 13, 30, 86 and 92 of the Treaty establishing the European Economic Community,

THE COURT,

in answer to the questions referred to it by the Pretore de Conegliano, by order of that court dated 20 November 1972, hereby rules:

A duty falling within a general system of internal taxation applying systematically to national and imported products according to the same criteria can nevertheless constitute a charge having an effect equivalent to a customs duty on imports, when such duty is intended exclusively to support activities which specifically benefit the taxed domestic product.

JUDGMENT OF THE COURT
10 OCTOBER 1973 [1]

F.lli Variola SpA
v Amministrazione italiana delle Finanze
(preliminary ruling requested by the Tribunale di Trieste)

'Unloading charge'

Case 34/73

Summary

1. *Customs duties — Charges having equivalent effect — Meaning — Same meaning in the Treaty and in the agricultural regulations*
   (EEC Treaty, Article 9)
2. *Customs duties — Charges having equivalent effect — Meaning — Unloading charge — Inadmissibility*
   (EEC Treaty, Articles 9, 13 (2))
3. *Acts of an institution — Regulation — Direct applicability — Meaning*
   (EEC Treaty 189)
4. *Acts of an institution — Regulation — Repeal — Private rights — Validity*
   (EEC Treaty 189)
5. *Community legal order — Primacy over national law — Community rules — Entry into force — Date — Alteration by Member States — Inadmissibility*

1. The concept of 'charge having equivalent effect' under the agricultural Regulations must be taken to have the same meaning as in Articles 9 *et seq.* of the Treaty.

2. The prohibition of all customs duties and charges having equivalent effect covers any charge levied at the time or by reason of importation and which, specifically affecting the imported product and not the home-produced product, has the same restrictive effect on the free movement of goods as a customs duty.
   Accordingly, a charge imposed exclusively on imported goods because they have been unloaded in home ports constitutes a 'charge having equivalent effect' and is prohibited.

3. Owing to its very nature and its place in the system of sources of Community law, a Regulation has immediate effect and, consequently, operates to confer rights on private parties which the national courts have a duty to protect.
   The direct application of a Regulation means that its entry into force and its

1 — Language of the Case: Italian.

application in favour of or against those subject to it are independent of any measure of reception into national law.

A legislative provision of national law reproducing the content of a directly applicable rule of Community law can in no way affect direct applicability, or the Court's jurisdiction under the Treaty.

4. In the absence of valid provision to the contrary, repeal of a Regulation does not mean abolition of the private rights it created.

5. A legislative provision of internal law cannot be set up against the direct application, in the legal order of Member States, of Regulations of the Community and other provisions of Community law without compromising the essential character of Community rules and the fundamental principle that the Community legal system is supreme.
This is particularly true as regards the date from which the Community rule becomes operative and creates rights in favour of private parties.
The freedom of Member States, without express authority, to vary the date on which a Community rule comes into force is excluded by reason of the need to ensure uniform and simultaneous application of Community law throughout the Community.

In Case 34/73

Reference to the Court under Article 177 of the EEC Treaty by the President of the Tribunal of Trieste for a preliminary ruling in the action pending before that court between

F.LLI VARIOLA SPA, Trieste,

and

AMMINISTRAZIONE ITALIANA DELLE FINANZE

on the interpretation of Articles 18 and 20 of Regulation No 19 of the Council of 4 April 1962 on the gradual establishment of a common organization of the market in cereals (OJ of 20 April 1962, p. 933) and of Articles 18 and 21 of Regulation No 120/67 EEC of the Council of 13 June 1967 on the common organization of the market in cereals (OJ of 19 June 1967, p. 2269) and on certain other questions relating to the direct application of these provisions,

THE COURT,

in answer to the questions referred to it by the President of the Tribunal of Trieste by order of 12 January 1973, hereby rules:

On Question 1

1. **The concept of 'charge having equivalent effect' under Articles 18 and 20 of Regulation 19/62 and Articles 18 and 21 of Regulation No 120/67 must be taken to have the same meaning as in Articles 9 et seq. of the Treaty.**

On Question 2

2. A charge which is imposed exclusively on imported goods solely because they have been unloaded in the national ports constitutes a 'charge having equivalent effect to a customs duty' and is accordingly prohibited so far as the importation of cereals is concerned, whether from other member countries or third countries, under Articles 18 and 20 of Regulation No 19/62 and Articles 18 and 21 of Regulation No 120/67.

On Questions 3 and 6

3. The provisions of Articles 18 and 20 of Regulation No 19/62 and of Articles 18 and 21 of Regulation No 120/67 prohibiting Member States from levying any charge having equivalent effect to customs duties are directly applicable in the legal order of Member States and accordingly confer rights on private parties which the national courts must protect.

On Questions 4 and 5

4. A legislative measure under national law which reproduces the text of a directly applicable rule of Community law cannot in any way affect such direct applicability, or the Court's jurisdiction under the Treaty.

On Question 7

5. The rights created in favour of private parties under Articles 18 and 20 of Regulation No 19/62 remained in force, without interruption, after Regulation No 120/67 came into effect.

On Question 8

6. The direct effect of Articles 18 and 20 of Regulation No 19/62 and of Articles 18 and 21 of Regulation No 120/67 prevails against any national legislative measure purporting to change the date from which these provisions became operative.

JUDGMENT OF THE COURT
11 OCTOBER 1973 [1]

Rewe-Zentralfinanz eGmbH
v Direktor der Landwirtschaftskammer Westfalen-Lippe
(preliminary ruling requested by
the Oberverwaltungsgericht Nordrhein-Westfalen)

'Phyto-sanitary examination'

Case 39/73

Summary

Customs duties — Charges having an effect equivalent to — Meaning — Phyto-sanitary examination — Charges — Imposition — Prohibition
(EEC Treaty, Article 13 (2))

Pecuniary charges, whatever their amount, imposed for reasons of phyto-sanitary examination of products when they cross the frontier, which are determined according to criteria of their own, which criteria are not comparable with those for determining the pecuniary charges attaching to similar domestic products, are deemed charges having an effect equivalent to customs duties.
The activity of the administration of the State intended to maintain a phyto-sanitary system imposed in the general interest cannot be regarded as a service rendered to the importer such as to justify the imposition of a pecuniary charge.

In Case 39/73

Reference to the Court under Article 177 of the EEC Treaty by the Oberverwaltungsgericht für das Land Nordrhein-Westfalen for a preliminary ruling in the action pending before that Court between

REWE-ZENTRALFINANZ EGMBH,

plaintiff,

and

DIRECTOR OF THE LANDWIRTSCHAFTSKAMMER WESTFALEN-LIPPE,

defendant,

1 — Language of the Case: German.

on the interpretation of Article 13 (2) of the EEC Treaty,

THE COURT,

in answer to the questions referred to it by the Oberverwaltungsgericht für das Land Nordrhein-Westfalen by order of that court dated 19 February 1973, hereby rules:

1. Pecuniary charges, whatever their amount, imposed for reasons of phyto-sanitary examination of products when they cross the frontier, which are determined according to criteria of their own, which criteria are not comparable with those for determining the pecuniary charges attaching to similar domestic products, are deemed charges having an effect equivalent to customs duties.

2. The activity of the administration of the State intended to maintain a phyto-sanitary system imposed in the general interest cannot be regarded as a service rendered to the importer such as to justify the imposition of a pecuniary charge.

JUDGMENT OF THE COURT OF 22 OCTOBER 1974 [1]

Demag AG v Finanzamt Duisburg-Süd (preliminary ruling requested by the Finanzgericht Düsseldorf)

Case 27/74

Summary

1. *Customs duties and internal taxation — Joint application to the same case of provisions relating thereto — Impossibility thereof*
   (EEC Treaty, Articles 12, 13 and 95)
2. *Preliminary ruling — Jurisdiction of the Court — Limits*
   (EEC Treaty, Article 177)
3. *Tax provisions — Internal taxation — Concept*
   (EEC Treaty, Article 95)

1. Articles 12 and 13 on the one hand and 95 on the other cannot be applied jointly in the same case.

2. In the procedure for a preliminary ruling under Article 177 of the Treaty, the Court cannot classify a specific national tax for the purpose of applying Community law, since the interpretation of legislative and other acts of a national nature remains within the jurisdiction of the national court and this Court is competent only to interpret and assess the validity of the Community acts referred to in the said article.

   However, the Court is competent to interpret Community provisions in order to enable the national court to apply the rules of Community law correctly to the national provision.

3. A charge which subjects without distinction industrial exports to other Member States to a financial charge by partially abolishing the exoneration from internal taxation and which is closely integrated into the national system of turnover tax, comes under internal taxation within the meaning of Article 95 et seq. of the Treaty, and cannot therefore constitute a charge having an effect equivalent to a customs duty within the meaning of Article 12 of the Treaty.

1 — Language of the Case: German.

In Case 27/74

Reference to the Court under Article 177 of the EEC Treaty by the Finanzgericht Düsseldorf for a preliminary ruling in the action pending before that court between

DEMAG AG, Duisburg

v

FINANZAMT DUISBURG-SÜD

on the interpretation of Articles 12, 96, 107 and 109 of the EEC Treaty,

THE COURT

in answer to the questions referred to it by the Finanzgericht Düsseldorf by order of that court dated 8 March 1974, hereby rules:

A charge which subjects without distinction industrial exports to other Member States to a financial charge by partially abolishing the exoneration from internal taxation and which is closely integrated into the national system of turnover tax, comes under internal taxation within the meaning of Article 95 et seq. of the Treaty, and cannot therefore constitute a charge having an effect equivalent to a customs duty within the meaning of Article 12 of the Treaty.

JUDGMENT OF THE COURT OF 10 DECEMBER 1974 [1]

Mr Charmasson v Minister for Economic Affairs and Finance (Paris) (preliminary ruling requested by the Conseil d'État de France)

'National organization and common organization of the agricultural market'

Case 48/74

Summary

1. *Agriculture — Common agricultural policy — National market organization — General rules of the Treaty — Article 33 — Derogation — Provisional admissibility — Conditions*
(EEC Treaty, Article 40 (2))

2. *Agriculture — Common agricultural policy — National market organization — Concept*
(EEC Treaty, Article 40 (2))

1. Derogations which a national organization may effect from the general rules of the Treaty are only permissible provisionally until the end of the transitional period to the extent necessary to ensure its functioning, without however impeding the adaptations which are involved in the establishment of the common agricultural policy. They cease at the expiry of this period, when the provisions of Article 33 must be fully effective.

2. The national organization amounts to a totality of legal devices placing the regulation of the market in the products in question under the control of the public authority, with a view to ensuring, by means of an increase in productivity and of optimum utilization of manpower, a fair standard living for producers, the stabilization of the market, the assurance of supplies and reasonable prices to the consumers. To continue permanently beyond the transitional period a simple quota system cannot respond to these conditions.

1 — Language of the Case: French.

In case 48/74,

Reference to the Court under Article 177 of the EEC Treaty by the Conseil d'État of France for a preliminary ruling in the action pending before that court between

Mr Charmasson, of Rungis (Val-de-Marne), France,

and

MINISTER FOR ECONOMIC AFFAIRS AND FINANCE, Paris,

on the interpretation of Articles 33, 43, 45 and 46 of the EEC Treaty in the matter of national organizations of the market.

THE COURT

in answer to the questions referred to it by the Conseil d'État of France by Judgment of 28 June 1974, hereby rules:

1. Whilst a national organization of the market existing at the date of coming into force of the Treaty could, during the transitional period, preclude the application of Article 33 thereof, to the extent that such application would have impaired its functioning, this cannot, however, be the case after the expiration of that period, when the provisions of Article 33 must be fully effective;

2. The national organization can be defined as a totality of legal devices placing the regulation of the market in the products in question under the control of the public authority, with a view to ensuring, by means of an increase in productivity and of optimum utilization of the factors of production, in particular of manpower, a fair standard of living for producers, the stabilization of markets, the assurance of supplies and reasonable prices to consumers. To continue permanently and beyond the transitional period a simple quota system cannot respond to these conditions.

JUDGMENT OF THE COURT
23 JANUARY 1975 [1]

P. J. Van der Hulst's Zonen v Produktschap voor Siergewassen (preliminary ruling requested by the College van Beroep voor het Bedrijfsleven)

'Flower bulbs'

Case 51/74

Summary

1. *Preliminary rulings — Jurisdiction of the Court — Limits (EEC Treaty, Article 177)*

2. *Customs duties on export — Charges having equivalent effect — Concept (EEC Treaty, Article 16)*

3. *Agriculture — Common organization of the market — Infringements by Member States of the provisions or objects of Community Regulations — Inadmissibility*

4. *Agriculture — Common organization of the market — Live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage — National intervention mechanism — Incompatibility with Community law — Considerations involved (Regulation No 234/68 of the Council)*

5. *Agriculture — Common organization of the market — Agricultural products — Internal levy falling more heavily on export sales than on sales on the national market — Prohibition of discrimination within the meaning of paragraph 2 of Article 40 (3) and Article 95 of the EEC Treaty — Application by analogy*

1. Within the framework of proceedings brought under Article 177 of the Treaty, the Court cannot settle a difference concerning the assessment of the facts involved.

2. An internal levy may have equivalent effect to a customs duty on export if it falls more heavily on export sales than on sales inside the country, or where the levy is intended to fund activities tending to make the home market more profitable than exports or in any other way to place the product intended for the home market at an advantage compared with the product intended for export.

3. Once the Community has, pursuant to Article 40 of the Treaty, legislated for establishment of the common organization of the market in a given

1 — Language of the Case: Dutch.

sector, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it, having regard not only to the express provisions of the legislation but also to its aims and objects.

4. A national intervention mechanism is incompatible with Regulation No 234/68 on the establishment of a common organization of the market in live plants in so far as products which do not satisfy Community standards laid down under the regulation qualify for the intervention.

5. An internal levy on sales of a product is incompatible with the prohibition of discrimination embodied in the EEC Treaty when it falls more heavily on export sales than on sales on the national market or when the revenue from the levy is designed to place national products at an advantage.

In Case 51/74

Reference to the Court of Justice under Article 177 of the EEC Treaty by the College van Beroep voor het Bedrijfsleven for a preliminary ruling in the action between

P. J. VAN DER HULST'S ZONEN (Limited Liability Partnership) of Hillegom

and

PRODUKTSCHAP VOOR SIERGEWASSEN (Ornamental Plant Authority) of The Hague

on the interpretation of

1. Article 16 of the EEC Treaty and Article 10 of Regulation (EEC) No 234/68 of the Council of 27 February 1968 on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage (OJ L 55, p. 1)

2. Article 40 of the EEC Treaty and Article 1 of Regulation No 234/68

3. Article 93 (3) of the EEC Treaty

THE COURT

in answer to the questions referred to it by the College van Beroep voor het Bedrijfsleven by order of that Court dated 16 July 1974,

hereby rules:

(1) An internal levy may have equivalent effect to a customs duty on export if it falls more heavily on export sales than on sales inside the country, or where the levy is intended to fund activities tending to make the home market more profitable than exports or in any other way to place the product intended for the home market at an advantage compared with the product intended for export.

(2) (a) A national intervention measure is incompatible with Regulation No 234/68 on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage in so far as products which do not meet Community quality standards as laid down under the Regulation qualify for the intervention;

(b) An internal levy on sales of a product is incompatible with the prohibition of discrimination embodied in the EEC Treaty if it falls more heavily on export sales than on sales on the national market or if the income from the levy is intended to place the national product at an advantage.

JUDGMENT OF THE COURT OF 18 JUNE 1975 [1]

Industria Gomma Articoli Vari, IGAV v Ente Nazionale per la Cellulosa e per la Carta, ENCC (preliminary ruling requested by the Pretore di Trieste)

'System of importation of paper, cardboard and pulp into Italy'

Case 94/74

Summary

1. Customs duties — Charges having equivalent effect — Concept — Internal taxation — Definition — Distinction
(EEC Treaty, Article 13 (2); Article 95)

2. Customs duties — Charges having equivalent effect — Prohibition — Direct effect
(EEC Treaty, Article 13 (2))

3. Customs duties — Charges having equivalent effect — Concept — Due — Utilization — Purpose incompatible with Treaty — Consequences
(EEC Treaty, Article 13 (2))

1. (a) The prohibition contained in Article 13 (2) is aimed at any tax demanded at the time or by reason of importation and which, being imposed specifically on an imported product to the exclusion of a similar domestic product, results in the same restrictive consequences on the free movement of goods as a customs duty by altering the cost price of that product. This prohibition attaches solely to the effect of such a fiscal charge and not to the manner in which it is imposed; the fact that the duty is levied by an independent institution governed by public law rather than by the State itself has no effect on its definition.

(b) A duty falling within a general system of internal taxation applying systematically to domestic and imported products according to the same criteria is subject to the rule of non-discrimination in matters of internal taxation laid down by Article 95; it may nevertheless constitute a charge having an effect equivalent to a customs duty on imports when such duty is intended exclusively to support activities which specifically benefit the taxed domestic product.

1 — Language of the Case: Italian.

2. As from 1 January 1970, the date of expiration of the transitional period, Article 13 (2) has, by its very nature, produced direct effects in the legal relations between the Member States and those subject to their jurisdiction.
3. A due imposed by a Member State has not the character of a charge having an effect equivalent to a customs duty by reason solely of the fact that it is utilized for the purpose of financing a system of aid which is recognized as incompatible with the Treaty.

In Case 94/74

Reference to the Court under Article 177 of the EEC Treaty by the Pretore of Abbiategrasso (Italy) for a preliminary ruling in the action pending before that court between

INDUSTRIA GOMMA ARTICOLI VARI, IGAV, a limited company, having its registered office in Abbiategrasso (Milan),

and

ENTE NAZIONALE PER LA CELLULOSA E PER LA CARTA, ENCC, (National Board for Cellulose and Paper) having its registered office in Rome, on the interpretation of Articles 13 (2), 85 and 86 of the EEC Treaty in relation to a domestic charge of a fiscal nature levied on certain paper and cardboard and on cellulose,

THE COURT

in answer to the questions referred to it by the Pretore of Abbiategrasso by order of that court of 14 November 1974, hereby rules:

1. **A duty falling within a general system of internal taxation applying systematically to domestic and imported products according to the same criteria can nevertheless constitute a charge having an effect equivalent to a customs duty on imports, when such duty is intended exclusively to support activities which specifically benefit the taxed domestic product;**

2. **As from 1 January 1970 Article 13 (2) produces, by its very nature, direct effects in the legal relations between the Member States and their subjects;**

3. **The provisions of Articles 85 and 86 do not apply to activities of the kind referred to by the national court.**

JUDGMENT OF THE COURT
3 FEBRUARY 1976 [1]

Pubblico Ministero
v Flavia Manghera and Others
(preliminary ruling requested by the Giudice Istruttore presso il Tribunale di Como)

Case 59/75

Summary

Quantitative restrictions — Elimination — National monopolies of a commercial character — Adjustment — Transitional period — Expiry — Discrimination — Abolition — Subjective rights — Protection
(EEC Treaty, Article 37)

Article 37 (1) of the EEC Treaty must be interpreted as meaning that as from 31 December 1969 every national monopoly of a commercial character must be adjusted so as to eliminate the exclusive right to import from other Member States.

When the transitional period ended Article 37 (1) was capable of being relied on by nationals of Member States before national courts.

In Case 59/75

Reference to the Court under Article 177 of the EEC Treaty by the Giudice Istruttore presso il Tribunale di Como (Investigating Judge at the Tribunale di Como) for a preliminary ruling in the criminal proceedings pending before that court between

PUBBLICO MINISTERO

and

FLAVIA MANGHERA AND OTHERS

on the interpretation of Article 37 (1) of the EEC Treaty,

1 — Language of the Case: Italian.

THE COURT

in answer to the questions referred to it by the Giudice Istruttore presso il Tribunale di Como by order dated 30 June 1975, hereby rules,

1. **Article 37 (1) of the EEC Treaty must be interpreted as meaning that as from 31 December 1969 every national monopoly of a commercial character must be adjusted so as to eliminate the exclusive right to import from other Member States.**

2. **When the transitional period ended Article 37 (1) was capable of being relied on by nationals of Member States before national courts.**

4. **The Council Resolution of 21 April 1970 does not alter the scope and the provisions of Article 37 (1).**

JUDGMENT OF THE COURT OF 17 FEBRUARY 1976 [1]

Rewe-Zentrale des Lebensmittel-Großhandels GmbH v Hauptzollamt Landau/Pfalz (preliminary ruling requested by the Finanzgericht Rheinland-Pfalz)

'German Spirits Monopoly'

Cade 45/75

Summary

1. *Questions referred for preliminary ruling — Jurisdiction of the Court — Limits*
   (EEC Treaty, Article 177)

2. *Tax provisions — Internal taxation on imported products and similar domestic products — Discrimination — Prohibition — Direct effect*
   (EEC Treaty, Article 95)

3. *Tax provisions — Internal taxation on imported products and similar domestic products — Similarity of the products*
   (EEC Treaty, Article 95)

4. *Tax provisions — Internal taxation on imported products and similar domestic products — Different method of calculation — Discrimination — Prohibition — Extent*
   (EEC Treaty, Article 95)

5. *Tax provisions — Internal taxation on imported products and similar domestic products — Identical taxes — Different allocation — Permissible*
   (EEC Treaty, Article 95)

6. *Quantitative restrictions — Elimination — State monopolies of a commercial character — Transitional period — Expiry — Discrimination — Abolition — Direct effect*
   (EEC Treaty, Article 37)

7. *Quantitative restrictions — Elimination — State monopolies of a commercial character — Discrimination regarding conditions under which goods are procured and marketed — Prohibition — Extent*
   (EEC Treaty, Article 37)

1 — Language of the Case: German.

1. Although, in the context of proceedings under Article 177 of the Treaty, it is not for the Court to rule on the compatibility of the provisions of a national law with the Treaty, it does, on the other hand, have jurisdiction to provide the national court with all the criteria of interpretation relating to Community law which may enable it to judge such compatibility.
2. The first paragraph of Article 95 produces direct effects and creates individual rights which national courts must protect.
3. A comparison must be made between the taxation imposed on products which, at the same stage of production or marketing, have similar characteristics and meet the same needs from the point of view of consumers. In this respect, the classification of the domestic product and the imported product under the same heading in the Common Customs Tariff constitutes an important factor in this assessment.
4. The first paragraph of Article 95 must be interpreted as prohibiting the imposition of taxation on an imported product according to a method of calculation or manner of imposition which differs from those applying to the tax imposed on the similar domestic product and leads to higher taxation on the imported product, such as the imposition of a uniform amount in one case and a graduated amount in the other, even if such disparity only occurs in a minority of cases, and that it is inappropriate to take into consideration the possibly different effects of such taxation on the price levels of the two products.
5. The first paragraph of Article 95 does not prohibit the imposition of the same taxation on an imported product and a similar domestic product, even if a part of the tax levied on the domestic product is allocated for the purposes of financing a State monopoly, whilst that levied on the imported product is imposed for the benefit of the general budget of the State.
6. When the transitional period has expired, the duty laid down in Article 37 (1) is no longer subject to any condition, nor can its performance or effects be subject to the adoption of any measure either by the Community or the Member States, and, by its very nature, it is capable of conferring on those concerned individual rights which national courts must protect.
7. The application of Article 37 (1) is not limited to imports or exports which are directly subject to the monopoly but covers all measures which are connected with its existence and affect trade between Member States in certain products, whether or not subject to the monopoly, and thus covers charges which would result in discrimination against imported products as compared with national products coming under the monopoly. However, that provision does not prohibit the imposition of identical taxation on an imported product and a similar domestic product, even if the charge imposed on the latter is, in part, allocated for the purposes of financing the monopoly, whilst the charge levied on the imported product is imposed for the benefit of the general budget of the State.

In Case 45/75

Reference to the Court under Article 177 of the EEC Treaty by the Finanzgericht Rheinland-Pfalz (Rheinland-Palatinate Finance Court) for a preliminary ruling in the action pending before that court between

REWE-ZENTRALE DES LEBENSMITTEL-GROSSHANDELS EGMBH, Köln,

and

HAUPTZOLLAMT LANDAU/PFALZ,

on the interpretation of Article 37 (1) and the first paragraph of Article 95 of the EEC Treaty,

THE COURT

in answer to the questions referred to it by the Finanzgericht Rheinland-Pfalz by order dated 10 April 1975, hereby rules:

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

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

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

4. **Article 37 (1) is capable of conferring on those concerned individual rights which national courts must protect;**

5. **Article 37 (1) must be interpreted as meaning that the discrimination regarding the conditions under which goods are procured and marketed which is referred to therein includes the extraction of a contribution to the monopoly costs from an imported product, even in the form of a duty, but that that provision does not prohibit the imposition of identical taxation on an imported product and a similar domestic product, even if the charge imposed on the latter is, in part, allocated for the purposes of financing the monopoly, whilst the charge levied on the imported product is imposed for the benefit of the general budget of the State.**

JUDGMENT OF THE COURT
17 FEBRUARY 1976 [1]

Hauptzollamt Göttingen and Bundesfinanzminister v Wolfgang Miritz GmbH & Co.
(preliminary ruling requested by the Bundesfinanzhof)

Case 91/75

Summary

1. *Quantitative restrictions — Elimination — State monopolies of a commercial character — Transitional period — Expiration — Discrimination — Abolition*
(EEC Treaty, Article 37)

2. *Quantitative restrictions — Elimination — State monopolies of a commercial character — Discrimination regarding the conditions under which goods are procured and marketed — Prohibition — Extent*
(EEC Treaty, Article 37)

3. *Quantitative restrictions — Elimination — State monopolies of a commercial character — Disposal of or obtaining the best return for agricultural products — Discrimination — Abolition — Derogation — Absence*
(EEC Treaty, Article 37)

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

2. The application of Article 37 (1) is not limited to imports or exports which are directly subject to the monopoly but covers all measures which are connected with its existence and affect trade between Member States in certain products, whether or not subject to the monopoly, and thus covers charges which result in discrimination against imported products as compared with national products coming under the monopoly. This provision prevents a Member State from levying a charge imposed only on products imported from another Member State for the purpose of compensating for the difference between the selling price of the product in the country from which it comes and the higher price paid by the State monopoly to national producers of the same product.

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

1 — Language of the Case: German.

In Case 91/75

Reference to the Court under Article 177 of the EEC Treaty by the Bundesfinanzhof for a preliminary ruling in the action pending before that court between

HAUPTZOLLAMT GÖTTINGEN

BUNDESFINANZMINISTER

and

WOLFGANG MIRITZ GMBH & CO.

on the interpretation of Articles 12 and 37 of the EEC Treaty,

THE COURT

in answer to the questions referred to it by the Bundesfinanzhof by order of 18 June 1975, hereby rules:

1. **After the end of the transitional period, Article 37 of the EEC Treaty prevents a Member State from levying a charge imposed only on products imported from another Member State for the purpose of compensating for the difference between the selling price of the product in the country from which it comes and the higher price paid by the State monopoly to national producers of the same product;**

2. **The provisions of Article 37 (4) do not derogate from the other provisions of the article.**

JUDGMENT OF THE COURT
20 MAY 1976 [1]

Impresa Costruzioni Comm. Quirino Mazzalai v Ferrovia del Renon (preliminary ruling requested by the Tribunale di Trento)

Case 111/75

Summary

1. Questions referred for a preliminary ruling — Jurisdiction of the Court — Limits. (EEC Treaty, Article 177)

2. Taxation — Legislation of the Member States — Harmonization — Turnover tax — Value-added tax — Chargeable event — Occurrence — Moment (Second Council Directive of 11 April 1967, Article 6 (4) on the harmonization of legislation)

1. Under Article 177, the Court of Justice has jurisdiction to give preliminary rulings concerning the interpretation of acts of the institutions of the Community, regardless of whether they are directly applicable.
It is not for the Court to appraise the relevance of questions referred under Article 177, which is based on a clear separation of jurisdictions and leaves to the national courts the task of deciding whether the procedure of a reference for a preliminary ruling is helpful for the purposes of the decision in the proceedings pending before them.
2. Article 6 (4) of the Second Council Directive of 11 April 1967 cannot be interpreted as permitting the moment when the service is provided to be identified with that when the invoice is issued or a payment on account is made if these transactions take place after the service has been carried out.

In Case 111/75

Reference to the Court under Article 177 of the EEC Treaty by the Tribunale di Trento for a prelininary ruling in the action pending before that court between

IMPRESA COSTRUZIONI COMM. QUIRINO MAZZALAI

and

FERROVIA DEL RENON

1 — Language of the Case: Italian.

on the interpretation of Article 6 (4) of the Second Council Directive 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 (67/228/EEC), OJ, English Special Edition 1967, p. 16,

THE COURT

in answer to the question referred to it by the Tribunale di Trento by order of 30 June 1975 hereby rules:

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

JUDGMENT OF THE COURT OF 22 JUNE 1976 [1]

Bobie Getränkevertrieb GmbH v Hauptzollamt Aachen-Nord (preliminary ruling requested by the Finanzgericht Düsseldorf

Case 127/75

Summary

1. *Internal taxation — Products of other Member States — Taxation — System — Difference compared with the one used for the taxation of similar domestic products — Discrimination against imported products — Prohibition*
   (EEC Treaty, first paragraph of Article 95)

2. *Internal taxation — Products of other Member States — Taxation — System — Choice — Competence of the Member States — Restriction thereof by the prohibition of discrimination within the meaning of the first paragraph of Article 95 — Absence*

3. *Internal taxation — Products of other Member States — Taxation — System — Choice — Graduated tax — Application to production — Period of reference fixed — Limits of the first paragraph of Article 95*

1. The levying by a Member State of a tax on a product imported from another Member State in accordance with a method of calculation or rules which differ from those used for the taxation of the similar domestic product, for example a flat-rate amount in one case and a graduated amount in another, would be incompatible with the first paragraph of Article 95 of the EEC Treaty if the latter product were subject, even if only in certain cases, by reason of graduated taxation, to a charge to tax lower than that on the imported product.
2. The first paragraph of Article 95 does not restrict the freedom of each Member State to establish the system of taxation which it considers the most suitable in relation to each product provided that the imported product is not subject to a charge to tax higher than that on the similar domestic product.
3. If a Member State has elected to apply to home-produced beer a graduated tax calculated on the basis of the quantity which each brewery produces in one year, the first paragraph of Article 95 is only fully complied with if the foreign beer, also taxed on the basis of the quantities produced by each brewery in one year, is also taxed at the same or a lower rate.

1 — Language of the Case: German.

In Case 127/75

Reference to the Court under Article 177 of the EEC Treaty by the Finanzgericht Düsseldorf for a preliminary ruling in the action pending before that court between

BOBIE GETRÄNKEVERTRIEB GMBH, Gelsenkirchen,

and

HAUPTZOLLAMT AACHEN-NORD,

on the interpretation of the first paragraph of Article 95 of the EEC Treaty relating to the application of a tax on beer imported into the Federal Republic of Germany coming from other Member States

THE COURT

in answer to the questions referred to it by the Finanzgericht, Düsseldorf, by order of 26 November 1975, hereby rules:

1. The levying by a Member State of a tax on a product imported from another Member State in accordance with a method of calculation or rules which differ from those used for the taxation of the similar domestic product, for example a flat-rate amount in one case and a graduated amount in another would be incompatible with the first paragraph of Article 95 of the EEC Treaty if the latter product were subject, even if only in certain cases, by reason of graduated taxation, to a charge to tax lower than that on the imported product.

2. To extend the system of graduated rates of tax laid down for home-produced beer to beer imported into a Member State by applying those rates to the quantity of beer imported yearly by a single importer, while at the same time taxing home-produced beer with reference to the quantity of beer produced during one year by each brewery, is incompatible with the first paragraph of Article 95 in so far as beer coming from a brewery of another Member State during one year bears a higher tax than that levied on an equivalent quantity of beer produced by a domestic brewery during the same period.

3. If therefore a Member State has elected to apply to home-produced beer a graduated tax calculated on the basis of the quantity which each brewery produces in one year, the first paragraph of Article 95 is only fully complied with if the foreign beer is also taxed at a rate, the same or lower, applied to the quantities of beer produced by each brewery during the period of one year.

JUDGMENT OF THE COURT
15 DECEMBER 1976 [1]

Simmenthal SpA
v Italian Minister for Finance
(preliminary ruling requested by the Pretore of Susa)

'Veterinary and public health inspections'

Case 35/76

Summary

1. *References for a preliminary ruling — Jurisdiction of the Court — Limits*
   (EEC Treaty, Article 177)

2. *Quantitative restrictions — Measures having equivalent effect — Importation of goods — Veterinary and public health inspections — Prohibition*
   (EEC Treaty, Article 30)

3. *Quantitative restrictions — Measures having equivalent effect — Importation of animals and meat intended for human consumption — Veterinary and public health inspection — Prohibition — Entry into force*
   (Regulation No 14/64, Article 12, Regulation No 805/68, Article 22)

4. *Free movement of goods — Restrictions — Prohibition — Derogation — Object*
   (EEC Treaty, Article 36)

5. *Quantitative restrictions — Measures having equivalent effect — Importation of animals and meat intended for human consumption — Veterinary and public health inspections — — Prohibition — Derogation — Duration — Conditions with regard to health — Fulfilment — Verification — Occasional veterinary and public health inspections — Permissibility — Jurisdiction of national courts*
   (EEC Treaty, Articles 30 and 36; Council Directives Nos 64/432 and 64/433)

6. *Customs duties — Elimination — Charges having equivalent effect — Concept — Products — Crossing the frontier — Veterinary and public health inspection — Fee*
   (EEC Treaty, Article 9)

7. *Internal taxation — Domestic and imported products — Veterinary and public health inspections carried out within Member States — Fees — Discrimination — Prohibition*
   (EEC Treaty, Article 95)

1 — Language of the Case: Italian.

1. Article 177 of the EEC Treaty is based on a distinct separation of functions between national courts and tribunals on the one hand and the Court of Justice on the other hand and it does not give the Court jurisdiction to take cognizance of the facts of the case or to criticize the reasons for the reference. The Court is entitled to pronounce on the interpretation of the Treaty and of acts of the institutions but cannot apply them to the case in question since such application falls within the jurisdiction of the national court.
2. Veterinary and public health inspections at the frontier, whether carried out systematically or not, on the occasion of the importation of goods constitute measures having an effect equivalent to quantitative restrictions within the meaning of Article 30 of the Treaty, which are prohibited by that provision, subject to the exceptions laid down by Community law and in particular by Article 36 of the Treaty.
3. As far as concerns the products referred to in Regulation Nos 14/64 and 805/68 on the common organization of the market in beef and veal the prohibition of veterinary and public health inspections, subject to the exceptions laid down by Community law, took effect on the date when the said regulations entered into force.
4. Article 36 of the EEC Treaty is not designed to reserve certain matters for the exclusive jurisdiction of Member States but permits national laws to derogate from the principle of the free movement of goods to the extent to which such derogation is and continues to be justified for the attainment of the objectives referred to in that article.
5. Although systematic veterinary and public health inspections at the frontier of the products mentioned in Directives Nos 64/432 and 64/433 are no longer necessary or, consequently, justified under Article 36 as from the latest dates specified in the directives for the entry into force of the national provisions which are necessary in order to comply with the said directives and although, in principle, a mere examination of the documents (health certificates) which are required to accompany the products should disclose whether the conditions with regard to health have been fulfilled, occasional veterinary or public health inspections are not ruled out, provided that they are not increased to such an extent as to constitute a disguised restriction on trade between Member States. It is for the national courts, before which such cases may be brought, to determine, in the event of a dispute, whether the procedures adopted for the inspections, on which they are asked to give a ruling, are incompatible with the requirements of Article 36.
6. Pecuniary charges imposed by reason of veterinary or public health inspections of products on the occasion of their crossing the frontier are to be regarded as charges having an effect equivalent to customs duties.
7. Charges imposed by the various public authorities on the occasion of veterinary and public health inspections carried out within Member States on both domestic and imported products constitute internal taxation to which the prohibition of discrimination in Article 95 of the Treaty applies.

In Case 35/76

Reference to the Court under Article 177 of the EEC Treaty by the Pretura di Susa for a preliminary ruling in the proceedings pending before that court between

SIMMENTHAL SPA., Monza,

and

ITALIAN MINISTER FOR FINANCE

on the interpretation of Article 9 *et seq.*, 30 *et seq.* and 95 of the EEC Treaty and also of Article 12 of Regulation No 14/64/EEC of the Council and Article 22 of Regulation (EEC) No 805/68 of the Council,

THE COURT

in answer to the questions referred to it by the Pretura di Susa by order of 6 April 1976 hereby rules:

1. (a) Veterinary and public health inspections at the frontier, whether carried out systematically or not, on the occasion of the importation of animals or meat intended for human consumption constitute measures having an effect equivalent to quantitative restrictions within the meaning of Article 30 of the Treaty, which are prohibited by that provision, subject to the exceptions laid down by Community law and in particular by Article 36 of the Treaty.

   (b) As far as concerns the products referred to in Regulations Nos 14/64 and 805/68 on the common organization of the market in beef and veal the prohibition of such measures, subject to the exceptions mentioned above, took effect on the date when the said regulations entered into force.

2. Although systematic veterinary and public health inspections at the frontier of the products mentioned in Directives Nos 64/432 and 64/433 are no longer necessary or, consequently, justified under Article 36 as from the latest dates specified in the directives for the entry into force of the national provisions which are necessary in order to comply with the said directives and although, in principle, a mere examination of the documents (health certificates) which are required to accompany the products should disclose whether the conditions with regard to health have been fulfilled, occasional veterinary or public health inspections are not ruled out, provided that they are not increased to such an extent as to constitute a disguised restriction on trade between Member States.

3. (a) Pecuniary charges imposed by reason of veterinary or public health inspections of products on the occasion of their crossing the frontier are to be regarded as charges having an effect equivalent to customs duties.

   (b) The position would be different only if the pecuniary charges related to a general system of internal dues applied systematically in accordance with the same criteria to domestic products and imported products alike.

4. Charges imposed by the various public authorities on the occasion of veterinary and public health inspections carried out within Member States on both domestic and imported products constitute internal taxation to which the prohibition of discrimination in Article 95 of the Treaty applies.

JUDGMENT OF THE COURT
25 JANUARY 1977 [1]

W. J. G. Bauhuis
v The Netherlands State
(preliminary ruling requested by the Arrondissementsrechtbank of The Hague)

Case 46/76

1. *Customs duties — Elimination — Charges having equivalent effect — Concept (EEC Treaty, Articles 9, 12, 13 and 16)*

2. *Free movement of goods — Restrictions — Elimination — Derogation within the meaning of Article 36 of the EEC Treaty — Strict interpretation*

3. *Free movement of goods — Restrictions — Elimination — Derogation within the meaning of Article 36 of the EEC Treaty — Fees for veterinary and public health inspection — Permissibility — Duties — Levy — Prohibition*

4. *Customs duties on exports — Charges having equivalent effect — Concept — Veterinary and public health inspections — Fees — Internal marketing and export (Article 95)*

5. *Customs duties on exports — Charges having equivalent effect — Concept — Veterinary and public health inspections imposed by a provision of Community law — Fees — Imposition by exporting Member State — Permissibility (EEC Treaty, Article 16, Directive No 64/432/EEC)*

6. *Quantitative restrictions — Charges having equivalent effect — Bovine animals and swine — Export to another Member State — Veterinary and public health in addition to the exceptions laid down to Directive No 64/432/EEC — Prohibition — Fees — Imposition — Incompatibility with Community law*

1. Any pecuniary charge, whatever its designation and mode of application, which is imposed unilaterally on goods by reason of the fact that they cross a frontier and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect within the meaning of Articles 9, 12, 13 and 16 of the Treaty, even if it is not imposed for the benefit of the State. The position would be different only if the charge in question is the consideration for a benefit provided in fact for the exporter representing an amount proportionate to the said benefit or if it related to a general system of internal dues applied systematically in accordance with the same criteria to domestic products and imported products alike.
2. Article 36 is to be interpreted strictly since it constitutes a derogation from

1 — Language of the Case: Dutch.

the fundamental principle of the elimination of all obstacles to the free movement of goods between Member States. It is not to be understood as authorizing measures of a nature different from those contemplated by Articles 30 to 34.

3. Article 36, in accordance with the conditions which it prescribes, does not prevent the retention of certain restrictions. In this respect it does not matter that the inspections carried out by importing States on the occasion of the crossing of the frontier are replaced by inspections initially carried out by the exporting Member State. However Article 36 does not permit the collection of duties charged on the goods subjected to these inspections since this collection is not necessary for the exercise of the process provided for by Article 36 and therefore constitutes an additional obstacle to intra-Community trade.
4. If the fees for veterinary and public health inspections are demanded in the case of internal marketing as well as in the case of exportation then they form part of a general system of domestic charges and are not charges having an effect equivalent to a customs duty on exports but fall within the prohibition of discrimination under Article 95 of the Treaty.
5. Fees charged for veterinary and public health inspections, which are prescribed by a Community provision, which are uniform and are required to be carried out before despatch within the exporting country do not constitute charges having an effect equivalent to customs duties on exports, provided that they do not exceed the actual cost of the inspection for which they were charged.
6. Apart from the exceptions laid down by the directive itself, any additional inspection of bovine animals or swine for export to another Member State imposed unilaterally by a Member State, whether on its own initiative or in order to meet the requirements of another Member State, which are no longer justified, would constitute a measure having an effect equivalent to a quantitative restriction and any fee charged on this occasion would, for that reason, be incompatible with Community law.

In Case 46/76

Reference to the Court under Article 177 of the EEC Treaty by the Arrondissementsrechtbank of The Hague, for a preliminary ruling in the proceedings before that Court between

W. J. G. BAUHUIS

and

THE NETHERLANDS STATE

for an interpretation of the provisions of the Treaty prohibiting charges having an effect equivalent to customs duties on exports and of Council Directive No 64/432 of 26 June 1964 (OJ English Special Edition 1963-1964, p. 164)

THE COURT

in answer to the questions referred to it by the Arrondissementsrechtbank, The Hague, by order of 10 May 1976, hereby rules:

1. **Fees charged for veterinary and public health inspections which are prescribed by a Community provision, which are uniform and are required to be carried out before despatch within the exporting country, do not constitute charges having**

an effect equivalent to customs duties on exports, provided that they do not exceed the actual cost of the inspection for which they were charged.

2. Consequently, apart from the exceptions laid down by Directive No 64/432/EEC itself, any additional inspection of bovine animals or swine intended for export to another Member State, which is prescribed unilaterally by a Member State, either on its own initiative or in order to meet the requirements of another Member State which are no longer justified, constitutes a measure having an effect equivalent to a quantitative restriction and any fee charged on that occasion would, for that reason, be incompatible with Community law.

3. Fees charged by the exporting Member State for veterinary and public health inspections carried out by the authorities of that State, which are not required by a Community regulation or directive but which have been prescribed for the purpose of checking whether the conditions to which the Member State of destination has made the importation subject have been complied with, constitute charges having an effect equivalent to customs duties.

JUDGMENT OF THE COURT
1 FEBRUARY 1977 [1]

Verbond van Nederlandse Ondernemingen v Inspecteur der Invoerrechten en Accijnzen (preliminary ruling requested by the Hoge Raad of the Netherlands)

'Capital goods'

Case 51/76

1. *Turnover tax — National legislation — Harmonization — Capital goods — Concept — Powers of definition of the Member States*
   (Second Council Directive of 11 April 1967 on the harmonization of legislation of Member States, Article 17)

2. *Measures adopted by an institution — Direct effect — Directives*
   (EEC Treaty, Article 189)

3. *Turnover tax — Legislation of the Member States — Harmonization — Goods used for the purposes of an undertaking — Not in the nature of capital goods — Value-added tax — Immediate deduction — Right — Protection by the national court*
   (Second Council Directive of 11 April 1967 on the harmonization of legislation of Member States, Articles 11 and 17)

1. The words 'capital goods' appearing in the third indent of Article 17 of the Second Council Directive of 11 April 1967, on the harmonization of legislation of Member States concerning turnover taxes, mean goods used for the purposes of some business activity and distinguishable by their durable nature and their value and such that the acquisition costs are not normally treated as current expenditure, but are written off over several years. The Member States have a certain margin of discretion as regards the requirements which must be satisfied concerning the durability and value of the goods, together with the rules applicable for writing off, provided that they pay due regard to the existence of an essential difference between capital goods and the other goods used in the management and in the day to day running of undertakings.
2. It would be incompatible with the binding effect attributed to a directive by Article 189 to exclude, in principle, the possibility that the obligation which it imposes may be invoked by those concerned. In particular, where the Community authorities have, by directive, imposed on Member States the obligation to pursue a particular course of conduct, the useful effect of such an act would be weakened if individuals were prevented from relying on it before

1 — Language of the Case: Dutch.

their national court and if the latter were prevented from taking it into consideration as an element of Community law. This is especially so when the individual invokes a provision of a directive before a national court in order that the latter shall rule whether the competent national authorities, in exercising the choice which is left to them as to the form and the methods for implementing the directive, have kept within the limits as to their discretion set out in the directive.

3. In the case of goods purchased in 1972 and intended to be used for the purposes of the undertaking which do not belong to the category of capital goods within the meaning of Article 17 of the directive, it is the duty of the national court before which the rule as to immediate deduction set out in Article 11 of the directive is invoked to take those facts into account in so far as a national implementing measure falls outside the limits of the margin of the discretion left to the Member States.

In Case 51/76

Reference to the Court under Article 177 of the EEC Treaty by the Hoge Raad (Supreme Court) of the Netherlands for a preliminary ruling in the action pending before that court between

VERBOND VAN NEDERLANDSE ONDERNEMINGEN (Federation of Undertakings of the Netherlands), The Hague,

and

INSPECTEUR DER INVOERRECHTEN EN ACCIJNZEN (Inspector of Customs and Excise, The Hague,

on the interpretation of Articles 11 and 17 of the Second Council Directive (67/228/EEC) 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 (OJ English Special Edition 1967, p. 16),

THE COURT

in answer to the questions referred to it by the Hoge Raad of the Netherlands by order of 9 June 1976, hereby rules:

1. **The words 'capital goods' appearing in the third indent of Article 17 of the Second Council Directive of 11 April 1967, on the harmonization of legislation of Member States concerning turnover taxes, mean goods used for the purposes of some business activity and distinguishable by their durable nature and their value and such that the acquisition costs are not normally treated as current expenditure, but are written off over several years.**

2. **The Member States have a certain margin of discretion as regards the requirements which must be satisfied concerning the durability and value of the goods, together with the rules applicable for writing off, provided that they pay due regard to the existence of an essential difference between capital goods and the other goods used in the management and in the day to day running of undertakings.**

3. In the case of goods purchased in 1972 and intended to be used for the purposes of the undertaking which do not belong to the category of capital goods within the meaning of Article 17 of the directive, it is the duty of the national court before which the rule as to immediate deduction set out in Article 11 of the directive is invoked to take those facts into account in so far as a national implementing measure falls outside the limits of the margin of the discretion left to the Member States.

JUDGMENT OF THE COURT
16 FEBRUARY 1977 [1]

Schöttle & Söhne OHG
v Finanzamt Freudenstadt
(preliminary ruling requested by the Finanzgericht Baden-Württemberg)

Case 20/76

1. *Tax provisions — Internal taxation — Concept — Wide interpretation — International transport of goods by road — Charge — Imposition according to the distance covered on the national territory and the weight of the goods in question*
   (EEC Treaty, Article 95)

2. *Tax provisions — Internal taxation — Imported products — Charges in excess of those imposed on similar national products — Concept*
   (EEC Treaty, Article 95)

3. *Tax provisions — Internal taxation — Goods moving within the national territory — Imported goods — Charges — Comparison — Criteria — Powers of the national judge*
   (EEC Treaty, Article 95)

4. *Tax provisions — Internal taxation — Imported goods — Discrimination — Prohibition — Application*
   (EEC Treaty, Article 95)

1. As the concept of internal taxation within the meaning of Article 95 of the EEC Treaty must be given a wide interpretation, taxation 'imposed indirectly on products' must be interpreted as also including a charge imposed on international transport of goods by road according to the distance covered on the national territory and the weight of the goods in question.
2. Article 95 is intended to ensure that the application of internal taxation in one Member State does not have the effect of imposing on products originating in other Member States taxation in excess of that imposed on similar domestic products and it is therefore irrelevant that the taxation is also imposed on the same conditions on national products which are exported and on imported products.
3. In order to compare the tax on goods moving within the national territory with that on the imported product for the purposes of the application of Article 95, account must be taken of both the basis of assessment of the tax and the advantages or exemptions which each tax carries with it. It is for

1 — Language of the Case: German.

the national judge to compare in specific cases the situations which may arise.

4. The minor and incidental nature of the obstacle created by a national tax and the fact that it could only have been avoided in practice by abolishing the tax are not sufficient to prevent Article 95 from being applicable.

In Case 20/76,

Reference to the Court pursuant to Article 177 of the EEC Treaty by the Finanzgericht Baden-Württemberg, Außensenate Stuttgart, for a preliminary ruling in the proceedings pending before that court between:

SCHÖTTLE & SÖHNE OHG, Oberkollwangen,

and

FINANZAMT FREUDENSTADT,

on the interpretation of Article 95 of the EEC Treaty,

THE COURT

in answer to the questions referred to it by the Finanzgericht Baden-Württemberg by order of 17 December 1975, hereby rules:

1. **Taxation imposed indirectly on products within the meaning of Article 95 of the EEC Treaty must be interpreted as also including a charge imposed on international transport of goods by road according to the distance covered on the national territory and the weight of the goods in question.**

2. **Article 95 is intended to ensure that the application of internal taxation in one Member State does not have the effect of imposing on products originating in other Member States taxation in excess of that imposed on similar domestic products and it is therefore irrelevant that the taxation is also imposed on the same conditions on national products which are exported and on imported products.**

3. **In order to compare the tax on goods moving within the national territory with that on the imported product for the purposes of the application of Article 95, account must be taken of both the basis of assessment of the tax and also of the advantages or exemptions which each tax carries with it.**

4. **The minor and incidental nature of the obstacle created by a national tax and the fact that it could only have been avoided in practice by abolishing the tax are not sufficient to prevent Article 95 from being applicable.**

JUDGMENT OF THE COURT
22 MARCH 1977 [1]

Iannelli & Volpi S.p.A.
v Ditta Paolo Meroni
(preliminary ruling requested by the Pretore di Milano)

Case 74/76

1. *State aid — Compatibility with Community law — Challenge by individuals — Inadmissibility*
   (EEC Treaty, Article 92, Article 93)

2. *Quantitative restrictions — Elimination — Individual rights — Protection*
   (EEC Treaty, Article 30)

3. *State aid — Articles 92, 93 and 30 of the EEC Treaty — Field of application — Difference — Aspects of aid which are not necessary for attainment of its object or for its proper functioning — Incompatibility with Article 30 of the EEC Treaty — Application of this provision*

4. *State aid — An aspect of aid which is not necessary for attainment of its object or for its proper functioning — Incompatibility with a provision of the EEC Treaty other than Articles 92 and 93*

5. *Internal taxation — Imported product — Domestic product — Discrimination — Prohibition — Field of application*
   (EEC Treaty, Article 95)

6. *Internal taxation — Imported product — Domestic product — Discrimination within the meaning of Article 95 of the EEC Treaty — Jurisdiction of the national court*

1. The intention of the Treaty in providing through Article 93 for aid to be kept under constant review and supervised by the Commission is that the finding that an aid may be incompatible with the common market is to be determined, subject to review by the Court, by means of an appropriate procedure which it is the Commission's responsibility to set in motion. The parties concerned cannot therefore simply, on the basis of Article 92 alone, challenge the compatibility of an aid with Community law before national courts or ask them to decide as to any incompatibility which may be the main issue in actions before them or may arise as a subsidiary issue.
2. Article 30 of the Treaty has direct effect and creates, at the end of the transitional period at the latest, for all persons subject to Community law, rights which national courts must protect.
3. The aids referred to in Articles 92 and 93 of the Treaty do not as such fall within the field of application of the

1 — Language of the Case: Italian.

prohibition of quantitative restrictions on imports and measures having equivalent effect laid down by Article 30. The aspects of aid, which are not necessary for attainment of its object or for its proper functioning and which contravene this prohibition may for that reason be held to be incompatible with this provision.

4. The fact that an aspect of aid, which is not necessary for the attainment of its object or for its proper functioning, is incompatible with a provision of the Treaty other than Articles 92 and 93 does not in fact invalidate the aid as a whole or for that reason vitiate by reason of illegality the system of financing the said aid.
5. Since Article 95 of the Treaty refers to internal taxation of any kind the fact that a tax or levy is collected by a body governed by public law other than the State or is collected for its own benefit and is a charge which is special or appropriated for a specific purpose cannot prevent its falling within the field of application of Article 95 of the Treaty.
   In order to apply Article 95 of the Treaty not only the rate of direct and indirect internal taxation on domestic and imported products but also the basis of assessment and detailed rules for levying the tax must be taken into consideration.
   As soon as any differences in this respect result in the imported product being taxed at the same stage of production or marketing at a higher rate than the similar domestic product the prohibition of Article 95 is infringed.
6. It is nevertheless for the national court within the framework of its own legal system to decide whether the whole of any internal taxation which is discriminatory within the meaning of Article 95 or only that part of it which exceeds the tax assessed on the domestic product is to be regarded as not payable.

In Case 74/76

Reference to the Court under Article 177 of the EEC Treaty by the Pretore di Milano (IIIrd Civil Chamber) for a preliminary ruling in the action pending before that court between

IANNELLI & VOLPI S.P.A., Milan

and

PAOLO MERONI,

on the interpretation of Articles 30 and 95 of the EEC Treaty

THE COURT

in answer to the questions referred to it by the Pretore di Milano, by order of 25 June 1976 hereby rules:

1. **Article 30 of the Treaty has direct effect and creates, at the end of the transitional period at the latest, for all persons subject to Community law, rights which national courts must protect;**

2. **The aids referred to in Articles 92 and 93 of the Treaty do not as such fall within the field of application of the prohibition of quantitative restrictions on imports and measures having equivalent effect laid down by Article 30 but the aspects of aid, which are not necessary for the attainment of its object or for its proper functioning and which contravene this prohibition may for that reason be held to be incompatible with this provision;**

3. The fact that an aspect of aid, which is not necessary for the attainment of its object or for its proper functioning, is incompatible with a provision of the Treaty other than Articles 92 and 93 does not in fact invalidate the aid as a whole or for that reason vitiate by reason of illegality the system of financing the said aid;

4. Since Article 95 of the Treaty refers to internal taxation of any kind the fact that a tax or levy is collected by a body governed by public law other than the State or is collected for its benefit and is a tax charge which is special or appropriated for a specific purpose cannot prevent its falling within the field of application of Article 95 of the Treaty;

5. In order to apply Article 95 of the Treaty not only the rate of direct and indirect internal taxation on domestic and imported products but also the basis of assessment and detailed rules for levying the tax must be taken into consideration;

   As soon as any differences in this respect result in the imported product being taxed at the same stage of production or marketing at a higher rate than the similar domestic product the prohibition of Article 95 is infringed;

6. It is nevertheless for the national court within the framework of its own legal system to decide whether the whole of any internal taxation which is discriminatory within the meaning of Article 95 or only that part of it which exceeds the tax assessed on the domestic product is to be regarded as not payable.

JUDGMENT OF THE COURT
22 MARCH 1977 [1]

Firma Steinike und Weinlig
v Federal Republic of Germany
(preliminary ruling requested by the Verwaltungsgericht Frankfurt)

Case 78/76

1. *State aid — Compatibility with Community law — Challenge by individuals — Inadmissibility save in the cases provided for in Article 92 in respect of the measures provided for in Articles 93 (2) and 94 of the Treaty*

2. *State aid — Article 92 of the EEC Treaty — Interpretation — Application — National court — Jurisdiction — Limits — Bringing before the Court*
   (EEC Treaty, Article 92, Article 93)

3. *State aid — Undertakings and production within the meaning of Article 92 of the EEC Treaty — Concepts*

4. *State aid — Prohibition — Field of application*
   (EEC Treaty, Article 92)

5. *State aid — Concept — Measures by public authority — Financing — Contributions imposed by this authority on the undertakings concerned*
   (EEC Treaty, Article 92)

6. *Member States — Obligations — Infringement — Failings of other Member States — Justification — Absence*

7. *Customs duties — Charges having equivalent effect — Internal taxation — Distinction — Criteria*
   (EEC Treaty, Article 9, Article 95)

8. *Customs duties — Charges having equivalent effect — Levying subsequent to crossing the frontier*

9. *Internal taxation — Imported products — Domestic product — Discrimination — Concept*
   (EEC Treaty, Article 95)

1. The intention of the Treaty in providing through Article 93 for aid to be kept under constant review and supervised by the Commission is that the finding that an aid may be incompatible with the Common Market is to be determined, subject to review by the Court, by means of an

1 — Language of the Case: German.

appropriate procedure which it is the Commission's responsibility to set in motion. The parties concerned cannot therefore simply, on the basis of Article 92 alone, challenge the compatibility of an aid with Community law before national courts or ask them to decide as to any compatibility which may be the main issue in actions before them or may arise as a subsidiary issue. There is this right however where the provisions of Article 92 have been applied by the general provisions provided for in Article 94 or by specific decisions under Article 93 (2).

2. The provisions of Article 93 do not preclude a national court from referring a question on the interpretation of Article 92 of the Treaty to the Court of Justice if it considers that a decision thereon is necessary to enable it to give judgment; in the absence of implementing provisions within the meaning of Article 94 however a national court does not have jurisdiction to decide an action for a declaration that existing aid which has not been the subject of a decision by the Commission requiring the Member State concerned to abolish or alter it or a new aid which has been introduced in accordance with Article 93 (3) is incompatible with the Treaty.
3. Save for the reservation in Article 90 (2) of the Treaty, Article 92 covers all private and public undertakings and all their production.
4. The prohibition contained in Article 92 (1) covers all aid granted by a Member State or through State resources without its being necessary to make a distinction according to whether the aid is granted directly by the State or by public or private bodies established or appointed by it to administer the aid.
5. A measure adopted by the public authority and favouring certain undertakings or products does not lose the character of a gratuitous advantage by the fact that it is wholly or partially financed by contributions imposed by the public authority and levied on the undertakings concerned.
6. Any breach by a Member State of an obligation under the Treaty cannot be justified by the fact that other Member States are also failing to fulfil this obligation.
7. The same charge cannot within the system of the Treaty fall simultaneously within the category of charges having an effect equivalent to a customs duty within the meaning of Articles 9, 12 and 13 of the Treaty and that of internal taxation within the meaning of Article 95 in view of the fact that whereas Articles 9 and 12 prohibit Member States from introducing between themselves any new customs duties on imports or exports or any charges having equivalent effect, Article 95 is limited to prohibiting discrimination against the products of other Member States by means of internal taxation.
8. Where the conditions which distinguish a charge having an effect equivalent to a customs duty are fulfilled, the fact that it is applied at the stage of marketing or processing of the product subsequent to its crossing the frontier is irrelevant when the product is charged solely by reason of its crossing the frontier, which factor excludes the domestic product from similar taxation.
9. There is generally no discrimination such as is prohibited by Article 95 where internal taxation applies to domestic products and to previously imported products on their being processed into more elaborate products without any distinctions of rate, basis of assessment of detailed rules for the levying thereof being made between them by reason of their origin.

In Case 78/76

Reference to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht Frankfurt for a preliminary ruling in the action pending before that court between:

FIRMA STEINIKE UND WEINLIG, Hamburg,

and

FEDERAL REPUBLIC OF GERMANY, represented by the Bundesamt für Ernährung und Forstwirtschaft (Federal Office for Food and Foresty)

on the interpretation of Articles 9 (1), 12, 13 (2), 92, 93 and 95 of the EEC Treaty,

THE COURT

in answer to the question referred to it by the Verwaltungsgericht Frankfurt by order of 10 June 1976, hereby rules:

1. **The provisions of Article 93 do not preclude a national court from referring a question on the interpretation of Article 92 of the Treaty to the Court of Justice if it considers that a decision thereon is necessary to enable it to give judgment; in the absence of implementing provisions within the meaning of Article 94 however a national court does not have jurisdiction to decide an action for a declaration that existing aid which has not been the subject of a decision by the Commission requiring the Member State concerned to abolish or that a new aid which has been introduced in accordance with Article 93 (3) is incompatible with the Treaty.**

2. **Save for the reservation in Article 90 (2) of the Treaty, Article 92 covers all private and public undertakings and all their production.**

3. **The prohibition contained in Article 92 (1) covers all aid granted by a Member State or through State resources without its being necessary to make a distinction whether the aid is granted directly by the State or by public or private bodies established or appointed by it to administer the aid.**

4. **A measure adopted by the public authority and favouring certain undertakings or products does not lose the character of a gratuitous advantage by the fact that it is wholly or partially financed by contributions imposed by the public authority and levied on the undertakings concerned.**

5. **Any breach by a Member State of an obligation under the Treaty in connexion with the prohibition laid down in Article 92 cannot be justified by the fact that other Member States are also failing to fulfil this obligation.**

6. **Where the conditions which distinguish a charge having an effect equivalent to a customs duty are fulfilled, the fact that it is applied at the stage of marketing or processing of the product subsequent to its crossing the frontier is irrelevant when the product is charged solely by reason of its crossing the frontier, which factor excludes the domestic product from similar taxation.**

7. **There is generally no discrimination such as is prohibited by Article 95 where internal taxation applies to domestic products and to previously imported products on their being processed into more elaborate products without any distinctions of rate, basis of assessment or detailed rules for the levying thereof being made between them by reason of their origin.**

JUDGMENT OF THE COURT
25 MAY 1977 [1]

Fratelli Cucchi
v Avez S.p.A.
(preliminary ruling requested by the Pretura di Abbiategrasso)

Case 77/76

1. *Agriculture — Common organization of the markets — Sugar — Sugar marketing years 1975/1976 to 1979/1980 — Aids — Grant — Financing — System*
   (Regulation No 3330/74 of the Council, Article 38)

2. *Customs duties — Charges having equivalent effect — Concept*
   (EEC Treaty, Articles 9, 13 (2))

3. *Customs duties — Charges having equivalent effect — Concept — Internal taxation — Distinction — Jurisdiction of national court*
   (EEC Treaty, Articles 9, 13 (2), 95)

4. *Agriculture — Common organization of the markets — Functioning — Producer prices — Formation — Community rules — Interference by Member States — Limitation — Case of Regulation No 3330/74 — Infringement — Individual rights*

1. Authorization under Article 38 of Regulation (EEC) No 3330/74 to grant the aids provided for therein cannot be taken to mean that any method of financing these aids, whatever its character or conditions, is compatible with Community law.
   In the financing of the aid granted, the national authorities are in particular subject not only to the obligations arising under the Treaty but also to those arising under the other provisions of Regulation (EEC) No 3330/74.
2. The prohibitions contained in Articles 9 and 13 are aimed at any tax demanded at the time of or by reason of importation and which, being imposed specifically on imported products to the exclusion of a similar domestic product, results in the same restrictive consequences on the free movement of goods as a customs duty by altering the cost price of that product.
3. A duty falling within a general system of internal taxation applying to domestic products as well as to imported products according to the same criteria can constitute a charge having an effect equivalent to a customs duty on imports only if it has the sole purpose of financing activities for the specific advantage of the taxed domestic product, if the taxed product and the domestic product benefiting

1 — Language of the Case: Italian.

from it are the same, and if the charges imposed on the domestic product are made good in full. It is for the national court to define the duty in question.

4. It also follows from Regulation No 3330/74 and in particular from Article 33 thereof that, even apart from cases of disturbance provided for in the said provisions, the functioning of a common organization of the markets and in particular the formation of producer prices must in principle be governed by the general Community provisions as laid down in general rules amended annually with the result that any specific interference with this functioning is strictly limited to the cases expressly provided for. Hence under Regulation (EEC) No 3330/74 the Community is, in the absence of express derogation, alone competent to adopt specific measures involving intervention in the machinery of price formation, in particular by limiting the effects of an alteration in the level of Community prices, whether as regards intervention prices or the rate of exchange of the national currency in relation to the unit of account; an infringement in this respect of Regulation (EEC) No 3330/74 may be the subject of proceedings before the national courts brought by any natural or legal person whose stocks have been subject to the national measure.

In Case 77/76,

Reference to the Court under Article 177 of the EEC Treaty by the Pretura di Abbiategrasso for a preliminary ruling in the action pending before that court between

FRATELLI CUCCHI

and

AVEZ S.P.A.

on the interpretation of Article 13 (2) of the EEC Treaty and also of Council Regulations Nos 1009/67/EEC of 18 December 1967 and 3330/74 of 19 December 1974 on the common organization of the market in sugar (OJ, English Special Edition 1967 p. 304, and OJ L 359 of 31. 12. 1974, p. 1),

THE COURT,

in answer to the questions referred to it by the Pretura di Abbiategrasso by order of 16 July 1976 hereby rules:

1. **A duty falling within a general system of internal taxation applying to domestic products as well as to imported products according to the same criteria can constitute a charge having an effect equivalent to a customs duty on imports only if it has the sole purpose of financing activities for the specific advantage of the taxed domestic product, if the taxed product and the domestic product benefiting from it are the same, and if the charges imposed on the domestic product are made good in full.**

2. **Under Regulation (EEC) No 3330/74 the Community is, in the absence of express derogation, alone competent to adopt specific measures involving intervention in the machinery of price formation, in particular by limiting the effects of an alteration in the level of Community prices, whether as regards intervention prices or the rate of exchange of the national currency in relation to the unit of account; an infringement in this respect of Regulation (EEC) No 3330/74 may be the subject of proceedings before the national courts brought by any natural or legal person whose stocks have been subject to the national measure.**

JUDGMENT OF THE COURT
25 MAY 1977 [1]

Interzuccheri S.p.A.
v Ditta Rezzano e Cavassa
(preliminary ruling requested by the Pretura di Recco)

Case 105/76

1. Agriculture — Common organization of the markets — Sugar — Sugar-marketing years 1975/1976 to 1979/1980 — Aids — Grant — Financing — System
(Regulation No 3330/74 of the Council, Article 38)

2. Customs duties — Charges having equivalent effect — Concept
(EEC Treaty, Articles 9, 13 (2))

3. Customs duties — Charges having equivalent effect — Concept — International taxation — Distinction — Jurisdiction of national court
(EEC Treaty, Articles 9, 13 (2), 95)

1. Authorization under Article 38 of Regulation (EEC) No 3330/74 to grant the aids provided for therein cannot be taken to mean that any method of financing these aids, whatever its character or conditions, is compatible with Community law.
In the financing of the aid granted, the national authorities are in particular subject not only to the obligations arising under the Treaty but also to those arising under the other provisions of Regulation (EEC) No 3330/74.
2. The prohibitions contained in Articles 9 and 13 are aimed at any tax demanded at the time of or by reason of importation and which, being imposed specifically on imported products to the exclusion of a similar domestic product, results in the same restrictive consequences on the free movement of goods as a customs duty by altering the cost price of that product.
3. A duty falling within a general system of internal taxation applying to domestic products as well as to imported products according to the same criteria can constitute a charge having an effect equivalent to a customs duty on imports only if it has the sole purpose of financing activities for the specific advantage of the taxed domestic product, if the taxed product and the domestic product benefiting from it are the same, and if the charges imposed on the domestic product are made good in full. It is for the national court to define the duty in question.

1 — Language of the Case: Italian.

In Case 105/76

Reference to the Court under Article 177 of the EEC Treaty by the Pretura di Recco for a preliminary ruling in the action pending before that court between

INTERZUCCHERI S.P.A.

and

DITTA REZZANO E CAVASSA

on the interpretation of Article 13 (2) of the EEC Treaty and of Council Regulations Nos 1009/67/EEC of 18 December 1967 and 3330/74 of 19 December 1974 on the common organization of the market in sugar (OJ, English Special Edition 1967, p. 304, and OJ L 359 of 31. 12. 1974, p. 1),

THE COURT

in answer to the questions referred to it by the Pretura di Recco by order of 21 October 1976 hereby rules:

A duty falling within a general system of internal taxation applying to domestic products as well as to imported products according to the same criteria can constitute a charge having an effect equivalent to a customs duty on imports only if it has the sole purpose of financing activities for the specific advantage of the taxed domestic product, if the taxed product and the domestic product benefiting from it are the same, and if the charges imposed on the domestic product are made good in full.

JUDGMENT OF THE COURT OF 16 NOVEMBER 1977 [1]

NV GB-INNO-BM v Vereniging van de Kleinhandelaars in Tabak (ATAB) (preliminary ruling requested by the Belgian Hof van Cassatie)

'Tobacco products'

Case 13/77

1. *Competition — Community system — Member States — Obligations — Dominant position within the market — Abuse encouraged by a national legislative provision — Prohibition*
   (EEC Treaty, Article 5, Article 86, Article 90)

2. *Competition — Manufactured tobacco — Sale to the consumer — Price determined by the manufacturer or importer — Adherence imposed by a national rule — Compatibility with Article 86 in conjunction with Article 3 (f) and the second paragraph of Article 5 of the Treaty — Criteria*

3. *Quantitative restrictions — Manufactured tobacco — Sale to the consumer — Price determined by the manufacturer or importer — Adherence imposed by a national rule — Measure having an effect equivalent to a quantitative restriction — Criteria*
   (EEC Treaty, Article 30)

4. *National taxes other than turnover taxes — Manufactured tobacco — Consumption affected — Sale — Price determined by the manufacturer or importer — Adherence imposed by a Member State — Prohibition under Article 5 of Directive No 72/464 — None*

1. Member States may not enact measures enabling private undertakings to escape from the constraints imposed by Articles 85 to 94 of the Treaty. It follows that any abuse of a dominant position within the market is prohibited by Article 86 even if such abuse is encouraged by a national legislative provision.
2. In order to assess the compatibility with Article 86 of the Treaty, in conjunction with Article 3 (f) and the second paragraph of Article 5 of the Treaty, of the introduction or maintenance in force of a national measure whereby the prices determined by the manufacturer or importer must be adhered to when tobacco products are sold to a consumer, it must be determined, taking into account the obstacles to trade which may result from the nature of the fiscal arrangements to which those products are subject,

1 — Language of the Case: Dutch.

whether, apart from any abuse of a dominant position which such arrangements might encourage, such introduction or maintenance in force is also likely to affect trade between Member States.

3. Although a maximum price applicable without distinction to domestic and imported products does not in itself constitute a measure having an effect equivalent to a quantitative restriction, it may have such an effect, however, when it is fixed at a level such that the sale of imported products becomes, if not impossible, more difficult than that of domestic products. On the other hand, rules in a Member State whereby a fixed price is imposed for the sale to the consumer of either imported or home-produced tobacco products, namely the price which has been freely chosen by the manufacturer or importer, constitute a measure having an effect equivalent to a quantitative restriction on imports only if, taking into account the obstacles inherent in the different methods of fiscal control which are used by the Member States in particular to ensure collection of the taxes on those products, such a system of fixed prices is likely to hinder, directly or indirectly, actually or potentially, imports between Member States.
4. Article 5 of Council Directive No 72/464/EEC of 19 December 1972 on taxes other than turnover taxes which affect the consumption of manufactured tobacco does not aim to prohibit the Member States from introducing or maintaining in force a legislative measure whereby a selling price, namely the price stated on the tax label, is imposed for the sale to the consumer of imported or home-produced tobacco products, provided that that price has been freely determined by the manufacturer or importer.

In Case 13/77

Reference to the Court under Article 177 of the EEC Treaty by the Belgian Hof van Cassatie (Court of Cassation) for a preliminary ruling in the action pending before that court between

NV GB-INNO-BM

and

VERENIGING VAN DE KLEINHANDELAARS IN TABAK (ATAB) (Association of Tobacco Retailers),

on the interpretation of Article 3 (f), the second paragraph of Article 5 and Articles 30, 31, 32, 86 and 90 of the EEC Treaty and of Council Directive No 72/464/EEC (OJ, English Special Edition 1972 (31 December), p. 3) on taxes other than turnover taxes which affect the consumption of manufactured tobacco,

THE COURT

in answer to the questions referred to it by the Belgian Hof van Cassatie by a judgment of 7 January 1977, hereby rules:

1. **Article 86 of the EEC Treaty prohibits any abuse by one or more undertakings of a dominant position, even if such abuse is encouraged by a national legislative provision.**

2. In order to assess the compatibility with Article 86 of the Treaty, in conjunction with Article 3 (f) and the second paragraph of Article 5 of the Treaty, of the introduction or maintenance in force of a national measure whereby the prices determined by the manufacturer or importer must be adhered to when tobacco products are sold to a consumer, it must be determined, taking into account the obstacles to trade which may result from the nature of the fiscal arrangements to which those products are subject, whether, apart from any abuse of a dominant position which such arrangements might encourage, such introduction or maintenance in force is also likely to affect trade between Member States.

3. Rules in a Member State whereby a fixed price is imposed for the sale to the consumer of either imported or home-produced tobacco products, namely the price which has been freely chosen by the manufacturer or importer, constitute a measure having an effect equivalent to a quantitative restriction on imports only if, taking into account the obstacles inherent in the different methods of fiscal control which are used by the Member States in particular to ensure collection of the taxes on those products, such a system of fixed prices is likely to hinder, directly or indirectly, actually or potentially, imports between Member States.

4. Article 5 of Council Directive No 72/464/EEC of 19 December 1972 on taxes other than turnover taxes which affect the consumption of manufactured tobacco does not aim to prohibit the Member States from introducing or maintaining in force a legislative measure whereby a selling price, namely the price stated on the tax label, is imposed for the sale to the consumer of imported or home-produced tobacco products, provided that that price has been freely determined by the manufacturer or importer.

JUDGMENT OF THE COURT OF 9 MARCH 1978 [1]

Amministrazione delle Finanze dello Stato v Simmenthal S.p.A. (preliminary ruling requested by the Pretore di Susa)

"Discarding by the national court of a law contrary to Community law"

Case 106/77

1. *Preliminary rulings — Reference to the Court — Conditions for withdrawal*

2. *Community law — Direct applicability — Concept — Consequences for national courts*
   (EEC Treaty, Art. 189)

3. *Community law — Precedence — Conflicting national law — Automatic inapplicability of existing national provisions — Preclusion of valid adoption of legislative measures incompatible with Community law*

4. *Community law — Directly applicable provisions — Conflict between Community law and a subsequent national law — Powers and duties of national court having jurisdiction — Non application of national provision even if adopted subsequently — Incompatibility with the Treaty of any constitutional practice reserving the solution of the dispute to any authority other than court having jurisdiction.*

1. The Court of Justice considers a reference for a preliminary ruling, pursuant to Article 1977 of the Treaty, as having been validly brought before it so long as the reference has not been withdrawn by the court from which it emanates or has not been quashed on appeal by a superior court.

2. The direct applicability of Community law means that its rules must be fully and uniformly applied in all the Member States from the date of their entry into force and for so long as they continue in force. Directly applicable provisions are a direct source of rights and duties for all those affected thereby, whether Member States or individuals; this consequence also concerns any national court whose task it is as an organ of a Member to protect the rights conferred upon individuals by Community law.

3. In accordance with the principle of the precedence of Community law, the relationship between provisions of the Treaty and directly applicable measures of the institutions on the one hand and the national law of the Member States on the other is such that those provisions and measures not only by their entry into force render automatically inapplicable any

1 — Language of the Case: Italian.

conflicting provision of current national law but — in so far as they are an integral part of, and take precedence in, the legal order applicable in the territory of each of the Member States — also preclude the valid adoption of new national legislative measures to the extent to which they would be incompatible with Community provisions.

Any recognition that national legislative measures which encroach upon the field within which the Community exercises its legislative power or which are otherwise incompatible with the provisions of Community law had any legal effect would amount to a corresponding denial of the effectiveness of obligations undertaken unconditionally and irrevocably by Member States pursuant to the Treaty and would thus imperil the very foundations of the Community.

4. A national court which is called upon, within the limits of its jurisdiction, to apply provisions of Community law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsèquently, and it is not necessary for the court to request or await the prior setting aside of such provisions by legislative or other constitutional means.

In Case 106/77

REFERENCE to the Court under Article 177 of the EEC Treaty by the Pretore di Susa (Italy) for a preliminary ruling in the action pending before that court between

AMMINISTRAZIONE DELLE FINANZE DELLO STATO (Italian Finance Administration)

and

SIMMENTHAL S.P.A., having its registered office at Monza,

on the interpretation of Article 189 of the EEC Treaty and, in particular, on the effects of the direct applicability of Community law if it is inconsistent with any provisions of national law which may conflict with it.

THE COURT,

in answer to the questions referred to it by the Pretore di Susa by order of 28 July 1977, hereby rules:

A national court which is called upon, within the limits of its jurisdiction, to apply provisions of Community law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for the court to request or await the prior setting aside of such provisions by legislative or other constitutional means.

JUDGMENT OF THE COURT OF 29 JUNE 1978 [1]

Statens Kontrol med Ædle Metaller v Preben Larsen; Flemming Kjerulff v Statens Kontrol med Ædle Metaller (preliminary ruling requested by Københavns Byret)

"Charge for the control of articles of precious metal"

Case 142/77

1. *Customs duties on exports — Charges having equivalent effect — Concept — Charge for the control of articles of precious metal — Classification*
   (EEC Treaty, Art. 16)

2. *Tax provisions — Internal taxation — Products intended for export — Rule against discrimination — Application*
   (EEC Treaty, Art. 95)

3. *Tax provisions — Internal taxation — Products placed on the market in several Member States — Double taxation — Effects — Abolition — Harmonization of legislation*
   (EEC Treaty, Arts. 95, 99 and 100)

1. A levy which is imposed on undertakings manufacturing, importing or dealing in articles of precious metal to meet the costs of the supervision of such undertakings by the authorities and which is calculated on the basis of the undertakings' consumption of precious metals is not in the nature of a charge having an effect equivalent to a customs duty on exports as long as it applies in accordance with the same criteria to all undertakings which are subject to such supervision whatever the origin or destination of the products.

2. Article 95, considered within the context of the tax provisions laid down in the Treaty, must be interpreted as also prohibiting any tax discrimination against products intended for export to other Member States.

3. The EEC Treaty does not contain any rules intended to prohibit the effects of double taxation with regard to products placed on the market in various Member States of the Community. The abolition of such effects, which is desirable in the interests of the freedom of movement of goods, can however only result from the harmonization of the national systems under Article 99 or possibly Article 100 of the Treaty.

1 — Language of the Case: Danish.

In Case 142/77,

REFERENCE to the Court under Article 177 of the EEC Treaty by Københavns Byret (Copenhagen City Court) for a preliminary ruling in the actions pending before that court between, first,

STATENS KONTROL MED ÆDLE METALLER (National Authority for the Control of Precious Metals), having its offices in Copenhagen,

and

PREBEN LARSEN, goldsmith, having his place of business in Jyllinge,

and, secondly, between

FLEMMING KJERULFF, goldsmith, having his place of business in Copenhagen,

and

STATENS KONTROL MED ÆDLE METALLER

on the interpretation of the concepts of charge having an effect equivalent to a customs duty on exports within the meaning of Article 16 and of internal taxation within the meaning of the first paragraph of Article 95 of the EEC Treaty in relation to the Danish legislation on the control of articles of precious metal,

THE COURT

in answer to the questions referred to it by Københavns Byret by order of 2 November 1977, hereby rules:

1. A levy which is imposed on undertakings manufacturing, importing or dealing in articles of precious metal to meet the costs of the supervision of such undertakings by the authorities and which is calculated on the basis of the undertakings' consumption of precious metals is not in the nature of a customs duty on exports as long as it applies in accordance with the same criteria to all undertakings which are subject to such supervision whatever the origin or destination of the products.

2. It follows from Article 95 of the Treaty, considered within the context of the tax provisions laid down in the Treaty, that a system of internal taxation, including a system designed to finance the supervision of the production and marketing of articles of precious metal, must be applied without discrimination, whatever the origin or destination of the products.

3. A system of taxation so arranged that the consumption of precious metal exported and for that reason exempted from the application of a mark is included in the chargeable consumption of the undertakings on the same conditions as the quantities of metal marketed on the national territory and subject as such to the duty of marking must not be regarded as discriminatory.

The fact that the precious metal worked in a Member State is supplied to the manufacturer by a foreign customer to whom the finished product is re-exported does not alter this appraisal as long as that transaction is, as regards tax, subject to the same charges as all other similar transactions coming within the scope of the same legal provisions, whatever the procedure for taxation.

4. In the present state of Community law, the fact that an article of precious metal manufactured in one Member State and exported to another Member State is subject in the State of destination to a further control and to a charge in respect thereof does not prohibit the Member State of origin from including the quantities of metal exported in the basis of assessment to the levy payable for the control of the quality of the metal carried out by that State.

JUDGMENT OF THE COURT OF 10 OCTOBER 1978 [1]

H. Hansen jun. & O. C. Balle GmbH & Co. v Hauptzollamt Flensburg (preliminary ruling requested by the Finanzgericht Hamburg)

"Taxation of spirits"

Case 148/77

1. *EEC Treaty — Geographical area of application — French overseas departments — Tax provisions — Prohibition of discrimination — Applicability*
   (EEC Treaty, Art. 95 and Art. 227 (1) and (2))

2. *Tax provisions — Internal taxation — Preferential treatment of certain types of spirits or certain clases of producers — Products coming from other Member States — Extension of tax advantages — Criteria*
   (EEC Treaty, first and second paragraphs of Art. 95)

3. *Tax provisions — Internal taxation — Products imported from non-member countries — Prohibition of discrimination — Absence of any provision in the EEC Treaty — Possible basis in other treaties*

1. Article 227 (2) of the EEC Treaty, interpreted in the light of Article 227 (1), must be taken to mean that the tax provisions of the Treaty, in particular the prohibition of discrimination laid down in Article 95, apply to goods coming from the French overseas departments.
2. Where national tax legislation favours certain classes of producers or the production of certain types of spirits by means of tax exemptions or the grant of reduced rates of taxation, even if such advantages benefit only a small proportion of domestic production or are granted for special social reasons, those advantages must be extended to imported Community spirits which fulfil the same conditions, taking into account the criteria which underlie the first and second paragraphs of Article 95 of the EEC Treaty.
3. The EEC Treaty does not include any rule prohibiting discrimination in the application of internal taxation to products imported from non-member countries, subject however to any treaty provisions which may be in force between the Community and the country of origin of a given product.

1 — Language of the Case: German.

In Case 148/77

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht (Finance Court) Hamburg for a preliminary ruling in the action pending before that court between

H. HANSEN JUN. & O. C. BALLE GMBH & Co, having its registered office in Flensburg,

and

HAUPTZOLLAMT (Principal Customs Office) FLENSBURG,

on the interpretation of Articles 9, 37, 92, 93, 95 and 227 of the EEC Treaty in relation to the application of the German Gesetz über das Branntweinmonopol (Law on the spirits monopoly) of 8 April 1922,

THE COURT

in answer to the questions referred to it by the Finanzgericht Hamburg by an order of 24 October 1977, hereby rules:

1. **Article 227 (2) of the EEC Treaty, interpreted in the light of Article 227 (1), must be taken to mean that the tax provisions of the Treaty, in particular the prohibition of discrimination laid down in Article 95, apply to goods coming from the French overseas departments.**

2. **Where national tax legislation favours certain classes of producers or the production of certain types of spirits by means of tax exemptions or the grant of reduced rates of taxation, even if such advantages benefit only a small proportion of domestic production or are granted for special social reasons, those advantages must be extended to imported Community spirits which fulfil the same conditions, taking into account the criteria which underlie the first and second paragraphs of Article 95 of the EEC Treaty.**

3. **The EEC Treaty does not include any provision prohibiting discrimination in the application of internal taxation to products imported from non-member countries, subject however to any treaty provisions which may be in force between the Community and the country of origin of a given product.**

JUDGMENT OF THE COURT OF 20 FEBRUARY 1979 [1]

Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein (preliminary ruling requested by the Hessisches Finanzgericht)

"Measures having an effect equivalent to quantitative restrictions"

Case 120/78

1. *State monopolies of a commercial character — Specific provision of the Treaty — Scope*
   (EEC Treaty, Art. 37)

2. *Quantitative restrictions — Measures having equivalent effect — Marketing of a product — Disparities between national laws — Obstacles to intra-Community trade — Permissible — Conditions and limits*
   (EEC Treaty, Art. 30 and 36)

3. *Quantitative restrictions — Measures having equivalent effect — Concept — Marketing of alcoholic beverages — Fixing of a minimum alcohol content*
   (EEC Treaty, Art. 30)

1. Since it is a provision relating specifically to State monopolies of a commercial character, Article 37 of the EEC Treaty is irrelevant with regard to national provisions which do not concern the exercise by a public monopoly of its specific function — namely, its exclusive right — but apply in a general manner to the production and marketing of given products, whether or not the latter are covered by the monopoly in question.

2. In the absence of common rules, obstacles to movement within the Community resulting from disparities between the national laws relating to the marketing of a product must be accepted in so far as those provisions may be recognized as being necessary in order to satisfy mandatory requirements relating in particular to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions and the defence of the consumer.

1 — Language of the Case: German.

3. The concept of "measures having an effect equivalent to quantitative restrictions on imports", contained in Article 30 of the EEC Treaty, is to be understood to mean that the fixing of a minimum alcohol content for alcoholic beverages intended for human consumption by the legislation of a Member State also falls within the prohibition laid down in that provision where the importation of alcoholic beverages lawfully produced and marketed in another Member State is concerned.

In Case 120/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hessisches Finanzgericht for a preliminary ruling in the action pending before that court between

REWE-ZENTRAL AG, having its registered office in Cologne,

and

BUNDESMONOPOLVERWALTUNG FÜR BRANNTWEIN (Federal Monopoly Administration for Spirits),

on the interpretation of Articles 30 and 37 of the EEC Treaty in relation to Article 100 (3) of the German Law on the Monopoly in Spirits,

THE COURT,

in answer to the questions referred to it by the Hessisches Finanzgericht by order of 28 April 1978, hereby rules:

The concept of "measures having an effect equivalent to quantitative restrictions on imports" contained in Article 30 of the EEC Treaty is to be understood to mean that the fixing of a minimum alcohol content for alcoholic beverages intended for human consumption by the legislation of a Member State also falls within the prohibition laid down in that provision where the importation of alcoholic beverages lawfully produced and marketed in another Member State is concerned.

JUDGMENT OF THE COURT OF 13 MARCH 1979 [1]

S.A. des Grandes Distilleries Peureux v Directeur des Services Fiscaux de la Haute-Saône et du Territoire de Belfort (preliminary ruling requested by the Tribunal de Grande Instance, Lure)

"French alcohol monopoly"

Case 86/78

1. *References for a preliminary ruling — Interpretation of Community law — Relevance to the proceedings before the national court — Assessment — Jurisdiction of national court*
   (EEC Treaty, Art. 177)

2. *State monopolies of a commercial character — Internal taxation — Domestic products more heavily burdened than products imported from other Member States — Admissibility*
   (EEC Treaty, Arts. 37 and 95)

1. It is for the national court pursuant to the separation of jurisdiction on which Article 177 of the Treaty is based to decide how far the interpretation of Community law is necessary for it to give its judgment.

2. Whether or not a domestic product is subject to a commercial monopoly, neither Article 37 nor Article 95 of the EEC Treaty prohibits a Member State from imposing on that domestic product internal taxation in excess of that imposed on similar products imported from other Member States.

In Case 86/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal de Grande Instance, Lure, for a preliminary ruling in the proceedings pending before that court between

1 — Language of the Case: French.

S.A. DES GRANDES DISTILLERIES PEUREUX, Fougerolles (Haute-Saône),

and

DIRECTEUR DES SERVICES FISCAUX DE LA HAUTE-SAÔNE ET DU TERRITOIRE DE BELFORT, Vesoul,

on the interpretation of Articles 7, 12, 34, 37 and 95 of the EEC Treaty,

THE COURT,

in answer to the question referred to it by the Tribunal de Grande Instance, Lure, by a judgment of 6 January 1978, hereby rules:

Whether or not a domestic product — in particular certain potable spirits — is subject to a commercial monopoly, neither Article 37 nor Article 95 of the EEC Treaty prohibits a Member State from imposing on that domestic product internal taxation in excess of that imposed on similar products imported from other Member States.

JUDGMENT OF THE COURT OF 13 MARCH 1979 [1]

Hansen GmbH & Co. v Hauptzollamt Flensburg (preliminary ruling requested by the Finanzgericht Hamburg)

"Taxation of spirits"

Case 91/78

1. *State monopolies of a commercial character — Provisions of the Treaty — Temporal application*
   (EEC Treaty, Art. 37)

2. *State monopolies of a commercial character — Exercise of exclusive rights — Measures linked to the grant of an aid — Assessment in the light of Article 37*
   (EEC Treaty, Art. 37, 92 and 93)

3. *State monopolies of a commercial character — Marketing of a product at an abnormally low resale price — Incompatible with Article 37*
   (EEC Treaty, Art. 37)

4. *State monopolies of a commercial character — Discrimination — Prohibition — Direct effect*
   (EEC Treaty, Art. 37)

5. *State monopolies of a commercial character — Provisions of the Treaty — Products imported from third countries — Not applicable*
   (EEC Treaty, Art. 37)

6. *Association of the overseas countries and territories — Council Decision No 70/549/EEC — Effects — Goods coming from the countries and territories concerned — Community products subject to a monopoly of a commercial character — Equality of treatment*
   (EEC Treaty, Art. 37; Council Decision No 70/549, Art. 2 (1) and Art. 5 (1))

1. Article 37 of the EEC Treaty remains applicable, following the expiry of the transitional period, wherever, even after the adjustment prescribed in the Treaty, the exercise by a State monopoly of its exclusive rights entails an instance of discrimination or restriction prohibited by that article. In particular, in the case of an activity specifically connected with the

1 — Language of the Case: German.

exercise by a State monopoly of its exclusive right to purchase, process and sell, the application of Article 37 cannot be excluded.

2. Article 37 of the EEC Treaty constitutes in relation to Articles 92 and 93 of that Treaty a *lex specialis* in the sense that State measures, inherent in the exercise by a State monopoly of a commercial character of its exclusive right must, even where they are linked to the grant of an aid to producers subject to the monopoly, be considered in the light of the requirements of Article 37.
3. Any practice by a State monopoly which consists in marketing a product with the aid of public funds at an abnormally low resale price compared to the price, before tax, of a product of comparable quantity imported from another Member State is incompatible with Article 37 (1) of the Treaty.
4. Article 37 of the Treaty confers rights, which the national courts must protect, on traders who suffer the financial consequences of discrimination resulting from an abnormal reduction of the resale price charged by a public monopoly through the use of State funds.
5. The sphere of application of Article 37 of the Treaty does not extend to State measures which affect the importation of goods from third countries, since the arrangements for the importation of such products are subject not to the provisions governing the internal market but to those relating to commercial policy.
6. Council Decision No 70/549 of 29 September 1970 on the Association of the Overseas Countries and Territories with the European Economic Community is intended to place goods originating in the countries and territories concerned on an equal footing with Community products so far as concerns any discriminatory practices on the part of a State monopoly of a commercial character.

In Case 91/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht [Finance Court] Hamburg for a preliminary ruling in the action pending before that court between

HANSEN GMBH & CO., having its registered office in Flensburg,

and

HAUPTZOLLAMT [Principal Customs Office] FLENSBURG,

on the interpretation of Articles 37, 92 and 93 of the EEC Treaty and of Article 2 (1) of Council Decision No 70/549/EEC of 29 September 1970 on the Association of the Overseas Countries and Territories with the European Economic Community in relation to the application of the German Gesetz über das Branntweinmonopol [Law on the Monopoly in Spirits] of 8 April 1922 as amended by the Laws of 2 May and of 5 July 1976.

THE COURT

in answer to the questions referred to it by the Finanzgericht Hamburg by an order of that court of 22 March 1978, hereby rules:

1. **Article 37 of the EEC Treaty constitutes in relation to Articles 92 and 93 if that Treaty a *lex specialis* in the sense that State measures, inherent in the exercise by a State monopoly of a commercial character of its exclusive right must, even where they are linked to the**

grant of an aid to producers subject to the monopoly, be considered in the light of the requirements of Article 37.

2. Any practice by a State monopoly which consists in marketing a product such as spirits with the aid of public funds at an abnormally low resale price compared to the price, before tax, of spirits of comparable quality imported from another Member State is incompatible with Article 37 (1) of the EEC Treaty.

3. Article 37 of the EEC Treaty confers rights, which the national courts must protect, on persons who suffer the financial consequences of discrimination resulting from an abnormal reduction of the resale price charged by a public monopoly through the use of State funds.

4. The sphere of application of Article 37 of the EEC Treaty does not extend to measures which affect the importation of goods from third countries.

5. Council Decision No 70/549/EEC of 29 September 1970 on the Association of the Overseas Countries and Territories with the European Economic Community — subject to the reservation that its applicability to the facts of the case is verified by the national court — is intended to place goods originating in the countries and territories concerned on an equal footing with Community products so far as concerns any discriminatory practices on the part of a State monopoly of a commercial character.

JUDGMENT OF THE COURT (FIRST CHAMBER) OF 31 MAY 1979 [1]

Denkavit Loire S.à.r.l. v French State (Customs Authorities) (preliminary ruling requested by the Tribunal d'Instance, Lille)

"Charges having equivalent effect"

Case 132/78

1. *Customs duties — Charges having an equivalent effect — Concept*
   (EEC Treaty, Arts. 9, 12, 13 and 16)

2. *Tax provisions — Internal taxation — Concept — Equal tax treatment for national and imported products — Criteria*
   (EEC Treaty, Art. 95)

3. *Customs duties — Charges having an equivalent effect — Charge on imported meat*
   (EEC Treaty, Arts. 9, 12 and 13)

1. Any pecuniary charge, whatever its designation and mode of application, which is imposed unilaterally on goods by reason of the fact that they cross a frontier and which is not a customs duty in the strict sense, constitutes a charge having an equivalent effect within the meaning of Articles 9, 12, 13 and 16 of the Treaty. Such a charge however escapes that classification if it constitutes the consideration for a benefit provided in fact for the importer or exporter representing an amount proportionate to the said benefit. It also escapes that classification if it relates to a general system of internal dues supplied systematically and in accordance with the same criteria to domestic products and imported and exported products alike, in which case it does not come within the scope of Articles 9, 12, 13 and 16 but within that of Article 95 of the Treaty.

2. In order to relate to a general system of internal dues and thus not come within the application of the provisions prohibiting charges having an effect equivalent to customs duties, the charge to which an imported product is subject must impose the same duty on national products and identical imported products at the

1 — Language of the Case: French.

same marketing stage and the chargeable event giving rise to the duty must also be identical in the case of both products. It is therefore not sufficient that the objective of the charge imposed on imported products is to compensate for a charge imposed on similar domestic products — or which has been imposed on those products or a product from which they are derived — at a production or marketing stage prior to that at which the imported products are taxed.

3. A charge which is imposed on meat, whether or not prepared, when it is imported, and in particular on consignments of lard, even though no charge is imposed on similar domestic products, or a charge is imposed on them according to different criteria, in particular by reason of a different chargeable event giving rise to the duty, constitutes a charge having an effect equivalent to a customs duty within the meaning of Articles 9, 12 and 13 of the Treaty.

In Case 132/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal d'Instance, Lille, for a preliminary ruling in the action pending before that court between

DENKAVIT LOIRE S.À.R.L.

and

FRENCH STATE (CUSTOMS AUTHORITIES)

on the interpretation of Articles 9, 12, 13 and 95 of the EEC Treaty and of Regulation No 2759/75 of the Council of 29 October 1975 on the common organization of the market in pigmeat (Official Journal 1975, L 282, p. 1),

THE COURT (First Chamber)

in answer to the questions referred to it by the Tribunal d'Instance, Lille, by judgment of 25 May 1978 completed by a corrective judgment of 6 July 1978, hereby rules:

A charge which is imposed on meat, whether or not prepared, when it is imported, and in particular on consignments of lard, even though no charge is imposed on similar domestic products, or a charge is imposed on them according to different criteria, in particular by reason of a different chargeable event giving rise to the duty, constitutes a charge having an effect equivalent to a customs duty within the meaning of Articles 9, 12 and 13 of the EEC Treaty.

JUDGMENT OF THE COURT OF 12 JUNE 1979 [1]

N.V. Nederlandse Spoorwegen v Staatssecretaris van Financiën (preliminary ruling requested by the Hoge Raad of the Netherlands)

"Cash-on-delivery commission"

Case 126/78

1. *Tax provisions — Harmonization of legislation — Turnover tax — Common system of value added tax — Services subject thereto — Services ancillary to the transport of goods — Collection of the price of the goods carried — Specific treatment — Not permissible*

   (Second Council Directive No 67/288, Annex B, item 5)

2. *Tax provisions — Harmonization of legislation — Turnover tax — Common system of value added tax — Services subject thereto — Exemption by Member States — Conditions — Mandatory taxation of services ancillary to transport of goods*

   (Second Council Directive No 67/228, Art. 6 (2), Annexes A, item 10, and B, item 5)

1. If a carrier has undertaken, in addition to the transport of the goods, to collect the price of the goods before delivering them to the consignee (cash-on-delivery system) the collection of that price is a service ancillary to the transport within the meaning of Annex B, item 5, to the Second Council Directive No 67/228 on the harmonization of legislation of Member States concerning turnover taxes. It follows that for the purposes of the application of value added tax Member States are not empowered to treat an ancillary service such as the collection of the cash-on-delivery price separately from the service of the transport of goods.

2. The provision "Regarding Article 6 (2)" in Annex A, item 10, to Directive No 67/228 must be interpreted restrictively in order to safeguard the coherence of the new system and the neutrality in competition which it seeks to establish. It follows that a Member State cannot insert into its legislation a measure exempting a

1 — Language of the Case: Dutch.

service listed in Annex B save in an exceptional case which justifies an adverse effect upon neutrality in competition. It must be concluded that the collection of the price of goods transported, a service ancillary to the transport of goods, cannot be exempted from turnover tax since it is included in the aforementioned Annex B, item 5, which contains the list of services compulsorily taxable under Article 6 of the directive. The national court must take account of the combined provisions of Article 6 (2) and of Annex B, item 5.

In Case 126/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hoge Raad of the Netherlands for a preliminary ruling in the proceedings pending before that court between

N.V. NEDERLANDSE SPOORWEGEN, Utrecht,

and

STAATSSECRETARIS VAN FINANCIËN

on the interpretation of certain provisions of the Second Council Directive (No 67/228/EEC) of 11 April 1967 (Official Journal, English Special Edition 1967, p. 16) on the harmonization of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax,

THE COURT

in answer to the questions referred to it by the Hoge Raad by judgment of 24 May 1978, hereby rules:

1. If a carrier has undertaken, in addition to the transport of the goods, to collect the price of the goods before delivering them to the consignee (cash-on-delivery system) the collection of that price is a service ancillary to the transport within the meaning of Annex B, item 5, to the Second Directive of the Council of the European Communities of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes.

2. For the purposes of the application of value added tax Member States are not empowered to treat an ancillary service such as the collection of the cash-on-delivery price separately from the service of the transport of goods.

3. The national court must take account of the combined provisions of Article 6 (2) of the Second Directive and of Annex B, item 5, thereto.

JUDGMENT OF THE COURT OF 12 JUNE 1979 [1]

Ketelhandel P. van Paassen B.V. v Staatssecretaris van Financiën/ Inspecteur der Invoerrechten en Accijnzen; Minister van Financiën v Denkavit Dienstbetoon B.V. (preliminary rulings requested by the Hoge Raad of the Netherlands)

"A single entity for tax purposes"

Joined Cases 181 and 229/78

1. *Tax provisions — Harmonization of legislation — Turnover tax — Common system of value-added tax — Special national systems — Conditions for adoption — Mandatory consultation with Commission — Arrangements therefor*
   (Council Directive No 67/228, Art. 16)

2. *Tax provisions — Harmonization of legislation — Turnover tax — Common system of value-added tax — Persons subject thereto — National system under which undertaking is a single entity for tax purposes — Conditions for adoption*
   (Council Directive No 67/228, Annex A, Point 2)

1. Article 16 of the Second Council Directive (No 67/228/EEC) on the harmonization of legislation of Member States concerning turnover taxes does not lay down any particular procedure from the point of view of the form of the reference to the Commission, but it does require that such reference should be made "in good time", that is to say that the Commission should be given a reasonable period of time to examine the documents sent to it, that it should know the purpose for which the Member State has sent them to it and that they should contain complete information enabling the Commission — in accordance with Article 101 of the Treaty — to find that a difference between the provisions laid down by law, regulation or administrative action in Member States is distorting the conditions of competition in the Common Market and that the resultant distortion needs to be eliminated.

2. A Member State has adopted a system such as that referred to in the fourth paragraph of Point 2 "Regarding Article 4" of Annex A to Directive No 67/228/EEC if it has laid down in its legislation that turnover tax shall be levied *inter alia* on the supply of goods and services by undertakings, after entering into the consultations to which reference is made in Article 16 of the directive, even though it has not defined the concept of an undertaking otherwise than as "any person who independently carries on business".

1 — Language of the Case: Dutch

In Joined Cases 181 and 229/78

REFERENCES to the Court under Article 177 of the EEC Treaty by the Hoge Raad [Supreme Court] of the Netherlands for a preliminary ruling in the proceedings pending before that court (in Case 181/78) between

KETELHANDEL P. VAN PAASSEN B.V., Wateringen (Netherlands)

and

STAATSSECRETARIS VAN FINANCIËN [Secretary of State for Finance] / INSPECTEUR DER INVOERRECHTEN EN ACCIJNZEN [Inspector of Customs and Excise], The Hague,

and (in Case 229/78) between

MINISTER VAN FINANCIËN [Minister for Finance], The Hague,

and

DENKAVIT DIENSTBETOON B.V., Voorthuizen (Netherlands),

on the interpretation of the Second Council Directive (No 67/228/EEC) 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 (Official Journal, English Special Edition 1967, p. 16) in particular Article 4 thereof and Point 2 "Regarding Article 4" of Annex A thereto,

THE COURT,

in answer to the questions referred to it by the Hoge Raad by judgments dated 6 September and 11 October 1978, hereby rules:

A Member State has adopted a system such as that referred to in the fourth paragraph of Point 2 "Regarding Article 4" of Annex A to the Second Directive if it has laid down in its legislation that turnover tax shall be levied *inter alia* on the supply of goods and services by undertakings, after entering into the consultations to which reference is made

in Article 16 of the directive, even though it has not defined the concept of an undertaking otherwise than as "any person who independently carries on business".

JUDGMENT OF THE COURT
OF 27 JUNE 1979 [1]

Advokatrådet as representative of P. Conradsen A/S v Ministeriet for Skatter og Afgifter (preliminary ruling requested by the Østre Landsret)

"Capital duty on raising of capital"

Case 161/78

1. *Tax provisions — Harmonization of laws — Indirect taxes on the raising of capital — Capital duty on contributions to capital companies — Basis of assessment — Actual value of the assets at the time of contribution — Liabilities and expenses deductible — Concept — Exclusion of potential liabilities*

   (Council Directive No 69/335, Art. 5 (1) (a))

2. *Tax provisions — Harmonization of laws — Indirect taxes on the raising of capital — Capital duty on contributions to capital companies — Basis of assessment — Actual value of the assets at the time of contribution — Entering of "Provisions for taxation" under liabilities in the balance sheet — No effect*

   (Council Directives No 69/335, Art. 5 (1) (a) and No 78/660, Art. 9, Liabilities B.2)

3. *Tax provisions — Harmonization of laws — Indirect taxes on the raising of capital — Capital duty on contributions to capital companies — Basis of assessment — Actual value of the assets at the time of contribution — Liabilities and expenses deductible — Concept — Potential tax liability on an untaxed reserve — Exclusion*

   (Council Directive No 69/335, Art. 5 (1) (a))

1. It is evident from Article 5 (1) (a) of Council Directive No 69/335 concerning indirect taxes on the raising of capital, in the light of its objectives, that the capital duty is to be charged on the "actual value" of the assets at the time at which they were contributed and not on their book value, and that the "liabilities and expenses" which are deductible under this provision from the actual value of the contributions can only be

1 — Language of the Case: Danish

those the existence and amount whereof are certain.

The need to base the taxation of capital which has been raised on criteria which are objective and uniform within the Community in fact precludes the book value of the assets contributed and also of potential tax liabilities chargeable on the profits of the company from being taken into consideration. Such liabilities, for the very good reason that they are unascertained, make it impossible to determine the actual value of assets contributed at the time at which they were contributed and thus to calculate one of the main constituent elements for the levying of the duty, namely the basic taxable amount.

2. The principle laid down in Article 5 (1) (a) of Directive No 69/335 that the charging of capital duty on the actual value of the assets at the time at which they were contributed and not on the basis of their book value cannot be affected by the fact that Article 9, Liabilities B.2 of Council Directive No 78/660 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies provides for "Provisions for taxation" to be entered under liabilities as "Provisions for liabilities and charges". That directive pursues an objective which differs considerably from that of Directive No 69/335: it does not aim at harmonizing taxation of the raising of capital, but, as provided for in Article 54 (3) (g) of the Treaty, is among the measures which, in the context of the right of establishment aim at "co-ordinating to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 58 with a view to making such safeguards equivalent throughout the Community".

In these circumstances, although entering "Provisions for taxation" under liabilities fulfils the requirements for the presentation by companies of their balance sheet, in accord with the interests of the members and of third parties, it does not imply that such an entry may affect the value of capital which has been raised and is liable to the capital duty introduced by Directive No 69/335.

Although Article 20 (1) of Directive No 78/660 does not rule out the possibility that provisions for liabilities and charges are intended to cover losses or debts the nature of which is clearly defined and which at the date of the balance sheet are either likely to be incurred, or certain to be incurred but uncertain as to amount or as to the date on which they will arise, paragraph (3) of the very same article states that the said provisions "may not be used to adjust the values of assets", and thus makes it clear that entering these provisions in the accounts relates to the requirements for the presentation of the balance sheets of certain types of companies but cannot in fact alter the basis for the assessment of a tax such as capital duty which in substance is based on the actual value of the assets.

3. The provisions of Article 5 (1) (a) of Directive No 69/335 must be interpreted to mean that those provisions prevent a Member State, in assessing the liability to capital duty on the raising of the capital of a newly-formed limited company, whose share capital is created by contributions from an existing undertaking belonging to one of the founders, from granting a deduction for the potential tax liability on an

untaxed reserve created when the aforesaid founder contributed to the new company the said undertaking's goods in stock and goods on order under binding contracts at a value written down for tax purposes less than their actual value.

Likewise, in the circumstances related above, Article 5 (1) (a) of Directive No 69/335 precludes a deduction's being allowed for the amount of any potential tax which the newly-formed company would have to pay if, during the year in which it was formed, it realized a profit from the reserve resulting from the writing-down of the contributions for tax purposes and thereby obtained a corresponding amount of actual income liable to tax as such.

In Case 161/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Fourth Chamber of the Østre Landsret (Eastern Division of the High Court) for a preliminary ruling in the action pending before that court between

ADVOKATRÅDET (Bar Council) AS REPRESENTATIVE OF P. CONRADSEN A/S

and

MINISTERIET FOR SKATTER OG AFGIFTER (Ministry for Fiscal Affairs)

on the interpretation of Council Directive No 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital,

THE COURT

in answer to the questions referred to it by the Østre Landsret by order of 30 June 1978, hereby rules:

The provisions of Article 5 (1) (a) of Council Directive No 69/335 of 17 July 1969 concerning indirect taxes on the raising of capital must be interpreted to mean that those provisions prevent a Member State, in assessing the liability to capital duty on the raising of the capital of a newly-formed limited company, whose share capital is created by contributions from an existing undertaking belonging to one of the founders, from granting a deduction for any potential tax liability on an untaxed reserve created when the aforesaid founder contributed to the new company the said undertaking's goods in stock and goods on order under binding contracts at a value written down for tax purposes less than their actual value.

Likewise, in the circumstances related above, Article 5 (1) (a) of Directive No 69/335 precludes a deduction's being allowed for the amount of any potential tax which the newly-formed company would have to pay if, during the year in which it was formed, it realized a profit from the reserve resulting from the writing-down of the contributions for tax purposes and thereby obtained a corresponding amount of actual income liable to tax as such.

JUDGMENT OF THE COURT OF 8 JANUARY 1980 [1]

Commission of the European Communities v Italian Republic

"Regenerated petroleum products"

Case 21/79

1. *Tax provisions — Internal taxation — Rule that there should be no discrimination — Scope — Tax advantages for domestic products — Extension to products imported from other Member States*
   (EEC Treaty, Art. 95)

2. *Approximation of laws — Disposal of waste oils — Undertakings concerned — Allowances in the form of reduction of domestic charges — Admissibility — Conditions — Compliance with the rule that there should be no tax discrimination*
   (EEC Treaty, Art. 95; Council Directive No 75/439/EEC, Art. 13)

1. In the absence of any unification or harmonization of the relevant provisions, Community law does not prohibit Member States from granting, for proper economic and social reasons, tax advantages, in the form of exemption from or reduction of duties, to certain products or to certain classes of producers. The EEC Treaty does not therefore forbid, as far as domestic tax laws are concerned, the taxation at differential rates of products which may serve the same economic ends, especially if, objectively speaking, it appears that the cost of production differs considerably.

On the other hand the first paragraph of Article 95 of the Treaty requires that such tax advantages must also be extended without any discrimination to similar products from the other Member States which satisfy the same conditions laid down for those advantages. However that provision does not place Member States under a duty to abolish as regards internal taxes on domestic products differences which are objectively justified and which may be introduced by domestic legislation unless such abolition is the only way of avoiding direct or indirect discrimination against the imported products.

1 — Language of the Case: Italian.

2. Pursuant to Article 13 of Directive No 75/439 on the disposal of waste oils, when Member States implement a directive they are free either to grant indemnities directly to undertakings engaged in the recovery, disposal or regeneration of used oils or to allow regenerated oils to benefit from more favourable tax treatment, or even to combine the two systems. Nevertheless, if in the exercise of their discretion in this field they opt for a system of lower internal taxation, they must accept the consequences of that choice and ensure that the system chosen complies with the fundamental principle laid down in Article 95 of the EEC Treaty that there must be no tax discrimination against imported products.

In Case 21/79

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Antonino Abate, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

applicant,

v

ITALIAN REPUBLIC, represented by its Ambassador, Adolfo Maresca, acting as Agent, assisted by Arturo Marzano, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

defendant,

APPLICATION for a declaration that, as far as concerns the tax rules applicable to regenerated petroleum products, the Italian Republic failed to fulfil its obligations under the first paragraph of Article 95 of the EEC Treaty,

THE COURT

hereby:

1. Declares that, by maintaining, pursuant to Law No 1852 of 31 December 1962 modifying the tax system applicable to petroleum products, different rates for the "imposta di fabbricazione" [internal production tax] on regenerated mineral oils produced in Italy and for the "sovraimposta di confine" [frontier surcharge] on regenerated oils from other Member States, the Italian Republic has failed to fulfil its obligations under the first paragraph of Article 95 of the EEC Treaty;

2. Orders the parties to bear their own costs.

JUDGMENT OF THE COURT OF 27 FEBRUARY 1980 [1]

Commission of the European Communities v French Republic

"Tax arrangements applicable to spirits"

Case 168/78

1. *Tax provisions — Internal taxes — Provisions of the Treaty — Aim*
   (ECC Treaty, Art. 95)

2. *Tax provisions — Internal taxes — Prohibition of discrimination between imported products and similar national products — Similar products — Concept — Interpretation — Criteria*
   (EEC Treaty, Art. 95, first paragraph)

3. *Tax provisions — Internal taxes — Taxes of such a nature as to afford indirect protection to other products — Competing products — Criteria*
   (EEC Treaty, Art. 95, second paragraph)

4. *Tax provisions — Internal taxes — Grant of tax benefits to national products — Permissibility — Conditions — Extension to products imported from other Member States*
   (EEC Treaty, Art. 95)

5. *Tax provisions — Internal taxes — Similar products — Competing products — Criteria — Common Customs Tariff classification — Not a decisive criterion*
   (ECC Treaty, Art. 95, first and second paragraphs)

1. Within the system of the EEC Treaty, the provisions of the first and second paragraphs of Article 95 supplement the provisions on the abolition of customs duties and charges having equivalent effect. Their aim is to ensure free movement of goods between the Member States in normal conditions of competition by the elimination of all forms of protection which may result from the application of internal taxation which discriminates against products from other Member States. Article 95 must guarantee the complete neutrality of internal taxation as regards competition between domestic products and imported products.

1 — Language of the Case: French.

2. The first paragraph of Article 95 must be interpreted widely so as to cover all taxation procedures which conflict with the principle of the equality of treatment of domestic products and imported products; it is therefore necessary to interpret the concept of "similar products" with sufficient flexibility. It is necessary to consider as similar products which have similar characteristics and meet the same needs from the point of view of consumers. It is therefore necessary to determine the scope of the first paragraph of Article 95 on the basis not of the criterion of the strictly identical nature of the products but on that of their similar and comparable use.

3. The function of the second paragraph of Article 95 is to cover all forms of indirect tax protection in the case of products which, without being similar within the meaning of the first paragraph, are nevertheless in competition, even partial, indirect or potential, with certain products of the importing country. For the purposes of the application of that provision it is sufficient for the imported product to be in competition with the protected domestic production by reason of one or several economic uses to which it may be put, even though the condition of similarity for the purposes of the first paragraph of Article 95 is not fulfilled.

   Whilst the criterion indicated in the first paragraph of Article 95 consists in the comparison of tax burdens, whether in terms of the rate, the mode of assessment or other detailed rules for the application thereof, in view of the difficulty of making sufficiently precise comparisons between the products in question, the second paragraph of that article is based upon a more general criterion, in other words the protective nature of the system of internal taxation.

4. Whilst Community law, as it stands at present, does not prohibit certain tax exemptions or tax concessions, in particular so as to enable productions or undertakings to continue which would no longer be profitable without these special tax benefits because of the rise in production costs, the lawfulness of such practices is subject to the condition that the Member States using those powers extend the benefit thereof in a non-discriminatory and non-protective manner to imported products in the same situation.

5. The classifications in the Common Customs Tariff which were designed with the Community's foreign trade in mind, do not provide conclusive evidence as to whether different products in relation one to another are similar within the meaning of the first paragraph of Article 95 of the EEC Treaty, or in competition, even partial, indirect or potential, and so covered by the second paragraph of that article.

In Case 168/78

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Jean-Claude Séché, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

applicant,

v

FRENCH REPUBLIC, represented by Noël Museux, Assistant Director at the Directorate for Legal Affairs at the Ministry of Foreign Affairs, acting as Agent, and Pierre Péré, Secretary for Foreign Affairs at the Directorate for Legal Affairs, acting as Assistant Agent, with an address for service in Luxembourg at the Embassy of France,

defendant,

APPLICATION for a declaration that, by applying a discriminatory tax system on spirits, the French Republic has failed to fulfil its obligations under Article 95 of the EEC Treaty,

THE COURT

hereby:

1. **Declares that, by the application of discriminatory taxation on spirits as regards, first, geneva and other alcoholic beverages obtained from the distillation of cereals and, secondly, spirits obtained from wine and fruit, under Articles 403 and 406 of the Code Général des Impôts, the French Republic has failed, as regards products imported from other Member States, to fulfil its obligations under Article 95 of the EEC Treaty;**

2. **Orders the French Republic to pay the costs.**

JUDGMENT OF THE COURT OF 27 FEBRUARY 1980 [1]

Commission of the European Communities v Italian Republic

"Tax arrangements applicable to spirits"

Case 169/78

1. *Tax provisions — Internal taxes — Provisions of the Treaty — Aim*
   (EEC Treaty, Art. 95)

2. *Tax provisions — Internal taxes — Prohibition of discrimination between imported products and similar national products — Similar products — Concept — Interpretation — Criteria*
   (EEC Treaty, Art. 95, first paragraph)

3. *Tax provisions — Internal taxes — Taxes of such a nature as to afford indirect protection to other products — Competing products — Criteria*
   (EEC Treaty, Art. 95, second paragraph)

4. *Tax provisions — Internal taxes — Grant of tax benefits to national products — Permissibility — Conditions — Extension to products imported from other Member States*
   (EEC Treaty, Art. 95)

5. *Tax provisions — Internal taxes — Similar products — Competing products — Criteria — Common Customs Tariff classification — Nomenclature of customs statistics — Not a decisive criterion*
   (EEC Treaty, Art. 95, first and second paragraphs)

1. Within the system of the EEC Treaty, the provisions of the first and second paragraphs of Article 95 supplement the provisions on the abolition of customs duties and charges having equivalent effect. Their aim is to ensure free movement of goods between the Member States in normal conditions of competition by the elimination of all forms of protection which may result from the application of internal taxation which discriminates against products from other Member States. Article 95 must guarantee the complete neutrality of internal taxation as regards competition between domestic products and imported products.

2. The first paragraph of Article 95 must be interpreted widely so as to cover all taxation procedures which conflict with the principle of the equality of

1 — Language of the Case: Italian.

treatment of domestic products and imported products; it is therefore necessary to interpret the concept of "similar products" with sufficient flexibility. It is necessary to consider as similar products which have similar characteristics and meet the same needs from the point of view of consumers. It is therefore necessary to determine the scope of the first paragraph of Article 95 on the basis not of the criterion of the strictly identical nature of the products but on that of their similar and comparable use.

3. The function of the second paragraph of Article 95 is to cover all forms of indirect tax protection in the case of products which, without being similar within the meaning of the first paragraph, are nevertheless in competition, even partial, indirect or potential, with certain products of the importing country. For the purposes of the application of that provision it is sufficient for the imported product to be in competition with the protected domestic production by reason of one or several economic uses to which it may be put, even though the condition of similarity for the purposes of the first paragraph of Article 95 is not fulfilled.

   Whilst the criterion indicated in the first paragraph of Article 95 consists in the comparison of tax burdens, whether in terms of the rate, the mode of assessment or other detailed rules for the application thereof, in view of the difficulty of making sufficiently precise comparisons between the products in question, the second paragraph of that article is based upon a more general criterion, in other words the protective nature of the system of internal taxation.

4. Whilst Community law as it stands at present does not prohibit certain exemptions or tax concessions, in particular so as to enable productions or undertakings to continue which would no longer be profitable without those special tax benefits because of the rise in production costs, the lawfulness of such practices is subject to the condition that the Member States using those powers extend the benefit thereof in a non-discriminatory and non-protective manner to imported products in the same situation.

5. The classifications in the Common Customs Tariff, which were designed with the Community's foreign trade in mind, do not provide conclusive evidence as to whether different products in relation one to another are similar within the meaning of the first paragraph of Article 95 of the EEC Treaty or in competition, even partial, indirect or potential, and so covered by the second paragraph of that article.

   The same conclusion applies to customs statistics the aim of which is to record the volume of movement of goods coming under the various tariff headings.

In Case 169/78

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Antonino Abate, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

applicant,

v

ITALIAN REPUBLIC, represented for the purposes of the written procedure, by Adolfo Maresca, Ambassador, acting as Agent, assisted by Mario Fanelli, Avvocato dello Stato, and, for the purposes of the oral procedure, by Ivo Maria Braguglia, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

defendant,

APPLICATION for a declaration that the Italian Republic, by levying, in the form of tax banderoles, a differentiated tax which penalizes imported spirits, has failed to fulfil its obligations under Article 95 of the EEC Treaty,

THE COURT

hereby:

1. **Declares that, by the application of differential taxation on spirits in the form of tax banderoles affixed to receptacles containing spirits intended for retail, as provided for by the Italian tax legislation resulting from the provisions of Article 6 of Decree Law No 745 of 26 October 1970, ratified by Law No 1034 of 18 December 1970, as regards, first, spirits obtained by the distillation of cereals and sugar-cane and, secondly, spirits obtained from wine and marc, the Italian Republic, has failed, as regards products imported from the other Member States, to fulfil its obligations under Article 95 of the EEC Treaty.**

2. **The Italian Republic is ordered to pay the costs.**

JUDGMENT OF THE COURT OF 27 FEBRUARY 1980 [1]

Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

"Tax arrangements applying to wine"

Case 170/78

1. *Tax provisions — Internal Taxes — Provisions of the Treaty — Aim — Prohibition of discrimination between imported products and similar national products — Prohibition of taxes of such a nature as to afford indirect protection to other products*
   (EEC Treaty, Art. 95)

2. *Tax provisions — Internal taxes — Taxes of such a nature as to afford indirect protection to other products — Competing products — Criteria — Present state of market and possibilities for development — How the protective effect is to be shown*
   (EEC Treaty, Art. 95, second paragraph)

3. *Tax provisions — Internal taxes — Taxes of such a nature as to afford indirect protection to other products — Competing products — Degree of substitution possible — Criteria — Consumer benefits — Inadequate criterion*
   (EEC Treaty, Art. 95, second paragraph)

1. The aim of Article 95 of the EEC Treaty, as a whole, is to eliminate the adverse effects on the free movement of goods and on normal conditions of competition between Member States of the discriminatory or protective application of internal taxation.

   To this end, the first paragraph, which relates to "similar" products, which are thus by definition largely comparable, prohibits any tax provision whose effect is to impose, by whatever tax mechanism, higher taxation on imported goods than on similar domestic products.

   The second paragraph, for its part, applies to the treatment for tax purposes of products which, without

1 — Language of the Case: English.

fulfilling the criterion of similarity, are nevertheless in competition, either partially or potentially, with certain products of the importing country. That provision, precisely in view of the difficulty of making a sufficiently precise comparison between the products in question, employs a more general criterion, in other words the indirect protection afforded by a domestic tax system.

2. In order to determine the existence of a competitive relationship under the second paragraph of Article 95, it is necessary to consider not only the present state of the market but also the possibilities for development within the context of free movement of goods at the Community level and the further potential for the substitution of products for one another which may be revealed by intensification of trade, so as fully to develop the complementary features of the economies of the Member States in accordance with the objectives laid down by Article 2 of the Treaty.

   Where there is such a competitive relationship between an imported product and national production, the second paragraph of Article 95 prohibits tax practices "of such a nature as to afford indirect protection" to the production of the importing Member State.

   For the application of that provision it is impossible to require in each case that the protective effect should be shown statistically. It is sufficient for it to be shown that a given tax mechanism is likely, in view of its inherent characteristics, to bring about the protective effect referred to by the Treaty. Without disregarding the importance of the criteria which may be deduced from statistics from which the effects of a given tax system may be measured, it is impossible to require the Commission, in proceedings which it has brought under Article 169 of the Treaty, to supply statistical data on the actual foundation of the protective effect of the tax system complained of.

3. For the purpose of measuring the possible degree of substitution between two products for the application of the second paragraph of Article 95 of the EEC Treaty, it is impossible to restrict oneself to consumer habits in a Member State or in a given region. Such habits, which are essentially variable in time and space, cannot be considered to be a fixed rule; the tax policy of a Member State must not therefore crystallize given consumer habits so as to consolidate an advantage acquired by national industries concerned to comply with them.

In Case 170/78

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Anthony McClellan, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

applicant,

supported by the

ITALIAN REPUBLIC, represented, for the purpose of the written procedure, by its Ambassador, Adolfo Maresca, acting as Agent, assisted by Mario Fanelli, Avvocato dello Stato, and, for the purpose of the oral procedure, by Ivo Maria Braguglia, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

intervener,

v

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, represented by R. D. Munrow, Assistant Treasury Solicitor, acting as Agent, assisted by Harry K. Woolf, Barrister of the Inner Temple, and Mr Peter Archer, Q. C. of Gray's Inn, with an address for service in Luxembourg at the Embassy of the United Kingdom,

defendant,

APPLICATION for a declaration that the United Kingdom of Great Britain and Northern Ireland, by failing to repeal or amend its national provisions with regard to excise duty on still light wine, has failed to fulfil its obligations under the second paragraph of Article 95 of the EEC Treaty,

THE COURT,

before giving judgment on the application lodged by the Commission for a declaration that the United Kingdom has failed to fulfil its obligations, hereby:

1. **Orders the parties to re-examine the subject-matter of the dispute in the light of the legal considerations set out in this judgment and to report to the Court on the result of that examination before 31 December 1980. The Court will give final judgment after that date after examining the reports which have been submitted to it or in the absence of those reports.**

2. **Reserves the costs.**

JUDGMENT OF THE COURT OF 27 FEBRUARY 1980 [1]

Commission of the European Communities v Kingdom of Denmark

"Tax arrangements applicable to spirits"

Case 171/78

1. *Tax provisions — Internal taxes — Provisions of the Treaty — Aim*
(EEC Treaty, Art. 95)

2. *Tax provisions — Internal taxes — Prohibition of discrimination between imported products and similar national products — Similar products — Concept — Interpretation — Criteria*
(EEC Treaty, Art. 95, first paragraph)

3. *Tax provisions — Internal taxes — Taxes of such a nature as to afford indirect protection to other products — Competing products — Criteria*
(EEC Treaty, Art. 95, second paragraph)

4. *Tax provisions — Internal taxes — Grant of tax benefits to national products — Permissibility — Conditions — Extension to products imported from other Member States*
(EEC Treaty, Art. 95)

5. *Tax provisions — Internal taxes — Harmonization of laws — Preliminary condition to application of Article 95 of the Treaty — Impossibility — Prohibition of discriminatory or protective taxes — Fiscal harmonization — Respective objectives*
(EEC Treaty, Arts. 95 and 99)

1. Within the system of the EEC Treaty, the provisions of the first and second paragraphs of Article 95 supplement the provisions on the abolition of customs duties and charges having equivalent effect. Their aim is to ensure free movement of goods between the Member States in normal conditions of competition by the elimination of all forms of protection which may result from the application of internal taxation which discriminates against products from other Member States. Article 95 must

1 — Language of the Case: Danish.

guarantee the complete neutrality of internal taxation as regards competition between domestic products and imported products.

2. The first paragraph of Article 95 must be interpreted widely so as to cover all taxation procedures which conflict with the principle of the equality of treatment of domestic products and imported products; it is therefore necessary to interpret the concept of "similar products" with sufficient flexibility. It is necessary to consider as similar products which have similar characteristics and meet the same needs from the point of view of consumers. It is therefore necessary to determine the scope of the first paragraph of Article 95 on the basis not of the criterion of the strictly identical nature of the products but on that of their similar and comparable use.

3. The function of the second paragraph of Article 95 is to cover all forms of indirect tax protection in the case of products which, without being similar within the meaning of the first paragraph, are nevertheless in competition, even partial, indirect or potential, with certain products of the importing country. For the purposes of the application of that provision it is sufficient for the imported product to be in competition with the protected domestic production by reason of one or several economic uses to which it may be put, even though the condition of similarity for the purposes of the first paragraph of Article 95 is not fulfilled.

   Whilst the criterion indicated in the first paragraph of Article 95 consists in the comparison of tax burdens, whether in terms of the rate, the mode of assessment or other detailed rules for the application thereof, in view of the difficulty of making sufficiently precise comparisons between the products in question, the second paragraph of that article is based upon a more general criterion, in other words the protective nature of the system of internal taxation.

4. Whilst Community law, as it stands at present, does not prohibit certain tax exemptions or tax concessions, in particular so as to enable productions or undertakings to continue which would no longer be profitable without these special tax benefits because of the rise in production costs, the lawfulness of such practices is subject to the condition that the Member States using those powers extend the benefit thereof in a non-discriminatory and non-protective manner to imported products in the same situation.

5. The implementation of the programme of harmonization laid down by Article 99 of the EEC Treaty cannot constitute a preliminary to the application of Article 95. Whatever the disparities between the national tax systems, Article 95 lays down a basic requirement which is directly linked to the prohibition on customs duties and charges having an equivalent effect between the Member States in that it intends to eliminate before any harmonization all national tax practices which are likely to create discrimination against imported products or to afford protection to certain domestic products. Articles 95 and 99 pursue different objectives, since Article 95 aims to eliminate in the immediate future discriminatory or protective tax practices, whilst Article 99 aims to reduce trade barriers arising from the differences between the national tax systems, even where those are applied without discrimination.

In Case 171/78

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Johannes Føns Buhl, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

applicant,

KINGDOM OF DENMARK, represented by Per Lachmann, Head of the Secretariat of the Common Market Division at the Ministry for Foreign Affairs, acting as Agent, assisted, on behalf of Poul Schmith, Government Advocate, by Georg Lett, Advocate, with an address for service in Luxembourg at the office of Vagn Ditlev Larsen, Acting Chargé d'Affaires at the Royal Embassy of Denmark,

defendant,

APPLICATION for a declaration that, by not complying with the opinion by which the Commission requested it to introduce uniform taxes on spirits, the Kingdom of Denmark has been in breach of the first paragraph or, alternatively, the second paragraph of Article 95 of the EEC Treaty,

THE COURT

hereby:

1. **Declares that, by the application of a discriminatory tax on spirits as follows from Co-ordinated Law No 151 of 4 April 1978, the Kingdom of Denmark has failed, as regards products imported from the other Member States, in its obligations under Article 95 of the EEC Treaty;**

2. **Orders the Kingdom of Denmark to pay the costs.**

JUDGMENT OF THE COURT OF 27 FEBRUARY 1980 [1]

Commission of the European Communities v Ireland

"Taxation of alcohol"

Case 55/79

1. *Tax provisions — Internal taxes — Discrimination — Criteria — Actual effect of taxation borne by national products and imported products respectively — Criteria*
   (EEC Treaty, first paragraph of Art. 95)

2. *Tax provisions — Internal taxes — Discriminatory taxation — Justification — Inappropriate exchange rate for national currency — Not permissible*
   (EEC Treaty, Art. 95)

3. *Tax provisions — Internal taxes — Harmonization of laws — Preliminary condition for application of Article 95 of the Treaty — None*
   (EEC Treaty, Arts. 95, 99 and 100)

1. It is necessary, for the purposes of the application of the prohibition on discrimination laid down in Article 95 of the EEC Treaty, to take into consideration, not only the rate of tax, but also the provisions relating to the basis of assessment and the detailed rules for levying the various duties. In fact the decisive criterion of comparison for the purposes of the application of Article 95 is the actual effect of each tax on national production on the one hand and on imported products on the other, since even where the rate of tax is equal, the effect of that tax may vary according to the detailed rules for the basis of assessment and levying thereof applied to national production and imported products respectively.

2. If a Member State considers that the difference between the exchange rates for its currency and that of another Member State have not been fixed appropriately, it should seek the remedy for that situation by the appropriate means. It is not entitled itself to correct such a monetary situation by means of discriminatory

1 — Language of the Case: English.

tax provisions contrary to Article 95 of the EEC Treaty.

3. Although obstacles to the free movement of goods may be eliminated by applying the procedure for the harmonization of tax legislation under Articles 99 and 100 of the Treaty the implementation of those provisions and particularly of Article 99 cannot be put forward as a condition for the application of Article 95, which imposes on Member States with immediate effect the duty to apply their tax legislation without discrimination even before there is any harmonization.

In Case 55/79

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Anthony McClellan, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

applicant,

v

IRELAND, represented by Louis J. Dockery, Chief State Solicitor, acting as Agent, assisted by Nial Fennelly, S.C., with an address for service in Luxembourg at the Irish Embassy,

defendant,

APPLICATION for a declaration that by maintaining in force the national provisions and practices relating to the levying of excise duties on spirits, beer and made wine, Ireland has failed to fulfil its obligations under Article 95 or Article 30 of the EEC Treaty,

THE COURT

hereby:

1. **Declares that by the discriminatory application to products imported from other Member States of provisions relating to deferment of payment of excise duty on spirits, beer and made-wine, pursuant in particular to the Imposition of Duties (No 221) (Excise Duties)** Order, 1975, Ireland has failed to fulfil its obligations under the first paragraph of Article 95 of the EEC Treaty.

2. Orders Ireland to pay the costs.

on the interpretation of Article 95 of the EEC Treaty in relation to the Danish Law of 4 April 1978 on the taxation of spirits,

THE COURT

in answer to the questions referred to it by the Østre Landsret by order of 26 March 1979, hereby rules:

1. Whilst the Treaty does not exclude, in principle a difference in the taxation of various alcoholic products, such a distinction may not be used for the purposes of tax discrimination or in such a manner as to afford protection, even indirect, to domestic production. A system which consists in conferring a tax advantage on a single product which represents the major proportion of domestic production to the exclusion of all other similar or competing imported products is incompatible with Community law.

2. Where a national system of taxation at different rates is found to be incompatible with Community law, the Member State in question must apply to imported products a rate of tax which eliminates the margin of discrimination or protection prohibited by the Treaty. Article 95 accords such treatment only to products which are imported from other Member States.

3. It is for the Member States to ensure the repayment of charges levied contrary to Article 95 in accordance with the provisions of their internal law subject to conditions which must not be less favourable than those relating to similar actions of a domestic nature and which in any case must not make it impossible in practice to exercise the rights conferred by the Community legal system. Community law does not prevent the fact that the burden of the charges which have been unlawfully levied may have been passed on to other traders or to consumers from being taken into consideration. It is compatible with the principles of Community law to take into consideration, if appropriate, in accordance with the national law of the Member State concerned, the damage suffered by the person liable to pay the charges by reason of the restrictive effect of the latter on the volume of imports from other Member States.

JUDGMENT OF THE COURT OF 27 FEBRUARY 1980 [1]

Hans Just I/S v Danish Ministry for Fiscal Affairs (preliminary ruling requested by the Østre Landsret)

"Tax arrangements applicable to spirits"

Case 68/79

1. *Tax provisions — Internal taxes — Differentiated tax system — Permissibility — Conditions*
   (EEC Treaty, Art. 95)

2. *Tax provisions — Internal taxes — Taxes incompatible with Community law — Obligations of Member States*
   (EEC Treaty, Art. 95)

3. *Community law — Direct effect — Individual rights — Protection by national courts — Principle of co-operation*
   (EEC Treaty, Art. 5)

4. *Tax provisions — Internal taxes — Taxes incompatible with Community law — Reimbursement by Member States — Procedural conditions — Application of national law — Conditions — Taking account of any passing on of tax or of damage suffered by the importer — Permissibility*
   (EEC Treaty, Art. 95)

1. Whilst the Treaty does not exclude, in principle, a difference in the taxation of various alcoholic products, such a distinction may not be used for the purposes of tax discrimination or in such a manner as to afford protection, even indirect, to domestic production.

   A system which consists in conferring a tax advantage on a single product which represents the major proportion of domestic production to the exclusion of all other similar or competing imported products is incompatible with Community law.

1 — Language of the Case: Danish.

2. Where a national system of taxation at different rates is found to be incompatible with Community law, the Member State in question must apply to imported products a rate of tax which eliminates the margin of discrimination or protection prohibited by the Treaty. Article 95 accords such treatment only to products which are imported from other Member States.
3. In application of the principle of co-operation laid down in Article 5 of the Treaty, it is the courts of the Member States which are entrusted with ensuring the legal protection which subjects derive from the direct effect of the provisions of Community law.
4. In the absence of Community rules concerning the refunding of national charges which have been levied in breach of Article 95 of the EEC Treaty, it is for the Member States to arrange for the reimbursement of such charges in accordance with the requirements of their domestic legal system; it is for them to designate to this intent the courts having jurisdiction and to determine the procedural conditions governing actions at law.

   Such conditions cannot be less favourable than those relating to similar actions of a domestic nature and must not make it impossible in practice to exercise the rights conferred on individuals by the Community legal system.

   Community law does not require an order for the recovery of charges improperly made to be granted in conditions which would involve the unjust enrichment of those entitled. Thus it does not prevent account being taken of the fact that it has been possible for the burden of such charges to be passed on to other traders or to consumers.

   It is equally compatible with the principles of Community law for account to be taken in accordance with the national law of the State concerned of the damage which an importer may have suffered because the effect of the discriminatory or protective tax provisions was to restrict the volume of imports from other Member States.

In Case 68/79

REFERENCE to the court under Article 177 of the EEC Treaty by the Østre Landsret [Eastern Division of the High Court] for a preliminary ruling in the action pending before that court between

HANS JUST I/S, an undertaking which produces and imports spirits, with registered offices in Copenhagen,

and

THE DANISH MINISTRY FOR FISCAL AFFAIRS

on the interpretation of Article 95 of the EEC Treaty in relation to the Danish Law of 4 April 1978 on the taxation of spirits,

THE COURT

in answer to the questions referred to it by the Østre Landsret by order of 26 March 1979, hereby rules:

1. Whilst the Treaty does not exclude, in principle a difference in the taxation of various alcoholic products, such a distinction may not be used for the purposes of tax discrimination or in such a manner as to afford protection, even indirect, to domestic production. A system which consists in conferring a tax advantage on a single product which represents the major proportion of domestic production to the exclusion of all other similar or competing imported products is incompatible with Community law.

2. Where a national system of taxation at different rates is found to be incompatible with Community law, the Member State in question must apply to imported products a rate of tax which eliminates the margin of discrimination or protection prohibited by the Treaty. Article 95 accords such treatment only to products which are imported from other Member States.

3. It is for the Member States to ensure the repayment of charges levied contrary to Article 95 in accordance with the provisions of their internal law subject to conditions which must not be less favourable than those relating to similar actions of a domestic nature and which in any case must not make it impossible in practice to exercise the rights conferred by the Community legal system. Community law does not prevent the fact that the burden of the charges which have been unlawfully levied may have been passed on to other traders or to consumers from being taken into consideration. It is compatible with the principles of Community law to take into consideration, if appropriate, in accordance with the national law of the Member State concerned, the damage suffered by the person liable to pay the charges by reason of the restrictive effect of the latter on the volume of imports from other Member States.

JUDGMENT OF THE COURT OF 11 MARCH 1980 [1]

Pasquale Foglia v Mariella Novello . (preliminary ruling requested by the Pretura, Bra)

"Tax system applicable to liqueur wines"

Case 104/79

Preliminary questions — Jurisdiction of the Court — Limits — Questions submitted in the course of a friendly suit before a national court — Inadmissibility
(EEC Treaty, Art. 177)

The duty of the Court of Justice under Article 177 of the EEC Treaty is to supply all courts in the Community with the information on the interpretation of Community law which is necessary to enable them to settle genuine disputes which are brought before them.

On the other hand the court does not have jurisdiction — otherwise the whole system of legal remedies available to private individuals to enable them to protect themselves against tax provisions which are contrary to the Treaty would be jeopardized — to give rulings on questions asked within the framework of proceedings whereby the parties to the main action are concerned to obtain a ruling that the tax system of a Member State is invalid by the expedient of proceedings before a court of another Member State between two private individuals who are in agreement as to the result to be attained and who have inserted a clause in their contract in order to induce that court to give a ruling on the point. The artificial nature of this expedient is underlined by the fact that the parties did not avail themselves of the remedies open under the national law of the first Member State against the tax in question.

1 — Language of the Case: Italian

In Case 104/79

Reference to the Court under Article 177 of the EEC Treaty by the Pretura [District Court], Bra, for a preliminary ruling in the action pending before that court between

PASQUALE FOGLIA, San Vittoria d'Alba,

and

MARIELLA NOVELLO, Magliano Alfieri,

on the interpretation of Articles 92 and 95 of the EEC Treaty

THE COURT

in answer to the questions submitted to it by the Pretura di Bra, by an order of 6 June 1979, hereby rules:

The Court of Justice has no jurisdiction to give a ruling on the questions asked by the national court.

JUDGMENT OF THE COURT
OF 21 MAY 1980 [1]

Commission of the European Communities v Italian Republic

"Internal taxation: 'sovrapprèzzo' "

Case 73/79

1. *Tax provisions — Internal taxation — Discriminatory taxation coming under a system of aids — Cumulative application of Articles 92, 93 and 95 of the Treaty*
   (EEC Treaty, Arts. 92, 93 and 95)

2. *Tax provisions — Internal taxation — Discriminatory taxation coming under a system of aids — Application for a declaration of failure to fulfil obligations under Article 169 — Parallel initiation of procedure under Article 93 of the Treaty — Application not devoid of purpose*
   (EEC Treaty, Arts. 92, 93, 95 and 169)

3. *Agriculture — Common organization of the markets — Sugar — National adaptation aids — Method of financing — Compatibility with Community law — Conditions*
   (Regulation No 3330/74 of the Council, Art. 38)

4. *Tax provisions — Internal taxation — Discrimination — Criteria for appraisal — Purpose to which revenue from the charge is put — Financing aids for the sole benefit of domestic products — Not permissible*
   (EEC Treaty, Art. 95)

5. *Tax provisions — Internal taxation — Concept — Passing financial burdens on to the consumer — No effect*
   (EEC Treaty, Art. 95)

1. A measure carried out by means of discriminatory taxation, which may be considered at the same time as forming part of an aid within the meaning of Article 92 of the EEC Treaty, is governed both by the provisions of the first paragraph of Article 95 and by those applicable to

1 — Language of the Case: Italian

aids granted by States. It follows that discriminatory tax practices are not exempted from the application of Article 95 by reason of the fact that they may at the same time be described as a means of financing a State aid.

2. If the Commission charges a Member State with practices which constitute an infringement of Article 95 of the EEC Treaty and if on that basis it has initiated the procedure under Article 169 that procedure does not lose its purpose because the Commission takes the view that the same practices form part of a system of aids incompatible with the common market and initiates the procedure provided for in Article 93.

3. Authorization under Article 38 of Regulation (EEC) No 3330/74 to grant the aids provided for therein cannot be taken to mean that any method of financing such aids, whatever its character or conditions, is compatible with Community law. On the contrary, the financing of the aid granted, the national authorities remain in particular subject to the obligations arising under the EEC Treaty.

4. In an interpretation of the concept "internal taxation" for the purposes of Article 95 of the EEC Treaty it may be necessary to take into account the purpose to which the revenue from the charge is put. In fact, if the revenue from such a charge is intended to finance activities for the special advantage of the taxed domestic products it may follow that the charge imposed on the basis of the same criteria on domestic and imported products nevertheless constitutes discriminatory taxation in so far as the fiscal burden on domestic products is neutralized by the advantages which the charge is used to finance whilst the charge on the imported products constitutes a net burden.

   It follows that internal taxation is of such a nature as indirectly to impose a heavier burden on products from other Member States than on domestic products if it is used exclusively or principally to finance aids for the sole benefit of domestic products.

5. The fact that the financial burdens arising from the imposition of a charge are passed on to the consumers does not alter the legal nature of the charge in question as regards Article 95 of the EEC Treaty.

In Case 73/79

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Antonio Abate, its Legal Adviser, acting as Agent, assisted by Professor Giovanni Puoti, with an address for service in Luxembourg at the office of Mario Cervino, Jean Monnet Building, Kirchberg,

applicant,

v

ITALIAN REPUBLIC, represented by its Ambassador, Adolfo Maresca, acting as Agent, assisted by Ivo Maria Braguglia, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

defendant,

APPLICATION under Article 169 of the EEC Treaty for a declaration that the Italian Republic, by imposing a special charge, which is not uniform, on domestically-produced sugar and sugar imported from other Member States, has failed to fulfil its obligations under Article 95 of the EEC Treaty,

THE COURT

hereby:

1. **Declares that the Italian Republic, by imposing internal taxation the burden of which falls unequally on sugar produced in Italy and on that imported from other Member States, has failed to fulfil an obligation under Article 95 of the Treaty;**

2. **Orders the defendant to pay the costs.**

JUDGMENT OF THE COURT (FIRST CHAMBER)
OF 9 OCTOBER 1980 [1]

Criminal proceedings against Giovanni Carciati (preliminary ruling requested by the Tribunale Civile e Penale, Ravenna)

"Free movement of goods — Temporary importation of motor vehicles"

Case 823/79

Free movement of goods — National rules prohibiting residents from using vehicles admitted under a scheme for temporary importation — Compatibility with the EEC Treaty

The rules of the EEC Treaty relating to the free movement of goods do not preclude the imposition by national rules on persons residing in the territory of a Member State of a prohibition, subject to criminal penalties, on the use of motor vehicles admitted under a scheme for temporary importation and thus exempt from payment of value added tax.

In Case 823/79,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunale Civile e Penale [Civil and Criminal Court], Ravenna, for a preliminary ruling in the criminal proceedings pending before that court against

GIOVANNI CARCIATI

on the interpretation of the Community rules applicable in respect of the free movement of goods,

1 — Language of the Case: Italian.

THE COURT (First Chamber),

in answer to the question referred to it by the Tribunale Civile e Penale di Ravenna by an order dated 26 November 1979, hereby rules:

The rules of the EEC Treaty relating to the free movement of goods do not preclude the imposition by national rules on persons residing in the territory of a Member State of a prohibition, subject to criminal penalties, on the use of motor vehicles admitted under temporary importation arrangements and thus exempt from payment of value added tax.

JUDGMENT OF THE COURT (SECOND CHAMBER) OF 30 OCTOBER 1980 [1]

Schneider-Import GmbH & Co. KG v Hauptzollamt Mainz (preliminary ruling requested by the Finanzgericht Rheinland-Pfalz)

"Tax arrangements applicable to spirits — exemptions for small distilleries"

Case 26/80

1. *Tax provisions — Internal taxation — Grant of tax advantages to domestic products permissible — Conditions — Extension to products imported from other Member States*

   (EEC Treaty, Art. 95)

2. *Tax provisions — Internal taxation — Grant of tax advantages to domestic products — Extension to products imported from other Member States — Difficulties owing to methods of taxation — Criteria of equal treatment — Advantages reserved to small-scale producers of spirits — Condition for qualifying therefor — Upper limit for production — Compliance with same limit for imported products*

   (EEC Treaty, Art. 95)

1. In the absence of any unification or harmonization of the relevant provisions, Community law does not prohibit Member States from granting tax advantages for legitimate social or economic purposes, in the form of exemption from or reduction of duties, to certain products or to certain classes of producers. However, according to the requirements of Article 95 of the EEC Treaty, such preferential systems must be extended without discrimination to products coming from other Member States satisfying the same conditions.

2. Where it is impossible to transfer to imported products tax advantages the grant of which is linked to special methods of taxation and of supervision laid down by the legislation of the importing State, it is necessary to consider that the requirements of Article 95 of the Treaty are fulfilled where the legislation of a Member State makes

1 — Language of the Case: German.

it possible to apply to imports of products from other Member States arrangements the practical effect of which may be considered as equivalent to the arrangements applied to domestic products so that imported products may in fact enjoy the same advantages as comparable national products.

As regards, in particular, the tax advantages reserved by national legislation to certain categories of small-scale producers of spirits, the fixing by the legislation of a Member State of an upper limit for production which is imposed upon producers of other Member States as a condition for qualifying for a reduction in the rate of tax conforms to the requirements of Article 95 where that limit corresponds in general to the upper limit to which national producers are subject in order to qualify for the same tax advantage. Article 95 does not require the Member State to extend the same advantage to imported products coming from undertakings whose production exceeds the production limit thus fixed.

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht Rheinland-Pfalz [Finance Court of Rhineland-Palatinate], for a preliminary ruling in the action pending before that court between

SCHNEIDER-IMPORT GMBH & CO. KG, Bingen,

and

HAUPTZOLLAMT [Principal Customs Office] MAINZ,

for a preliminary ruling on the interpretation of Article 95 of the EEC Treaty in relation to the application of the German Law of 8 April 1922 on the Monopoly in Spirits *[Gesetz über das Branntweinmonopol]* as amended by the Laws of 13 July 1978 and of 13 November 1979,

THE COURT (Second Chamber)

in answer to the questions referred to it by the Finanzgericht Rheinland-Pfalz by order of 20 December 1979, hereby rules:

1. **Article 95 of the EEC Treaty, in its application to the tax advantages reserved by national legislation to certain categories of small-scale producers of spirits, must be interpreted as meaning that the requirement of non-discrimination laid down in that provision of the Treaty is fulfilled where the arrangements applicable to spirits imported from other Member States may be considered as equivalent to the arrangements applicable to national production so that imported products may in fact enjoy the same advantages as comparable national products.**

2. The fixing by the legislation of a Member State of an upper limit for production which is imposed upon producers of other Member States as a condition for qualifying for a reduction in the rate of tax conforms to the requirements of Article 95 of the EEC Treaty where that limit corresponds in general to the upper limit to which national producers are subject in order to qualify for the same tax advantage.

   Article 95 does not require the Member States to extend the same advantage to imported products coming from undertakings whose production exceeds the production limit thus fixed.

JUDGMENT OF THE COURT
OF 14 JANUARY 1981 [1]

Chemial Farmaceutici SpA v DAF SpA (preliminary ruling requested by the Pretura, Castell'Arquato)

"Taxation of denatured alcohol"

Case 140/79

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

1 — Language of the Case: Italian.

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.

In Case 140/79

REFERENCE to the Court under Article 177 of the EEC Treaty by the Pretura, Castell'Arquato, (Italy) for a preliminary ruling in the proceedings pending before that court between

CHEMIAL FARMACEUTICI SPA, whose registered office is in Turin,

and

DAF SPA, whose registered office is in San Giorgio Piacentino,

on the interpretation of Article 95 of the EEC Treaty in relation to Italian legislation concerning a special revenue charge on denatured alcohol,

THE COURT,

in answer to the questions referred to it by the Pretura, Castell'Arquato, by order of 6 September 1979, hereby rules:

1. **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.**

2. **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.**

JUDGMENT OF THE COURT OF 14 JANUARY 1981 [1]

SpA Vinal v SpA Orbat (preliminary ruling requested by the Pretura Civile, Casteggio)

"Taxation of denatured alcohol"

Case 46/80

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 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 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

1 — Language of the Case: Italian.

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 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.

In Case 46/80

REFERENCE to the Court under Article 177 of the EEC Treaty by the Pretura Civile [Civil Court], Casteggio, for a preliminary ruling in the action pending before that court between

SpA VINAL., having its registered office in Casteggio, Pavia,

and

SpA ORBAT, having its registered office in Milan,

on the interpretation of Article 95 of the EEC Treaty in relation to Italian legislation concerning a special revenue charge on denatured alcohol,

THE COURT,

in answer to the questions referred to it by the Pretura, Casteggio, by order of 30 January 1980, hereby rules:

1. **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.**

2. **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.

JUDGMENT OF THE COURT
OF 28 JANUARY 1981 [1]

Officier van Justitie v J. A. W. M. J. Kortmann (preliminary ruling requested by the Arrondissementsrechtbank Roermond)

"Pharmaceutical products — Parallel imports"

Case 32/80

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

1 — Language of the Case: Dutch.

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 of 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.

In Case 32/80

REFERENCE to the Court under Article 177 of the EEC Treaty by the Arrondissementsrechtbank [District Court] Roermond, The Netherlands, for a preliminary ruling in the action pending before that court between

OFFICIER VAN JUSTITIE [Public Prosecutor]

and

J. A. W. M. J. KORTMANN

on the interpretation of Article 36 of the EEC Treaty,

THE COURT,

in answer to the question submitted to it by the Arrondissementsrechtbank, Roermond, by judgment of 4 December 1979, hereby rules:

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 within the meaning 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 in consequence 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 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 the 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. 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.

JUDGMENT OF THE COURT (SECOND CHAMBER) OF 5 FEBRUARY 1981 [1]

Staatssecretaris van Financiën v Coöperatieve Aardappelenbewaarplaats GA (preliminary ruling requested by the Hoge Raad der Nederlanden)

"VAT — Provision of services"

Case 154/80

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 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 cooperative association running a warehouse for the storage of goods which does not impose any storage charge on its members for the service provided.

In Case 154/80

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hoge Raad der Nederlanden [Supreme Court of the Netherlands] for a preliminary ruling in the action pending before that court between

1 — Language of the Case: Dutch.

STAATSSECRETARIS VAN FINANCIËN [Secretary of State for Finance]

and

COÖPERATIEVE AARDAPPELENBEWAARPLAATS GA, a cooperative association, Heinkenszand,

on the interpretation of Article 8 of the Second Council Directive 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 (Official Journal, English Special Edition 1967, p. 16),

THE COURT (Second Chamber)

in answer to the question referred to it by the Hoge Raad der Nederlanden by judgment of 25 June 1980, hereby rules:

There can be no question of any consideration within the meaning of the opening words of subparagraph (a) of Article 8 of the Second Directive 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, (Official Journal, English Special Edition 1967, p. 16) in the case of a cooperative association running a warehouse for the storage of goods which does not impose any storage charge on its members for the service provided.

JUDGMENT OF THE COURT (SECOND CHAMBER) OF 7 MAY 1981 [1]

Rumhaus Hansen GmbH & Co. v Hauptzollamt Flensburg (preliminary ruling requested by the Finanzgericht Hamburg)

"Tax arrangements applicable to spirits — Charging of reduced taxes"

Case 153/80

Tax provisions — Internal taxation — Granting of tax advantages in favour of domestic products — Extension to products imported from other Member States — Criteria — Advantages reserved to small producers of spirits — Rate of taxation reduced in terms of quantities produced — Application to imported products originating with undertakings having the same production capacity

(EEC Treaty, Art. 95)

Article 95 of the EEC Treaty must be interpreted as meaning that tax advantages granted under the legislation of a Member State in favour of certain alcoholic products must be extended to similar products originating in other Member States which fulfil both the criterion of similarity which forms the basis of Article 95 and the conditions laid down under its national legislation for qualifying for the tax advantage in question.

In the tax advantage for domestic products is granted in terms of the quantities produced in each production undertaking the same advantage must be granted in favour of products from production units situated in other Member States which fulfil the same quantitative criteria. If that condition is fulfilled a Member State may not refuse that tax advantage on the basis of supplementary conditions derived from its legislation which a production unit situated in another Member State cannot fulfil by reason of its geographical situation or of the legislation on the production of spirits in force in that State.

1 — Language of the Case: German.

In Case 153/80

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht [Finance Court] Hamburg for a preliminary ruling in the action pending before that court between

RUMHAUS HANSEN GMBH & CO., having its registered office in Flensburg,

and

HAUPTZOLLAMT [Principal Customs Office] FLENSBURG

on the interpretation of Article 95 of the EEC Treaty in relation to the application of the German Gesetz über das Branntweinmonopol [Law on the Monopoly in Spirits] of 8 April 1922,

THE COURT (Second Chamber)

in answer to the questions referred to it by the Finanzgericht Hamburg by order of 12 June 1980, hereby rules:

1. **Article 95 of the EEC Treaty must be interpreted as meaning that tax advantages granted under the legislation of a Member State in favour of certain alcoholic products must be extended to similar products originating in other Member States which fulfil both the criterion of similarity which forms the basis of Article 95 and the conditions laid down under its national legislation for qualifying for the tax advantage in question.**

2. **If the tax advantage for domestic products is granted in terms of the quantities produced in each production undertaking the same advantage must be granted in favour of products from production units situated in other Member States which fulfil the same quantitative criteria. If that condition is fulfilled a Member State may not refuse that tax advantage on the basis of supplementary conditions derived from its legislation which a production unit situated in another Member State cannot fulfil by reason of its geographical situation or of the legislation on the production of spirits in force in that State.**

JUDGMENT OF THE COURT OF 27 MAY 1981 [1]

Amministrazione delle Finanze dello Stato v Essevi SpA and Carlo Salengo (preliminary ruling requested by the Corte d'Appello, Milan)

"System of taxation applicable to spirits"

Joined Cases 142 and 143/80

1. *Action for failure of a State to fulfil its obligations under the Treaty — Stage preceding commencement of proceedings — Reasoned opinion — Effect restricted to commencement of proceedings before Court — Exemption of Member State from compliance with its obligations — Not permissible*
   (EEC Treaty, Art. 169)

2. *Tax provisions — Internal taxation — System of differential taxation of a discriminatory nature — Grant of tax advantages subject to conditions which can be satisfied only by domestic products — Prohibition*
   (EEC Treaty, Art. 95)

3. *Tax provisions — Internal taxation — Rule against discrimination — Direct effect — Date on which rule took effect*
   (EEC Treaty, Art. 95)

4. *Aids granted by Member States — Aid in form of tax discrimination — Authorization — Not permissible*
   (EEC Treaty, Arts 92, 93 and 95)

5. *Community law — Direct effect — National taxes incompatible with Community law — Refund — Detailed rules — Application of national law — Taking into account of any passing-on of tax — Whether permissible*

1. Opinions delivered by the Commission pursuant to Article 169 of the EEC Treaty have legal effect only in relation to the commencement of proceedings before the Court against a State alleged to have failed to fulfil its obligations under the Treaty. The Commission may not, in the attitude which it adopts and in the opinions which it is obliged to deliver

1 — Language of the Cases: Italian.

under Article 169, exempt a Member State from compliance with its obligations under the Treaty or prevent individuals from relying, in legal proceedings, on the rights conferred upon them by the Treaty in order to contest any legislative or administrative measures of a Member State which may be incompatible with Community law.

2. A system of differential taxation whereby the grant of a tax exemption or the enjoyment of a reduced rate of taxation is conditional upon the possibility of inspecting production on national territory is discriminatory in nature and as such comes within the prohibition laid down by Article 95. The effect of such a condition which by definition cannot be satisfied by similar products from other Member States is to preclude those products in advance from qualifying for the tax advantage in question and to confine that advantage to domestic production.

3. Under the third paragraph of Article 95 of the EEC Treaty, the rule against discrimination set out in the first two paragraphs of that article became fully effective as from 1 January 1962. After that date, a Member State could no longer be authorized to maintain in its tax law or fiscal practices any pre-existing discrimination in the system applicable to the importation of products originating in other Member States.

4. Under the system of the EEC Treaty an aid, within the meaning of Articles 92 and 93, cannot be introduced or authorized by a Member State in the form of fiscal discrimination against products originating in other Member States.

5. The protection of rights guaranteed by the Community legal order does not require an order for the recovery of taxes unduly levied to be granted in conditions which would involve an unjust enrichment of those entitled. There is nothing, from the point of view of Community law, to prevent national courts from taking account in accordance with their national law of the fact that it has been possible for taxes unduly levied to be incorporated in the prices of the undertaking liable for the tax and to be passed on to the purchasers.

In Joined Cases 142 and 143/80

REFERENCES to the Court under Article 177 of the EEC Treaty by the Corte d'Appello [Court of Appeal], Milan, for a preliminary ruling in the actions pending before that court between,
on the one hand,

AMMINISTRAZIONE DELLE FINANZE DELLO STATO

and,

on the other hand,

ESSEVI SPA, having its registered office in Milan (Case 142/80),

and

CARLO SALENGO, an undertaking established in Genoa (Case 143/80),

on the interpretation of Article 95 of the EEC Treaty in relation to the Italian legislation on the State tax on imported potable spirits,

THE COURT

in answer to the questions referred to it by the Corte d'Appello, Milan, by orders of 19 February 1980 hereby rules:

1. **Opinions delivered by the Commission pursuant to Article 169 of the EEC Treaty have legal effect only in relation to the commencement of proceedings before the Court against a State alleged to have failed to fulfil its obligations under the Treaty. The Commission may not, by attitudes adopted in the context of that procedure, release a Member State from its obligations or impair rights which individuals derive from the Treaty.**

2. **A system of taxation of spirits organized in such a way as to confine exemptions or reduced rates of tax to domestic production alone constitutes discrimination prohibited by Article 95 of the EEC Treaty.**

3. **Under the third paragraph of Article 95 of the EEC Treaty, the rule against discrimination set out in the first two paragraphs of that article became fully effective as from 1 January 1962. A Member State could no longer be authorized to maintain after that date any pre-existing fiscal discrimination in the system applicable to the importation of potable spirits originating in other Member States.**

JUDGMENT OF THE COURT
OF 7 JULY 1981 [1]

Rewe-Handelsgesellschaft Nord mbH and Rewe-Markt Steffen v Hauptzollamt Kiel (preliminary ruling requested by the Finanzgericht Hamburg)

"Butter-buying cruises"

Case 158/80

1. *Common Customs Tariff — Exemptions applicable to goods contained in travellers' personal luggage — Conditions for the application — Origin of goods — Irrelevant — Traveller coming from a non-member country — Concept*

   (Regulation No 1544/69 of the Council, as amended by Regulation No 3061/78)

2. *Common Customs Tariff — Exemptions applicable to goods contained in travellers' personal luggage — Community rules exhaustive — Wider exemptions granted by a Member State — Not permissible*

   (Regulation No 1544/69 of the Council, as amended by Regulation No 3061/78)

3. *Measures adopted by institutions — Regulations — Requirement to state reasons on which based — Insufficient statement of reasons*

   (EEC Treaty, Art. 190; Council Regulation No 3022/77)

4. *Tax provisions — Harmonization of legislation — Exemptions from turnover tax and excise duty for goods contained in travellers' personal luggage — Conditions for the application — Travel between non-member country and the Community — Travel between Member States*

   (Council Directives Nos 69/169, 72/230 and 78/1032)

5. *Tax provisions — Harmonization of legislation — Exemptions from turnover tax and excise duty for goods contained in travellers' personal luggage — Residual power of Member States — Limits*

   (Council Directives Nos 69/169, 72/230 and 78/1032)

6. *Community law — Direct effect — Individual rights — Safeguard — Availability of all national types of action*

1 — Language of the Case: German.

1. The exemption provided for by Regulation No 1544/69, as last amended by Regulation No 3061/78, applies only to goods contained in the personal luggage of travellers coming from a non-member country. That exemption applies irrespective of the origin of the goods or the place from which they come and of the customs duties and taxes which they have borne prior to their importation into the territory of the Community. However, it is impossible to consider as a traveller coming from a non-member country, within the meaning of the regulation, a person who, during a cruise departing from a port of a Member State, does not call at a non-member country or who makes only a token call there and does not remain there for an appreciable period, that is to say, a period during which he has in fact an opportunity of making purchases.

2. Regulation No 1544/69 of the Council of 23 July 1969 contains exhaustive rules on the exemption from customs duty of goods contained in the personal luggage of travellers coming from non-member countries and those rules do not leave Member States any power to grant, in the field covered by the regulation, any exemption wider than those provided for by the regulation.

3. Article 190 of the EEC Treaty requires that regulations should contain a statement of the reasons which led the institution to adopt them, so as to make possible a review by the Court and so that the Member States and the nationals concerned may have knowledge of the conditions under which the Community institutions have applied the Treaty.

   A statement of reasons which does not provide any legal justification for the contested provisions of the regulation does not fulfil that requirement.

4. (a) In the case of travel between non-member countries and the Community, the exemption provided for in Directive No 69/169, as supplemented by Directives Nos 72/230 and 78/1032, on the harmonization of provisions laid down by law, regulations or administrative action relating to exemption from turnover tax and excise duty on imports in international travel may be granted only to travellers who arrive in the customs territory of the Community from a non-member country and in this case the circumstances in which the goods have been acquired are irrelevant to the grant of the exemptions.

   (b) In the case of travel within the Community, where the journey from one Member State to another involves transit through the territory of a non-member country or begins in a part of the territory of the other Member State in which the taxes to which the directive refers are not chargeable on goods which are consumed within that territory, the traveller must be able to establish that the goods transported in his luggage were acquired subject to the general conditions governing taxation on the domestic market of a Member State and do not qualify for any refund of turnover tax or excise duty. If the traveller is unable to provide the aforementioned proof

he may enjoy only the more restricted exemption provided for in the case of travel between non-member countries and the Community.

5. In adopting Directive No 69/169, and Directives Nos 72/230 and 78/1032 which supplement it, the Council intended gradually to establish a complete system of exemptions from turnover tax and excise duty for goods contained in travellers' personal luggage. Consequently in this field the Member States are left with only the restricted power given to them by the directives to grant exemptions other than those specified in the directives.

6. Although the EEC Treaty has made it possible in a number of instances for private persons to bring a direct action, where appropriate, before the Court of Justice, it was not intended to create new remedies in the national courts to ensure the observance of Community law other than those already laid down by national law. On the other hand the system of legal protection established by the Treaty, as set out in Article 177 in particular, implies that it must be possible for every type of action provided for by national law to be available for the purpose of ensuring observance of Community provisions having direct effect, on the same conditions concerning the admissibility and procedure as would apply were it a question of ensuring observance of national law.

In Case 158/89

REFERENCE to the Court under Article 177 of the EEC Treaty by the IVth Senate of the Finanzgericht [Finance Court] Hamburg for a preliminary ruling in the action pending before that court between

1. REWE-HANDELSGESELLSCHAFT NORD MBH,

2. REWE-MARKT STEFFEN, Kiel,

and

HAUPTZOLLAMT [Principal Customs Office] KIEL

on the interpretation of Regulation (EEC) No 1544/69 of the Council of 23 July 1969 on the tariff applicable to goods contained in travellers' personal luggage (Official Journal, English Special Edition 1969 (II), p. 359), Council Directive No 69/169/EEC of 28 may 1968 on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel (Official Journal, English Special Edition 1969 (I), p. 232) and the validity of Council Regulation (EEC) No 3023/77 of 20 December 1977 on

THE COURT,

in answer to the questions referred to it by the Finanzgericht Hamburg, by order of 5 June 1980, hereby rules:

1. **The exemption provided for by Regulation No 1544/69, as last amended by Regulation No 3061/78, applies only to goods contained**

in the personal luggage of travellers coming from a non-member country. That exemption applies irrespective of the origin of the goods or the place from which they come and of the customs duties and taxes which they have borne prior to their importation into the territory of the Community. However, it is impossible to consider as a traveller coming from a non-member country, within the meaning of the regulation, a person who, during a cruise departing from a port of a Member State, does not call at a non-member country or who makes only a token call there and does not remain there for an appreciable period, that is to say, a period during which he has in fact an opportunity of making purchases.

2. Regulation No 1544/69 of the Council of 23 July 1969 contains exhaustive rules on the exemption from customs duty of goods contained in the personal luggage of travellers coming from non-3402936oceedings are, in sorestricted005member countries and those rules do not leave Member States any power to grant, in the field covered by the regulation, any exemption wider than those provided for by the regulation.

3. Council Regulation No 3023/77 of 20 December 1977 on certain measures to put an end to abuses resulting from the sale of agricultural products on board ship does not contain an adequate statement of the reasons on which it is based and is accordingly not valid.

4. In the case of travel between non-member countries and the Community, the exemption provided for in Council Directive No 69/169 of 28 May 1969 on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel may be granted only to travellers who arrive in the customs territory of the Community from a non-member country and in this case the circumstances in which the goods have been acquired are irrelevant to the grant of the exemptions.

5. In the case of travel within the Community, where the journey from one Member State to another involves transit through the territory of a non-member country or begins in a part of the territory of the other Member State in which the taxes to which the directive refers are not chargeable on goods which are consumed within that territory, the traveller must be able to establish that the goods transported in his luggage were acquired subject to the general conditions governing taxation on the domestic market of a Member State and do not qualify for any refund of turnover tax and/or excise duty. If the traveller is unable to provide the aforementioned proof he may enjoy only the more restricted exemption provided for in the case of travel between non-member countries and the Community.

6. In adopting Directive No 69/169, and the Second and Third Directives of 12 June 1972 and of 10 December 1978 respectively which supplement it, the Council intended gradually to establish a complete system of exemptions from turnover tax and excise duty for

goods contained in travellers' personal luggage. Consequently in this field the Member States are left with only the restricted power given to them by the directives to grant exemptions other than those specified in the directives.

7. The system of legal protection established by the Treaty, as set out in Article 177 in particular, implies that is must be possible for every type of action provided for by national law to be available before the national courts for the purpose of ensuring observance of Community provisions having direct effect, on the same conditions concerning admissibility and procedure as would apply were it a question of ensuring observance of national law.

JUDGMENT OF THE COURT (SECOND CHAMBER)
25 NOVEMBER 1981 [1]

Hauptzollamt Flensburg v Hermann C. Andresen GmbH & Co KG (reference for a preliminary ruling from the Bundesfinanzhof)

(Fiscal system for spirits)

Case 4/81

1. *Tax provisions — Internal taxation — Provisions of the Treaty — Scope — Charge not of a fiscal nature — Exclusion — Limits*
   (EEC Treaty, Art. 95)

2. *Tax provisions — Internal taxation — Concept — Element of the sale price of a product subject to a monopoly and not in the nature of a fiscal charge — Exclusion*
   (EEC Treaty, Art. 95)

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

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

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

1 — Language of the Case: German.

In Case 4/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesfinanzhof (Federal Finance Court) for a preliminary ruling in the action pending before that court between

HAUPTZOLLAMT (Principal Customs Office) FLENSBURG

and

HERMANN C. ANDRESEN GMBH & Co KG, whose registered office is in Flensburg,

on the interpretation of Article 95 of the EEC Treaty in relation to the application of the German Law on the Spirits Monopoly (Branntweinmonopolgesetz) of 8 April 1922,

THE COURT (Second Chamber),

in answer to the questions referred to it by the Bundesfinanzhof by order of 2 December 1980, hereby rules:

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

JUDGMENT OF THE COURT
16 DECEMBER 1981 [1]

Pasquale Foglia
v Mariella Novello
(reference for a preliminary ruling from the Pretura, Bra)

(Tax arrangements applying to liqueur wines)

Case 244/80

1. *Preliminary questions — Jurisdiction of national court — Assessment of need to obtain an answer — Exclusive application of Community law*
   (EEC Treaty, Art. 177)

2. *Preliminary questions — Jurisdiction of Court of Justice — Limits — Questions submitted within the framework of procedural devices arranged by the parties — Examination by the Court of Justice of its own jurisdiction*
   (EEC Treaty, Art. 177)

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

4. *Preliminary questions — Jurisdiction of the Court of Justice — Question designed to allow the national court to determine whether legislative provisions of another Member State are in accordance with Community law — Parties to the national proceedings — Special care to be taken by the Court of Justice*
   (EEC Treaty, Art. 177)

5. *Preliminary questions — Jurisdiction of the Court of Justice — Conditions for exercise — Nature and objective of proceedings before national courts — No effect*
   (EEC Treaty, Art. 177)

[1] — Language of the Case: Italian

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

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

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

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

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

employed for purposes which were not intended by the Treaty.

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

In Case 244/80

REFERENCE to the Court under Article 177 of the EEC Treaty by the Pretura [District Court], Bra, for a preliminary ruling in the action pending before that court between

PASQUALE FOGLIA, Santa Vittoria d'Alba,

and

MARIELLA NOVELLO, Magliano Alfieri,

on the interpretation of Articles 177 and 95 of the EEC Treaty,

THE COURT

in answer to the questions submitted to it by the Pretore, Bra, by order of 18 October 1980, hereby rules:

1. **According to the intended role of Article 177, an assessment of the need to obtain an answer to the questions of interpretation raised, regard being had to the circumstances of fact and of law involved in the main action, is a matter for the national court; it is nevertheless for the Court of Justice, in order to confirm its own jurisdiction, to examine, where necessary, the conditions in which the case has been referred to it by the national court.**

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

3. **In the case of questions intended to permit the national court to determine whether provisions laid down by law or regulation in another Member State are in accordance with Community law the degree of legal protection may not differ according to whether such questions are raised in proceedings between individuals or in an action to which the State whose legislation is called in question is a party, but**

in the first case the Court of Justice must take special care to ensure that the procedure under Article 177 is not employed for purposes which were not intended by the Treaty.

4. The circumstance referred to by the Pretore, Bra, in his second order for reference does not appear to constitute a new fact which would justify the Court of Justice in making a fresh appraisal of its jurisdiction and it is therefore for the Pretore, within the framework of the collaboration between a national court and the Court of Justice, to ascertain in the light of the foregoing considerations whether there is any need to obtain an answer from the Court of Justice to the fifth question and, if so, to indicate to the Court any new factor which might justify it in taking a different view of its jurisdiction.

JUDGMENT OF THE COURT
19 JANUARY 1982 [1]

Ursula Becker
v Finanzamt Münster-Innenstadt
(reference for a preliminary ruling from the Finanzgericht Münster)

(Effect of directives)

Case 8/81

1. *Measures adopted by institutions — Directives — Effect — Non-implementation by a Member State — Right of individuals to rely upon the directive — Conditions*
   (EEC Treaty, Art. 189)

2. *Measures adopted by institutions — Directives — Directive conferring a margin of discretion on the Member States — Provisions which are severable and may be relied upon by individuals*
   (EEC Treaty, Art. 189; Council Directive 77/388)

3. *Tax provisions — Harmonization of laws — Turnover tax — Common system of value-added tax — Exemptions conferred by the Sixth Directive — Taxable persons' right of option — Implementation — Powers of the Member States — Limits*
   (Council Directive 77/388, Art. 13 B and C)

4. *Tax provisions — Harmonization of laws — Turnover tax — Common system of value-added tax — Exemptions conferred by the Sixth Directive — Effects within the system of value-added tax*
   (Council Directive 77/388)

5. *Tax provisions — Harmonization of laws — Turnover tax — Common system of value-added tax — Exemptions conferred by the Sixth Directive — Exemption of transactions consisting of the negotiation of credit — Possibility of individuals' relying upon the relevant provision where the directive has not been implemented — Conditions*
   (Council Directive 77/388, Art. 13 B (d) 1)

1 — Language of the Case: German

1. It would be incompatible with the binding effect which Article 189 of the EEC Treaty ascribes to directives to exclude in principle the possibility of the obligation imposed by it being relied upon by persons concerned. Particularly in cases in which the Community authorities have, by means of a directive, placed Member States under a duty to adopt a certain course of action, the effectiveness of such a measure would be diminished if persons were prevented from relying upon it in proceedings before a court and national courts were prevented from taking it into consideration as an element of Community law. Consequently, a Member State which has not adopted the implementing measures required by the directive within the prescribed period may not plead, as against individuals, its own failure to perform the obligations which the directive entails. Thus, wherever the provisions of a directive appear, as far as their subject-matter is concerned, to be unconditional and sufficiently precise, those provisions may, in the absence of implementing measures adopted within the prescribed period, be relied upon as against any national provision which is incompatible with the directive or in so far as the provisions define rights which individuals are able to assert against the State.

2. Whilst the Sixth Council Directive 77/388 on the harmonization of the laws of the Member States relating to turnover taxes undoubtedly confers upon the Member States varying degrees of discretion as regards implementing certain of its provisions, individuals may not for that reason be denied the right to rely on any provisions which owing to their particular subject-matter are capable of being severed from the general body of provisions and applied separately. This minimum guarantee for persons adversely affected by the failure to implement the directive is a consequence of the binding nature of the obligation imposed on the Member States by the third paragraph of Article 189 of the EEC Treaty. That obligation would be rendered totally ineffectual if the Member States were permitted to annul, as the result of their inactivity, even those effects which certain provisions of a directive are capable of producing by virtue of their subject-matter.

3. Article 13 C of Directive 77/388 does not in any way confer upon the Member States the right to place conditions on or to restrict in any manner whatsoever the exemptions provided for by Part B. It merely reserves the right to the Member States to allow, to a greater or lesser degree, persons entitled to those exemptions to opt for taxation themselves, if they consider that it is in their interest to do so.

4. The scheme of Directive 77/388 is such that on the one hand, by availing themselves of an exemption, persons entitled thereto necessarily waive the right to claim a deduction in respect of input tax and on the other hand, having been exempted from the tax, they are unable to pass on any charge whatsoever to the person following them in the chain of supply, with the result that the rights of third parties in principle cannot be affected.

5. As from 1 January 1979 it was possible for the provision concerning

the exemption from turnover tax of transactions consisting of the negotiation of credit contained in Article 13 B (d) 1 of Directive 77/388 to be relied upon, in the absence of the implementation of that directive, by a credit negotiator where he had refrained from passing that tax on to persons following him in the chain of supply, and the State could not claim, as against him, that it had failed to implement the directive.

In Case 8/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht [Finance Court] Münster for a preliminary ruling in the case pending before that court between

URSULA BECKER, a self-employed credit negotiator, residing in Münster,

and

FINANZAMT MÜNSTER-INNENSTADT [Tax office, Münster Central],

on the interpretation of Article 13 B (d) 1 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (Official Journal 1977, L 145, p. 1),

THE COURT

in answer to the questions submitted to it by the Finanzgericht Münster by order of 27 November 1980, hereby rules:

As from 1 January 1979 it was possible for the provision concerning the exemption from turnover tax of transactions consisting of the negotiation of credit contained in Article 13 B (d) 1 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment to be relied upon, in the absence of the implementation of that directive, by a credit negotiator where he had refrained from passing that tax on to persons following him in the chain of supply, and the State could not claim, as against him, that it had failed to implement the directive.

JUDGMENT OF THE COURT
1 APRIL 1982 [1]

Staatssecretaris van Financiën v Hong Kong Trade Development Council (reference for a preliminary ruling from the Hoge Raad der Nederlanden)

(Refund of value added tax)

Case 89/81

Tax provisions — Harmonization of legislation — Turnover taxes — Common system of value added tax — Taxable person — Concept — Person providing services free of charge — Excluded

(Council Directive 67/228, Art. 4)

A person who habitually provides services for traders, free of charge in all cases, cannot be regarded as a taxable person within the meaning of Article 4 of the Second Directive on the harmonization of legislation of Member States concerning turnover taxes.

In Case 89/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hoge Raad der Nederlanden [Supreme Court of the Netherlands] for a preliminary ruling in the proceedings pending before that court between

STAATSSECRETARIES VAN FINANCIËN [Secretary of State for Finance] of the Netherlands

and

HONG KONG TRADE DEVELOPMENT COUNCIL, Amsterdam,

1 — Language of the Case: Dutch.

on the interpretation of Article 4 and the first sub-paragraph of Article 11 (2) of the Second Council Directive, 67/228/EEC, 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 (Official Journal, English Special Edition 1967, p. 16),

THE COURT,

in reply to the questions submitted to it by the Hoge Raad by order of 8 April 1981, hereby rules:

A person who habitually provides services for traders, in all cases free of charge, cannot be regarded as a taxable person within the meaning of Article 4 of the Second Directive.

JUDGMENT OF THE COURT (FIRST CHAMBER)
29 APRIL 1982 [1]

Pabst & Richarz KG v Hauptzollamt Oldenburg (reference for a preliminary ruling from the Finanzgericht Hamburg)

(Tax system applicable to spirits)

Case 17/81

1. *Preliminary questions — Jurisdiction of the national court — Ascertainment and appraisal of the facts of the case*
   (EEC Treaty, Art. 177)

2. *Community law — Uniform application — Legal classification in Community law of a national measure — Independent classification*

3. *Tax provisions — Internal taxation — Discrimination between domestic products and similar imported products — Prohibition — Scope — Relief for national products at the expense of similar imported products — Relief prohibited*
   (EEC Treaty, Art. 95)

4. *Tax provisions — Internal taxation — Selling price of a product covered by a national monopoly — Component in the nature of taxation forming part of that price — Tax on imported products — Tax corresponding to a non-tax component in the selling price of the similar product covered by the monopoly — Discriminatory taxation — Relief by an equal amount for the two products — Continuation of discrimination*
   (EEC Treaty, Art. 95, para. 1)

5. *Tax provisions — Internal taxation — Whether discriminatory taxation may come under a system of State aids — Application in any case of the tax provisions of the Treaty*
   (EEC Treaty, Arts 92 and 95)

1 — Language of the Case: German

6. *State monopolies of a commercial character — Specific provisions of the Treaty — Matters covered — Activities intrinsically connected with the specific function of monopolies — Relief for spirits on which tax was previously charged — Provisions not applicable*

   (EEC Treaty, Art. 37)

7. *International agreements — Association Agreement between the EEC and Greece — Prohibition of discrimination in taxation — Tax relief at the expense of products imported from Greece — Prohibition — Direct effect*

   (EEC Treaty, Art. 95; Association Agreement between the EEC and Greece of 9 July 1961, Art. 53 (1))

1. It is not for the Court of Justice but for the national court to ascertain the facts which have given rise to the dispute and to establish the consequences which they have for the judgment which it is required to deliver.

2. The legal classification in Community law of a national measure does not depend upon how that measure is viewed or appraised in the national context. The need to ensure that the provisions of the Treaty are applied in a uniform manner throughout the Community requires that they should be interpreted independently.

3. Article 95 of the Treaty is intended to cover all taxation procedures which conflict with the principle of equality of treatment of domestic products and imported products. Accordingly that provision applies to measures of relief which, within the framework of an increase in taxes on spirits, accord more favourable treatment to similar domestic products than to imported products even though such measures were adopted on the basis of administrative instructions.

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

   It follows that a tax component included in the taxation of imported spirits and corresponding to a non-tax component in the selling price of spirits marketed by the Federal Monopoly Administration is discriminatory. Consequently if the same amount of relief is available in respect of different taxes imposed on imported spirits on the one hand and on the domestic spirits of a monopoly on the other the less favourable tax treatment of the imported spirits continues and the said discrimination subsists.

5. A measure carried out by means of discriminatory taxation, which may be considered at the same time as forming part of an aid within the meaning of Article 92 of the Treaty, should in any case be governed by Article 95.
6. The rules contained in Article 37 of the Treaty concern only activities intrinsically connected with the specific business of the monopoly in question. They are thus irrelevant to national provisions which have no connexion with such specific business, like those concerning relief for spirits on which tax was previously charged.
7. Article 53 (1) of the Agreement establishing an Association between the European Economic Community and Greece fulfils, within the framework of that Agreement, the same function as that of Article 95 of the Treaty. It forms part of a group of provisions the purpose of which was to prepare for the entry of Greece into the Community by the establishment of a customs union, by the harmonization of agricultural policies, by the introduction of freedom of movement for workers and by other measures for the gradual adjustment to the requirements of Community law.

It accordingly follows from the wording of Article 53 (1), cited above, and from the objective and nature of the Association Agreement of which it forms part that that provision precludes a national system of relief from providing more favourable tax treatment for domestic spirits than for those imported from Greece. It contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure. In those circumstances Article 53 (1) must be considered as directly applicable from the beginning of the third year after the entry into force of the Agreement, on which date all measures conflicting with that provision was, by virtue of its third subparagraph, to be abolished.

In Case 17/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht [Finance Court] Hamburg for a preliminary ruling in the action pending before that court between

PABST & RICHARZ KG, having its place of business at Elsfleth,

and

HAUPTZOLLAMT [Principal Customs Office] OLDENBURG,

OBERFINANZDIREKTION HANNOVER [Principal Revenue Office, Hanover], intervener,

on the interpretation of Articles 37 and 95 of the EEC Treaty, Article 53 (1) of the Agreement establishing an Association between the European Economic Community and Greece and of Articles 92 et seq. of the EEC Treaty in relation to the application of certain administrative measures concerning the implementation of the German Law of 8 April 1922 on the Monopoly in Spirits (Gesetz über das Branntweinmonopol),

THE COURT (First Chamber)

in answer to the questions submitted to it by the Finanzgericht Hamburg by order of 31 October 1981, hereby rules:

An importer of spirits coming from other Member States or from Greece may rely before a national court on the provisions of Article 95 of the Treaty or of the first subparagraph of Article 53 (1) of the Association Agreement with Greece against the application of national measures of tax relief for spirits, introduced on the basis of administrative instructions in connection with an alteration in the taxes on spirits following the adjustment of the national monopoly in spirits if such measures have the effect of according less favourable treatment to such spirits than to similar domestic products.

JUDGMENT OF THE COURT
5 MAY 1982 [1]

Gaston Schul Douane Expediteur BV v Inspecteur der Invoerrechten en Accijnzen, Roosendaal (reference for a preliminary ruling from the Gerechtshof, 's-Hertogenbosch)

(Turnover tax on the importation of goods supplied by private persons)

Case 15/81

1. *Tax provisions — Harmonization of laws — Turnover tax — Common system of value-added tax — Value-added tax levied on the importation of products from another Member State supplied by a private person — Nature of internal taxation — Discriminatory character — Conditions*
   (EEC Treaty, Arts 12, 13 (2) and 95)

2. *Tax provisions — Harmonization of laws — Value-added tax — Common system of value-added tax — Value-added tax levied on the importation of products from another Member State supplied by a private person — Compatibility with the Treaty — Conditions*
   (EEC Treaty, Art. 95; Council Directive No 77/388, Art. 2, point 2)

3. *Tax provisions — Internal taxation — Discrimination — Prohibition — Value-added tax levied on the importation of products from another Member State supplied by a private person — Unlawfulness — Criteria*
   (EEC Treaty, Art. 95)

1. Value-added tax which a Member State levies on the importation of products from another Member State supplied by a private person where no such tax is levied on the supply of similar products by a private person within the territory of the Member State of importation does not constitute a charge having an effect equivalent to a customs duty on imports within the meaning of Articles 12 and 13 (2) of the Treaty but must be considered as an integral part of a general system of internal taxation

1 — Language of the Case: Dutch

and its compatibility with Community law must be considered in the context of Article 95. Value-added tax constitutes internal taxation in excess of that imposed on similar domestic products within the meaning of Article 95 of the Treaty to the extent to which the residual part of the value-added tax paid in the Member State of exportation which is still contained in the value of the product on importation is not taken into account. The burden of proving facts which justify the taking into account of the tax falls on the importer.

2. Article 2, point 2, of the Sixth Council Directive No 77/388,' according to which "the importation of goods" is to be subject to value-added tax, is compatible with the Treaty and therefore valid since it must be interpreted as not constituting an obstacle to the obligation under Article 95 of the Treaty to take into account, for the purpose of applying value-added tax on the importation of products from another Member State supplied by a private person where no such tax is levied on the supply of similar products by a private person within the territory of the Member State of importation, the residual part of the value-added tax paid in the Member State of exportation and still contained in the value of the product when it is imported.

3. Article 95 of the Treaty prohibits Member States from imposing value-added tax on the importation of products from another Member State supplied by a private person where no such tax is levied on the supply of similar products by a private person within the territory of the Member State of importation, to the extent to which the residual part of the value-added tax paid in the Member State of exportation and still contained in the value of the product when it is imported is not taken into account.

In Case 15/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Gerechtshof [Regional Court of Appeal], 's-Hertogenbosch, for a preliminary ruling in the action pending before that court between

GASTON SCHUL DOUANE EXPEDITEUR BV

and

INSPECTEUR DER INVOERRECHTEN EN ACCIJNZEN [Inspector of Customs and Excise], ROOSENDAAL,

on the interpretation of Articles 13 and 95 of the EEC Treaty and the validity of Article 2, point 2, of the Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (Official Journal L 145, p. 1),

THE COURT

in answer to the questions referred to it by the Gerechtshof, 's-Hertogenbosch by judgment of 19 December 1980, hereby rules:

1. Value-added tax which a Member State levies on the importation of products from another Member State supplied by a private person where no such tax is levied on the supply of similar products by a private person within the territory of the Member State of importation does not constitute a charge having an effect equivalent to a customs duty on imports within the meaning of Articles 12 and 13 (2) of the Treaty.

2. Value-added tax which a Member State levies on the importation of products from another Member State supplied by a private person where no such tax is levied on the supply of similar products by a private person within the territory of the Member State of importation constitutes internal taxation in excess of that imposed on similar domestic products within the meaning of Article 95 of the Treaty, to the extent to which the residual part of the value-added tax paid in the Member State of exportation which is still contained in the value of the product on importation is not taken into account. The burden of proving facts which justify the taking into account of the tax falls on the importer.

3. Article 2, point 2, of the Sixth Council Directive No 77/388 of 17 May 1977 is compatible with the Treaty and therefore valid since it must be interpreted as not constituting an obstacle to the obligation under Article 95 of the Treaty to take into account, for the purpose of applying value-added tax on the importation of products from another Member State supplied by a private person where no such tax is levied on the supply of similar products by a private person within the territory of the Member State of importation, the residual part of the value-added tax paid in the Member State of exportation and still contained in the value of the product when it is imported.

4. Article 95 of the Treaty prohibits Member States from imposing value-added tax on the importation of products from other Member States supplied by a private person where no such tax is levied on the supply of similar products by a private person within the territory of the Member State of importation, to the extent to which the residual part of the value-added tax paid in the Member State of exportation and still contained in the value of the product when it is imported is not taken into account.

JUDGMENT OF THE COURT (FIRST CHAMBER)
10 JUNE 1982 [1]

R. A. Grendel GmbH v Finanzamt für Körperschaften in Hamburg (reference for a preliminary ruling from the Finanzgericht Hamburg)

(Direct effect of directives — Value-added tax — Exemption)

Case 255/81

Tax provisions — Harmonization of laws — Turnover tax — Common system of value-added tax — Exemptions provided for in the Sixth Directive — Exemption for credit negotiation transactions — Possibility of individuals' relying on the appropriate provision in the event of the directive's not being implemented — Conditions (Council Directive 77/388, Art. 13 B (d) 1.)

As from 1 January 1979 it was possible for the provision concerning the exemption from turnover tax of transactions consisting of the negotiation of credit contained in Article 13 B (d) 1. of Directive 77/388 to be relied upon, in the absence of the implementation of that directive, by a credit negotiator where he had refrained from passing that tax on to persons following him in the chain of supply and the State could not claim, as against him, that it had failed to implement the directive.

In Case 255/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht [Finance Court] Hamburg for a preliminary ruling in the case pending before that court between

R. A. GRENDEL GMBH, represented by its Manager, Renate Grendel, residing in Hamburg,

1 — Language of the Case: German

v

FINANZAMT FÜR KÖRPERSCHAFTEN IN HAMBURG [Tax Office for Corporations in Hamburg], Hamburg,

on the interpretation of Article 13 B (d) 1. of the Sixth Council Directive 77/388 of 17 May 1977 on the harmonization of the laws of the Member

States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment,

THE COURT (First Chamber)

in answer to the question submitted to it by the Finanzgericht Hamburg by order of 4 September 1981, hereby rules:

As from 1 January 1979 it was possible for the provision concerning the exemption from turnover tax of transactions consisting of the negotiation of credit contained in Article 13 B (d) 1. of the Sixth Directive 77/388 of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment — to be relied upon, in the absence of the implementation of that directive, by a credit negotiator where he had refrained from passing that tax on to persons following him in the chain of supply, and the State could not claim, as against him, that it had failed to implement the directive.

JUDGMENT OF THE COURT (FIRST CHAMBER)
1 JULY 1982 [1]

B.A.Z. Bausystem AG v Finanzamt München für Körperschaften (reference for a preliminary ruling from the Finanzgericht München)

(Value-added tax — Interest on account of late payment)

Case 222/81

Tax provisions — Harmonization of laws — Turnover taxes — Common system of value-added tax — Provision of services — Basis of assessment — Consideration for the service — Concept — Interest on account of late payment awarded by a judicial decision — Exclusion

(Council Directive No 67/228, Art. 8 (2))

The concept of consideration, which constitutes the basis of assessment for the provision of services as provided for in Article 8 (a) of the Second Directive on the harmonization of legislation of Member States concerning turnover taxes, does not cover interest awarded to an undertaking by a judicial decision where such interest has been awarded to it by reason of the fact that the balance of the consideration for the services provided has not been paid in due time.

In Case 222/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht München (Finance Court, Munich) for a preliminary ruling in the action pending before that court between

B.A.Z. BAUSYSTEM AG, Zürich (Switzerland),

and

FINANZAMT MÜNCHEN FÜR KÖRPERSCHAFTEN [Munich Revenue Office for Corporations],

1 — Language of the Case: German

on the interpretation of the term "consideration" in Article 8 (a) of the Second Council Directive No 67/228/EEC 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 (Official Journal, English Special Edition 1967, p. 16),

THE COURT (First Chamber),

in answer to the question referred to it by the Finanzgericht München by order of 30 June 1981, hereby rules:

The basis of assessment referred to in Article 8 (a) of the Second Council Directive of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes does not include interest awarded to an undertaking by a judicial decision where such interest has been awarded to it by reason of the fact that the balance of the consideration for the services provided has not been paid in due time.

JUDGMENT OF THE COURT (THIRD CHAMBER) 15 JULY 1982 [1]

Cogis (Compagnia Generale Interscambi) v Amministrazione delle Finanze dello Stato (reference for a preliminary ruling from the Tribunale di Milano)

(Tax treatment of whisky)

Case 216/81

1. *Tax provisions — Internal taxation — Provisions of the Treaty — Objective*
   (EEC Treaty, Art. 95)

2. *Tax provisions — Internal taxation — Provisions whose effect is to protect domestic production — Similar domestic and imported products — Concept of "similar products" — Flexible interpretation*
   (EEC Treaty, first paragraph of Art. 95)

3. *Tax provisions — National taxation — Provisions whose effect is to protect domestic production — Competing domestic and imported products — Concept of competing products — Criteria for appraisal*
   (EEC Treaty, second paragraph of Art. 95)

1. The first and second paragraphs of Article 95 of the Treaty complement the provisions on the abolition of customs duties and charges having equivalent effect since their objective is to ensure the free movement of goods between the Member States under normal conditions of competition by eliminating any form of protection which may result in the application of internal taxation which discriminates against products from other Member States. In that respect Article 95 guarantees the complete neutrality of internal taxation as regards competition between domestic products and imported products.

2. The first paragraph of Article 95 must be interpreted widely so as to cover all taxation procedures which conflict with the principle of the equality of treatment of domestic products and imported products; in order to do so it is therefore necessary to interpret

1 — Language of the Case: Italian.

the concept of "similar products" with sufficient flexibility. Thus it is necessary to consider as "similar" products which have similar characteristics and meet the same needs from the point of view of consumers. It is accordingly necessary to determine the scope of the first paragraph of Article 95 on the basis not of the criterion of the strictly identical nature of the products but on that of their similar and comparable use.

3. If the condition of similarity required by the first paragraph of Article 95 of the Treaty is not fully met the second paragraph of that article has the function of covering all forms of indirect protection through taxation in the case of products which, without being similar within the meaning of the first paragraph, are nevertheless in competition, even partial, indirect or potential.

With regard to spirits for human consumption, spirits obtained from cereals and rum, as products of distillation, share with spirits obtained from wine sufficient common characteristics to form, at least in certain circumstances, an alternative choice for consumers. That finding constitutes sufficient ground for holding that such products are in competition with each other and that it is not permissible for taxation imposed on them to have a protective effect in favour of national production. In this respect it is important, disregarding any comparison of quantities consumed and imported, to take into consideration the potential market for the products in question in the absence of protective measures. Accordingly Article 95 prohibits a national system of taxation affecting differently imported whisky and domestic production of spirits obtained from wine.

In Case 216/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the First Civil Section of the Tribunale di Milano [District Court, Milan] for a preliminary ruling in the action pending before that court between

COGIS (COMPAGNIA GENERALE INTERSCAMBI)

•

and

AMMINISTRAZIONE DELLE FINANZE DELLO STATO

on the interpretation of Article 95 of the EEC Treaty

THE COURT (Third Chamber)

in answer to the question referred to it by the First Civil Section of the Tribunale di Milano by order of 2 April 1981, hereby rules:

Article 95 prohibits a system of taxation affecting differently whisky and other spirits.

JUDGMENT OF THE COURT (THIRD CHAMBER)
15 JULY 1982 [1]

Felicitas Rickmers-Linie KG & Co. v Finanzamt für Verkehrsteuern, Hamburg (reference for a preliminary ruling from the Finanzgericht Hamburg)

(Capital duties on the raising of capital — Nominal amount of company shares)

Case 270/81

1. *Tax provisions — Harmonization of laws — Indirect taxes on the raising of capital — Duty on contributions of capital to capital companies — Basis of assessment — Reference to the nominal amount of the shares in the company — Concept of "nominal amount" — Community concept*
   (Council Directive 69/335, Art. 5 (2))

2. *Tax provisions — Harmonization of laws — Indirect taxes on the raising of capital — Duty on contributions of capital to capital companies — Basis of assessment — Reference to the nominal amount of the shares in the company — Conditions*
   (Council Directive 69/335, Art. 5 (2))

3. *Measures adopted by the institutions — Directives — Effect — Correct implementation by the Member States — Effects on individuals of national implementing measures*
   (EEC Treaty, Art. 189)

1. The concept of "nominal amount" within the meaning of Article 5 (2) of Directive 69/335 concerning indirect taxes on the raising of capital is contained in a provision of Community law which does not refer to the law of the Member States in order to determine its meaning and scope. The harmonization of taxes such as capital duty on the raising of capital, not only in relation to the rates but also to the structure thereof, implies that the basis of assessment is determined in each Member State on

1 — Language of the Case: German

the basis of objective criteria, having a uniform scope within the Community and free from the influence of national laws. It follows that the interpretation of the concept at issue, considered in its entirety, may not be left to the discretion of each Member State.

It is for the national court, taking into account the criteria for interpretation laid down by the Court of Justice, to carry out the necessary appraisal both of the relevant national rules and the provisions of the company's documents of constitution in order to establish whether that is the case.

2. The shares in a company have a nominal amount within the meaning of Article 5 (2) of Directive 69/335/EEC when the legal structure of the type of company to which the company concerned belongs includes amounts fixed in cash, intended to quantify the value of the members' contribution to the raising of capital in that company and to characterize in durable fashion the relations between the members and the company.

3. Whenever a directive is correctly implemented, its effects reach individuals through the intermediary of the implementing measures adopted by the Member State concerned, without its being necessary to examine the question whether the provision in question meets the conditions which must be fulfilled for individuals to be able to rely upon it before a national court in the event of the directive's not being correctly implemented.

In Case 270/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht [Finance Court] Hamburg for a preliminary ruling in the action pending before that court between

FELICITAS RICKMERS-LINIE KG & CO.

v

FINANZAMT FÜR VERKEHRSTEUERN [Tax Office for Transfer Duties], HAMBURG, on the interpretation of Article 5 (2) of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (Official Journal, English Special Edition 1969 (II), p. 412),

THE COURT (Third Chamber),

in answer to the questions referred to it by the Finanzgericht Hamburg by order of 17 September 1981, hereby rules that:

1. The shares in a company have a nominal amount within the meaning of Article 5 (2) of Directive 69/335/EEC when the legal structure of the type of company to which the company concerned belongs includes amounts fixed in cash, intended to quantify the value of the members' contribution to the raising of capital in that company and to characterize in durable fashion the relations between the members and the company.

2. It is for the national court, taking into account the criteria for interpretation laid down by the Court of Justice, to carry out the necessary appraisal both of the relevant national rules and the provisions of the company's documents of constitution in order to establish whether that is the case.

JUDGMENT OF THE COURT
26 OCTOBER 1982 [1]

Hauptzollamt Mainz v C. A. Kupferberg & Cie. KG a. A. (reference for a preliminary ruling from the Bundesfinanzhof)

(Free trade agreements — Tax discrimination)

Case 104/81

1. *International agreements — Agreements with the Community — Agreements on free trade — Performance by the Community institutions and the Member States*
   (EEC Treaty, Art. 228 (2))

2. *International agreements — Agreements with the Community — Community nature — Uniform application by the Community institutions and the Member States*
   (EEC Treaty, Art. 228 (2))

3. *International agreements — Agreements with the Community — Agreement between the EEC and the Portuguese Republic — Direct effect — Conditions — Criteria*
   (EEC Treaty, Art. 228)

4. *International agreements — Agreements with the Community — Direct effect — Direct effect acknowledged by the courts of only one of the contracting parties — Principle of reciprocity — Breach — Absence*
   (EEC Treaty, Art. 228)

5. *International agreements — Agreements with the Community — Establishment of an institutional framework for the purpose of implementing an agreement — Judicial application of the agreement not excluded*
   (EEC Treaty, Art. 228)

6. *International agreements — Agreements with the Community — Direct effect — Safeguard clauses — No effect — Conditions*
   (EEC Treaty, Art. 228)

1 — Language of the Case: German.

7. *International agreements — Agreements with the Community — Agreement between the EEC and the Portuguese Republic — Rule against tax discrimination in respect of imported products — Direct effect*

   (EEC-Portugal Agreement of 22 July 1972, Art. 21, para. (1))

8. *International agreements — Agreements with the Community — Agreement between the EEC and the Portuguese Republic — EEC Treaty — Distinct objectives — Rule against tax discrimination in respect of imported products — Interpretation given by the Court of Article 95 of the EEC Treaty — Transposition to the system of the Agreement — None*

   (EEC Treaty, Art. 95; EEC-Portugal Agreement of 22 July 1972, Art. 21, para. (1))

9. *International agreements — Agreements with the Community — Agreement between the EEC and the Portuguese Republic — Rule against tax discrimination in respect of imported products — Tax reduction allowed by the importing Member State — Not applicable to products originating from Portugal — No similar national products in fact enjoying the benefit of the reduction — Discrimination — None*

   (EEC-Portugal Agreement of 22 July 1972, Art. 21, para. (1))

10. *International agreements — Agreements with the Community — Agreement between the EEC and the Portuguese Republic — Rule against tax discrimination in respect of imported products — Similar product — Community concept — Criteria of assessment*

    (EEC-Portugal Agreement of 22 July 1972, Art. 21, para. (1))

1. The measures needed to implement the provisions of an agreement concluded by the Community are to be adopted, according to the state of Community law for the time being in the areas affected by the provisions of the agreement, either by the Community institutions or by the Member States. That is particularly true of agreements such as those concerning free trade where the obligations entered into extend to many areas of a very diverse nature.

2. Since, according to Article 228 (2) of the Treaty, the Member States are bound, in the same manner as the institutions of the Community, by the international agreements which the latter are empowered to conclude, they fulfil, in ensuring respect for commitments arising from an agreement concluded by the Community institutions, an obligation not only in relation to the non-member country concerned but also and above all in relation to the Community which has assumed responsibility for the due performance of the agreement. That is why the provisions of such an agreement form an integral part of the Community legal system.

   It follows from the Community nature of such provisions that their effect in the Community may not be allowed to vary according to whether their application is in

practice the responsibility of the Community institutions or of the Member States and, in the latter case, according to the effects in the internal legal order of each Member State which the law of that State assigns to international agreements concluded by it. Therefore it is for the Court, within the framework of its jurisdiction in interpreting the provisions of agreements, to ensure their uniform application throughout the Community.

3. Neither the nature nor the structure of the Agreement between the EEC and the Portuguese Republic may prevent a trader from relying on one of its provisions before a court in the Community, especially as the answer to the question whether such a stipulation is unconditional and sufficiently precise to have direct effect presupposes an analysis of the provision in the light of the object and purpose of the Agreement and of its context.

4. According to the general rules of international law there must be *bona fide* performance of every agreement. Although each contracting party is responsible for executing fully the commitments which it has undertaken it is nevertheless free to determine the legal means appropriate for attaining that end in its legal system unless the agreement, interpreted in the light of its subject-matter and purpose, itself specifies those means. Subject to that reservation the fact that the courts of one of the parties to an international agreement concluded by the Community consider that certain of the stipulations in the agreement are of direct application whereas the courts of the other party do not recognize such direct application is not in itself such as to constitute a lack of reciprocity in the implementation of the agreement.

5. The mere fact that an agreement concluded by the Community has established a special institutional framework for consultations and negotiations between the contracting parties in relation to the implementation of the agreement is not in itself sufficient to exclude all judicial application of it.

6. Apart from specific situations which may involve their application, the existence of safeguard clauses which enable the contracting parties to derogate from certain provisions of an international agreement concluded by the Community is not sufficient in itself to affect the direct applicability which may attach to certain stipulations in the agreement.

7. The first paragraph of Article 21 of the Agreement between the EEC and the Portuguese Republic imposes on the Contracting Parties an unconditional rule against discrimination in matters of taxation, which is dependent only on a finding that the products affected by a particular system of taxation are of like nature, and the limits of which are the direct consequence of the purpose of the

Agreement. As such this provision may be applied by a court and thus produce direct effects throughout the Community.

8. Although Article 21 of the Agreement between the EEC and the Portuguese Republic on Free Trade and Article 95 of the EEC Treaty have the same object inasmuch as they aim at the elimination of tax discrimination, both provisions, which are moreover worded differently, must however be considered and interpreted in their own context.

   Since the EEC Treaty and the Agreement on Free Trade pursue different objectives, it follows that the interpretation given to Article 95 of the Treaty cannot be applied by way of simple analogy to the Agreement on Free Trade.

   The first paragraph of Article 11 must therefore be interpreted according to its terms and in the light of the objective which it pursues in the system of free trade established by the Agreement.

9. There is no discrimination within the meaning of the first paragraph of Article 21 of the Agreement between the Community and the Portuguese Republic where a Member State does not apply to products originating in Portugal a tax reduction provided for certain classes of producers or kinds of products if there is no like product on the market of the Member State concerned which has in fact benefited from such reduction.

10. For the purposes of its application in the Community the concept of similarity contained in the first paragraph of Article 21 of the Agreement between the EEC and Portugal is one of Community law which must be interpreted uniformly and it is for the Court to ensure that this is the case.

    In view of the purpose of that provision products which differ *inter se* both as regards the method of their manufacture and their characteristics may not be regarded as like products within the meaning of the said provision. It follows that liqueur wines fortified with spirits on the one hand and wines resulting from natural fermentation on the other may not be regarded as like products within the meaning of the provision at issue.

In Case 104/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesfinanzhof for a preliminary ruling in the action pending before that court between

HAUPTZOLLAMT MAINZ

and

C. A. KUPFERBERG & CIE. KG A. A., Mainz,

on the interpretation of the first paragraph of Article 21 of the Agreement made on 22 July 1972 between the EEC and the Portuguese Republic (Official Journal, English Special Edition (31 December) L 301, p. 166) and Article 95 of the EEC Treaty,

THE COURT,

in answer to the question referred to it by the Bundesfinanzhof by order of 24 March 1981, hereby rules:

1. The first paragraph of Article 21 of the Agreement between the Community and Portugal is directly applicable and capable of conferring on individual traders rights which the courts must protect.

2. It must be interpreted according to its wording and in the light of the objective which it has in the context of the system of free trade established by the Agreement.

3. The provision also applies to the importation of port wines.

4. It must be interpreted as follows:

   (a) There is no discrimination within the meaning of the first paragraph of Article 21 of the Agreement between the Community and Portugal where a Member State does not apply to products originating in Portugal a tax reduction provided for certain classes of producers or kinds of products if there is no like product on the market of the Member State concerned which has in fact benefited from such reduction.

   (b) Products which differ both as regards the method of their manufacture and their characteristics may not be regarded as like products.

JUDGMENT OF THE COURT
7 DECEMBER 1982 [1]

Commission of the European Communities v Italian Republic

(Failure of a State to fulfil an obligation — Directive on the excise duty on manufactured tobacco)

Case 41/82

Member States — Obligations — Implementation of directives — Failure to fulfil — Justification based on internal legal system — Not possible
(EEC Treaty, Arts 169 and 189, third paragraph)

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.

In Case 41/82

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by David Gilmour, Legal Adviser, acting as Agent, assisted by Guido Berardis, a member of its Legal Department, with an address for service in Luxembourg at the office of Oreste Montalto, Jean Monnet Building, Kirchberg,

applicant,

v

ITALIAN REPUBLIC, represented by the Avvocatura dello Stato [Office of the State Advocate], in the person of Oscar Fiumara, with an address for service in Luxembourg at the Italian Embassy,

defendant,

1 — Language of the Case: Italian

APPLICATION for a declaration that by not adopting within the prescribed period the provisions needed to comply with Council Directive 72/464 of 19 December 1972 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (Official Journal, English Special Edition, L 303 and 306, 31. 12. 1972, p. 1) — and Council Directive 77/805 of 19 December 1977 amending Directive 72/464 (Official Journal 1977, L 388, p. 22), the Italian Republic has failed to fulfil its obligations under the EEC Treaty,

THE COURT

hereby:

1. Declares that by not adopting the provisions needed in order to comply with Council Directives 72/464 of 19 December 1972 and 77/805 of 19 December 1977 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (Official Journal, English Special Edition, L 303 and 306, 31. 12. 1972, p. 1,

   and Official Journal 1977, L 338, p. 22), the Italian Republic has failed to fulfil its obligations under the Treaty;

2. Orders the defendant to pay the costs.

JUDGMENT OF THE COURT
15 MARCH 1983 [1]

Commission of the European Communities v Italian Republic

(Failure of a Member State to fulfil its obligations — Taxation of spirits)

Case 319/81

1. *Tax provisions — Internal taxation — System of differential taxation — Whether permissible — Conditions — Pursuit of objectives compatible with Community law — Absence of discriminatory or protective character*
   (EEC Treaty, Art. 95)

2. *Tax provisions — Internal taxation — Taxes whose effect is to protect domestic production — Competing domestic and imported products — Competing products — Criteria of assessment*
   (EEC Treaty, second paragraph of Art. 95)

3. *Tax provisions — Internal taxation — System of differential taxation — Higher rate of tax borne by products covered by a designation of origin or provenance — No protection of the designation of origin or provenance of similar or competing national products — System of taxation not permissible*
   (EEC Treaty, Art. 95)

4. *Tax provisions — Internal taxation — System of differential taxation — Higher rate of tax borne by luxury products — Whether permissible — Conditions*
   (EEC Treaty, Art. 95)

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 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 legislation 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.

1 — Language of the Case: Italian

2. As there are characteristics common to spirits of various types which are sufficiently marked for it to be said that they are at least partly or potentially in competition, taxation of them must not have the effect of protecting domestic products. For that purpose it is necessary to take into consideration the potential market of the products in question in the absence of protectionist measures and to ignore comparisons of consumption and import figures.

   Such a system has the effect of excluding domestic products in advance from the heaviest taxation since they will never fulfil the conditions on which the higher rate is charged and it is entirely at the discretion of the national legislature, in choosing not to introduce a general system applicable to all spirits, to perpetuate that situation indefinitely regardless of similarities or differences in conditions of production, quality, price or competition between national products and those imported from other Member States.

3. As the products concerned are either similar to or in competition with one another — which brings them within the scope of the second paragraph of Article 95 of the Treaty — a criterion for the charging of higher taxation, such as designation of origin or provenance, which by definition cannot ever be fulfilled by domestic products in the absence of rules protecting their designation of origin or provenance, cannot be considered to be compatible with the prohibition of discrimination laid down in that provision.

4. Member States have the right to adopt, whilst observing the relevant directives, a higher rate of VAT on luxury products as opposed to domestic or imported products not having that quality, provided, however, that the criteria chosen to determine which category of products is to be more heavily taxed are not discriminatory as against imported products similar to or in competition with domestic products in the manner contemplated by the second paragraph of Article 95 of the Treaty.

In Case 319/81

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Antonio Abate, acting as Agent, with an address for service in Luxembourg at the office of Oreste Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

supported by

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, represented by J. D. Howes, of the Treasury Solicitor's Department, acting as Agent, with an address for service in Luxembourg at the British Embassy,

intervener,

ITALIAN REPUBLIC, in the person of its Agent, Arnaldo Squillante, represented by Marcello Conti, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

defendant,

APPLICATION for a declaration under the second paragraph of Article 169 of the EEC Treaty that the Italian Republic has failed to fulfil the obligations arising from Article 95 of the EEC Treaty as regards value-added tax (VAT) on spirits,

THE COURT

hereby:

1. Declares that by applying a differential system of taxation to spirits on the basis of the criterion of designation of origin or provenance, in pursuance of Decree-Law No 58 of 4 March 1977 on value-added tax, the Italian Republic has failed to fulfil its obligations under Article 95 of the EEC Treaty as far as products imported from other Member States are concerned;

2. Orders the defendant to pay the costs.

JUDGMENT OF THE COURT
26 APRIL 1983 [1]

Hauptzollamt Flensburg v Firma Hansen GmbH & Co. (reference for a preliminary ruling from the Bundesfinanzhof)

(Tax arrangements applicable to spirits — Charging of reduced taxes)

Case 38/82

1. *Tax provisions — Internal taxation — Grant of tax advantages in favour of domestic products — Permissibility — Conditions — Extension to products imported from other Member States*
   (EEC Treaty, Art. 95)

2. *Tax provisions — Internal taxation — Lawful grant of tax advantages for domestic products — Extension to products imported from other Member States — Conditions*
   (EEC Treaty, Art. 95)

1. In the present state of Community law Member States are not prohibited from granting tax advantages in the form of exemption from or reduction in duty in respect of certain kinds of spirits or certain categories of producers. However, Article 95 of the Treaty requires that such preferential arrangements be extended without discrimination to imported products meeting the same conditions as the domestic products for which the preferential treatment is granted and must not constitute indirect protection for domestic products.

1 — Language of the Case: German.

2. Article 95 of the Treaty must be interpreted as meaning that, in order to qualify for a tax advantage available to domestic products which is permissible under Community law because it is not discriminatory inasmuch as the national provisions do not prescribe for its grant a condition which only domestic production is capable of fulfilling, spirits imported from other Member States must satisfy all the conditions of the provisions establishing the tax advantage in question.

In Case 38/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the VIIth Senate of the Bundesfinanzhof [Federal Finance Court] for a preliminary ruling in the action pending before that court between

HAUPTZOLLAMT FLENSBURG

and

FIRMA HANSEN GMBH & CO., Flensburg,

on the interpretation of Article 95 of the EEC Treaty,

THE COURT,

in answer to the questions referred to it by the Bundesfinanzhof by order of 17 December 1981, hereby rules:

Article 95 of the Treaty must be interpreted as meaning that, in the case of a national tax advantage which, since it is not discriminatory, is permissible under Community law, spirits imported from other Member States must, in order to qualify for that advantage, satisfy all the conditions of the provision by which it is established.

JUDGMENT OF THE COURT
21 JUNE 1983 [1]

Commission of the European Communities v French Republic

(Fixing of retail selling prices of manufactured tobacco)

Case 90/82

Tax provisions — Harmonization of laws — Taxes other than turnover taxes which affect the consumption of manufactured tobacco — Directive No 72/464 — Fixing of the retail selling price of manufactured tobacco by national authorities within the framework of the national monopoly of retail sales — Adverse effect upon the competitive relationship between imported tobacco and tobacco distributed by the national monopoly — Not permissible

(Council Directive No 72/464, Art. 5 (1))

Free movement of goods — Quantitative restrictions — Measures having equivalent effect — Price systems — Fixing of the retail selling price of manufactured tobacco by national authorities within the framework of the national monopoly of retail sales — Restriction of the freedom to import tobacco from other Member States — Not permissible

(EEC Treaty, Art. 30)

National monopolies of a commercial character — Duty to adjust — Scope — Fixing of the retail selling price of manufactured tobacco by national authorities within the framework of the national monopoly of retail sales — Adverse effect upon the marketing of tobacco imported from other Member States — Not permissible

(EEC Treaty, Art. 37)

Although it remains lawful for a Member State to limit the effect of the principle of the free determination of the retail selling prices of manufactured tobacco by the manufacturer or importer, enshrined in Article 5 (1) of Directive No 72/464, by the application of any measures of a general nature intended to ensure control of the increase of prices, the power to fix tobacco prices reserved to the government of that State by national legislation within the scope of the provisions organizing the national monopoly of retail sales of manufactured tobacco, is incompatible with the scheme and objective of the directive and the interpretation of Article 5 (1) thereof to the extent to which that power, by

1 — Language of the Case: French.

altering the selling price determined by the manufacturer or importer, allows the competitive relationship between imported tobacco and tobacco marketed by the national monopoly to be adversely affected.

The exercise of that power is also contrary to Article 30 of the Treaty, inasmuch as it allows the public authority, by a selective intervention as regards tobacco prices, to restrict the freedom of importation of tobacco originating in other Member States. It is furthermore contrary to Article 37 inasmuch as the fixing of a price other than that determined by the manufacturer or importer constitutes an extension to imported tobacco of a prerogative typical of the national monopoly, of such a nature as adversely to affect the marketing of imported tobacco under normal conditions of competition.

In Case 90/82

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, René-Christian Béraud acting as Agent, assisted by Pierre Didier of the Brussels Bar with an address for service in Luxembourg at the office of Oreste Montalto, a member of the Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

FRENCH REPUBLIC, represented by Noël Museux, Deputy Director of Legal Affairs at the Ministry of Foreign Relations, acting as Agent, and Alain Sortais, Foreign Affairs adviser at the Ministry of Foreign Relations, acting as Deputy Agent, with an address for service in Luxembourg at the French Embassy,

defendant,

APPLICATION for a declaration that the French Republic, by fixing retail selling prices of manufactured tobacco at a different level from that determined by the national manufacturers or by importers has failed to fulfil its obligations under the EEC Treaty and under Council Directive No 72/464/EEC of 19 December 1972 on taxes other than turnover taxes which affect the consumption of manufactured tobacco [Official Journal, English Special Edition, 1972 (31 December), L 303, p. 1], and in particular Article 5 (1) thereof,

THE COURT

hereby:

1. **Declares that the French Republic, by fixing the retail selling prices of manufactured tobacco at a different level from that determined by the manufacturers or importers has failed to fulfil its obligations under the EEC Treaty;**

2. **Orders the French Republic to pay the costs.**

JUDGMENT OF THE COURT
12 JULY 1983 [1]

Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Tax arrangements applying to wine)

Case 170/78

1. *Tax provisions — Internal taxation — Taxation capable of indirectly protecting other products — Competing products — Assessment criteria — Present state of the market and possible developments*
   (EEC Treaty, second para. of Art. 95)

2. *Tax provisions — Internal taxation — Taxation capable of indirectly protecting other products — Competing products — Possible degree of substitution — Assessment criteria — Consumer habits — Inadequate criterion*
   (EEC Treaty, second para. of Art. 95)

3. *Tax provisions — Internal taxation — Taxation capable of indirectly protecting other products — Competing products — Beer and wine — Criteria for assessing competitive relationship*
   (EEC Treaty, second para. of Art. 95)

4. *Tax provisions — Internal taxation — Taxation capable of indirectly protecting other products — Competing products — Beer and wine — Still light wines made from fresh grapes and imported from other Member States — Wines subjected to an additional tax burden so as to protect domestic beer production — Not permissible*
   (EEC Treaty, second para. of Art. 95)

1. The second paragraph of Article 95 applies to the treatment for tax purposes of products which, without fulfilling the criterion of similarity laid down in the first paragraph of that article, are nevertheless in competition, either partially or potentially, with certain products of the importing country.

   In order to determine the existence of a competitive relationship within the

1 — Language of the Case: English.

meaning of the second paragraph of Article 95, it is necessary to consider not only the present state of the market but also possible developments regarding the free movement of goods within the Community and the further potential for the substitution of products for one another which might be revealed by intensification of trade, so as fully to develop the complementary features of the economies of the Member States in accordance with the objectives laid down by Article 2 of the Treaty.

2. In measuring, for the purposes of the application of the second paragraph of Article 95 of the Treaty, the possible degree of substitution attention must not be confined to consumer habits in a Member State or in a given region. Those habits, which are essentially variable in time and space, cannot be considered to be immutable; the tax policy of a Member State must not therefore crystallize given consumer habits so as to consolidate an advantage acquired by national industries concerned to respond to them.

3. In view of the substantial differences in the quality and, therefore, in the price of wines, the decisive competitive relationship, for the purposes of the application of the second paragraph of Article 95 of the Treaty, between beer, a popular and widely consumed beverage, and wine must be established by reference to those wines which are the most accessible to the public at large, that is to say, generally speaking, the lightest and cheapest varieties. Accordingly, that is the appropriate basis for making fiscal comparisons by reference to the alcoholic strength or to the price of the two beverages in question.

4. A national system of taxation under which excise duty on still light wines made from fresh grapes and imported from other Member States is levied at a higher rate, in relative terms, than on domestic beer production, inasmuch as the latter constitutes the most relevant reference criterion from the point of view of competition between substitute products, is incompatible with the second paragraph of Article 95 of the Treaty since it has the effect of subjecting imported wines to an additional tax burden so as to protect domestic beer production.

   The effect of a system of that kind is to stamp such wines with the hallmarks of luxury products which, in view of the tax burden which they bear, can scarcely constitute in the eyes of the consumer a genuine alternative to the typical domestically produced beverage.

In Case 170/78

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Anthony McClellan, acting as Agent, with an address for service in Luxembourg at the office of Oreste Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

supported by the

ITALIAN REPUBLIC, represented by Arnaldo Squillante, President of Section at the Consiglio di Stato [State Council] and Head of the Department for Contentious Diplomatic Affairs, acting as Agent, assisted by Marcello Conti, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

intervener,

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, represented by R. N. Ricks, Assistant Treasury Solicitor, acting as Agent, assisted by Peter Archer QC, of Gray's Inn, with an address for service in Luxembourg at the British Embassy,

defendant,

APPLICATION for a declaration that the United Kingdom of Great Britain and Northern Ireland, by failing to repeal or amend its national provisions with regard to excise duty on still light wine, has failed to fulfil its obligations under the second paragraph of Article 95 of the EEC Treaty,

THE COURT

hereby:

1. **Declares that, by levying excise duty on still light wines made from fresh grapes at a higher rate, in relative terms, than on beer, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under the second paragraph of Article 95 of the EEC Treaty.**

2. **Orders the Commission of the European Communities and the United Kingdom to bear their own costs. The costs incurred by the Italian Republic are to be paid by the United Kingdom.**

JUDGMENT OF THE COURT
14 FEBRUARY 1984 [1]

Rewe-Handelsgesellschaft Nord mbH and Rewe-Markt Herbert Kureit v Hauptzollämter Flensburg, Itzehoe and Lübeck-West (reference for a preliminary ruling from the Finanzgericht Hamburg)

(Customs duty and tax exemptions applicable to goods contained in travellers' personal luggage — Goods purchased on ferries)

Case 278/82

1. *Preliminary rulings — Reference to the Court — Need for a preliminary ruling — Assessment by the national court*
   (EEC Treaty, Art. 177)

2. *Common Customs Tariff — Exemptions applicable to goods contained in the personal luggage of travellers — Goods purchased on board ferry-boats — Exemptions from customs duties, agricultural levies and other charges applicable to agricultural products — Conditions of application — Transport between a non-member country and the Community — Transport between Member States*
   Tax provisions — Harmonization of legislation — Exemptions from turnover tax and excise duty — Goods contained in the personal luggage of travellers and purchased on board ferry-boats — Conditions of application — Transport between a non-member country and the Community — Transport between Member States
   (Regulation No 1544/69 of the Council, as amended by Regulation No 3061/78, and Regulation No 1818/75, Art. 1, as amended by Regulation No 2780/78, and Art. 2; Council Directive 69/169)

1. It is not for the Court to decide whether or not a reference for a preliminary ruling is necessary. In the context of the division of judicial functions between national courts and tribunals, on the one hand, and the Court of Justice, on the other, under Article 177 of the Treaty, it is, in fact, for the national court, which alone has a direct knowledge of the facts of the case and of the arguments of the parties and which will have to take

1 — Language of the Case: German.

responsibility for giving judgment in the case, to assess, on the basis of its full knowledge of the case, whether the questions of law raised in the proceedings pending before it are material and whether a preliminary ruling is necessary to enable it to give judgment.

2. In relation to transport by sea by ferry between a non-member country and a Member State:

(a) Exemptions from customs duties, agricultural levies and other import charges applicable to agricultural products provided for in Regulation No 1544/69 (as amended by Regulation No 3061/78) and in Article 1 of Regulation No 1818/75 (as amended by Regulation No 2780/78) apply to goods contained in the personal luggage of travellers coming from a non-member country, irrespective of the origin of the goods and the place from which they come and the customs duties and taxes which they have borne prior to their importation into the territory of the Community.

(b) The exemption from turnover tax and excise duties provided for in Council Directive 69/169 of 28 May 1969 is granted to travellers who arrive in the customs territory of the Community from a non-member country and the circumstances in which the goods have been acquired are irrelevant to the grant of the exemption.

In relation to intra-Community transport by ferry

(a) Goods which have not yet been put into free circulation and which are contained in travellers' personal luggage may not benefit from any exemption from customs duties on their importation into a Member State.

(b) Directive 69/169, as amended, is to be interpreted as meaning that, in the context of intra-Community transport, goods contained in travellers' personal luggage and acquired in duty-free shops on board ferries operating regular services between Member States benefit, on importation, on the one hand, from exemption from turnover tax and excise duties and, on the other hand, from exemption from the other import charges applicable to agricultural products and referred to in Article 2 of Regulation No 1818/75, subject to the limits as to value and quantity of the exemptions granted to travellers coming from a non-member country.

In relation to intra-Community transport by combined services comprising travel to a Member State by ferry and return by land (coach) to the Member State in which the journey began

(a) Goods contained in travellers' personal luggage may not benefit from any exemption from customs duties on their importation when the traveller returns by land to the Member State in which the journey began.

(b) In principle, goods acquired free of turnover tax and excise duties in the course of intra-Community transport by combined ferry and coach services are to benefit from

the limited exemptions granted to travellers from a non-member country. However, no exemption may be granted in respect of such goods in a case where the stay in the Member State through which the traveller passes is of a purely token nature and does not in fact provide an opportunity of making purchases.

In Case 278/82

REFERENCE to the Court pursuant to Article 177 of the EEC Treaty by the Fourth Chamber of the Finanzgericht [Finance Court] Hamburg for a preliminary ruling in the action pending before that court between

(1) REWE-HANDELSGESELLSCHAFT NORD MBH, Höhndorf,

(2) REWE-MARKT HERBERT KUREIT, Niendorf,

plaintiffs,

and

HAUPTZOLLÄMTER [Principal Customs Offices] FLENSBURG, ITZEHOE AND LÜBECK-WEST,

defendants,

Party joined to the proceedings:

FÖRDE-REEDEREI GMBH, Flensburg,

on the interpretation of Regulation (EEC) No 1544/69 of the Council of 23 July 1969 (as amended) on the tariff applicable to goods contained in travellers' personal luggage (Official Journal, English Special Edition 1969 (II), p. 359), of Regulation (EEC) No 1818/75 of the Council of 10 July 1975 on the agricultural levies, compensatory amounts and other import charges applicable to agricultural products and to certain goods resulting from their processing, contained in travellers' personal baggage (Official Journal 1975, L 185, p. 3) and of Council Directive 69/169/EEC of 28 May 1969 (as amended) on the harmonization of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel (Official Journal, English Special Edition 1969 (I), p. 232),

THE COURT

in answer to the questions referred to it by the Finanzgericht Hamburg by order of 4 August 1982, hereby rules:

Community law governing exemptions from customs duties, turnover tax, excise duties and agricultural levies and other import charges applicable to agricultural products, applicable to goods contained in travellers' personal luggage, must be interpreted as follows:

1. In relation to transport by sea by ferry between a non-member country and a Member State

(a) Exemptions from customs duties, agricultural levies and other import charges applicable to agricultural products

The exemptions provided for in Regulation No 1544/69 (as amended by Regulation No 3061/78) and in Article 1 of Regulation No 1818/75 (as amended by Regulation No 2780/78) apply to goods contained in the personal luggage of travellers coming from a non-member country, irrespective of the origin of the goods and the place from which they come and the customs duties and taxes which they have borne prior to their importation into the territory of the Community.

(b) Exemptions from turnover tax and excise duties

The exemption provided for in Council Directive 69/169 of 28 May 1969 is granted to travellers who arrive in the customs territory of the Community from a non-member country and the circumstances in which the goods have been acquired are irrelevant to the grant of the exemption.

2. In relation to intra-Community transport by ferry

(a) Exemptions from customs duties

Goods which have not yet been put into free circulation and which are contained in travellers' personal luggage may not benefit from any exemption from customs duties on their importation into a Member State.

(b) Exemptions from turnover tax and excise duties, on the one hand, and exemptions from other import charges applicable to agricultural products and referred to in Article 2 of Regulation No 1818/75, on the other hand

Directive 69/169, as amended, is to be interpreted as meaning that, in the context of intra-Community transport, goods contained in travellers' personal luggage and acquired in duty-free shops on board ferries operating regular services between Member States benefit, on importation, on the one hand, from exemption from turnover tax and excise duties and, on the other hand, from exemption from the other import charges applicable to agricultural products and referred to in Article 2 of Regulation No 1818/75, subject to the limits as to value and quantity of the exemptions granted to travellers coming from a non-member country.

3. In relation to intra-Community transport by combined services comprising travel to a Member State by ferry and return by land (coach) to the Member State in which the journey began

(a) Exemptions from customs duties

Goods contained in travellers' personal luggage may not benefit from any exemption from customs duties on their importation when the traveller returns by land to the Member State in which the journey began.

(b) Exemptions from turnover tax and excise duties, on the one hand, and exemptions from other import charges applicable to agricultural products and referred to in Article 2 of Regulation No 1818/75, on the other hand

In principle, goods acquired free of turnover tax and excise duties in the course of intra-Community transport by combined ferry and coach services are to benefit from the limited exemptions granted to travellers coming from a non-member country. However, no exemption may be granted in respect of such goods in a case where the stay in the Member State through which the traveller passes is of a purely token nature and does not in fact provide an opportunity of making purchases.

JUDGMENT OF THE COURT
14 FEBRUARY 1984 [1]

Commission of the European Communities v Federal Republic of Germany

(Failure of a State to fulfil its obligations — Exemptions from turnover tax and excise duties for goods contained in traveller's personal luggage — "Butter-buying cruises")

Case 325/82

1. *Action for failure of a State to fulfil obligations — Procedure prior to the application to the Court — Formal invitation to submit observations — Reasoned opinion — Purpose — Statement of reasons on which the opinion is based — Criteria*

   (EEC Treaty, Art. 169)

2. *Member States — Obligations — Failure to fulfil obligations — Justification on basis of a possible failure to fulfil its obligations by another Member State — Not permissible*

   (EEC Treaty, Art. 169)

3. *Tax provisions — Harmonization of legislation — Exemption from turnover tax and excise duties — Goods contained in the personal luggage of travellers — Exhaustive Community rules — Scope*

   (Council Directive 69/169)

4. *Tax provisions — Harmonization of legislation — Exemption from turnover tax and excise duties — Goods contained in the personal luggage of travellers and purchased on board ships effecting excursions at sea — Grant of the exemption — Not permissible*

   (Council Directive 69/169)

1. In proceedings instituted by the Commission under Article 169 of the Treaty in respect of failure by a Member State to fulfil its obligations, the letter addressed by the Commission to a Member State formally inviting it to submit its observations and then the reasoned opinion delivered by the Commission must give the State in question an opportunity to submit its observations and constitute an essential guarantee

1 — Language of the Case: German.

provided by the Treaty; compliance with that guarantee is an essential formal requirement of the procedure under Article 169 of the Treaty. The opinion referred to in Article 169 must be considered to contain a sufficient statement of reasons when it contains a coherent statement of the reasons which led the Commission to believe that the State in question has failed to fulfil an obligation under the Treaty.

2. A Member State cannot plead the principle of reciprocity and rely on a possible infringement of the Treaty by another Member State in order to justify its own default. Nor, therefore, can a Member State rely on the principle of reciprocity to contest the admissibility of an action brought against it for failure to fulfil its obligations.

3. Directive 69/169 contains exhaustive rules on exemptions from turnover tax and excise duties applicable to goods contained in the personal luggage of travellers crossing the frontiers of the Member States. Accordingly, the provisions of the directive cover all the exemptions from such charges applicable in international travel, regardless of the country from which the travellers come.

4. By granting exemptions from turnover tax and excise duties in respect of the importation of goods contained in travellers' personal luggage and acquired free of tax on board ships entering the customs territory across the maritime frontier without their having in fact previously called at a port in another Member State or in a non-member country, a Member State infringes Directive 69/169, as amended.

In Case 325/82

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Erich Zimmermann, with an address for service in Luxembourg at the office of Oreste Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

FEDERAL REPUBLIC OF GERMANY, represented by Arved Deringer and Jochim Sedemund, Rechtsanwälte, 14 Heumarkt, D-5000 Cologne 1, with an address for service in Luxembourg at the Embassy of the Federal Republic of Germany, 20-22 Avenue Émile-Reuter,

defendant,

APPLICATION for a declaration that the Federal Republic of Germany, by permitting goods which have not borne turnover tax and excise duties to be sold during short cruises and excursions on the North Sea and the Baltic Sea to passengers who then import them tax-free into the Federal Republic of Germany on their return, has failed to fulfil its obligations under the provisions of Community law governing taxes,

THE COURT

hereby:

1. Declares that the Federal Republic of Germany, by granting exemptions from turnover tax and excise duties in respect of the importation of goods contained in travellers' personal luggage and acquired free of tax on board ships entering the customs territory across the maritime frontier without having in fact previously called at a port in another Member State or in a non-member country, has failed to fulfil its obligations under the EEC Treaty.

2. Orders the defendant to pay the costs.

JUDGMENT OF THE COURT
22 FEBRUARY 1984 [1]

Gerda Kloppenburg v Finanzamt Leer (reference for a preliminary ruling from the Niedersächsisches Finanzgericht)

(Effect of directives — Retroactive effect of an amendment)

Case 70/83

1. Community law — Principles — Legal certainty

2. Tax provisions — Harmonization of laws — Turnover taxes — Common system of value-added tax — Exemptions provided for in the Sixth Directive — Exemption for transactions consisting of the negotiation of credit — Possibility of individuals' relying on the appropriate provision in the event of the directive's not being implemented — Extension of the period for transposing the directive into national law — Effects

(Council Directives 77/388, Art. 13 B (d) 1 and 78/583, Art. 1)

1. Community legislation must be unequivocal and its application must be predictable for those who are subject to it. Postponement of the date of entry into force of a measure of general application, although the date initially specified has already passed, is in itself liable to undermine that principle.

2. In the absence of the implementation of Directive 77/388/EEC, the provision concerning the exemption from turnover tax of the negotiation of credit contained in Article 13 B (d) 1 of that directive could be relied upon by a credit negotiator in relation to transactions carried out between 1 January and 30 June 1978 where he

1 — Language of the Case: German

had refrained from passing the tax on to persons following him in the chain of supply. Directive 78/583 of 26 June 1978, extending the period for implementing Directive 77/388, does not have retroactive effect in relation to transactions carried out by economic operators prior to its entry into force.

In Case 70/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the Niedersächsisches Finanzgericht [Finance Court, Lower Saxony], for a preliminary ruling in the proceedings pending before that court between

GERDA KLOPPENBURG

and

FINANZAMT [Tax Officel] LEER,

on the interpretation of Article 13 B (d) 1 of the Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (Official Journal 1977, L 145, p. 1) and of Article 1 of the Ninth Council Directive, 78/583/EEC, of 26 June 1978 on the harmonization of the laws of the Member States relating to turnover taxes (Official Journal 1978, L 194, p. 16),

THE COURT

hereby rules:

In the absence of the implementation of the Sixth Council Directive, 77/388/EEC, of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover tax — Common system of value-added tax: uniform basis of assessment, it was possible for the provision concerning the exemption of the negotiation of credit contained in Article 13 B (d) 1 of that directive to be relied upon by a credit negotiator in relation to transactions carried out between 1 January and 30 June 1978 where he had refrained from passing that tax on to persons following him in the chain of supply.

JUDGMENT OF THE COURT
28 FEBRUARY 1984 [1]

Senta Einberger
v Hauptzollamt Freiburg
(reference for a preliminary ruling from the Finanzgericht Baden-Württemberg)

(Import turnover tax — Smuggled drugs)

Case 294/82

Tax provisions — Harmonization of laws — Turnover tax — Common system of value-added tax — Tax on importation — Application to the unlawful traffic in drugs — Not permissible — Criminal sanctions for offences — Power of the Member States

(Council Directives 67/228, Art. 2 and 77/388, Art. 2)

Illegal imports of drugs into the Community, which can give rise only to penalties under the criminal law, are alien to the provisions of the Sixth Directive on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: Uniform basis of assessment. Accordingly Article 2 thereof must be interpreted as meaning that no import turnover tax arises upon the unlawful importation into the Community of drugs which are not confined within economic channels strictly controlled by the competent authorities for use for medical and scientific purposes. That interpretation applies also to Article 2 of the Second Directive on the harmonization of value-added tax.

That finding is without prejudice to the powers of Member States to impose appropriate penalties in respect of contraventions of their drugs laws, with all the attendant consequences, in particular fines.

In Case 294/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht [Finance Court] Baden-Württemberg for a preliminary ruling in the action pending before that court between

1 — Language of the Case: German

SENTA EINBERGER, Schallstadt-Wolfenweiler,

and

HAUPTZOLLAMT [Principal Customs Office] FREIBURG,

on the interpretation of Article 2 (2) of the Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: Uniform basis of assessment (Official Journal 1977 L 145, p. 1),

THE COURT,

in answer to the question referred to it by the Finanzgericht Baden-Württemberg by order of 29 October 1982, hereby rules:

Article 2 of the Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: Uniform basis of assessment (Official Journal 1977 L 145, p. 1) must be interpreted as meaning that no import turnover tax arises upon the unlawful importation into the Community of drugs not confined within economic channels strictly controlled by the competent authorities for use for medical and scientific purposes. That interpretation applies also to Article 2 of the Second Directive on the harmonization of value-added tax.

JUDGMENT OF THE COURT
10 APRIL 1984 [1]

Commission of the European Communities v Kingdom of Belgium

(Failure of a Member State to fulfil its obligations — Sixth Directive on turnover taxes — Taxable amount)

Case 324/82

1. *Action for failure of a State to fulfil its obligations — Compatibility of national measures with Community law — Consideration by the Commission — Duty to take action within a given period — None*

   (EEC Treaty, Art. 169)

2. *Taxation provisions — Harmonization of legislation — Turnover taxes — Common system of value added tax — Basis of assessment — National derogations — Limits*

   (Sixth Council Directive (77/388/EEC), Arts 11 and 27 (1) and (5))

1. As a general rule the Commission is not obliged to observe any given time-limits when considering the compatibility of national measures with Community law and applying Article 169 of the Treaty

2. The special measures which Member States may retain, by virtue of Article 27 (1) and (5) of the Sixth Council Directive on the harmonization of the laws of the Member States relating to turnover taxes, in order to prevent certain types of tax evasion or avoidance may not in principle derogate from the basis for charging value added tax laid down in Article 11, except within the limits strictly necessary for achieving that aim.

   National legislation which provides that the minimum basis of assessment for the sale of new cars is not to be lower than the catalogue price in force at the time when the tax falls due and which therefore excludes from consideration any form of price discount or rebate entails such a complete and general amendment of the basis of assessment that it is impossible to accept that it contains only the derogations needed to avoid the risk of tax evasion or avoidance.

Language of the Case: French.

In Case 324/82

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, David Gilmour, and Guido Berardis, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Oreste Montalto, Jean Monnet Building, Kirchberg,

applicant,

KINGDOM OF BELGIUM, represented by the Minister for Foreign Relations, 2 Rue Quatre-Bras, 1000 Brussels, in the person of Robert Hoebaer, Director at the Ministry of Foreign Affairs, Foreign Trade and Co-operation with Developing Countries, and Frans J. Wauters, Adviser at the Ministry of Finance, acting as Agents, with an address for service in Luxembourg at the Belgian Embassy, Résidence Champagne, 4 Rue des Girondins,

defendant,

APPLICATION for a declaration that, by failing to comply with the provisions of Articles 11 and 27 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment — (Official Journal, L 145, 13. 6. 1977) as regards the calculation of the basis for charging tax on cars, the Kingdom of Belgium has failed to fulfil its obligations under Community law,

THE COURT

hereby:

1. Declares that, by retaining the catalogue price as the basis for charging VAT on cars, as a special measure derogating from Article 11 of the Sixth Directive, when the requirements laid down in Article 27 (5) of the directive are not fulfilled, the Kingdom of Belgium has failed to fulfil its obligations under the EEC Treaty;

2. Dismisses the remainder of the application;

3. Orders the Kingdom of Belgium to pay the costs.

JUDGMENT OF THE COURT
5 JUNE 1984 [1]

Commission of the European Communities v Italian Republic

(Implementation of a directive — Taxes which affect the consumption of manufactured tobacco)

Case 280/83

Member States — Obligations — Implementation of directives — Failure to fulfil obligations — 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 laid down in Community directives.

In Case 280/83

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Guido Berardis, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Manfred Beschel, also a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

ITALIAN REPUBLIC, represented by Arnaldo Squillante, President of Section at the Consiglio di Stato [State Council], Head of the Department for Contentious Diplomatic Affairs, acting as Agent, assisted by Oscar Fiumara, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

defendant,

1 — Language of the Case: Italian

APPLICATION for a declaration that, by failing to adopt within the prescribed period the measures needed to implement Council Directive 79/32/EEC of 18 December 1978 on taxes other than turnover taxes which affect the consumption of manufactured tobacco, the Italian Republic has failed to fulfil its obligations under the EEC Treaty,

THE COURT

hereby:

1. **Declares that, by failing to adopt within the prescribed period the provisions needed to comply with Council Directive 79/32/EEC of 18 December 1978 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (Official Journal 1979, L 10, p. 8), the Italian Republic has failed to fulfil its obligations under the EEC Treaty;**

2. **Orders the defendant to pay the costs.**

JUDGMENT OF THE COURT
10 JULY 1984 [1]

Dansk Denkavit ApS
v Ministeriet for Skatter og Afgifter
(reference for a preliminary ruling from the Østre Landsret)

(Turnover tax (VAT): Internal system — Rules applicable to imports)

Case 42/83

Tax provisions — Harmonization of laws — Turnover taxes — Common system of value added tax — Different accounting periods and time-limits for payment prescribed by a Member State for VAT on imports and VAT on domestic transactions — Permissibility — Compatibility with Article 95 of the Treaty

(EEC Treaty, Art. 95; Council Directive 77/388)

1. The Sixth Council Directive (77/388/EEC) on the harmonization of the laws of the Member States relating to turnover taxes does not prevent a Member State from laying down, in respect of value-added tax on imports, accounting periods and periods for payment which are different from the periods allowed for payment of the net tax liability under the internal system.

2. Differences in the time-limits prescribed by national legislation with regard to the taxation of imports and taxation of domestic transactions may, in certain circumstances, constitute an infringement of Article 95 of the Treaty. Nevertheless, tax periods which serve as a basis for calculating the net tax position of each taxable person under the internal system need not, as Community legislation stands at present, be taken into consideration in the comparison of the periods for payment. Thus, legislation which lays down in respect of value-added tax on imports accounting periods and periods for payment which are different from the periods allowed for payment of the net tax liability under the internal system does not entail discrimination within the meaning of Article 95 of the Treaty.

1 — Language of the Case: Danish.

In Case 42/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the Østre Landsret [Eastern Division of the Danish High Court] for a preliminary ruling in the proceedings pending before that court between

DANSK DENKAVIT APS

and

MINISTERIET FOR SKATTER OG AFGIFTER [Ministry for Fiscal Affairs]

on the interpretation of the Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes (77/388/EEC) and Article 95 of the EEC Treaty,

THE COURT,

in reply to the questions submitted to it by the Østre Landsret by order of 2 March 1983, hereby rules:

1. **The Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes does not prevent a Member State from laying down in respect of VAT on imports accounting periods and periods for payment which are different from the periods allowed for payment of the net tax liability under the internal system.**

2. **Differences in time-limits laid down by national legislation with regard to the taxation of imports and taxation of domestic transactions may, in certain circumstances, constitute an infringement of Article 95 of the Treaty. Nevertheless, tax periods which serve as a basis for calculating the net tax position of each taxable person under the internal system need not, as Community legislation stands at present, be taken into consideration in the comparison of the periods for payment. Thus, there is nothing in legislation such as that described by the national court which is capable of constituting discrimination within the meaning of Article 95 of the Treaty.**

JUDGMENT OF THE COURT
3 OCTOBER 1984 [1]

Commission of the European Communities v Italian Republic

(Implementation of a directive — Mutual assistance in relation to VAT)

Case 279/83

Member States — Obligations — Failure to implement directives — Justification — Insufficiency
(EEC Treaty, Art. 169)

A Member State cannot rely on provisions, practices or situations in its internal legal system to justify a failure to comply with obligations or time-limits imposed by Community directives.

In Case 279/83

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Guido Berardis, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Manfred Beschel, a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

ITALIAN REPUBLIC, represented by its Government in the person of Arnaldo Squillante, President of Chamber at the State Council, Head of the Department for Contentious Diplomatic Affairs, Treaties and Legislative Matters at the Ministry of Foreign Affairs, acting as Agent, assisted by O. Fiumara, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

defendant,

1 — Language of the Case: Italian.

APPLICATION for a declaration that the Italian Republic, by failing to adopt within the period prescribed the measures needed to comply with Council Directive No 79/1071/EEC of 6 December 1979 amending Directive No 76/308/EEC on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing of the European Agricultural Guidance and Guarantee Fund, and of agricultural levies and customs duties (Official Journal 1979, L 331, p. 10), has failed to fulfil its obligations under the EEC Treaty,

THE COURT

hereby:

1. Declares that by failing to adopt within the period prescribed the measures needed to comply with Council Directive No 79/1071 of 6 December 1979 amending Directive No 76/308 on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing of the European Agricultural Guidance and Guarantee Fund, and of agricultural levies and customs duties, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;

2. Orders the defendant to pay the costs.

JUDGMENT OF THE COURT (FIFTH CHAMBER)
11 DECEMBER 1984 [1]

Criminal proceedings against Jan Gerrit Abbink (reference for a preliminary ruling from the Arrondissementsrechtbank, Arnhem)

(Temporary importation of motor vehicles — Exemption from import duty)

Case 134/83

Free movement of goods — National legislation prohibiting residents from using vehicles admitted under temporary importation rules — No exception for use without intention of evading tax — Compatibility with the Treaty — Period concerned
(Council Directive No 83/182/EEC)

The rules of the EEC Treaty relating to the free movement of goods do not preclude national legislation from imposing on persons residing in the territory of a Member State a prohibition, subject to criminal penalties, on the use of motor vehicles admitted under temporary importation arrangements and thus exempt from payment of value-added tax, even if that legislation makes no exception for cases in which such vehicles are used without any intention of evading tax.

That statement applies only to the period before the entry into force of Council Directive No 83/182/EEC, which governs the matter as from that date.

In Case 134/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the Arrondissementsrechtbank [District Court], Arnhem, for a preliminary ruling in the criminal proceedings pending before that court against

JAN GERRIT ABBINK, Rijnsburg, Netherlands,

1 — Language of the Case: Dutch.

on the interpretation of provisions of the EEC Treaty relating to the free movement of goods with regard to national legislation making it an offence for persons resident in the territory of a Member State to use motor vehicles covered by temporary import rules and consequently imported free of import duty, even if such temporary use is made without any intention of evading tax,

THE COURT (Fifth Chamber)

in answer to the question submitted to it by the Arrondissementsrechtbank, Arnhem, by an order dated 30 May 1983, hereby rules:

The rules of the EEC Treaty relating to the free movement of goods do not preclude national legislation from imposing on persons residing in the territory of a Member State a prohibition, subject to criminal penalties, on the use of motor vehicles admitted under temporary importation arrangements and thus exempt from payment of value added tax, even if that legislation makes no exception for cases in which such vehicles are used without any intention of evading tax.

Case 253/83

Sektkellerei C. A. Kupferberg & Cie KG a. A.
v
Hauptzollamt Mainz

(reference for a preliminary ruling
from the Finanzgericht Rheinland-Pfalz)

'Tax system with regard to spirits'

Summary

Fiscal legislation — Internal taxation — National spirits monopoly — De facto *reduction in selling price — Compatibility with the EEC Treaty and the Agreements between the EEC and Spain and between the EEC and the Portuguese Republic — Conditions*

(EEC Treaty, Art. 37 and Art. 95; Agreement between the EEC and Spain of 29 June 1970, Art. 3; Agreement between the EEC and the Portuguese Republic of 22 July 1972, Art. 21)

Articles 95 and 37 of the EEC Treaty, Article 21 of the Agreement between the EEC and the Portuguese Republic and Article 3 of the Agreement between the EEC and Spain must be interpreted as not precluding the *de facto* reduction made in the selling price of spirit sold by the Federal Monopoly Administration in a given period provided that the rate of taxation actually applied to imported products during that period did not exceed the rate of taxation actually levied on corresponding domestic products.

JUDGMENT OF THE COURT (Fourth Chamber)
15 January 1985 *

In Case 253/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht Rheinland-Pfalz [Finance Court, Rhineland-Palatinate] for a preliminary ruling in the proceedings pending before that court between

Sektkellerei C. A. Kupferberg & Cie KG a. A.

and

Hauptzollamt Mainz [Principal Customs Office, Mainz],

* Language of the Case: German

on the interpretation of Articles 37 and 95 of the EEC Treaty, Article 3 of the Agreement of 29 June 1970 between the EEC and Spain (Official Journal L 182, p. 4) and the first paragraph of Article 21 of the Agreement of 22 July 1972 between the EEC and the Portuguese Republic (Official Journal L 301, p. 165) with regard to the implementation of certain measures in the field of the Branntweinmonopolgesetz [Law on the Monopoly in Spirits] of 8 April 1922,

THE COURT (Fourth Chamber),

in answer to the question referred to it by the Finanzgericht Rheinland-Pfalz by order of 6 October 1983, hereby rules:

Articles 95 and 37 of the EEC Treaty, Article 21 of the Agreement between the EEC and the Portuguese Republic and Article 3 of the Agreement between the EEC and Spain must be interpreted as not precluding the *de facto* reduction made in the selling price of spirits sold by the Federal Monopoly Administration during a given period provided that the rate of taxation actually applied to imported products in that period did not exceed the rate of taxation actually levied on corresponding domestic products.

Case 5/84

Direct Cosmetics Ltd
v
Commissioners of Customs and Excise

(reference for a preliminary ruling
from the London Value-Added Tax Tribunal)

'Sixth Directive on the harmonization of VAT — Taxable amount'

Summary

Tax provisions — Harmonization of laws — Turnover taxes — Common system of value-added tax — Basis of the charge to tax — National derogating measures — Amendment of a measure in force — Obligation to notify the Commission — Failure to notify — Amendment may not be relied upon as against individuals

(Council Directive No 77/388, Art. 11 A 1. (a) and Art. 27 (1), (2) and (5))

1. Where national legislation notified under Article 27 (5) of the Sixth Directive on the harmonization of the laws of the Member States relating to turnover taxes is amended in such a way as to omit therefrom the element which links it to the directive, such an amendment, which introduces a substantial change in the previous legislation, constitutes a 'special measure' within the meaning of Article 27 (1) requiring the Member State to inform the Commission under Article 27 (2).

2. A Member State which has failed to fulfil its obligation under Article 27 (2) of the Sixth Directive by not informing the Commission of a special measure derogating from the provisions of Article 11 A 1. (a) which lay down the basis for charging value added tax and thus requiring the authorization of the Council under Article 27 (1) may not rely on that measure as against an individual seeking before the national courts the application of provisions of revenue law adopted in conformity with Article 11 A 1. (a) of the directive.

JUDGMENT OF THE COURT
13 February 1985

In Case 5/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the London

Value-Added Tax Tribunal for a preliminary ruling in the proceedings pending before that tribunal between

Direct Cosmetics Ltd

and

The Commissioners of Customs and Excise,

on the interpretation of Article 27 (5) of the Sixth Council Directive (No 77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment,

On those grounds,

THE COURT,

in answer to the questions submitted to it by the London Value-Added Tax Tribunal by order of 9 November 1983, hereby rules:

(1) **Where national legislation, notified under Article 27 (5) of the Sixth Council Directive (No 77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes is amended by the deletion of a reference to the criterion of protection of the national revenue, such an amendment constitutes a 'special measure' within the meaning of Article 27 (1) requiring the Member State to inform the Commission under Article 27 (2).**

(2) **A Member State which has failed to fulfil its obligation under Article 27 (2) of the Sixth Directive by not informing the Commission of a special measure derogating from the provisions of Article 11 A 1. (a) of the directive and thus requiring the authorization of the Council under Article 27 (1) may not rely on that measure as against an individual seeking before the national courts the application of provisions of revenue law adopted in conformity with Article 11 A 1. (a) of the directive.**

Case 268/83

D. A. Rompelman and E. A. Rompelman-Van Deelen
v
Minister van Financiën

(reference for a preliminary ruling
from the Hoge Raad der Nederlanden)

'Harmonization of VAT — Sixth Directive — Concept of taxable person'

Summary

Tax provisions — Harmonization of laws — Turnover taxes — Common system of value-added tax — Economic activities within the meaning of Article 4 of the Sixth Directive — Acquisition of assets
(Council Directive No 77/388, Art. 4 (1))

The economic activities referred to in Article 4 (1) of the Sixth Directive on the harmonization of the laws of the Member States relating to turnover taxes may consist in several consecutive transactions. The preparatory acts, such as the acquisition of assets and therefore the purchase of immovable property, which form part of those transactions must themselves be treated as constituting economic activity.

Accordingly, the acquisition of a right to the future transfer of property rights in part of a building yet to be constructed with a view to letting such premises in due course may be regarded as an economic activity within the meaning of Article 4 (1) of the Sixth Directive. However, that provision does not preclude the revenue authorities from requiring the declared intention to be supported by objective evidence such as proof that the premises which it is proposed to construct are specifically suited to commercial exploitation.

JUDGMENT OF THE COURT (Second Chamber)
14 February 1985 [1]

In Case 268/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hoge Raad der Nederlanden [Supreme Court of the Netherlands] for a preliminary ruling in the proceedings pending before that court between

D. A. Rompelman and E. A. Rompelman-Van Deelen, Amsterdam,

and

Minister van Financiën [Minister for Finance],

on the interpretation of the Sixth Council Directive (No 77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (Official Journal L 145 of 13 June 1977, p. 1),

THE COURT (Second Chamber),

in answer to the question submitted to it by the Hoge Raad der Nederlanden by judgment of 30 November 1983, hereby rules:

The acquisition of a right to the future transfer of property rights in part of a building yet to be constructed with a view to letting such premises in due course may be regarded as an economic activity within the meaning of Article 4 (1) of the Sixth Directive. However, that provision does not preclude the tax administration from requiring the declared intention to be supported by objective evidence such as proof that the premises which it is proposed to construct are specifically suited to commercial exploitation.

Case 54/84

Michael Paul
v
Hauptzollamt Emmerich

(reference for a preliminary ruling
from the Finanzgericht Düsseldorf)

'Frontier-zone travel — Duty-free imports'

Summary

Tax provisions — Harmonization of laws — Exemptions from turnover taxes and excise duties — Goods contained in the personal luggage of travellers — Reduction in exemptions in intra-Community frontier traffic — Frontier zone — Definition
(Council Directive 69/169, Art. 5 (5), as amended by Directive 72/230)

The expression 'frontier-zone', defined in the first indent of Article 5 (5) of Council Directive 69/169 of 28 May 1969, as amended by Council Directive 72/230, which defines the area the residents of which may enjoy only a reduced proportion of exemptions in relation to taxes on turnover and excise duties chargeable upon importation, must be interpreted as meaning a circular zone having a radius of 15 km and its centre at the customs crossing.

OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 31 January 1985 *

Mr President,
Members of the Court,

1. These proceedings raise the question of the territorial scope of the rules on duty-free imports by persons living in frontier zones.

The plaintiff in the main action bought 250 cigarettes in a Netherlands district near the frontier some 80 km from his home in the

JUDGMENT OF THE COURT (Third Chamber)
21 March 1985

In Case 54/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht [Finance Court] Düsseldorf for a preliminary ruling in the proceedings pending before that court between

Michael Paul

and

Hauptzollamt [Principal Customs Office] **Emmerich**

on the interpretation of Regulation No 1544/69 of the Council of 23 July 1969 (Official Journal, English Special Edition 1969 (II), p. 359), as amended by Council Regulation No 3061/78 of 19 December 1978 (Official Journal, L 366, p. 3),

THE COURT (Third Chamber),

in answer to the question referred to it by the Finanzgericht Düsseldorf by order of 1 February 1984, hereby rules:

The expression 'frontier zone', defined in the first indent of Article 5 (5) of Council Directive 69/169 of 28 May 1969, as amended by Council Directive 72/230 of 12 June 1972, must be interpreted as meaning a circular zone having a radius of 15 km and its centre at the customs crossing.

Case 112/84

Michel Humblot
v
Directeur des services fiscaux

(reference for a preliminary ruling
from the Tribunal de grande instance, Belfort)

'Article 95 — Special tax on motor vehicles'

Summary

Tax provisions — Internal taxation — System of differential taxation on cars — Progressive tax replaced in the case of cars exceeding a given fiscal power rating by a considerably higher special tax — Special tax imposed in practice solely on imported cars — Prohibition — Discriminatory or protective effect
(EEC Treaty, Art. 95)

As Community law stands at present the Member States are at liberty to subject products such as cars to a system of road tax which increases progressively in amount depending on an objective criterion, such as the power rating for tax purposes, which may be determined in various ways.

However, Article 95 of the EEC Treaty prohibits the charging on cars exceeding a given power rating for tax purposes of a special fixed tax the amount of which is several times the highest amount of the progressive tax payable on cars of less than the said power rating for tax purposes, where the only cars subject to the special tax are imported, in particular from other Member States. Although such a system embodies no formal distinction based on the origin of products it manifestly exhibits discriminatory or protective features contrary to Article 95, since the power rating determining liability to the special tax has been fixed at a level such that only imported cars are subject to the special tax whereas all cars of domestic manufacture are liable to the distinctly more advantageous differential tax.

JUDGMENT OF THE COURT
9 May 1985

In Case 112/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal de grande instance [Regional Court], Belfort, for a preliminary ruling in the proceedings pending before that court between

Michel Humblot

and

Directeur des services fiscaux

on the interpretation of Article 95 of the EEC Treaty,

THE COURT,

in answer to the question referred to it by the Tribunal de grande instance, Belfort, by judgment of 17 April 1984, hereby rules:

Article 95 of the EEC Treaty prohibits the charging on cars exceeding a given power rating for tax purposes of a special fixed tax the amount of which is several times the highest amount of the progressive tax payable on cars of less than the said power rating for tax purposes, where the only cars subject to the special tax are imported, in particular from other Member States.

Case 139/84

Van Dijk's Boekhuis BV

v

Staatssecretaris van Financiën

(reference for a preliminary ruling
from the Hoge Raad der Nederlanden)

'VAT — Work on customers' materials — Book repairs'

Summary

Tax provisions — Harmonization of legislation — Turnover taxes — Common system of value-added tax — Supply of goods — Production of goods from customers' materials — Concept — Repairs — Excluded

(Council Directives 67/228, Art. 5 (2) (d), and 77/338, Art. 5 (5) (a))

The production of goods from customers' materials as referred to in Article 5 (2) (d) of the Second Directive and Article 5 (5) (a) of the Sixth Directive on the harmonization of the laws of the Member States relating to turnover taxes only takes place where a contractor produces a new article from the materials entrusted to him by his customer. A new article is produced when the work of the contractor results in an article whose function, according to generally accepted views, is different from that of the materials provided.

It follows that repairs, however radical they may be, which simply restore to the article entrusted to the contractor the function which it previously had without resulting in the creation of a new article do not amount to the production of goods from customers' materials.

JUDGMENT OF THE COURT (Fifth Chamber)
14 May 1985

In Case 139/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hoge

Raad der Nederlanden [Supreme Court of the Netherlands] for a preliminary ruling in the action pending before that court between

Van Dijk's Boekhuis BV, Kampen,

and

Staatssecretaris van Financiën

on the interpretation of Article 5 (2) of Council Directive 67/228/EEC 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' (Official Journal, English Special Edition 1967, p. 16), and of Article 5 (5) (a) of Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — common system of value-added tax: uniform basis of assessment' (Official Journal 1977, L 145, p. 1),

THE COURT (Fifth Chamber),

in reply to the questions submitted to it by the Hoge Raad der Nederlanden, by judgment of 16 May 1984, hereby rules:

The production of goods from customers' materials, as referred to in Article 5 (2) (d) of Council Directive 67/228 of 11 April 1967 (Official Journal, English Special Edition 1967, p. 16) and Article 5 (5) (a) of Council Directive 77/388 of 17 May 1977 (Official Journal 1977, L 145, p. 1) on the harmonization of the laws of the Member States relating to turnover taxes, only takes place where a contractor produces a new article from the materials entrusted to him by his customer. A new article is produced when the work of the contractor results in an article whose function, according to generally accepted views, is different from that of the materials provided.

Case 47/84

Staatssecretaris van Financiën
v
Gaston Schul Douane-Expediteur BV

(reference for a preliminary ruling
from the Hoge Raad der Nederlanden)

'Turnover tax on the importation of goods
supplied by private persons'

Summary

1. *Tax provisions — Harmonization of laws — Turnover taxes — Common system of value-added tax — Sixth Directive — Double taxation in intra-Community trade — Incompatible with Article 95 of the Treaty — Elimination — Role devolving upon the Court pending action by the Community legislature*
   (EEC Treaty, Art. 95; Council Directive No 77/388/EEC, Arts 2 and 11)

2. *Tax provisions — Harmonization of laws — Turnover taxes — Common system of value-added tax — VAT charged on the importation, from another Member State, of goods supplied by a non-taxable person — Method of calculation*
   (EEC Treaty, Art. 95; Council Directive No 77/388/EEC)

1. The practical application of the common system of VAT introduced by the Sixth Directive has given rise to instances of double taxation in intra-Community trade. Although it is for the Community legislature to establish a system of complete competitive neutrality involving, in cases where goods are supplied by one private person to another private person residing in another Member State, full remission of tax on exportation, until such a system has been established Article 95 of the Treaty prevents an importing Member State from applying its VAT rules to imported goods in a manner contrary to the principles embodied in that article. Consequently, pending the adoption of a legislative solution, in charging VAT on imports account must be taken of the effect of Article 95 of the

Treaty. It is therefore for the Court to lay down guidelines compatible with Article 95 of the Treaty, consistent with the general scheme of the Sixth Directive and sufficiently simple to be able to be applied in a uniform manner throughout the Member States.

2. Where a Member State charges VAT on the importation, from another Member State, of goods supplied by a private person, but does not charge VAT on the supply by a private person of similar goods within its own territory, the VAT payable on importation must be calculated by taking into account the amount of VAT paid in the Member State of exportation that is still contained in the value of the goods at the time of importation in such a way that that amount is not included in the taxable amount and is in addition deducted from the VAT payable on importation.

The amount of VAT paid in the Member State of exportation that is still contained in the value of the goods at the time of importation is equal:

in cases in which the value of the goods has decreased between the date on which VAT was last charged in the Member State of exportation and the date of importation: to the amount of VAT actually paid in the Member State of exportation, less a percentage representing the proportion by which the goods have depreciated;

in cases in which the value of the goods has increased over that same period: to the full amount of the VAT actually paid in the Member State of exportation.

JUDGMENT OF THE COURT (Fourth Chamber)
21 May 1985

In Case 47/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hoge Raad der Nederlanden [Supreme Court of the Netherlands] for a preliminary ruling in the action pending before that court between

Staatssecretaris van Financiën [Secretary of State for Finance], The Hague,

and

Gaston Schul Douane-Expediteur BV, Wernhout, the Netherlands,

on the interpretation of Article 95 of the Treaty,

THE COURT (Fourth Chamber),

in answer to the questions referred to it by the Hoge Raad der Nederlanden by judgment of 15 February 1984, hereby rules:

(1) Where a Member State charges VAT on the importation, from another Member State, of goods supplied by a private person, but does not charge VAT on the supply by a private person of similar goods within its own territory, the VAT payable on importation must be calculated by taking into account the

amount of VAT paid in the Member State of exportation that is still contained in the value of the goods at the time of importation in such a way that that amount is not included in the taxable amount and is in addition deducted from the VAT payable on importation.

(2) The amount of VAT paid in the Member State of exportation that is still contained in the value of the goods at the time of importation is equal:

in cases in which the value of the goods has decreased between the date on which VAT was last charged in the Member State of exportation and the date of importation: to the amount of VAT actually paid in the Member State of exportation, less a percentage representing the proportion by which the goods have depreciated;

in cases in which the value of the goods has increased over that same period: to the full amount of the VAT actually paid in the Member State of exportation.

Case 277/83

Commission of the European Communities
v
Italian Republic

'Reduction of the tax on alcohol used in the production of "Marsala" '

Summary

1. *Tax provisions — Internal taxation — Grant of tax relief in respect of domestic products — Permissibility — Conditions — Extension to products imported from other Member States (EEC Treaty, Art. 95)*

2. *Tax provisions — Internal taxation — Discriminatory taxation under a system of aid — Application of Article 95 of the EEC Treaty (EEC Treaty, Arts 92 and 95)*

3. *Tax provisions — Internal taxation — Discrimination — Prohibition — Limited effect of discrimination — Not relevant (EEC Treaty, Art. 95)*

1. Having regard to the state of development of Community law, the grant of certain tax exemptions or tax concessions by way of tax relief or in the form of a reduction of rates of tax on the basis of objective criteria must be permitted on condition that the benefit of such measures is extended without discrimination to imported products which satisfy the same conditions.

2. Discriminatory fiscal practices are not exempt from the application of Article 95 on the ground that they may be classified at the same time as a method of financing State aid.

3. The purpose of the first paragraph of Article 95, which is to eliminate all forms of direct or indirect discrimination, could not be achieved if the advantages granted in respect of domestic products could escape the prohibition laid down by Article 95 by reason of their purportedly limited effect. Accordingly, even a tax relief the discriminatory effect of which is slight falls within the prohibition in Article 95.

JUDGMENT OF THE COURT
3 July 1985

In Case 277/83

Commission of the European Communities, represented by Guido Berardis, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Manfred Beschel, also a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

Italian Republic, represented by its Government in the person of Arnaldo Squillante, President of Chamber of the Consiglio di Stato and Head of the Department for Contentious Diplomatic Affairs, Treaties and Legislative Matters of the Ministry for Foreign Affairs, acting as Agent, assisted by Pier Giorgio Ferri, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 rue Marie-Adelaide,

defendant,

APPLICATION for a declaration that by applying a reduced rate of tax on the manufacture of alcohol distilled from wine and used in the production of Marsala liqueur wine, whilst applying at the full rate the equivalent frontier surcharge on alcohol distilled from wine and used in the production of liqueur wines imported from other Member States, the Italian Republic has failed to fulfil its obligations under Article 95 of the EEC Treaty,

THE COURT

hereby:

(1) **Declares that by imposing on liqueur wines imported from other Member States a frontier surcharge on alcohol distilled from wine and used in the manufacture of such wines at a rate higher than that of the tax on alcohol distilled from wine and used in the production of Marsala liqueur wine, the Italian Republic has failed to fulfil its obligations under Article 95 of the EEC Treaty.**

(2) **Orders the Italian Republic to pay the costs.**

Case 168/84

Gunter Berkholz

v

Finanzamt Hamburg-Mitte-Altstadt

(reference for a preliminary ruling
by the Finanzgericht Hamburg)

'Sixth Directive on the harmonization of VAT — Fixed establishment'

Summary

1. *Tax provisions — Harmonization of legislation — Turnover taxes — Common system of value-added tax — Sixth Directive — Territorial scope — Taxation by a Member State of services performed outside its sovereign territory on board a vessel over which it has jurisdiction — Admissibility*
(Council Directive 77/388, Arts 3 and 9)

2. *Tax provisions — Harmonization of legislation — Turnover taxes — Common system of value-added tax — Supply of services — Determination of the point of reference for tax purposes — Options available to the Member States — Criterion — Appropriateness for tax purposes*
(Council Directive 77/388, Art. 9 (1))

3. *Tax provisions — Harmonization of legislation — Turnover taxes — Common system of value-added tax — Supply of services — Determination of the point of reference for tax purposes — 'Fixed establishment' within the meaning of the Sixth Directive — Concept — Operation of gaming machines on board a vessel on the high seas*
(Council Directive 77/388, Art. 9 (1))

4. *Tax provisions — Harmonization of legislation — Turnover taxes — Common system of value-added tax — Exemptions provided for in the Sixth Directive — Exemption of services to meet the direct needs of sea-going vessels — Operation of gaming machines installed on board — Exclusion*
(Council Directive 77/388, Art. 15 (8))

1. The territorial scope of the Sixth Directive, Directive 77/388, on the harmonization of the laws of the Member States relating to turnover taxes coincides, in the case of each Member State, with the scope of its value-added-tax legislation. Hence, Article 9 of the directive, concerning the place where a service is deemed to be supplied, does not prevent the Member States from taxing services provided outside their territorial jurisdiction on board sea-going ships over which they have jurisdiction.

2. In order to determine the point of reference for tax purposes for the provision of services it is for each Member State to determine from the range of options set forth in Directive 77/388 which point of reference is most appropriate from the point of view of tax. According to Article 9 (1) of the directive, the place where the supplier has established his business is a primary point of reference inasmuch as regard is to be had to another establishment from which the services are supplied only if the reference to the place where the supplier has established his business does not lead to a rational result for tax purposes or creates a conflict with another Member State.

3. Article 9 (1) of Directive 77/388, on the place where a service is deemed to be supplied for tax purposes, must be interpreted as meaning that an installation for carrying on a commercial activity, such as the operation of gaming machines, on board a ship sailing on the high seas outside the national territory may be regarded as a fixed establishment within the meaning of that provision only if the establishment entails the permanent presence of both the human and technical resources necessary for the provision of those services and it is not appropriate to deem those services to have been provided at the place where the supplier has established his business.

4. Article 15 (8) of Directive 77/388, on the exemption of services to meet the direct needs of sea-going vessels, must be interpreted as meaning that the exemption for which it provides does not apply to the operation of gaming machines installed on board sea-going vessels.

JUDGMENT OF THE COURT (Second Chamber)
4 July 1985

In Case 168/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht [Finance Court] Hamburg, for a preliminary ruling in the proceedings pending before that court between

Gunter Berkholz, sole proprietor of the undertaking abe-Werbung Alfred Berkholz, whose registered office is in Hamburg,

and

Finanzamt [Tax Office] **Hamburg-Mitte-Altstadt**,

on the interpretation of Article 9 (1) and Article 15 (8) of the Sixth Council Directive (77/388/EEC), of 17 May 1977, on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment,

THE COURT (Second Chamber),

in answer to the questions referred to it by the Finanzgericht Hamburg by order of 30 April 1984, hereby rules:

(1) **Article 9 (1) of the Sixth Council Directive, of 17 May 1977, on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment must be interpreted as meaning that an installation for carrying on a commercial activity, such as the operation of gaming machines, on board a ship sailing on the high seas outside the national territory may be regarded as a fixed establishment within the meaning of that provision only if the establishment entails the permanent presence of both the human and technical resources necessary for the provision of those services and it is not appropriate to deem those services to have been provided at the place where the supplier has established his business.**

(2) **Article 15 (8) of the Sixth Directive must be interpreted as meaning that the exemption for which it provides does not apply to the operation of gaming machines installed on board the sea-going vessels referred to in that article.**

Case 16/84

Commission of the European Communities

v

Kingdom of the Netherlands

'VAT — Taxable amount in the case of movable goods traded in by way of part-payment'

Summary

1. *Action against a Member State for failure to fulfil its obligations — Pre-litigation procedure — Reasoned opinion — Time-limit for compliance by the Member State — Suspension — Conditions*
(EEC Treaty, Art. 169)

2. *Tax provisions — Harmonization of laws — Turnover taxes — Common system of value-added tax — Taxable amount — Trade-in of second-hand goods by way of part-payment — National rules providing that the value of the goods traded in is not part of the taxable amount — Permissibility — Conditions*
(Council Directive No 77/388, Arts 11 A 1 (a) and 32)

1. Article 169 of the Treaty provides that the period within which a Member State must comply with a reasoned opinion addressed to it is to be laid down by the Commission, and it is therefore the Commission which must decide on any application for the time-limit to be suspended. It follows that the Government of a Member State is not justified in believing, merely on the basis of interviews with Commission officials or the Commission's failure to reply to letters sent to it, that the time-limit laid down in the reasoned opinion is suspended.

2. A national system of value-added tax which was in existence when the Sixth

Directive on the harmonization of the laws of the Member States relating to turnover taxes entered into force and which, as regards the determination of the taxable amount in the case of the supply of movable goods where second-hand goods are traded in, provides that the value of the trade-in is not included in the consideration payable by the purchaser, does not infringe Article 11 A 1 (a) of the directive because it is in principle covered by Article 32 of the same directive, which pending the introduction of a common system of taxation of second-hand goods re-establishing competitive neutrality in sales of such goods between direct sales from one consumer to another and transactions through commercial channels, authorizes Member States to retain national systems having the same objective. The object and effect of such a system is to offset the residual part of the VAT already borne by the second-hand goods traded in, so that on resale those goods may be subject to the general system of VAT, and is not to exempt from tax part of the consideration obtained by the taxable person wishing to resell for the supply of the new goods.

JUDGMENT OF THE COURT
10 July 1985

In Case 16/84

Commission of the European Communities, represented by its Legal Adviser, D.R. Gilmour, acting as Agent, assisted by H.J. Bronkhorst, Advocate at the Hoge Raad der Nederlanden, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

Kingdom of the Netherlands, represented by A. Bos, Legal Adviser at the Ministry of Foreign Affairs, acting as Agent, with an address for service in Luxembourg at its Embassy, 5 rue Spoo,

defendant,

APPLICATION for a declaration that, by failing to adopt within the prescribed period the laws, regulations or administrative provisions needed to comply with Article 11 of the Sixth Council Directive (No 77/388/EEC of 17 May 1977) on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (Official Journal 1977, L 145, p. 1), the Kingdom of the Netherlands has failed to fulfil its obligations under the EEC Treaty,

THE COURT

hereby:

(1) Dismisses the application;

(2) Orders the Commission to pay the costs.

Case 17/84

Commission of the European Communities

v

Ireland

'VAT — Taxable amount in the case of movable goods traded in by way of part-payment'

Summary

Tax provisions — Harmonization of laws — Turnover taxes — Common system of value-added tax — Taxable amount — Trade-in of second-hand goods by way of part-payment — National rules providing that the value of the goods traded in is not part of the taxable amount — Permissibility — Conditions

(Council Directive No 77/388, Arts 11 A 1 (a) and 32)

A national system of value-added tax which was in existence when the Sixth Directive on the harmonization of the laws of the Member States relating to turnover taxes entered into force and which, as regards the determination of the taxable amount in the case of the supply of movable goods where second-hand goods are traded in, provides that the value of the trade-in is not included in the consideration payable by the purchaser, does not infringe Article 11 A 1 (a) of the directive because it is in principle covered by Article 32 of the same directive, which pending the introduction of a common system of taxation of second-hand goods re-establishing competitive neutrality in sales of such goods between direct sales from one consumer to another and transactions through commercial channels, authorizes Member States to retain national systems having the same objective. The object and effect of such a system is to offset the residual part of the VAT already borne by the second-hand goods traded in, so that on resale those goods may be subject to the general system of VAT, and is not to exempt from tax part of the consideration obtained by the taxable person wishing to resell for the supply of the new goods.

JUDGMENT OF THE COURT

10 July 1985

In Case 17/84

Commission of the European Communities, represented by its Legal Adviser, D. R. Gilmour, acting as Agent, with an address for service in Luxembourg at the office of M. Beschel, a member of its Legal Service, Jean Monnet Building, Kirchberg,

applicant,

v

Ireland, represented by L. J. Dockery, Chief State Solicitor, acting as Agent, with an address for service in Luxembourg at its Embassy, 28 route d'Arlon,

defendant,

APPLICATION for a declaration that, by continuing to apply Section 10 (2) of the Value Added Tax Act 1972, which reduces the taxable amount of goods sold in conjunction with a trade-in, contrary to Article 11 of Council Directive No 77/388/EEC of 17 May 1977 on the harmonization of the laws of Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (Official Journal 1977, L 145, p. 1), Ireland has failed to fulfil its obligations under the directive,

THE COURT

hereby:

(1) **Dismisses the application; and**

(2) **Orders the Commission to pay the costs.**

Case 278/83

Commission of the European Communities
v
Italian Republic

'Value-added tax — Taxation of sparkling wines'

Summary

Tax provisions — Internal taxation — Differentiated taxation system — Application of a higher rate of taxation to a category of sparkling wines defined so as not to include any national product — Unlawfulness
(EEC Treaty, Art. 95)

For national law to subject the category of sparkling wines having an appellation of origin and required by legislation to be fermented naturally in their bottles, whereas because of the absence of any such rules the national product cannot fall within that category, constitutes a manifest breach of the rules laid down in Article 95 of the Treaty prohibiting tax discrimination. Such legislation is obviously conceived so as to apply only to imported products and is intended to protect the corresponding domestic products by applying appreciably lower rates of tax to them.

JUDGMENT OF THE COURT
11 July 1985

In Case 278/83

Commission of the European Communities, represented by Guido Berardis, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georges Kremlis, also a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

supported by

the French Republic, represented in the written procedure by François Renouard, Deputy Director of Legal Affairs of the Ministry of Foreign Relations, and in the oral procedure by Philippe Pouzoulet, Secretary of Foreign Affairs in the Legal

Affairs Directorate of the Ministry for Foreign Relations, both acting as Agents, with an address for service in Luxembourg at the French Embassy,

intervener,

v

Italian Republic, represented by Arnaldo Squillante, Head of the Department for Contentious Diplomatic Affairs, Treaties and Legislative Matters of the Ministry of Foreign Affairs, assisted by Pie Giorgio Ferri, Avvocato dello Stato, acting as Agent, with an address for service in Luxembourg at the Italian Embassy,

defendant,

APPLICATION for a declaration that, by applying to imported sparkling wines a higher rate of value-added tax than those applied to domestically-produced sparkling wines, the Italian Republic has failed to fulfil its obligations under Article 95 of the EEC Treaty,

THE COURT

hereby:

(1) **Declares that, by applying to sparkling wines having an appellation of origin and required by national legislation to be naturally fermented in their bottles a higher rate of value-added tax higher than the rates which it applies to comparable domestically-produced sparkling wines, the Italian Republic has failed to fulfil its obligations under Article 95 of the EEC Treaty;**

(2) **Orders the Italian Republic to pay the costs, including those of the intervener.**

Case 107/84

Commission of the European Communities
v
Federal Republic of Germany

'Value-added tax — Exemption provided for postal authorities'

Summary

Tax provisions — Harmonization of legislation — Turnover taxes — Common system of value-added tax — Exemptions provided for by the Sixth Directive — Exemption for the supply of services by the public postal services — Extension to the supply of services by other bodies on behalf of the public postal services — Not permissible

(Council Directive No 77/388, Art. 13 A (1) (a))

Article 13 A (1) (a) of the Sixth Directive on the harmonization of the laws of the Member States relating to turnover taxes exempts from value-added tax the supply of services by the public postal services themselves, but not the supply of services on behalf of the public postal services by other bodies.

JUDGMENT OF THE COURT
11 July 1985

In Case 107/84

Commission of the European Communities, represented by its Legal Advisers, David Gilmour and Friedrich-Wilhelm Albrecht, acting as Agents, with an address for service in Luxembourg at the office of Georges Kremlis, a member of its Legal Service, Jean Monnet Building, Kirchberg,

applicant,

v

Federal Republic of Germany, represented by Martin Seidel, *Ministerialrat*, and Professor Albert Bleckmann, acting as Agents, with an address for service in Luxembourg at its Embassy, 20-22 Avenue Emile Reuter,

defendant,

APPLICATION for a declaration under Article 169 of the EEC Treaty that the Federal Republic of Germany, by exempting from value-added tax the services provided by transport undertakings for the *Deutsche Bundespost* [Federal German Postal Service] by virtue of statutory provisions, has failed to fulfil its obligations under the EEC Treaty,

THE COURT

hereby:

(1) Declares that, by exempting from value-added tax the services provided, by virtue of statutory provisions, by transport undertakings for the *Deutsche Bundespost*, the Federal Republic of Germany has failed to fulfil its obligations under the EEC Treaty and under the provisions of the Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value-added tax: uniform basis of assessment;

(2) Orders the Federal Republic of Germany to pay the costs.

Case 249/84

Ministère public and Ministry of Finance
v
Venceslas Profant

(reference for a preliminary ruling
from the Cour d'appel, Brussels)

'Value-added tax on imports — Application to private cars'

Summary

1. *Tax provisions — Harmonization of laws — Turnover tax — Common system of value-added tax — Duty levied on the importation of vehicles — Internal taxation — Provisions relating to customs duties and charges having an equivalent effect — Inapplicability*
(EEC Treaty, Arts 12, 13 and 95)

2. *Taxation provisions — Harmonization of laws — Turnover tax — Common system of value-added tax — Exemptions provided for by the Sixth Directive — Exemption for the temporary importation of goods — Temporary importation of vehicles by students resident in other Member States — Levying of tax — Unlawfulness*
(Council Directive 77/388/EEC, Art. 14)

1. Value-added tax which a Member State levies on the importation of a motor vehicle from another Member State is not a customs duty on importation or a charge having an effect equivalent to such a duty within the meaning of Articles 12 and 13 of the Treaty, but must be considered as an integral part of a general system of internal taxation for the purposes of Article 95 of the Treaty and its compatibility with Community law must be considered in the context of that article.

2. The authorities of the Member States do not enjoy a complete discretion in implementing the exemptions for imports under Article 14 of the Sixth Directive on the harmonization of the laws of the Member States relating to turnover taxes,

for they have to observe the fundamental objectives of the harmonization of value-added tax such as, in particular, to facilitate the free movement of persons and goods and to prevent cases of double taxation. They are therefore required, in the case of motor vehicles used by students from another Member State, to apply the concept of temporary importation in such a way as to avoid derogating, by taxing such vehicles twice, from the freedom of nationals of Member States to pursue their studies in the Member State of their choice.

It follows that the rules of Community law, and in particular those laid down by the Sixth Directive, preclude the levying by a Member State of value-added tax on the importation of a motor vehicle purchased in another Member State, where value-added tax was paid and the vehicle was registered, when the vehicle is used by a national of the second Member State resident in that State but studying in the first Member State, where for the period of his studies his name is entered in the aliens' register. Whether or not the person in question is married is irrelevant.

JUDGMENT OF THE COURT (Fourth Chamber)
3 October 1985

In Case 249/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour d'appel [Court of Appeal], Brussels, for a preliminary ruling in the proceedings pending before that court between

Ministère public [Public Prosecutor] **and Ministry of Finance**

and

Venceslas Profant

on the interpretation of the provisions of the EEC Treaty on the free movement of goods and freedom to provide services in order to enable the national court to judge the compatibility therewith of the Belgian law on value-added tax,

THE COURT (Fourth Chamber)

in answer to the question referred to it by the Cour d'appel, Brussels, by judgment of 26 September 1984, hereby rules:

(1) **The value-added tax which a Member State levies on the importation of a motor vehicle from another Member State is not a customs duty on importation or a charge having equivalent effect within the meaning of Articles 12 and 13 of the EEC Treaty.**

(2) **The rules of Community law, and in particular those laid down by Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (Official Journal 1977, L 145, p. 1) preclude**

the levying by a Member State of value-added tax on the importation of a motor vehicle purchased in another Member State, where value-added tax was paid and the vehicle is registered, when the vehicle is used by a national of the second Member State resident in that State but studying in the first Member State, where for the period of his studies his name is entered in the aliens' register. Whether or not the person in question is married is irrelevant.

Case 295/84

SA Rousseau Wilmot

v

Caisse de compensation de l'Organisation autonome nationale de l'industrie et du commerce (Organic)

(reference for a preliminary ruling from the Cour d'appel, Douai)

'National levies based on turnover'

Summary

1. *Tax provisions — Harmonization of laws — Turnover taxes — Common system of value-added tax — Duties or charges which cannot be characterized as turnover taxes — Charge calculated on the basis of total annual turnover and collected for the purpose of providing finance for social security schemes*
(Council Directive 77/388, Art. 33)

The expression 'duties or charges which cannot be characterized as turnover taxes' in Article 33 of the Sixth Directive on the harmonization of the laws of the Member States relating to turnover taxes, which permits the Member States to maintain or introduce duties or charges which may not be so characterized, must be interpreted as including a charge of a non-fiscal nature which is levied on companies or certain categories of companies to provide finance for social security schemes and which is calculated on the basis of the total annual turnover of the companies concerned.

JUDGMENT OF THE COURT (Fourth Chamber)
27 November 1985

In Case 295/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour

d'appel [Court of Appeal], Douai, for a preliminary ruling in the proceedings pending before that court between

Rousseau Wilmot SA, Caudry,

and

Caisse de compensation de l'organisation autonome nationale de l'industrie et du commerce [Compensation Fund of the National Independent Organization for Trade and Industry] **(Organic),** Valbonne,

on the interpretation of Article 33 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (Official Journal 1977, L 145, p. 1),

THE COURT (Fourth Chamber)

in answer to the question referred to it by the Cour d'appel, Douai, by order of 29 November 1984, hereby rules:

The expression 'duties or charges which cannot be characterized as turnover taxes' in Article 33 of the Sixth Directive must be interpreted as including a charge of a non-fiscal nature which is levied on companies or certain categories of companies to provide finance for social security schemes and which is calculated on the basis of the total annual turnover of the companies concerned.

Case 283/84

Trans Tirreno Express SpA
v
Ufficio provinciale IVA

(reference for a preliminary ruling
from the Commissione tributaria di secondo grado, Sassari)

(Common system of value added tax — Territorial scope)

Summary

1. *Tax provisions — Harmonization of laws — Turnover taxes — Common system of value added tax — Sixth Directive — Territorial scope — Supply of services — Principle — Exceptions*
(Council Directive No 77/388/EEC, Arts 2, 3 and 9)

2. *Tax provisions — Harmonization of laws — Turnover taxes — Common system of value added tax — Sixth Directive — Territorial scope — Taxation by a Member State of transport services effected between two points within the national territory but partly outside that territory — Permissibility — Condition — No encroachment on the tax jurisdiction of other States*
(EEC Treaty, Art. 227; Council Directive No 77/388/EEC, Arts 3 and 9 (2) (b))

1. Within the general scheme of the Sixth Directive (No 77/388/EEC) on the harmonization of the laws relating to turnover taxes, Article 9, which determines the place where services are deemed to be provided for tax purposes, is intended to avoid conflicts of jurisdiction between Member States where the supply of services is covered by the laws of more than one State. Where no such conflict exists and the services supplied are purely internal and do not give rise to any conflict of jurisdiction as far as the charging of taxes is concerned,

the territorial scope of value added tax must be determined in relation to the basic rules laid down in Articles 2 and 3 which establish the principle of strict territoriality and not to the provisions of Article 9 which provide for derogations therefrom.

2. Although the territorial scope of Council Directive No 77/388 corresponds to that of the EEC Treaty as defined for each Member State in Article 227, and although the rules laid down in the directive have binding and mandatory force throughout the national territory of the Member States, the directive, and in particular Article 9 (2) (b) thereof, in no way restricts the freedom of the Member States to extend the scope of their tax legislation beyond their normal territorial limits, so long as they do not encroach on the jurisdiction of other States. Accordingly, Article 9 (2) (b) does not prohibit a Member State from levying value added tax on a transport operation effected between two points within its national territory, even where part of the journey is completed outside its national territory, provided that it does not encroach on the tax jurisdiction of other States.

JUDGMENT OF THE COURT (Second Chamber)
23 January 1986

In Case 283/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Commissione tributaria di secondo grado [Appeals Board of the Tax Commission], Sassari, for a preliminary ruling in the proceedings pending before it between

Trans Tirreno Express SpA, a company incorporated under Italian law whose registered office is at Sassari,

and

Ufficio provinciale IVA [provincial VAT office], Sassari,

on the interpretation of Article 9 (2) (b) of the Sixth Council Directive, No 77/388/EEC of 17 May 1977, on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment,

THE COURT (Second Chamber),

in reply to the question referred to it by the Commissione tributaria di secondo grado, Sassari, by an order of 23 November 1984, hereby rules:

Article 9 (2) (b) of the Sixth Council Directive, No 77/388/EEC of 17 May 1977, on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, does not

preclude a Member State from applying its value added tax legislation to a transport operation effected between two points within its national territory, even where a part of the journey is completed outside its national territory, provided that it does not encroach on the tax jurisdiction of other States.

Case 39/85

G. Bergeres-Becque

v

Chef de service interrégional des douanes

(reference for a preliminary ruling
from the tribunal d'instance, Bordeaux)

(Turnover tax on the importation of goods by private persons)

Summary

1. *Tax provisions — Internal taxation — Discrimination — Prohibition — Value-added tax levied on the importation of products from other Member States by a non-taxable person — Distinction between transactions effected for valuable consideration and other transactions — Irrelevant*
(EEC Treaty, Art. 95; Council Directive 77/388)

2. *Tax provisions — Harmonization of laws — Turnover tax — Common system of value-added tax — Value-added tax levied on the importation of products from other Member States by a non-taxable person — Method of calculation*
(EEC Treaty, Art. 95; Council Directive 77/388)

1. For the purpose of applying Article 95 of the EEC Treaty where value-added tax is levied on the importation of goods by a non-taxable person, no distinction should be made according to whether or not the transaction giving rise to the importation was effected for valuable consideration.

2. Where a Member State levies value-added tax on the importation from another Member State of goods supplied by a non-taxable person, the taxable amount does not include the amount of the tax paid in the exporting Member State which is still contained in the value

of the goods when they are imported; that value is to be determined on the basis of the relevant data in the exporting Member State.

The amount of the tax paid in the exporting Member State which is still contained in the value of the goods when they are imported is equal:

(a) to the amount of tax actually paid in the exporting Member State less a percentage representing the proportion by which the goods have depreciated, if the value of the goods has decreased between the date on which tax was last charged in the exporting Member State and the date of importation;

(b) to the full amount of tax actually paid in the exporting Member State, if the value of the goods has increased over the same period.

JUDGMENT OF THE COURT (First Chamber)
23 January 1986

In Case 39/85

REFERENCE to the Court under Article 177 of the EEC Treaty by the tribunal d'instance [District Court], Bordeaux, for a preliminary ruling in the proceedings pending before that court between

G. Bergeres-Becque

and

Chef de service interrégional des douanes [Head of the Inter-Regional Customs Service], Bordeaux

on the interpretation of Article 95 of the EEC Treaty,

THE COURT (First Chamber),

in answer to the questions referred to it by the tribunal d'instance de Bordeaux by a judgment of 24 January 1985, hereby rules:

(1) **For the purposes of applying Article 95 of the EEC Treaty where value-added tax is levied on the importation of goods by a non-taxable person, no distinction should be made according to whether or not the transaction giving rise to the importation was effected for valuable consideration.**

(2) **Where a Member State levies value-added tax on the importation from another Member State of goods supplied by a non-taxable person, the taxable amount does not include the amount of the value-added tax paid in the exporting**

Member State which is still contained in the value of the goods when they are imported; that value is to be determined on the basis of the relevant data in the exporting Member State.

(3) The amount of the value-added tax paid in the exporting Member State which is still contained in the value of the goods when they are imported is equal:

(a) to the amount of value-added tax actually paid in the exporting Member State less a percentage representing the proportion by which the goods have depreciated, if the value of the goods has decreased between the date on which value-added tax was last charged in the exporting Member State and the date of importation;

(b) to the full amount of value-added tax actually paid in the exporting Member State, if the value of the goods has increased over the same period.

Case 106/84

Commission of the European Communities

v

Kingdom of Denmark

(Taxation of spirits — Fruit wine)

Summary

1. *Tax provisions — Internal taxation — Prohibition of discrimination between imported products and similar domestic products — Similar products — Concept — Interpretation — Criteria — Wine made from grapes and wine made from other fruit*
(EEC Treaty, Art. 95, first paragraph)

2. *Tax provisions — Internal taxation — Prohibition of discrimination between imported products and similar domestic products — Discrimination — Concept — Scope*
(EEC Treaty, Art. 95, first paragraph)

3. *Tax provisions — Internal taxation — System of differential taxation — Permissibility — Conditions — Pursuit of objectives that are compatible with Community law — No discriminatory or protective effect*
(EEC Treaty, Art. 95)

1. In order to determine whether products are similar within the terms of the prohibition laid down in the first paragraph of Article 95 of the Treaty, it is necessary to consider whether they have similar characteristics and meet the same needs from the point of view of consumers. As the concept of similarity must be given a broad interpretation, the similarity of products must be assessed not according to whether they are strictly identical but according to whether their use is similar and comparable.

   Hence in order to determine whether two categories of beverages are similar, it is necessary first to consider certain objective characteristics, such as their origin, the method of manufacture and their organoleptic properties, in particular taste and alcohol content, and secondly to consider whether or not both categories of beverages are capable of meeting the same needs from the point of view of consumers, which must be assessed on the basis not of existing consumer habits but of the prospective development of those habits and, essentially, on the basis of objective characteristics which ensure that a product is capable of meeting the same needs as another product from the point of view of certain categories of consumers. The customs classification of beverages, which was designed to meet the requirements of external trade, cannot provide conclusive evidence with regard to the appraisal of the criterion of similarity. Nor is it relevant that one of the categories of beverages in question is covered by a common organization of the market whilst the other is not.

   It is clear from a comparison of wine made from grapes and wine made from other fruit, which is based on those criteria, that they are similar products.

2. The mere difference in the tax burden borne by domestic products and similar imported products, whether it is the result of the rate of tax, the mode of assessment or other detailed implementing rules, is sufficient evidence of discrimination which is prohibited by the

first paragraph of Article 95 of the Treaty.

3. At 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, even products which are similar within the meaning of the first paragraph of Article 95 of the Treaty, 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 legislation, 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. However, such differential taxation is incompatible with Community law if the products most heavily taxed are, by their very nature, imported products.

JUDGMENT OF THE COURT
4 March 1986

In Case 106/84

Commission of the European Communities, represented by its Legal Adviser, Johannes Føns Buhl, acting as Agent, with an address for service in Luxembourg at the office of Georges Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

applicant,

and

Kingdom of Denmark, represented by Laurids Mikaelsen, legal Adviser at the Ministry of Foreign Affairs, with an address for service in Luxembourg at the Danish Embassy,

defendant,

APPLICATION for a declaration that the Kingdom of Denmark has failed to fulfil its obligations under Article 95 of the EEC Treaty by imposing a higher rate of duty on wine made from grapes than on wine made from other fruit,

THE COURT

hereby:

(1) **Declares that, by taxing wine made from grapes at a higher rate than wine made from other fruit, the Kingdom of Denmark has failed to fulfil its obligations under the first paragraph of Article 95 of the EEC Treaty.**

(2) **Orders the Kingdom of Denmark to pay the costs.**

Case 243/84

John Walker & Sons Ltd

v

Ministeriet for Skatter og Afgifter

(reference for a preliminary ruling
from the Østre Landsret)

(Taxation of spirits — Fruit wine of the liqueur type)

Summary

1. *Tax provisions — Internal taxation — Prohibition of discrimination between imported products and similar domestic products — Similar products — Concept — Interpretation — Criteria — Scotch whisky and fruit wine of the liqueur type*
(EEC Treaty, Art. 95, first paragraph)

2. *Tax provisions — Internal taxation — System of differential taxation — Permissibility — Conditions — Pursuit of objectives that are compatible with Community law — No discriminatory or protective effect*
(EEC Treaty, Art. 95)

1. In order to determine whether products are similar within the terms of the prohibition laid down in the first paragraph of Article 95 of the Treaty, it is necessary to consider whether they have similar characteristics and meet the same needs from the point of view of consumers. As the concept of similarity must be given a broad interpretation, the similarity of products must be assessed not according to whether they are strictly identical but according to whether their use is similar and comparable.

   Hence, in order to determine whether two categories of beverages are similar, it is necessary first to consider certain objective characteristics, such as their origin, the method of manufacture and their organoleptic properties, in particular taste and alcohol content, and secondly to consider whether or not both categories of beverages are capable of meeting the same needs from the point of view of consumers.

   It is clear from a comparison of Scotch whisky and fruit wine of the liqueur type, which is based on those criteria, that they are not similar products.

2. At its present stage of development Community law, in particular the second paragraph of Article 95 of the Treaty, 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 legislation, 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. A system of taxation which differentiates between certain beverages does not unduly favour domestic producers where a significant proportion of domestic production of alcoholic beverages falls within each of the relevant tax categories.

JUDGMENT OF THE COURT
4 March 1986

In Case 243/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Østre Landsret [Eastern Division of the High Court] of Denmark for a preliminary ruling in the proceedings pending before that court between

John Walker & Sons Ltd, a company incorporated under English law, having its registered office in London,

and

Ministeriet for Skatter og Afgifter [Ministry for Fiscal Affairs]

on the interpretation of Article 95 of the EEC Treaty,

THE COURT,

in answer to the questions submitted to it by the Østre Landsret by judgment of 27 September 1984, hereby rules:

(1) **The first paragraph of Article 95 of the EEC Treaty must be interpreted as meaning that products such as Scotch whisky and fruit wine of the liqueur type may not be regarded as similar products.**

(2) **In the present stage of its development, Community law, and in particular the second paragraph of Article 95 of the EEC Treaty, does not preclude the application of a system of taxation which differentiates between certain beverages on the basis of objective criteria. Such a system does not favour domestic producers where a significant proportion of domestic production of alcoholic beverages falls within each of the relevant tax categories.**

Case 73/85

Hans-Dieter and Ute Kerrutt
v
Finanzamt Mönchengladbach-Mitte

(reference for a preliminary ruling
from the Finanzgericht Düsseldorf)

(Turnover tax — 'Bauherrenmodell'
[a co-proprietors' building scheme])

Summary

1. *Tax provisions — Harmonization of laws — Turnover tax — Common system of value-added tax — Exemptions provided for by the Sixth Directive — Exemption for the supply of buildings and the land on which they stand — Services provided in connection therewith — Whether taxable*
(Council Directive No 77/388, Art. 2 (1), Art. 13 B (g) and Art. 28 (3) (b))

2. *Tax provisions — Harmonization of laws — Turnover tax — Common system of value-added tax — Imposition of other national taxes on transactions already subject to VAT — Whether permissible — Conditions*
(Council Directive No 77/388, Art. 33)

1. By virtue of Article 2 (1) of the Sixth Council Directive (No 77/388) on the harmonization of the laws of the Member States relating to turnover taxes the supply of goods and services under a parcel of contracts for work and services in connection with the construction of a building, except the supply of the building land, are subject to value-added tax inasmuch as they do not fall within one of the exemptions provided for by the directive in respect of the supply of buildings and of the land on which they stand.

2. No provision of Community law prohibits a Member State from levying on a transaction which is subject to value-added tax under Directive No 77/388 other taxes on transfers and transactions, provided that such taxes cannot be characterized as turnover taxes.

JUDGMENT OF THE COURT (Fifth Chamber)
8 July 1986

In Case 73/85

REFERENCE to the Court under Article 177 of the EEC Treaty by the Finanzgericht [Finance Court] Düsseldorf for a preliminary ruling in the proceedings pending before that court between

Hans-Dieter and Ute Kerrutt, Markgröningen,

and

Finanzamt [Tax Office] **Mönchengladbach-Mitte**

on the interpretation of various provisions of the Sixth Council Directive, No 77/388/EEC of 17 May 1977, on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (Official Journal 1977, L 145, p. 1),

On those grounds,

THE COURT (Fifth Chamber)

in reply to the questions referred to it by the Finanzgericht Düsseldorf by an order of 17 December 1984, hereby rules:

(1) **Under a scheme such as the 'Bauherrenmodell' referred to in the order requesting a preliminary ruling the supply of goods and services under a parcel of contracts for work and services in connection with the construction of a building, except the supply of the building land, are subject to value-added tax by virtue of Article 2 (1) of the Sixth Council Directive (No 77/388/EEC of 17 May 1977).**

(2) **No provision of Community law prohibits a Member State from levying on a transaction which is subject to value-added tax under the Sixth Directive other taxes on transfers and transactions, such as the German 'Grunderwerbsteuer', provided that such taxes cannot be characterized as turnover taxes.**

O.J. No C 191 of 31.7.1985, p. 10

Action brought on 1 July 1985 by the Commission of the European Communities against the Italian Republic

(Case 200/85)

(85/C 191/12)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 1 July 1985 by the Commission of the European Communities, represented by Dr Guido Berardis, of the Commission's Legal Department, with an address for service in Luxembourg at the Chambers of Dr Georgios Kremlis, also of the Commission's Legal Department, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

— Declare that by introducing and maintaining differential rates of value-added tax on diesel-engined motor vehicles on the basis of the cylinder capacity in order to apply the higher rate exclusively to motor vehicles imported particularly from other Member States, the Italian Republic has failed to fulfil its obligations under Article 95 of the EEC Treaty.

— Order the Italian Republic to pay the costs.

Contentions and main arguments adduced in support

— Infringement of the first paragraph of Article 95 of the EEC Treaty. Since no diesel-engined motor vehicles with a cylinder capacity in excess of the limit laid down (2 500 cc) are manufactured in Italy, whilst such vehicles are manufactured in at least one other Member State, Italy imposes on certain products originating in other Member States internal taxes which are higher than those imposed on similar domestic products.

— Infringement of the second paragraph of Article 95 of the EEC Treaty. Even if the similarity between the products were open to challenge, the second paragraph of Article 95 would necessarily apply since the protectionist purpose of the measure in question cannot seriously be denied.

O.J. No C 15 of 21.1.1987, p. 4

JUDGMENT OF THE COURT

of 16 December 1986

in Case 200/85: Commission of the European Communities v. Italian Republic (1)

(Differential rates of value-added tax for diesel-engined motor vehicles)

(87/C 15/06)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 200/85: Commission of the European Communities (Agent: Guido Berardis) against Italian Republic (Agent: Luigi Ferrari Bravo, assisted by Pier Giorgio Ferri, Avvocato dello Stato) — application for a declaration that, by introducing and maintaining differential rates of value-added tax on diesel-engined cars on the basis of the cubic capacity in such a way that the highest rate applies exclusively to imported cars, and in particular to cars imported from other Member States, the Italian Republic has failed to fulfil its obligations under Article 95 of the EEC Treaty — the Court, composed of C. Kakouris, President of Chamber, acting as President, T. F. O'Higgins and F. Schockweiler (Presidents of Chambers), G. Bosco, T. Koopmans, K. Bahlmann and G. C. Rodriguez Iglesias, Judges; J. Mischo, Advocate-General; P. Heim, Registrar, gave a judgment on 16 December 1986, the operative part of which is as follows:

1. *The application is dismissed.*

2. *The Commission is ordered to pay the costs.*

---

(1) OJ No C 191, 31. 7. 1985.

O.J. No C 316 of 27.11.1984, p. 3

Action brought on 29 October 1984 by the Groupement Agricole d'Exploitation en Commun de la Ségaude (GAEC) against the Council and the Commission of the European Communities

(Case 253/84)

(84/C 316/05)

An action against the Council and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 29 October 1984 by the Groupement Agricole d'Exploitation en Commun de la Ségaude, whose registered office is at La Clagette (France), represented by L. Funck-Brentano, of the Paris Bar, with an address for service in Luxembourg at the Chambers of M. Neuen-Kauffman, of the Luxembourg Bar, 18 Avenue de la Porte-Neuve.

The applicant claims that the Court should:

(a) declare admissible the applicant's claim for damages of FF 60 000 and any additional sum which may fall due;

(b) declare that the European Economic Community is liable, in accordance with Articles 178 and 215 of the EEC Treaty, for the damage sustained by the applicant as a result of the Council's adoption of the Decision of 30 June 1984;

(c) declare that accordingly the European Economic Community is bound to pay the applicant provisional damages of FF 60 000 plus interest;

(d) declare that the European Economic Community is bound to pay any subsequent amounts as and when such amounts are determined;

(e) order the European Economic Community to pay the costs of these proceedings and any subsequent proceedings in which a definitive ruling is made as to the additional amounts.

Contentions and main arguments adduced in support:

The applicant produces beef, veal, poultry and milk. Sales of its products have been adversely affected as a direct result of the aid granted to farmers of the Federal Republic of Germany, authorized by Council Decision No 84/361/EEC (1). That Decision is unlawful for the following reasons:

— failure to comply with procedural requirements: the Council chose to use the procedure laid down in Article 93 (2) of the EEC Treaty, despite the fact that the aid authorized has an effect on agricultural and VAT provisions, which the Council is not entitled to adopt or to alter except on a proposal from the Commission. Moreover, the dismantling of monetary compensatory amounts under Regulation (EEC) No 855/84 (1) does not constitute an 'exceptional circumstance' within the meaning of Article 93 of the EEC Treaty.

— discrimination: the aid authorized goes beyond mere compensation for the dismantling of monetary compensatory amounts; indeed for about six months it will overlap with the advantage provided by the monetary compensatory amounts.

— infringement of Article 25 (3) of the Sixth Council Directive (2).

— infringement of Article 96 of the EEC Treaty.

(1) OJ No L 185, 12. 7. 1984, p. 41.

(1) OJ No L 90, 1. 4. 1984, p. 1.
(2) OJ No L 145, 13. 6. 1977, p. 1.

O.J. No C 34 of 12.2.1987, p. 4

JUDGMENT OF THE COURT

of 15 January 1987

in Case 253/84: Groupement Agricole d'Exploitation en Commun (GAEC) v. Council and Commission of the European Communities (1)

(Action for damages)

(87/C 34/07)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 253/84: Groupement Agricole d'Exploitation en Commun (GEAC) de la Segaude, having its registered office at la Clayette (France), represented by Lise Funck-Brentano, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Marlyse Neuen-Kaufmann, 18 Avenue de la Porte Neuve, supported by Fédération Nationale des Syndicats d'Exploitants Agricoles (FNSEA), Paris, represented by Lise Funck-Brentano, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Marlyse Neuen-Kaufmann, 18 Avenue de la Porte Neuve against the Council of the European Communities (Agents: Antonio Sacchettini and Arthur Brautigam) and the Commission of the European Communities (Agent: Jean-Claude Seché), supported by the Federal Republic of Germany (Agent: Martin Seidel, assisted by Dietrich Ehle, of the Cologne Bar) — application for damages under Article 178 and the second paragraph of Article 215 of the EEC Treaty — the Court, composed of Lord Mackenzie Stuart, President, Y. Galmot, T. F. O'Higgins and F. Schockweiler (Presidents of Chambers), G. Bosco, T. Koopmans, O. Due, U. Everling, K. Bahlmann, R. Joliet and J. C. Moitinho de Almeida, Judges; Sir Gordon Slynn, Advocate General; for the Registrar, H. A. Rühl, Principal Administrator, gave a judgment on 15 January 1987, the operative part of which is as follows:

1. *The application is dismissed.*

2. *GAEC and FNSEA are ordered to pay the costs of the Council and of the Federal Republic of Germany.*

---

(1) OJ No C 316, 27. 11. 1984.

O.J. No C 240 of 21.9.1985, p. 4

Action brought on 30 July 1985 by the Commission of the European Communities against the Kingdom of the Netherlands

(Case 235/85)

(85/C 240/05)

An action against the Kingdom of the Netherlands was brought before the Court of Justice of the European Communities on 30 July 1985 by the Commission of the European Communities, represented by J. F. Buhl, acting as Agent, assisted by M. Mees, Advocate, with an address for service in Luxembourg at the office of G. Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

1. Declare that by not subjecting to the system of Value Added Tax the legal activities of notaries and sheriffs' officers performed for consideration, the Kingdom of the Netherlands has not fulfilled its obligations under the Community provisions, in particular Article 2 and Article 4 (1), (2) and (4) of Council Directive 77/388/EEC (1) of 17 May 1977;

2. Order the Kingdom of the Netherlands to pay the costs.

Contentions and main arguments adduced in support

In the Commission's view, the provision of services by notaries and sheriffs' officers is an 'economic activity' within the meaning of the Sixth Directive on VAT which gives an independent definition of that expression. The underlying principle of VAT, namely a comprehensive tax on consumption, requires the provisions regarding exceptions and exemptions to be interpreted strictly. Therefore, in view of their independence, particularly in the activities which they perform as part of their office, notaries and sheriffs' officers are not in the category of 'bodies governed by public law'.

(1) OJ No L 145, 13. 6. 1977, p. 1.

O.J. No C 108 of 23.4.1987, p. 5

JUDGMENT OF THE COURT

of 26 March 1987

in Case 235/85: Commission of the European Communities against the Kingdom of the Netherlands (1)

(Persons subject to VAT — Bodies governed by public law — Notaries and sheriffs'-officers)

(87/C 108/06)

(Language of the case: Dutch)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 235/85: Commission of the European Communities (Agent: Johannes Føns Buhl, assisted by Marten Mees of the Bar of the Hague) against the Kingdom of the Netherlands (Agent: G. N. Borchardt) — application for a declaration that by not subjecting the public services performed by notaries and sheriffs' officers to VAT, the Kingdom of the Netherlands has failed to fulfil its obligations under the Sixth Directive on VAT — the Court, composed of Lord Mackenzie Stuart, President, C. Kakouris and F. Schockweiler (Presidents of Chambers), G. Bosco, T. Koopmans, U. Everling, R. Joliet, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Judges; C. O. Lenz, Advocate General; D. Louterman, Administrator, acting as Registrar, gave a judgment on 26 March 1987, the operative part of which is as follows:

1. *By not subjecting to the system of value-added tax the public services performed by notaries and sheriffs' officers, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 2 and Article 4 (1), (2) and (4) of Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment;*

2. *The Kingdom of the Netherlands is ordered to pay the costs.*

(1) OJ No C 240, 21. 9. 1985.

O.J. No.C 327 of 20.12.1986,p.6

Action brought on 24 November 1986 by the Commission of the European Communities against the Federal Republic of Germany

(Case 290/86)

(86/C 327/10)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 24 November 1986 by the Commission of the European Communities, represented by Götz zur Hausen and John Forman, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

1. Declare that, by failing to pay interest (in the amount of DM 3 292 041,32) under Article 11 of Regulation (EEC) No 2891/77 for the period from 31 October 1984 until the own resources were made available (1 August 1986) on the own resources which it had failed to pay between 1980 and 1983 as a result of exempting from value-added tax, contrary to Article 13 (A) (1) (a) of the Sixth Council Directive on turnover taxes, the supply of transport services for the Deutsche Bundespost, the Federal Republic of Germany has failed to fulfil its obligations under the EEC Treaty;

2. Order the Federal Republic of Germany to pay the costs.

Contentions and main arguments adduced in support

In view of the declaration of the Court of Justice in Case 107/84 (1) that the Sixth Council Directive on turnover taxes had been infringed, as a result of which infringement the value-added tax own resources basis had been reduced, the Federal Republic of Germany was obliged under Article 1 (1) and Article 2 (1) of Regulation (EEC) No 2892/77 (2) to subsequently make good the amount due Under Article 11 of Regulation (EEC) No 2891/77 (3) any delay in crediting an amount is to give rise to payment of the rate of interest provided for therein regardless of the reason for the delay.

(1) OJ No C 200, 8. 8. 1985, p. 8.
(2) OJ No L 336, 27. 12. 1977, p. 8.
(3) OJ No L 336, 27. 12. 1977, p. 1.

O.J. No.C 136 of 21.5.1987,p.9

Removal from the Register of Case 290/86 (1)

(87/C 136/16)

By order of 26 March 1987 the Court of Justice of the European Communities ordered the removal from the Register of Case 290/86: Commission of the European Communities v. Federal Republic of Germany

(1) OJ No C 327, 20. 12. 1986

O.J. No C 181 of 19.7.1985, p. 5

Action brought on 25 June 1985 by the Commission of the European Communities against the French Republic

(Case 196/85)

(85/C 181/10)

An action against the French Republic was brought before the Court of Justice of the European Communities on 25 June 1985 by the Commission of the European Communities, represented by Jacques Delmoly, a member of its Legal Department, with an address for service in Luxembourg at the office of Georges Kremlis, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

— Declare that, by establishing and maintaining a system of differential taxation in respect of wines known as 'natural sweet wines' and of dessert wines, the French Republic has failed to fulfil its obligations under Article 95 of the EEC Treaty;

— Order the French Republic to pay the costs.

Contentions and main arguments adduced in support

The Commission no longer disputes the principle of the application by France of tax provisions favouring natural sweet wines in France since the benefit of those provisions was extended to similar products imported from other Member States by the Finance Law of 1982. It considers, however, that three of the conditions which imported products must satisfy under Article 417a of the Code Général des Impôts [General Taxation Code] are of a restrictive nature and render virtually ineffective the extension of those tax provisions to foreign producers. Those conditions are:

— the requirement that the product comes from a region where its production is traditional and customary;

— the requirement of equivalent supervision of its production and marketing: in the Commission's opinion it is not possible, in particular, for the benefit of the favourable tax provisions to be granted on the basis of an agreement concluded with another Member State or on the basis of an exchange of information;

— the requirement of special accompanying documents.

O.J. No C 123 of 9.5.1987, p. 6

JUDGMENT OF THE COURT

of 7 April 1987

in Case 196/85: Commission of the European Communities v. French Republic (1)

(Taxation of natural sweet wines and liqueur wines)

(87/C 123/08)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 196/85: Commission of the European Communities (Agent: Johannes Føns Buhl) against the French Republic (Agents: Gilbert Guillaume, Régis de Gouttes and Philippe Pouzoulet) — application for a declaration that, by establishing and maintaining a system of differential taxation in respect of wines known as 'natural sweet wines' and liqueur wines, the French Republic has failed to fulfil its obligations under Article 95 of the EEC Treaty — the Court, composed of Lord Mackenzie Stuart, President, Y. Galmot and T. F. O'Higgins (Presidents of Chambers), G. Bosco, O. Due, U. Everling and K. Bahlmann, Judges; Sir Gordon Slynn, Advocate General; P. Heim, Registrar, gave a judgment on 7 April 1987, the operative part of which is as follows:

1. *The application is dismissed.*

2. *The Commission of the European Communities is ordered to pay the costs.*

(1) OJ No C 181, 19. 7. 1985.

O.J. No.C 325 of 18.12.1986,p.7

Reference for a preliminary ruling by the Gerechtshof te Amsterdam by judgment of that court of 7 October 1986 in the case of Atletiek Vereniging 'N.E.A.-Volharding' v Inspecteur der Invoerrechten en Accijnzen te Alkmaar

(Case 273/86)

(86/C 325/08)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Gerechtshof [Regional Court of Appeal], Amsterdam, of 7 October 1986, which was received at the Court Registry on 12 Novmeber 1986, for a preliminary ruling in the case of Atletiek Vereniging 'N.E.A.-Volharding', Purmerend, v Inspecteur der Invoerrechten en Accijnzen [Inspector of Customs and Excise], Alkmaar, on the following questions:

1. (a) Can the supply of food and drink by a sports club to its members in a canteen run by the club be regarded as a service closely linked to sport or physical education supplied to persons taking part in sport or physical education within the meaning of Article 13 (A) (1) (m) of the Sixth Council Directive, No 77/388/EEC of 17 May 1977, on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment?

   (b) In answering Question I (a) should a distinction be made between the supply of food and drink to members in the course of or in direct connexion with the actual practice of sport by members and the supply of food and drink to members on other occasions?

2. If Question 1 (a) is answered in the affirmative, can the supply of food and drink be regarded (to that extent) as essential to the transactions exempted within the meaning of the first indent of Article 13 (A) (2) (b) of the Sixth Directive?

(1) OJ No L 145, 13. 6. 1977, p. 1.

O.J. No.C 165 of 24.6.1987,p.7

Removal from the Register of Case 273/86 (1)

(87/C 165/16)

By order of 8 April 1987 the Court of Justice of the European Communities ordered the removal from the Register of Case 273/86 (reference for a preliminary ruling by the Gerechtshof Amsterdam): Atletiek Vereniging 'NEA-Volharding' v. Inspecteur der Invoerrechten en Accijnzen, Alkmaar.

(1) OJ No C 325, 18. 12. 1986.

O.J. No. C 181 of 19.7.1985, p. 3

Action brought on 13 June 1985 by the Commission of the European Communities against the Italian Republic

(Case 184/85)

(85/C 181/06)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 13 June 1985 by the Commission of the European Communities, represented by Enrico Traversa, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georges Kremlis, also of the Commission's Legal Department, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

— Declare that, by imposing and maintaining in force a tax on the consumption of fresh and dried bananas and on banana meal, the Italian Republic has failed to fulfil its obligations under Article 95 of the EEC Treaty;

— Order the Italian Republic to pay the costs.

Contentions and main arguments adduced in support

The consumption tax is imposed only on bananas, which, apart from an absolutely negligible quantity of home-grown bananas, consist almost entirely of imports. However, neither that tax nor any other Italian charge which is similar or comparable to it is charged on the numerous well-known varieties of edible fruit which are typically home grown and must be regarded as 'similar products'.

Alternatively, if the similarity between bananas and home-grown fruit cannot be established beyond doubt, the Commission considers the tax to be contrary to the second paragraph of Article 95 of the EEC Treaty.

O.J. No. C 203 of 30.7.1987, p. 6

JUDGMENT OF THE COURT

of 7 May 1987

in Case 184/85: Commission of the European Communities v. Italian Republic (1)

(Consumer tax on bananas)

(87/C 203/07)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 184/85: Commission of the European Communities (Agent: Enrico Traversa) against Italian Republic (Agent: Luigi Ferrari Bravo, assisted by Sergio Laporta, Avvocato dello Stato) — application for a declaration that, by imposing and maintaining in force a tax on the consumption of fresh and dried bananas and on banana meal, the Italian Republic has failed to fulfil its obligations under Article 95 of the EEC Treaty — the Court, composed of Y. Galmot, President of Chamber, acting for the President, C. N. Kakouris, T. F. O'Higgins and F. A. Schockweiler (Presidents of Chambers), G. Bosco, T. Koopmans, O. Due, U. Everling, K. Bahlmann, R. Joliet and G. C. Rodríguez Iglesias, Judges; C. O. Lenz, Advocate-General; H. A. Rühl, Principal Administrator, acting for the Registrar, gave a judgment on 7 July 1987, the operative part of which is as follows:

1. *By imposing and maintaining in force a tax on the consumption of fresh bananas which is applicable to bananas from the French Overseas Departments, the Italian Government has failed to fulfil its obligations under the second paragraph of Article 95 of the EEC Treaty.*

2. *The remainder of the application is dismissed.*

3. *The Italian Republic is ordered to pay the costs.*

---

(1) OJ No C 181, 19. 7. 1985.

O.J. No. C 179 of 17.7.1985, p. 4

Reference for a preliminary ruling by the Tribunale di Milano by order of that court of 17 January 1985 in the case of Cooperativa Co-Frutta srl and Amministrazione delle Finanze dello Stato

(Case 193/85)

(85/C 179/06)

Reference has been made to the Court of Justice of the European Communities by an order of the Tribunale di Milano [District Court, Milan] of 17 January 1985, which was received at the Court Registry on 21 June 1985, for a preliminary ruling in the case of Cooperativa Co-Frutta srl, Padua, and Amministrazione delle Finanze dello Stato [State Finance Administration] on the following questions:

1. Does a charge described as a State consumption tax which is expressed to be imposed on both imported products and domestic products but in practice applies only to imported products because, as a result of environmental conditions, there is no domestic production of the product in question (in this case bananas), constitute a charge having an effect equivalent to a customs duty, prohibited by Articles 9 and 12 of the EEC Treaty?

2. Must a charge of that kind instead be regarded as internal taxation within the meaning of Article 95 of the EEC Treaty in view of the fact that, according to its name, it is imposed on the consumption of the goods in question and not on the importation thereof, even if it is physically collected when the goods are cleared through customs and is imposed only on bananas and not on any other kind of fruit?

3. If it is to be regarded as internal taxation, is the charge in question contrary to the second paragraph of Article 95 and as such prohibited, inasmuch as its purpose is to protect other fruit, in particular all home-grown fruit?

4. If the matter falls to be considered, must Article 95 be applied only to products originating in the Member States of the Community or also to products which are in free circulation?

5. If Article 95 of the EEC Treaty is held to be inapplicable to products originating in non-member countries, is a charge which is contrary to Article 95 as regards products of the Member States also contrary to Article III of the General Agreement on Tariffs and Trade (GATT) as regards products originating in the territory of the contracting parties to the Agreement?

O.J. No. C 152 of 10.6.1987, p. 6

JUDGMENT OF THE COURT

of 7 May 1987

in Case 193/85 (reference for a preliminary ruling made by the Tribunale di Milano): Cooperativa Co-Frutta srl v. Amministrazione delle Finanze dello Stato (1)

(Consumer tax on bananas)

(87/C 152/10)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the Reports of the Cases before the Court)

In Case 193/85: reference to the Court under Article 177 of the EEC Treaty by the Tribunale di Milano [District Court, Milan] for a preliminary ruling in the proceedings pending before that court between Cooperativa Co-Frutta srl and Amministrazione delle Finanze dello Stato — on the interpretation of Articles 9, 12 and 95 of the EEC Treaty and Article III of the General Agreement on Tariffs and Trade — the Court composed of Y. Galmot, acting for the President of the Court, C. N. Kakouris, T. F. O'Higgins and F. A. Schockweiler (Presidents of Chambers), G. Bosco, T. Koopmans, O. Due, U. Everling, K. Bahlmann, R. Joliet and G. C. Rodríguez Iglesias, Judges; C. O. Lenz, Advocate-General; H. A. Rühl, Principal Administrator, acting for the Registrar gave a judgment on 7 May 1987, the operative part of which is as follows:

---

(1) OJ No C 179, 17. 7. 1985.

1. *A charge described as a consumer tax which is imposed on both imported and domestic products but in practice applies virtually exclusively to imported products because domestic production is extremely small does not constitute a charge having an effect equivalent to a customs duty within the meaning of Articles 9 and 12 of the EEC Treaty if it is part of a general systems of internal dues applied systematically to categories of products in accordance with objective criteria irrespective of the origin of the products. It therefore constitutes internal taxation within the meaning of Article 95.*

2. *A consumer tax imposed on certain imported fruit is contrary to the second paragraph of Article 95 of the EEC Treaty if it is of such a nature as to protect domestic fruit production.*

3. *Article 95 of the EEC Treaty applies to all products coming from Member States, including products from non-member countries which are in free circulation in the Member States.*

O.J. No. C 327 of 17.12.1985, p. 8

Action brought on 19 November 1985 by the Commission of the European Communities against the Kingdom of Belgium

(Case 356/85)

(85/C 327/17)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 19 November 1985 by the Commission of the European Communities, represented by Henri Etienne, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

— Declare that the Kingdom of Belgium, by introducing and applying a higher rate of value added tax on wine of fresh grapes, an imported product, than on beer, a domestic product, has failed to fulfil its obligations under Article 95 of the EEC Treaty;

— Order the Kingdom of Belgium to pay the costs.

Contentions and main arguments adduced in support:

Since beer and wine are competing products, Belgium is prohibited by the second paragraph of Article 95 of the EEC Treaty from imposing on the imported product, wine, a tax of such a nature as to afford protection to the domestic product, beer.

O.J. No. C 205 of 1.8.1987, p. 8

JUDGMENT OF THE COURT

of 9 July 1987

in Case 356/85: Commission of the European Communities v. Kingdom of Belgium (1)

(Taxation of wine and beer)

(87/C 205/10)

(Language of the Case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 356/85, Commission of the European Communities (Agent: Henri Etienne), supported by the French Republic (Agent: Gilbert Guillaume) against Kingdom of Belgium (Agent: Robert Hobaer, assisted by Jacques Delbeke) — application for a declaration that, by applying a higher rate of VAT to wines made from fresh grapes, which are imported, than to beer, which is produced in Belgium, the Kingdom of Belgium has failed to fulfil its obligations under Article 95 of the EEC Treaty — the Court, composed of Lord Mackenzie Stuart, President, T. F. O'Higgins and F. A. Schockweiler (Presidents of Chambers), G. Bosco, O. Due, U. Everling, K. Bahlmann, R. Joliet, J. C. Moitinho de Almeida, Judges; J. L. da Cruz Vilaça, Advocate-General; B. Pastor, Administrator, for the Registrar, gave a judgment on 9 July 1987, the operative part of which is as follows:

1. *The application is dismissed;*

2. *The Commission of the European Communities and the French Republic are jointly and severally ordered to pay the costs.*

---

(1) OJ No C 327, 17. 12. 1985.

O.J. No. C 355 of 31.12.1985, p. 12

Reference for a preliminary ruling by the Tribunal de Grande Instance, Mulhouse, by judgment of that court of 19 December 1985 in the case of Jacques Feldain v. Directeur Général des Impôts, Colmar

(Case 433/85)

(85/C 355/21)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Tribunal de Grande Instance, Mulhouse, of 19 December 1985, which was received at the Court Registry on 30 December 1985, for a preliminary ruling in the case of Jacques Feldain v. Directeur Général des Impôts, Colmar, on the following question:

Does Article 95 of the Treaty of Rome forbid the imposition, on motor vehicles exceeding a certain power rating for tax purposes, of a differential tax which increases exponentially according to that rating, where the rating is arrived at by means of a formula which has the effect of subjecting to the said exponential increase any vehicle of a given cylinder capacity and such vehicles are manufactured only in certain other countries, in particular those of the Community, and not in France?

O.J. No. C 274 of 13.10.1987, p. 5

JUDGMENT OF THE COURT

of 17 September 1987

in Case 433/85 (reference for a preliminary ruling made by the Tribunal de Grande Instance, Mulhouse): Jacques Feldain v. Directeur des Services Fiscaux du Département du Haut-Rhin (1)

(Article 95 — Differential tax on motor vehicles)

(87/C 274/06)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 433/85: reference to the Court under Article 177 of the EEC Treaty by the Tribunal de Grande Instance [Regional Court], Mulhouse, for a preliminary ruling in the proceedings pending before that court between Jacques Feldain, a company director, of Mulhouse, France, and the Directeur des Services Fiscaux [Director of the Tax Authorities] of the Département of Haut-Rhin, at his office in Colmar, France — on the interpretation of Article 95 of the EEC Treaty — the Court, composed of T. F. O'Higgins, President of the Second Chamber, acting as President, F. A. Schockweiler (President of the First Chamber), G. Bosco, O. Due, U. Everling, K. Bahlmann and R. Joliet, Judges; J. Mischo, Advocate-General; B. Pastor, Administrator, for the Registrar, gave a judgment on 17 September 1987, the operative part of which is as follows:

A system of road tax in which one tax band comprises more power ratings for tax purposes than the others, with the result that the normal progression of the tax is restricted in such a way as to afford an advantage to top-of-the-range cars of domestic manufacture, and in which the power rating for tax purposes is calculated in a manner which places vehicles imported from other Member States at a disadvantage has a discriminatory or protective effect within the meaning of Article 95 of the Treaty.

---

(1) OJ No C 355, 31. 12. 1985.

O.J. No. C 145 of 12.6.1986, p. 10

Reference for a preliminary ruling by the Gerechtshof, Amsterdam, by judgment of that court of 7 March 1986 in the case of Amro Aandelen Fonds, Amsterdam v. Inspecteur der Registratie en Successie

(Case 112/86)

(86/C 145/16)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Fourth Collegiate Revenue Chamber of the Gerechtshof [Regional Court of Appeal], Amsterdam, of 7 March 1986, which was received at the Court Registry on 12 May 1986, for a preliminary ruling in the case of Amro Aandelen Fonds, Amsterdam, represented by Amsterdam Rotterdam Bank NV v. Inspecteur des Registratie en Successie (Haarlem) on the following question:

What requirements, besides that of operating for profit, must a group of persons (providers of capital) without legal personality satisfy in order to be regarded as a 'company' within the meaning of Article 3 (2) of the Directive [Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (1)]?

(1) OJ, English Special Edition 1969 (II), p. 412.

O.J. No. C 334 of 12.12.1987, p. 4

JUDGMENT OF THE COURT

of 12 November 1987

in Case 112/86: (reference for a preliminary ruling made by the Gerechtshof, Amsterdam): Amro Aandelen Fonds v. Inspecteur der Registratie en Successie [Inspector of Registration and Death Duties] (1)

(Indirect taxes on the raising of capital — Definition of capital company)

(87/C 334/04)

(Language of the case: Dutch)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 112/86 reference to the Court under Article 177 of the EEC Treaty by the Gerechtshof, Amsterdam, for a preliminary ruling in the proceedings pending before that Court between Amro Aandelen Fonds, represented by Amsterdam Rotterdam Bank NV and Inspecteur der Registratie en Successie, Amsterdam (now in Haarlem) — on the interpretation of Article 3 of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (Official Journal, English Special Edition 1969 (II, p. 412) — the Court, composed of Lord Mackenzie Stuart, President, G. C. Rodríguez Iglesias (President of Chamber), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot and T. F. O'Higgins, Judges; M. Darmon, Advocate-General; P. Heim, Registrar, gave a judgment on 12 November 1987, the operative part of which is as follows:

A group of persons without legal personality, the members of which provide capital for separate assets with a view to making profits is to be deemed to be a capital company by virtue of Article 3 (2) of Directive 69/335/EEC without any additional requirement. It is, however, for the national legislature, by virtue of the same provision, to determine whether or not it is to be regarded as a capital company for the purpose of charging capital duty.

(1) OJ No C 145, 12. 6. 1986.

O.J. No. C 169 of 8.7.1986, p. 7

Action brought on 26 May 1986 by the Commission of the European Communities against the Italian Republic

(Case 124/86)

(86/C 169/12)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 26 May 1986 by the Commission of the European Communities, represented by Sergio Fabro, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

1. declare that by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 83/183/EEC (1) of 28 March 1983 on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals the Italian Republic has failed to fulfil its obligations under the said Directive;

(1) OJ No L 105, 23. 4. 1983, p. 64.

2. order the Italian Republic to pay the costs.

Contentions and main arguments adduced in support:

Under Article 289 of the EEC Treaty, according to which directives are binding, as to the result to be achieved, upon each Member State to which they are addressed, the Member States are required to comply with the time-limits laid down in directives for their transposition into national law. Although that time limit expired on 1 January 1984 Italy has not taken the measures necessary to comply with the above-mentioned directive.

O.J. No. C 334 of 12.12.1987, p. 4

JUDGMENT OF THE COURT

of 24 November 1987

in Case 124/86: Commission of the European Communities v. Italian Republic (1)

(Failure of a Member State to fulfil its obligations — Failure to implement in national law Council Directive 83/183/EEC — Tax exemptions applicable to permanent imports from a Member State of the personal property of individuals)

(87/C 334/05)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 124/86: Commission of the European Communities (Agent: Sergio Fabro) against the Italian Republic (Agent: Luigi Ferrari Bravo, assisted by Ivo Braguglia) — application for a declaration that by failing to adopt within the time allowed the provisions necessary to comply with Council Directive 83/183/EEC of 28 March 1983 on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals (Official Journal No L 105, 1983, p. 64), the Italian Republic has failed to fulfil its obligations under the EEC Treaty — the Court, composed of G. Bosco, President of a Chamber, acting as President, J. C. Moitinho de Almeida (President of a Chamber), T. Koopmans, U. Everling, C. N. Kakouris, R. Joliet and F. A. Schockweiler, Judges; C. O. Lenz, Advocate-General; B. Pastor, Administrator, for the Registrar, gave a judgment on 24 November 1987, the operative part of which is as follows:

1. *By failing to adopt within the time allowed the provisions necessary to comply with Council Directive 83/183/EEC of 28 March 1983 on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals, the Italian Republic has failed to fulfil its obligations under the EEC Treaty.*

2. *The Italian Republic is ordered to pay the costs.*

(1) OJ No C 169, 8. 7. 1986.

O.J. No. C 169 of 8.7.1986, p. 7

Action brought on 26 May 1986 by the Commission of the European Communities against the Italian Republic

(Case 125/86)

(86/C 169/13)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 26 May 1986 by the Commission of the European Communities, represented by Sergio Fabro, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

1. declare that by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 83/181/EEC (') of 28 March 1983 determining the scope of Article 14 (1) (d) of Directive 77/388/EEC as regards exemption from value added tax on the final importation of certain goods the Italian Republic has failed to fulfil its obligations under the said Directive;

2. order the Italian Republic to pay the costs.

Contentions and main arguments adduced in support:

The contentions and main arguments are the same, *ceteris paribus*, as those adduced in Case 124/86; the time limit for transposition into national law expired on 1 July 1984.

(') OJ No L 105, 23. 4. 1983, p. 38.

O.J. No. C 334 of 12.12.1987, p. 5

JUDGMENT OF THE COURT

of 24 November 1987

in Case 125/86: Commission of the European Communities v. Italian Republic (')

(Failure of a Member State to fulfil its obligations — Failure to implement in national law Council Directive 83/181/EEC — Exemption from VAT on the final importation of certain goods)

(87/C 334/06)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 125/86: Commission of the European Communities (Agent: Sergio Fabro) against the Italian Republic (Agent: Luigi Ferrari Bravo, assisted by Ivo Braguglia) — application for a declaration that by failing to adopt within the time allowed the provisions necessary to comply with Council Directive 83/181/EEC of 28 March 1983 determining the scope of Article 14 (1) (d) of Directive 77/388/EEC as regards exemption from value added tax on the final importation of certain goods (Official Journal No L 105, 1983, p. 38), the Italian Republic has failed to fulfil its obligations under the EEC Treaty — the Court, composed of G. Bosco, President of a Chamber, acting as President, J. C. Moitinho de Almeida, (President of a Chamber), T. Koopmans, U. Everling, C. N. Kakouris, R. Joliet and F. A. Schockweiler, Judges; C. O. Lenz, Advocate-General; B. Pastor, Administrator, for the Registrar, gave a judgment on 24 November 1987, the operative part of which is as follows:

1. *By failing to adopt within the time allowed the provisions necessary to comply with Council Directive 83/181/EEC of 28 March 1983 determining the scope of Article 14 (1) (d) of Directive 77/388/EEC as regards exemption from value added tax on the final importa-*

(') OJ No C 169, 8. 7. 1986.

O.J. No. C 66 of 21.3.1986, p. 4

Reference for a preliminary ruling by the Højesteret (Supreme Court) by judgment of that court of 28 January 1986 in the case of Ministeriet for Skatter og Afgifter (Ministry for Fiscal Affairs) against Investeringsforeningen Dansk Sparinvest (Dansk Sparinvest Investment Society)

(Case 36/86)

(86/C 66/07)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Højesteret (Supreme Court) of 28 January 1986, which was received at the Court Registry on 11 February 1986, for a preliminary ruling in the case of Ministeriet for Skatter og Afgifter (Ministry for Fiscal Affairs) against Investeringsforeningen Dansk Sparinvest (Dansk Sparinvest Investment Society) on the following questions:

1. Are Articles 10 and 11 of the Council Directive No 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (1) to be understood as meaning that it is not permissible for a Member State to subject capital companies, within the meaning of Article 3 of the directive, to taxes or duties in connection with the transactions mentioned in Articles 10 and 11 other than capital duty and the duties mentioned in Article 12?

2. Is Article 4 (2) (a) of the directive to be understood as meaning that an increase in company capital effected by a transfer to it of the values mentioned in that provision is a precondition for the charging of capital duty within the meaning of the said provision or is a Member State entitled to charge capital duty simply on the basis of an increase in nominal capital?

(1) English Special Edition 1969 (II), p. 412.

O.J. No. C 55 of 26.2.1988, p. 9

JUDGMENT OF THE COURT

of 2 February 1988

in Case 36/86 (reference for a preliminary ruling made by the Højesteret): Ministry of Fiscal Affairs v. Investerings- foreningen Dansk Sparinvest (1)

(Indirect taxes on the raising of capital)

(88/C 55/08)

(Language of the Case: Danish)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 36/86: reference to the Court under Article 177 of the EEC Treaty by the Højesteret [Supreme Court] for a preliminary ruling in the proceedings pending before that court between the Ministry of Fiscal Affairs and Investeringsforeningen Dansk Sparinvest [Dansk Sparinvest Investment Society] — on the interpretation of Council Directive 69/335 of 17 July 1969 concerning indirect taxes on the raising of capital (Official Journal, English Special Edition 1969 (II), p. 412) — the Court, composed of Lord Mackenzie Stuart, President, J. C. Moitinho de Almeida (President of Chamber) T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot and T. F. O'Higgins, Judges; C. O. Lenz, Advocate General; H. A. Rühl, Principal Administrator, for the Registrar, gave a Judgment on 2 February 1988, the operative part of which is as follows:

1. *Articles 10 and 11 of Directive 69/335 mut be interpreted as meaning that it is not permissible for a Member State to subject capital companies, within the meaning of Article 3 of the Directive, to taxes or duties in connexion with the transactions mentioned in Articles 10 and 11 other than capital duty and the duties mentioned in Article 12.*

2. *Article 4 (2) (a) of Directive 69/335 must be interpreted as meaning that it applies only to an increase in the capital of a capital company by capitalization of profits or of permanent or temporary reserves and that a Member State is not entitled to charge capital duty solely on the basis of an increase in the nominal capital which does not contribute to the strengthening of the economic potential of the company.*

(1) OJ No C 66, 21. 3. 1986.

O.J. No.C 37 of 18.2.1986,p.8

Reference for a preliminary ruling by the Fifth Chamber of the Tribunal Correctionnel [Criminal Court] Verviers by judgment of that court of 8 January 1986 in the case of the Ministre des Finances and Procureur du Roi v. Ahmet Sikier and Mehmet Sikier

(Case 6/86)

(86/C 37/10)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Fifth Chamber of the Tribunal Correctionnel, Verviers, of 8 January 1986, which was received at the Court Registry on 13 January 1986, for a preliminary ruling in the case of Ministre des Finances and Procureur du Roi v. Ahmet Sikier and Mehmet Sikier on the following question:

Is the Royal Decree of 27 December 1977 compatible with the directives and regulations of the European Community and the Association Agreement between Turkey and the European Community (Law of 15 July 1964) in so far as it requires Turkish nationals to pay value-added tax on the importation of presents the value of which exceeds 45 000 Bfrs?

O.J. No.C 67 of 12.3.1988,p.7

Removal from the Register of Case 6/86 (1)

(88/C 67/11)

By order of 3 February 1988 the Court of Justice of the European Communities ordered the removal from the Register of Case 6/86 (reference for a preliminary ruling by the Tribunal de Première Instance, Verviers): Ministre des Finances and Procureur du Roi v. Ahmet Sikier and Mehmet Sikier.

---

(1) OJ No C 37, 18. 2. 1986.

O.J. No. C 347 of 31.12.1985, p. 27

Action brought on 2 December 1985 by the Commission of the European Communities against the Kingdom of Belgium

(Case 391/85)

(85/C 347/19)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 2 December 1985 by the Commission of the European Communities, represented by H. Étienne, Principal Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

— Declare that, in practice by retaining, under the Law of 31 July 1984, the catalogue price as the basis for the taxation of new saloon and estate cars, the Kingdom of Belgium has failed to take the measures necessary to comply with the judgment of the Court of Justice of 10 April 1984 (1) in which the Court declared that practice to be contrary to Directive 77/388/EEC (2);

— Order the Kingdom of Belgium to pay the costs.

Contentions and main arguments adduced in support

The action has been brought on the basis of Article 169 of the EEC Treaty. The registration tax provided for in the Law of 31 July 1984 and implemented by the Royal Decree of 20 December 1984 is charged on that part of the basis of assessment which the Court held to be contrary to the Treaty; that tax, although referred to by a different name, has the same characteristics as VAT.

(1) Case 324/82, *Commission* v. *Belgium*, [1984] ECR 1861.
(2) OJ No L 145, 13. 6. 1977, p. 1.

O.J. No. C 63 of 8.3.1988, p. 5

JUDGMENT OF THE COURT

of 4 February 1988

in Case 391/85: Commission of the European Communities v. Kingdom of Belgium (1)

(Failure of a State to fulfil its obligations — Failure to comply with a judgment of the Court — Sixth VAT Directive — Taxable amount)

(88/C 63/06)

(Language of the case: French)

(Provisional translation, the definitive translation will be published in the Reports of Cases before the Court)

In Case 391/85: Commission of the European Communities (Agent: H. Étienne) against the Kingdom of Belgium (Agents: R. Hoebaer and J. Dussart, assisted by G. Van Hecke and K. Lenaerts, both of the Brussels Bar) — application for a declaration that the Kingdom of Belgium, by in practice retaining, under the Law of 31 July 1984 amending the Code on taxes assimilated to stamp duties, the list price as the basis for the taxation of new saloon cars and estate cars, has failed to take the measures necessary to comply with the judgment of the Court of Justice of 10 April 1984 ([1984] ECR 1861), in which the Court declared that practice to be contrary to the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover tax — Common system of value-added tax: uniform basis of assessment (Official Journal 1977 No L 145, p. 1) — the Court, composed of G. Bosco, President of Chamber, acting as President, O. Due (President of Chamber), T. Koopmans, K. Bahlmann, R. Joliet, T. F. O'Higgins and F. A. Schockweiler, Judges; J. Mischo, Advocate-General; D. Louterman, Administrator, acting as Registrar, gave a judgment on 4 February 1988, the operative part of which is as follows:

1. *By in practice retaining, under the Law of 31 July 1984, the list price as the basis for the taxation of new saloon cars and estate cars, the Kindgom of Belgium has failed to take the measures necessary to comply with the judgment of the Court of 10 April 1984 and has failed to fulfil its obligations under the Treaty.*

2. *The Kingdom of Belgium is ordered to pay the costs.*

(1) OJ No C 347, 31. 12. 1985.

O.J. No. C 327 of 17.12.1985, p. 7

Action brought on 19 November 1985 by the Commission of the European Communities against the United Kingdom of Great Britain and Northern Ireland

(Case 353/85)

(85/C 327/15)

An action against the United Kingdom of Great Britain and Northern Ireland was brought before the Court of Justice of the European Communities on 19 November 1985 by the Commission of the European Communities, represented by its legal adviser, Mr D. R. Gilmour, acting as Agent, with an address for service in Luxembourg at the office of Mr Georgios Kremlis, member of its Legal Service, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

— Declare that by exempting supplies of goods, pursuant to the provisions of the Value Added Tax Act 1983, Schedule 6, Group 7 (Health), contrary to the provisions of Article 13 A 1 (c) of Directive 77/388/EEC, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil the obligations incumbent upon it pursuant to the Treaty establishing the European Economic Community;

— Find the United Kingdom liable in costs.

Contentions and main arguments adduced in support:

In the view of the Commission the exemption provided for in Article 13 A 1 (c) is limited to the supply of services and does not extend to the supply of goods (e.g. corrective spectacles made by registered opticians) unless such goods are supplied as an integral part and included in the price of the service.

O.J. No. C 74 of 22.3.1988, p. 6

JUDGMENT OF THE COURT

of 23 February 1988

in Case 353/85: Commission of the European Communities v. United Kingdom of Great Britain and Northern Ireland (1)

(Value added tax — Goods supplied in the exercise of a medical or paramedical profession)

(88/C 74/06)

(Language of the case: English)

In Case 353/85: Commission of the European Communities (Agent D. R. Gilmour) v. United Kingdom of Great Britain and Northern Ireland (Agent: S. J. Hay, assisted by D. Vaughan, Q.C.) — application for a declaration that, by exempting from value added tax the supply of certain goods provided in connection with the exercise of the medical and paramedical professions, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 13 A (1) (c) of the Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (Council Directive 77/388/EEC) (OJ No L 145, 1977, p. 1) — the Court composed of Lord Mackenzie Stuart, President, G. Bosco, O. Due and J. C. Moitinho de Almeida (Presidents of Chambers), U. Everling, K. Bahlmann, R. Joliet, T. F. O'Higgins and F. A. Schockweiler, Judges; G. F. Mancini, Advocate-General; D. Louterman, Administrator, for the Registrar, gave a judgment on 23 February 1988, the operative part of which is as follows:

1. *By exempting supplies of goods from the imposition of value added tax, pursuant to the provisions of the Value Added Tax Act 1983, Schedule 6, Group 7 (Health), the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 13 A (1) (c) of Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes;*

2. *The United Kingdom is ordered to pay the costs.*

---

(1) OJ No C 327, 17. 12. 1985.

O.J. No. C 333 of 21.12.1985, p. 4

Reference for a preliminary ruling by the Cour de Cassation, Chambre Commerciale by judgment of that court of 9 October 1985 in the case of Les Fils de Jules Bianco SA v. Director General for Customs and Indirect Taxes

(Case 331/85)

(85/C 333/07)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Cour de Cassation, Chambre Commerciale [Court of Cassation, Commercial Chamber], of 9 October 1985, which was received at the Court Registry on 8 November 1985, for a preliminary ruling in the case of Les Fils de Jules Bianco SA v. Director General for Customs and Indirect Taxes, on the following question:

— must the Treaty establishing the European Economic Community be interpreted as meaning that the French Republic cannot make the repayment of charges levied contrary to Community law conditional upon the production of proof that those charges have not been passed on to the purchasers of the products in respect of which they were charged, by placing the burden of adducing such negative proof solely upon natural or legal persons claiming repayment?

— does the answer depend upon whether the law of 30 December 1980 has retroactive effect, the nature of the charge at issue and whether the market is free, regulated or monopolistic, either wholly or in part?

O.J. No. C 74 of 22.3.1988, p. 11

JUDGMENT OF THE COURT

of 25 February 1988

in Joined Cases 331, 376 and 378/85: (reference for a preliminary ruling made by the Cour de Cassation of the French Republic): Les Fils de Jules Bianco SA and J. Girard Fils SA v. Directeur Général des Douanes et Droits Indirects (1)

(Recovery of undue payments — Evidence that charges on the price of goods have not been passed on)

(88/C 74/17)

(Language of the case: French)

(Provisional translation: the definitive translation will be published in the Reports of Cases before the Court)

In Joined Cases 331, 376 and 378/85: references to the Court under Article 177 of the EEC Treaty by the Cour de Cassation (Cour of Cassation) of the French Republic for a preliminary ruling in proceedings pending before that court between (1) Les Fils de Jules Bianco SA, whose registered office is at Ugine (France) and (2) J. Girard Fils SA, whose registered office is at Lyon (France) and the Directeur Général des Douanes et Droits Indirects (Director-General for Customs and Indirect Duties), residing in Paris (France) — on the determination of principles of Community law governing the repayment of national charges levied in breach of Community law — the Court, composed of G. Bosco, President of Chamber, acting as President, T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. N. Kakouris, R. Joliet, T. F. O'Higgins and F. A. Schockweiler, Judges; Sir Gordon Slynn, Advocate-General, D. Louterman, Administrator, acting for the Registrar, gave a judgment on 25 February 1988, the operative part of which is as follows:

---

(1) OJ No C 333, 21. 12. 1985 and OJ No C 336, 28. 12. 1985.

1. *The Treaty establishing the European Economic Community must be interpreted as meaning that a Member State may not adopt provisions which make the repayment of charges levied contrary to Community law conditional upon the production of proof that those charges have not been passed on to the purchasers of the products that were subject to the charges and place the burden of adducing such negative proof entirely upon the natural or legal persons claiming repayment.*

2. *The answer does not depend upon whether the national provision has retroactive effect, the nature of the charge at issue or whether the market is free, regulated or monopolistic, either wholly or in part.*

O.J. No. C 336 of 28.12.1985, p. 10

Reference for a preliminary ruling by the Cour de Cassation, Chambre Commerciale, by judgment of that court of 9 October 1985 in the case of Les Fils de Jules Bianco SA v. Director General for Customs and Indirect Duties

(Case 376/85)

(85/C 336/06)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Cour de Cassation, Chambre Commerciale [Court of Cassation, Commercial Chamber], of 9 October 1985, which was received at the Court Registry on 27 November 1985, for a preliminary ruling in the case of Les Fils de Jules Bianco S.A. v Director General for Customs and Indirect Duties, on the following question:

Must the Treaty establishing the European Economic Community be interpreted as meaning that the French Republic cannot make the repayment of charges levied contrary to Community law conditional upon the production of proof that those charges have not been passed on to the purchasers of the products in respect of which they were charged, by placing the burden of adducing such negative proof solely upon natural or legal persons claiming repayment? Does the answer depend upon whether the Law of 30 December 1980 has retroactive effect, the nature of the charge at issue and whether the market is free, regulated or monopolistic, either wholly or in part?

O.J. No. C 74 of 22.3.1988, p. 11

JUDGMENT OF THE COURT

of 25 February 1988

in Joined Cases 331, 376 and 378/85: (reference for a preliminary ruling made by the Cour de Cassation of the French Republic): Les Fils de Jules Bianco SA and J. Girard Fils SA v. Directeur Général des Douanes et Droits Indirects (1)

(Recovery of undue payments — Evidence that charges on the price of goods have not been passed on)

(88/C 74/17)

(Language of the case: French)

(Provisional translation: the definitive translation will be published in the Reports of Cases before the Court)

In Joined Cases 331, 376 and 378/85: references to the Court under Article 177 of the EEC Treaty by the Cour de Cassation (Cour of Cassation) of the French Republic for a preliminary ruling in proceedings pending before that court between (1) Les Fils de Jules Bianco SA, whose registered office is at Ugine (France) and (2) J. Girard Fils SA, whose registered office is at Lyon (France) and the Directeur Général des Douanes et Droits Indirects (Director-General for Customs and Indirect Duties), residing in Paris (France) — on the determination of principles of Community law governing the repayment of national charges levied in breach of Community law — the Court, composed of G. Bosco, President of Chamber, acting as President, T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. N. Kakouris, R. Joliet, T. F. O'Higgins and F. A. Schockweiler, Judges; Sir Gordon Slynn, Advocate-General, D. Louterman, Administrator, acting for the Registrar, gave a judgment on 25 February 1988, the operative part of which is as follows:

---

(1) OJ No C 333, 21. 12. 1985 and OJ No C 336, 28. 12. 1985.

1. *The Treaty establishing the European Economic Community must be interpreted as meaning that a Member State may not adopt provisions which make the repayment of charges levied contrary to Community law conditional upon the production of proof that those charges have not been passed on to the purchasers of the products that were subject to the charges and place the burden of adducing such negative proof entirely upon the natural or legal persons claiming repayment.*

2. *The answer does not depend upon whether the national provision has retroactive effect, the nature of the charge at issue or whether the market is free, regulated or monopolistic, either wholly or in part.*

O.J. No. C 336 of 28.12.1985, p. 10

Reference for a preliminary ruling by the Cour de Cassation, Chambre Commerciale, by judgment of that court of 9 October 1985 in the case of J. Girard Fils SA v. Director General for Customs and Indirect Duties

(Case 378/85)

(85/C 336/07)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Cour de Cassation, Chambre Commerciale [Court of Cassation, Commercial Chamber], of 9 October 1985, which was received at the Court Registry on 28 November 1985, for a preliminary ruling in the case of J. Girard Fils S.A. v Director General for Customs and Indirect Duties, on the following question:

Must the Treaty establishing the European Economic Community be interpreted as meaning that the French Republic cannot make the repayment of charges levied contrary to Community law conditional upon the production of proof that those charges have not been passed on to the purchasers of the products in respect of which they were charged, by placing the burden of adducing such negative proof solely upon natural or legal persons claiming repayment? Does the answer depend upon whether the Law of 30 December 1980 has retroactive effect, the nature of the charge at issue and whether the market is free, regulated or monopolistic, either wholly or in part?

O.J. No. C 74 of 22.3.1988, p. 11

JUDGMENT OF THE COURT

of 25 February 1988

in Joined Cases 331, 376 and 378/85: (reference for a preliminary ruling made by the Cour de Cassation of the French Republic): Les Fils de Jules Bianco SA and J. Girard Fils SA v. Directeur Général des Douanes et Droits Indirects (1)

(Recovery of undue payments — Evidence that charges on the price of goods have not been passed on)

(88/C 74/17)

(Language of the case: French)

(Provisional translation: the definitive translation will be published in the Reports of Cases before the Court)

In Joined Cases 331, 376 and 378/85: references to the Court under Article 177 of the EEC Treaty by the Cour de Cassation (Cour of Cassation) of the French Republic for a preliminary ruling in proceedings pending before that court between (1) Les Fils de Jules Bianco SA, whose registered office is at Ugine (France) and (2) J. Girard Fils SA, whose registered office is at Lyon (France) and the Directeur Général des Douanes et Droits Indirects (Director-General for Customs and Indirect Duties), residing in Paris (France) — on the determination of principles of Community law governing the repayment of national charges levied in breach of Community law — the Court, composed of G. Bosco, President of Chamber, acting as President, T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. N. Kakouris, R. Joliet, T. F. O'Higgins and F. A. Schockweiler, Judges; Sir Gordon Slynn, Advocate-General, D. Louterman, Administrator, acting for the Registrar, gave a judgment on 25 February 1988, the operative part of which is as follows:

---

(1) OJ No C 333, 21. 12. 1985 and OJ No C 336, 28. 12. 1985.

1. *The Treaty establishing the European Economic Community must be interpreted as meaning that a Member State may not adopt provisions which make the repayment of charges levied contrary to Community law conditional upon the production of proof that those charges have not been passed on to the purchasers of the products that were subject to the charges and place the burden of adducing such negative proof entirely upon the natural or legal persons claiming repayment.*

2. *The answer does not depend upon whether the national provision has retroactive effect, the nature of the charge at issue or whether the market is free, regulated or monopolistic, either wholly or in part.*

O.J. No. C 336 of 31.12.1986, p. 11

Reference for a preliminary ruling by the Corte di Appello di Genova by order of that court of 12 November 1986 in criminal proceedings against Rainer Drexl

(Case 299/86)

(86/C 336/16)

Reference has been made to the Court of Justice of the European Communities by order of the Corte di Appello di Genova / Court of Appeal, Genoa of 12 November 1986, which was received at the Court Registry on 1 December 1986, for a preliminary ruling in the criminal proceedings against Rainer Drexl on the following questions:

1. Do the Community rules on the harmonization of the legislation of the Member States relating to turnover tax (Article 95 of the EEC Treaty) prohibit the Member States from levying value-added tax on importation from another Member State of motor vehicles purchased there, where the value-added tax thereon has been paid and the vehicles have been registered in that State, without taking account of the residual value-added tax which was paid in the Member State of exportation and is still incorporated in the value of the goods at the time of importation:

2. Is the value-added tax which is levied by a Member State on importation without regard to the residual tax still incorporated in the value of the goods an internal tax in excess of that imposed on similar domestic products and as such prohibited under Article 95 of the EEC Treaty, where the amount in question is not collected in domestic transactions between private individuals involving the same goods?

3. Do the provisions of Community law which impose the same rate of tax on imports and on domestic sales of a product preclude rules of national law from laying down, in the event of failure to pay the tax on importation, a system of penalties which differ in nature and degree from those imposed for failure to pay the tax on domestic transactions? In particular, do the provisions of Community law on the harmonization of the tax system and the elimination of customs duties within the Community, viewed in relation to the principles of proportionality and non-discrimination developed by the Court of Justice, preclude a provision of national law (Article 70 of Presidential Decree No 633 of 26 October 1972), which treats offences involving payment of value-added tax on imports from other Member States as smuggling, from imposing in respect of those offences the sanctions — including criminal penalties — prescribed by the customs regulations on frontier charges in a different manner from that in which they are imposed in respect of comparable offences involving domestic sales of the same goods (Article 50 of the aforesaid presidential decree)?

O.J. No. C 74 of 22.3.1986, p. 13

JUDGMENT OF THE COURT

(Sixth Chamber)

of 25 February 1988

in Case 299/86: (reference for a preliminary ruling made by the Corte d'Appello di Genova): Criminal proceedings against Rainer Drexl (1)

(Turnover tax levied on the importation of goods by individuals)

(88/C 74/21)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 299/86: reference to the Court under Article 177 of the EEC Treaty by the Corte d'Appello di Genova (Court of Appeal, Genoa) for a preliminary ruling in the criminal proceedings pending before that court against Rainer Drexl — on the interpretation of Article 95 of the EEC Treaty — the Court (Sixth Chamber), composed of O. Due, President of the Chamber, T. Koopmans, K. Bahlmann, C. N. Kakouris and T. F. O'Higgins, Judges; M. Darmon, Advocate-General; J. A. Pompe, Deputy Registrar, gave a judgment on 25 February 1988, the operative part of which is as follows:

1. *Article 95 of the EEC Treaty must be interpreted as meaning that, upon the importation of goods from another Member State by an individual, which have not qualified for relief on exportation or for tax exemption in the importing Member State, the value-added tax charged on importation must take into account the residual amount of value-added tax paid in the exporting Member State and still included in the value of the goods at the time of importation, so as to ensure that the residual amount of such tax is not included in the basis of assessment and is deducted from the value-added tax payable upon importation.*

2. *National legislation which penalizes offences involving payment of value-added tax upon importation more severely than those involving payment of value-added tax on domestic transactions is incompatible with Article 95 of the EEC Treaty in so far as that difference is disproportionate to the difference between the two categories of offences.*

---

(1) OJ No C 336, 31. 12. 1986.

O.J. No. C 274 of 30.10.1986, p. 7

Reference for a preliminary ruling by the Tribunal de Grande Instance, Coutances, by judgment of that court of 18 September 1986 in the case of Gabriel Bergandi v. Directeur Général des Impôts (Direction des Services Fiscaux de La Manche)

(Case 252/86)

(86/C 274/12)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Tribunal de Grande Instance [Regional Court], Coutances, of 18 September 1986, which was received at the Court Registry on 1 October 1986, for a preliminary ruling in the case of Gabriel Bergandi v. Directeur Général des Impôts (Direction des Services Fiscaux de La Manche) [Director General of Taxes, Fiscal Services Directorate for the Département of La Manche] on the following questions:

1. Must Article 33 of Directive 77/388/EEC (the Sixth VAT Directive) be interpreted as prohibiting Member States from continuing to levy taxes on turnover in respect of the supply of goods or the provision of services once such activities become liable to value-added tax?
2. Must the concept of turnover taxes or any taxes, duties or charges which may be characterized as turnover taxes in Article 33 of the Sixth VAT Directive be interpreted as applying to taxes levied on operating receipts, regardless of whether the tax is calculated on the basis of actual income or on the basis of an approximate figure intended to correspond closely to the actual income where the latter is difficult to assess exactly?
3. More particularly, does the concept of turnover taxes or any taxes, duties or charges which may be characterized as turnover taxes in Article 33 of the Sixth VAT Directive include an annual, flat rate fiscal charge levied on all automatic machines installed in public places and providing entertainment to be viewed or listened to, a game or a recreation, introduced for the purpose of replacing a tax on the turnover of the operator of the machine and which is broadly adjusted to take account of the profitability of each type of machine and, indirectly, of the operator's income?
4. If the replies to Questions 1 and 3 are in the affirmative, does the prohibition of the cumulative levying of value-added tax and other turnover taxes on the same income or turnover lead to the conclusion that where value-added tax is first applied only at the beginning of the second half of a year and when the turnover taxes levied in addition to value-added tax must be paid in a single instalment at the beginning of the calendar year (except where deferred payment has been permitted), the introduction of value-added tax must lead to reimbursement of half of the amount due in respect of the taxes in the nature of turnover taxes for the year in which value-added tax was first applied or to no claim for payment of such amounts being made?
5. Must Article 95 of the EEC Treaty be interpreted as prohibiting the levying on operating receipts of tax at a rate three times higher on products originating mainly abroad or (') on similar products which are mainly produced in the Member State concerned? Must that discrimination be regarded as even more serious when the operating receipts concerned are liable both to value-added tax and to indirect taxation of another kind?
6. Must Article 30 of the EEC Treaty be interpreted as meaning that it is an infringement of that Article to make income from the operation of certain products liable to value-added tax unter Community legislation without abolishing the previously existing taxes levied on the income from the operation of the same products even though certain of the products operated are no longer manufactured on the territory of the Member State levying the various taxes concerned and where, in any event, the cumulative levying of such taxes could lead to a reduction in the quantity of such products imported from the rest of the Community?

(') Translator's note: 'than' would appear to be mean.

O.J. No. C 78 of 25.3.1988, p. 4

JUDGMENT OF THE COURT

of 3 March 1988

in Case 252/86: (reference for a preliminary ruling made by the Tribunal de Grande Instance de Coutances: Gabriel Bergandi v. Directeur Général des Impôts (')

(Value added tax — Gaming machines)

(88/C 78/03)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 252/86: reference to the Court under Article 177 of the EEC Treaty by the Tribunal de Grande Instance [Regional Court], Courtances for a preliminary ruling in the proceedings pending before that court between Gabriel Bergandi, trader, residing in Saint-Lô (France) and the Directeur Général des Impôts, Direction des Services Fiscaux, Département de la Manche [Director General of Taxes, Fiscal Services Directorate for the Département of La Manche] — on the interpretation of Article 33 of the Sixth Value Added Tax Directive and Articles 95 and 30 of the EEC Treaty — the Court, composed of Lord Mackenzie Stuart, President, G. Bosco and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, Y Galmot, C. N. Kakouris, R. Joliet and F. A. Schockweiler, Judges; G. F. Mancini, Advocate General; H. A. Rühl, Principal Administrator, acting for the Registrar, gave a judgment on 3 March 1988, the operative part of which is as follows:

(') OJ No C 274, 30. 10. 1986.

1. *Article 33 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax (VAT), must be interpreted as meaning that as from the introduction of the common system of VAT the Member States are no longer entitled to impose on the supply of goods, the provision of services or imports liable to VAT, taxes, duties or charges which can be characterized as turnover taxes.*

2. *A charge which, although providing for different amounts according to the characteristics of the taxed article, is assessed exclusively on the basis of the placing thereof at the disposal of the public, without in fact taking account of the income which could be earned thereby, may not be regarded as a charge which can be characterized as a turnover tax.*

3. *Article 95 of the EEC Treaty also applies to internal taxation which is imposed on the use of imported products where those products are essentially intended for such use and have been imported solely for that purpose.*

4. *A system of taxation graduated according to the categories of automatic gaming machines, which is intended to achieve legitimate social objectives and which procures no fiscal advantage for domestic products to the detriment of similar or competing imported products is not incompatible with Article 95.*

5. *Article 30 of the Treaty does not apply to the taxation of products originating in other Member States the compatibility of which with the Treaty falls under Article 95 thereof.*

O.J. No. C 144 of 11.6.1986, p. 9

Reference for a preliminary ruling made by order of the House of Lords dated 20 March 1986 in the case of Commissioners of Customs and Excise against Apple and Pear Development Council

(Case 102/86)

(86/C 144/11)

The Court of Justice of the European Communities has received a reference for a preliminary ruling made by order of the House of Lords in the proceedings between Commissioners of Customs and Excise and Apple and Pear Development Council which was lodged at the Court Registry on 28 April 1986 on the following question:

Does the exercise by the Apple and Pear Development Council of their functions pursuant to Article 3 of the Apple and Pear Development Council Order 1980, SI No 623 (as amended by the Apple and Pear Development Council (Amendment) Order 1980, SI No 2001), and the imposition on growers pursuant to Article 9 (1), of an annual charge for the purposes of enabling the Council to meet administrative and other expenses incurred or to be incurred in the exercise of such functions, constitute 'the supply of ... services effected for consideration' within the meaning of Article 2 of the Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States, relating to turnover taxes?

O.J. No. C 89 of 6.4.1988, p. 8

JUDGMENT OF THE COURT

(Sixth Chamber)

of 8 March 1988

in Case 102/86: (reference for a preliminary ruling made by the House of Lords) Apple and Pear Development Council v. Commissioners of Customs and Excise (1)

(Common system of value added tax — Supply of services effected for consideration)

(88/C 89/08)

(Language of the case: English)

In Case 102/86: reference to the Court under Article 177 of the EEC Treaty by the House of Lords for a preliminary ruling in the proceedings pending before that court between Apple and Pear Development Council and Commissioners of Customs and Excise — on the interpretation of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (Official Journal No L 145, 1977, p. 1) — the Court (Sixth Chamber), composed of O. Due, President of the Chamber, T. Koopmans, K. Bahlmann, C. N. Kakouris and T. F. O'Higgins, Judges; Sir Gordon Slynn, Advocate-General, D. Louterman, Administrator, acting for the Registrar, gave a judgment on 8 March 1988, the operative part of which is as follows:

The exercise by the Apple and Pear Development Council of its functions pursuant to Article 3 of the Apple and Pear Development Council Order 1980, S.I. No 623 (as amended by the Apple and Pear Development Council (Amendment) Order 1980, S.I. No 2001) and the imposition on growers pursuant to Article 9 (1) of an annual charge for the purpose of enabling the Development Council to meet administrative and other expenses incurred or to be incurred in the exercise of such functions do not constitute 'the supply of .. services effected for consideration' within the meaning of Article 2 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment.

---

(1) OJ No C 144, 11. 6. 1986.

O.J. No. C 215 of 26.8.1986, p. 2

Reference for a preliminary ruling by the Hoge Raad der Nederlanden by judgment of that court of 2 July 1986 in the case of Leesportefeuille 'Intiem' CV against the Staatssecretaris van Financiën

(Case 165/86)

(86/C 215/02)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Third Chamber of the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) of 2 July 1986, which was received at the Court Registry on 9 July 1986, for a preliminary ruling in the case of Leesportefeuille 'Intiem' CV, Hilversum, v. Staatssecretaris van Financiën on the following question:

Where a taxable person ('the employer'), by agreement with one of his employees and another taxable person ('the supplier'), allows the supplier to supply goods to the employee at the employer's expense, with the aim that the employee should use them for the purposes of the employer's business, and receives invoices for those goods from the supplier charging value-added tax on them, do the provisions of Article 11 (1) (a) of the Second Directive and of Article 17 (2) (a) of the Sixth Directive mean that the employer may deduct the value-added tax with which he is charged from the tax payable by him, or is deduction of the tax ruled out by the fact that the goods were not supplied to the employee?

O.J. No. C 90 of 7.4.1988, p. 5

JUDGMENT OF THE COURT

(Sixth Chamber)

of 8 March 1988

in Case 165/86 (reference for a preliminary ruling made by the Third Chamber of the Hoge Raad der Nederlanden): Leesportefeuille 'Intiem' CV against Secretary of State for Finance (1)

(Second and Sixth VAT Directives — Taxation of goods supplied to the employees of a taxable person)

(88/C 90/06)

(Language of the case: Dutch)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 165/86: reference to the Court under Article 177 of the EEC Treaty by the Third Chamber of the Hoge Raad der Nederlanden [Supreme Court of the Netherlands] for a preliminary ruling in the proceedings pending before that court between Leesportefeuille 'Intiem' CV and the Secretary of State for Finance — on the interpretation of Article 11 (1) (a) of the Second Council Directive (67/228/EEC) 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 (2), and of Article 17 (2) (a) of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the legislation of the Member States concerning turnover taxes — Common system of value added tax: uniform basis of assessment (3), the Court (Sixth Chamber), composed of O. Due, President, G. C. Rodríguez Iglesias, T. Koopmans, K. Bahlmann and C. N. Kakouris, Judges; J. L. da Cruz Vilaça, Advocate-General; H. A. Rühl, Principal Administrator, acting as Registrar, gave a judgment on 8 March 1988, the operative part of which is as follows:

Where an employer who is subject to the rules on VAT, by agreement with one of his employees and another taxable person (a supplier), has goods supplied at his own expense to that employee who uses them exclusively for the purposes of the employer's business and the employer receives from the supplier invoices for those goods charging VAT on them, the provisions of Article 11 (1) (a) of the Second Directive and of Article 17 (2) (a) of the Sixth Directive must be interpreted as meaning that the employer may deduct the VAT thus charged to him from the VAT which he is liable to pay.

---

(1) OJ No C 215, 26. 8. 1986.

(2) OJ No 71, 14. 4. 1967, p. 1303/67.

(3) OJ No L 145, 13. 6. 1977, p. 1.

O.J. No. C 172 of 10.7.1986, p. 4

Action brought on 2 May 1986 by the Commission of the European Communities against the Italian Republic

(Case 104/86)

(86/C 172/04)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 2 May 1986 by the Commission of the European Communities, represented by Giuliano Marenco, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

— Declare that the Italian Republic has failed to fulfil its obligations under Articles 5, 9 *et seq.* and 95 of the EEC Treaty by shifting on to the taxpayer the onus of proving that national charges and taxes which were unduly paid on the ground that they were contrary to Articles 9 *et seq.* and 95 of the EEC Treaty have not been passed on to other persons, by accepting only documentary proof in that regard and by giving retroactive effect to the national provisions concerned,

— Declare that the Italian Republic has failed to fulfil its obligations under Article 5 of the EEC Treaty and Regulation (EEC) No 1430/79 by laying down rules governing the repayment of Common Customs Tariff duties and import and export charges under the common agricultural policy,

— Order the defendant to pay the costs.

Contentions and main arguments adduced in support

The relevant Italian provisions (1) deprive Articles 9 *et seq.* and 95 of the EEC Treaty of any real effect, in so far as those national provisions apply to charges imposed by Italian law.

Those provisions constitute an unlawful encroachment on a sector governed by Community law, in particular Regulation (EEC) No 1430/79, in so far as, according to their wording, they apply to charges imposed by Community law.

(1) Article 19 of Decree Law No 688 of 30 September 1982 (Gazzetta ufficiale della Repubblica Italiana No 270, 30 September 1982, p. 7072) converted into Law No 872, 27 September 1982 (Gazzetta ufficiale della Repubblica Italiana No 328, 29 November 1982, p. 8599).

O.J. No. C 105 of 21.4.1988, p. 4

JUDGMENT OF THE COURT

of 24 March 1988

in Case 104/86: Commission of the European Communities v. Italian Republic (1)

(National taxes contrary to Community law — Recovery of undue payment — Proof that the tax has not been passed on in the price of goods — Partial withdrawal after the close of the oral procedure)

(88/C 105/05)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 104/86: Commission of the European Communities (Agent: Giuliano Marenco) against Italian Republic (Agent: Luigi Ferrari Bravo, assisted by Franco Favara, Avvocato dello Stato) — application for a declaration that by making the repayment of national taxes levied in breach of Community law virtually impossible or excessively difficult and by adopting legislation on the repayment of duties provided for under Community law, the Italian Republic has failed to fulfil its obligations under the EEC Treaty — the Court, composed of G. Bosco, President of Chamber, acting as President, T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. N. Kakouris, R. Joliet, T. F. O'Higgins and F. A. Schockweiler, Judges; Sir Gordon Slynn, Advocate-General; B. Pastor, Administrator, for the Registrar, gave a judgment on 24 March 1988, the operative part of which is as follows:

1. *By imposing on the taxpayer, under Article 19 of Decree-Law No 688 of 30 September 1982, converted into Law No 873 of 27 November 1982, the burden of proving by documentary evidence alone that the national taxes and charges of which he is seeking repayment on the ground that they were unduly paid, as they were contrary to Articles 9* et seq. *and 95 of the EEC Treaty, have not been passed on to other persons and by giving that provision retroactive effect, the Italian Republic has failed to fulfil its obligations under Articles 5, 9* et seq. *and 95 of the Treaty.*

2. *The Italian Republic is ordered to pay the costs.*

(1) OJ No C 172, 10. 7. 1986.

O.J. No. C 227 of 25.8.1987, p. 4

Action brought on 2 July 1987 by the Commission of the European Communities against Ireland

(Case 202/87)

(87/C 227/04)

An action against Ireland was brought before the Court of Justice of the European Communities on 2 July 1987 by the Commission of the European Communities, represented by its Legal Adviser Mr D. R. Gilmour with an address for service in Luxembourg at the office of Mr Georgios Kremlis, Jean Monnet Building, Kirchberg.

The applicant claims that the Court find:

— that, by granting a rebate on excise duty for domestically manufactured table waters which is not extended to table waters imported from other Member States, Ireland has failed to fulfil its obligations under the first paragraph of Article 95 of the Treaty,

— Ireland liable to costs.

Contentions and main arguments adduced in support:

In the Commission's view, Ireland does not contest that its legislation concerning rebates on excise duty on mineral water is contrary to Article 95 (1) of the EEC Treaty. The Irish legislation adopted in order to phase out the rebate scheme (Section 69 of the Finance Act 1986) until 1 March 1989 is not sufficient to terminate the infringement.

O.J. No. C 152 of 10.6.1988, p. 5

Removal from the Register of Case 202/87 (1)

(88/C 152/07)

By order of 27 April 1988 the Court of Justice of the European Communities ordered the removal from the Register of Case 202/87: Commission of the European Communities v. Ireland.

---

(1) OJ No C 227, 25. 8. 1987.

O.J. No. C 96 of 9.4.1987, p. 10

Reference for a preliminary ruling by the Tribunal de Grande Instance, Saint Brieuc, by judgment of that court of 9 December 1986 in the case of Georges Seguela v. Directeur des services fiscaux, Saint Brieuc

(Case 76/87)

(87/C 96/16)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Tribunal de Grande Instance [Regional Court], Saint Brieuc, of 9 December 1986, which was received at the Court Registry on 16 March 1987, for a preliminary ruling in the case of Georges Seguela v. Directeur des Services Fiscaux [Chief Tax Inspector], Saint Brieuc, on the following question:

Does Article 95 of the Treaty of Rome forbid the imposition, on private cars whose power rating for tax purposes exceeds the maximum rating of such vehicles presently manufactured in France, of a differential tax the amount of which is disproportionately higher above 16 CV than below?

O.J. No. C 142 of 31.5.1988, p. 4

JUDGMENT OF THE COURT

(First Chamber)

of 28 April 1988

in Joined Cases 76, 86 to 89 and 149/87 (references for a preliminary ruling made by the Tribunal de Grande Instance, Saint-Brieuc, and the Tribunal de Grande Instance, Nancy): G. Seguela and Others v. Administration des Impôts (1)

(Article 95 — Differential tax on motor vehicles)

(88/C 142/06)

(Language of the Case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Joined Cases 76, 86 to 89 and 149/87: references to the Court under Article 177 of the EEC Treaty by the Tribunal de Grande Instance [Regional Court], Saint Brieuc, for a preliminary ruling in the proceedings pending before it between G. Seguela, residing in Saint-Brieuc, and the Administration des Impôts [Tax Administration], represented by the Directeur des Services Fiscaux [Chief Tax Inspector] for the Département of Côtes-du-Nord, Saint-Brieuc (Case 76/87); and by the Tribunal de Grande Instance, Nancy, in the proceedings pending before it between A. Lachkar, residing in Nancy

(1) OJ No C 96, 9. 4. 1987.
OJ No C 114, 29. 4. 1987.
OJ No C 158, 16. 6. 1987.

(Case 86/87), J. Bayon, residing in Nancy (Case 87/87), J.-M. Bayon, residing in Vandœuvre (Case 88/87), P. Dellestable, residing in Nancy (Case 89/87) and F. Sargos, residing in Villers-les-Nancy (Case 149/87), and the Administration des Impôts, represented by the Directeur des Services Fiscaux for the Departement of Meurthe-et-Moselle, Nancy — on the interpretation of Article 95 of the EEC Treaty — the Court (First Chamber), composed of G. Bosco, President of the Chamber, R. Joliet and F. A. Schockweiler, Judges; J. Mischo, Advocate-General; B. Pastor, Administrator, for the Registrar, gave a judgment on 28 April 1988, the operative part of which is as follows:

A system of road-tax in which one tax-band comprises more power-ratings for tax purposes than the others, with the result that the normal progression of the tax is restricted in such a way as to afford an advantage to top-of-the-range cars of domestic manufacture, and in which the power-rating for tax purposes is calculated in a manner which places vehicles imported from other Member States at a disadvantage has a discriminatory or protective effect within the meaning of Article 95 of the Treaty.

O.J. No. C 114 of 29.4.1987, p. 9

References for a preliminary ruling by the Tribunal de Grande Instance, Nancy, by judgments of that court of 5 March (Cases 86, 87 and 88/87) and 12 March 1987 (Case 89/87) in the cases of Albert Lachkar (Case 86/87), Jean Bayon (Case 87/87), Jean-Marie Bayon (Case 88/87) and Pierre Dellestable (Case 89/87) v. directeur des services fiscaux de Meurthe-et-Moselle

(Cases 86, 87, 88 and 89/87)

(87/C 114/11)

Reference has been made to the Court of Justice of the European Communities by four judgments of the Second Chamber of the Tribunal de Grande Instance [Regional Court], Nancy, of 5 March (Cases 86, 87 and 88/87) and 12 March 1987 (Case 89/87), which were received at the Court Registry on 23 March 1987, for a preliminary ruling in the cases of Albert Lachkar (Case 86/87), Jean Bayon (87/87), Jean-Marie Bayon (Case 88/87) and Pierre Dellestable (Case 89/87) v. directeur des services fiscaux [Chief tax Inspector], Meurthe-et-Moselle, on the following question:

Does Article 95 of the EEC Treaty, on a true construction, in conjunction, if necessary, with any other provision or fundamental principle of the Treaty, prevent Member States from imposing on motor vehicles which exceed a certain power rating for tax purposes a differential tax which increases progressively according to that rating, where that criterion itself is determined by a formula which has the effect of subjecting to such progressive increase any vehicle of a given cylinder capacity which is not manufactured in France and is imported, in particular from other Member States?

O.J. No. C 142 of 31.5.1988, p. 4

JUDGMENT OF THE COURT

(First Chamber)

of 28 April 1988

in Joined Cases 76, 86 to 89 and 149/87 (references for a preliminary ruling made by the Tribunal de Grande Instance, Saint-Brieuc, and the Tribunal de Grande Instance, Nancy): G. Seguela and Others v. Administration des Impôts (1)

(Article 95 — Differential tax on motor vehicles)

(88/C 142/06)

(Language of the Case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Joined Cases 76, 86 to 89 and 149/87: references to the Court under Article 177 of the EEC Treaty by the Tribunal de Grande Instance [Regional Court], Saint Brieuc, for a preliminary ruling in the proceedings pending before it between G. Seguela, residing in Saint-Brieuc, and the Administration des Impôts [Tax Administration], represented by the Directeur des Services Fiscaux [Chief Tax Inspector] for the Département of Côtes-du-Nord, Saint-Brieuc (Case 76/87); and by the Tribunal de Grande Instance, Nancy, in the proceedings pending before it between A. Lachkar, residing in Nancy (Case 86/87), J. Bayon, residing in Nancy (Case 87/87), J.-M. Bayon, residing in Vandœuvre (Case 88/87), P. Dellestable, residing in Nancy (Case 89/87) and F. Sargos, residing in Villers-les-Nancy (Case 149/87), and the Administration des Impôts, represented by the Directeur des Services Fiscaux for the Departement of Meurthe-et-Moselle, Nancy — on the interpretation of Article 95 of the EEC Treaty — the Court (First Chamber), composed of G. Bosco, President of the Chamber, R. Joliet and F. A. Schockweiler, Judges; J. Mischo, Advocate-General; B. Pastor, Administrator, for the Registrar, gave a judgment on 28 April 1988, the operative part of which is as follows:

A system of road-tax in which one tax-band comprises more power-ratings for tax purposes than the others, with the result that the normal progression of the tax is restricted in such a way as to afford an advantage to top-of-the-range cars of domestic manufacture, and in which the power-rating for tax purposes is calculated in a manner which places vehicles imported from other Member States at a disadvantage has a discriminatory or protective effect within the meaning of Article 95 of the Treaty.

---

(1) OJ No C 96, 9. 4. 1987.
OJ No C 114, 29. 4. 1987.
OJ No C 158, 16. 6. 1987.

O.J. No. C 158 of 16.6.1987, p. 10

Reference for a preliminary ruling by the Tribunal de Grande Instance, Nancy (First Chamber), by judgment of that court of 7 May 1987 in the case of François Sargos v. Administration des Impôts in the person of the Directeur des Services Fiscaux of Meurthe-et-Moselle

(Case 149/87)

(87/C 158/09)

Reference has been made to the Court of Justice of the European Communities by a judgment of the First Chamber of the Tribunal de Grande Instance (Regional Court), Nancy, of 7 May 1987, which was received at the Court Registry on 13 May 1987, for a preliminary ruling in the case of François Sargos against Administration des Impôts (Revenue Administration) in the person of the Directeur des Services Fiscaux (Director of the Revenue Administration) of the Département of Meurthe-et-Moselle on the following question:

Must Article 95 of the EEC Treaty be interpreted as prohibiting a Member State from imposing on motor vehicles exceeding a certain power rating for tax purposes a differential tax which increases exponentially according to the power rating for tax purposes where that criterion is itself defined by a formula the effect of which is to subject to the exponential increase all vehicles having the relevant cylinder capacity, which are not manufactured in France and are imported in particular from other Member States?

O.J. No. C 142 of 31.5.1988, p. 4

JUDGMENT OF THE COURT

(First Chamber)

of 28 April 1988

in Joined Cases 76, 86 to 89 and 149/87 (references for a preliminary ruling made by the Tribunal de Grande Instance, Saint-Brieuc, and the Tribunal de Grande Instance, Nancy): G. Seguela and Others v. Administration des Impôts (1)

(Article 95 — Differential tax on motor vehicles)

(88/C 142/06)

(Language of the Case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Joined Cases 76, 86 to 89 and 149/87: references to the Court under Article 177 of the EEC Treaty by the Tribunal de Grande Instance [Regional Court], Saint Brieuc, for a preliminary ruling in the proceedings pending before it between G. Seguela, residing in Saint-Brieuc, and the Administration des Impôts [Tax Administration], represented by the Directeur des Services Fiscaux [Chief Tax Inspector] for the Département of Côtes-du-Nord, Saint-Brieuc (Case 76/87); and by the Tribunal de Grande Instance, Nancy, in the proceedings pending before it between A. Lachkar, residing in Nancy (Case 86/87), J. Bayon, residing in Nancy (Case 87/87), J.-M. Bayon, residing in Vandœuvre (Case 88/87), P. Dellestable, residing in Nancy (Case 89/87) and F. Sargos, residing in Villers-les-Nancy (Case 149/87), and the Administration des Impôts, represented by the Directeur des Services Fiscaux for the Departement of Meurthe-et-Moselle, Nancy — on the interpretation of Article 95 of the EEC Treaty — the Court (First Chamber), composed of G. Bosco, President of the Chamber, R. Joliet and F. A. Schockweiler, Judges; J. Mischo, Advocate-General; B. Pastor, Administrator, for the Registrar, gave a judgment on 28 April 1988, the operative part of which is as follows:

A system of road-tax in which one tax-band comprises more power-ratings for tax purposes than the others, with the result that the normal progression of the tax is restricted in such a way as to afford an advantage to top-of-the-range cars of domestic manufacture, and in which the power-rating for tax purposes is calculated in a manner which places vehicles imported from other Member States at a disadvantage has a discriminatory or protective effect within the meaning of Article 95 of the Treaty.

(1) OJ No C 96, 9. 4. 1987.
OJ No C 114, 29. 4. 1987
OJ No C 158, 16. 6. 1987.

O.J. No. C 37 of 9.2.1988, p. 10

References for a preliminary ruling by the Tribunal de Grande Instance Meaux, by judgments of the court of 10 December 1987 (391/87) and 19 November 1987 (392/87 to 394/87) in the cases of Jean-Marie Melicque (391/87), Tilt Automatique Sàrl. and Maître Charli, as trustee of Tilt Automatique Sàrl. in composition proceedings (392/87), Centre International d'Amusements SA (393/87) and Meaux Loisirs Sàrl. (394/87) v. Directeur des Services Fiscaux de Seine-et-Marne

(Cases 391, 392, 393 and 394/87)

(88/C 37/14)

Reference has been made to the Court of Justice of the European Communities by judgments of the Tribunal de Grande Instance [Regional Court] Meaux, of 10 December 1987 (391/87) and 19 November 1987 (392/87 to 394/87), which were received at the Court Registry on 31 December 1987, for a preliminary ruling in the cases of Jean-Marie Melicque (391/87), Tilt Automatique Sàrl. and Maître Charli, as trustee of Tilt Automatique Sàrl. in composition proceedings (392/87), Centre International d'Amusements SA (393/87) and Meaux Loisirs Sàrl. (394/87) v. Directeur des Services Fiscaux de Seine-et-Marne [Director of Fiscal Services of Seine and Marne] on the following question:

Are the contested taxes (entertainments tax and State tax) levied by the French tax authorities on the exploitation of automatic machines (apart from VAT) lawful or on the contrary prohibited under Article 33 of the Sixth VAT Directive of the Commission of the European Communities?

O.J. No. C 163 of 22.6.1988, p. 4

Removal from the Register of Joined Cases 391 to 394/87 (1)

(88/C 163/09)

By order of 19 May 1988 the Court of Justice of the European Communities ordered the removal from the Register of Joined Cases 391 to 394/87 (references for a preliminary ruling by the Tribunal de Grande Instance (Première Chambre Civile) de Meaux): Jean-Marie Melicque and Others v. Directeur des Services Fiscaux de Seine et Marne.

---

(1) OJ No C 37, 9. 2. 1988.

O.J. No. C 148 of 6.6.1987, p. 5

Action brought on 8 April 1987 by the Commission of the European Communities against the Italian Republic

(Case 122/87)

(87/C 148/07)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 8 April 1987 by the Commission of the European Communities, represented by Giuliano Marenco and Daniel Calleja, members of its Legal Department, acting as Agents, with an address for service in Luxembourg at the Chambers of Georgios Kremlis, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

— Declare that, by exempting from value-added tax the services provided by veterinary surgeons in the exercise of their profession, the Italian Republic has failed to fulfil its obligations under the Sixth Council Directive on value-added tax and, in particular, Article 2 thereof;

— Order the defendant to pay the costs.

Contentions and main arguments adduced in support:

The dispute between the parties turns on the interpretation of Article 13 (A) (1) (c) of the Sixth Council Directive (1) on value-added tax. According to the Italian authorities, that provision permits, whilst according to the Commission it does not permit, exemption from value-added tax in respect of services provided by veterinary surgeons.

The Commission's interpretation is based on the following arguments:

(a) the meaning of the expression 'medical care';

(b) comparison with the other language versions;

(c) the argument to the contrary based on Article 28 (3) (b) and point 9 of Annex F to the Directive;

(d) the criterion for interpreting exemptions is a restrictive one.

(1) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ No L 145, 13. 6. 1977, p. 1).

O.J. No. C 156 of 15.6.1988, p.5

JUDGMENT OF THE COURT

of 24 May 1988

in Case 122/87: Commission of the European Communities v. Italian Republic (1)

(Failure by a Member State to fulfil an obligation — Exemption from value added tax on veterinary services)

(88/C 156/08)

(Language of the case: Italian)

(Provisional translation: the definitive translation will be published in the Reports of Cases before the Court)

In Case 122/87: Commission of the European Communities (Agents: Giuliano Marenco and Daniel Calleja) against the Italian Republic (Agent: Luigi Ferrari Bravo, assisted by M. Braguglia) — application for a declaration that by exempting services provided by veterinary surgeons from value added tax, the Italian Republic has failed to fulfil its obligations under the EEC Treaty — the Court, composed of Lord Mackenzie Stuart, President, G. Bosco, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias (President of Chambers), T. Koopmans, U. Everling, Y. Galmot, C. N. Kakouris and F. A. Schockweiler, Judges; J. L. da Cruz Vilaça, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 24 May 1988, the operative part of which is as follows:

1. *by exempting from value added tax the services provided by veterinary surgeons in the exercise of their profession,*

(1) OJ No C 148, 6. 6. 1987.

the Italian Republic has failed to fulfil its obligations under the Sixth Council Directive 77/388/EEC of 17 May 1977 (Official Journal No L 145, 1977, p. 1);

2. *the Italian Republic is ordered to pay the costs.*

O.J. No.C 57 of 5.3.1987,p.5

Reference for a preliminary ruling by the Østre Landsret [Eastern Divisional Court] by order of that court of 30 January 1987 in the case of Dansk Denkavit ApS against Landbrugsministeriet [Ministry of Agriculture]

(Case 29/87)

(86/C 57/09)

Reference has been made to the Court of Justice of the European Communities by an order of the Østre Landsret of 30 January 1987, which was received at the Court Registry on 2 February 1987, for a preliminary ruling in the case of Dansk Denkavit ApS against Landbrugsministeriet on the following questions:

1. Did Council Directive 70/524/EEC (1) of 23 November 1970 concerning additives in feedingstuffs, as amended before Council Directive 84/587/EEC (2) of 29 November 1984, lay down such a degree of harmonization that the Member States were precluded, as regards the importation from other Member States of feedingstuffs containing additives, from relying on Article 36 of the EEC Treaty in connection with national measures for ensuring the identification of the additives used and the purity of those additives?

(1) OJ Special Edition 1970 (III), p. 840.
(2) OJ No L 319, 8. 12. 1984, p. 13.

2. If question 1 is answered in the negative it is asked whether, again prior to the said Directive 84/587/EEC, such a degree of harmonization of the requirements on packaging and labelling of feedingstuffs containing additives had been achieved that Article 36 could not be relied on in connection with a national requirement that there must be a statement on the packaging that the additive in question had been approved by a national authority under the registration number assigned.

3. Must Article 30 of the EEC Treaty be construed as meaning that it forbids a national measure whereby a Member State requires that the importation from other Member States of feedingstuffs containing additives mentioned in Directive 70/524/EEC shall only take place on the basis of a document, known as an 'authorization', issued to the undertaking on a 'once and for all' basis, where a wholly analogous authorization is required of domestic producers, where the authorities are not informed in any other way in which undertakings the control must be carried out pursuant to the said Directive, where the legislation does not lay down specific conditions for issuing or revoking authorizations and it must be assumed that according to principles of national law a request for authorization may be refused and an authorization may be revoked only where the activity is pursued in such a way that considerations of human or animal health make this imperative, where according to administrative practice the authorization is issued within a few weeks on the basis of a request which need only contain the importer's name and address and where in administrative practice an authorization has hitherto never been refused to or withdrawn from an importer?

4. Did Council Directive 70/524/EEC of 23 November 1970 concerning additives in feedingstuffs, as amended before Council Directive 84/587/EEC of 29 November 1984, lay down such a degree of harmonization that the Member States were wholly precluded from relying on Article 36 of the EEC Treaty in connection with a national measure such as that described in question 3?

5. Was it compatible with Community law, in particular Articles 9 and 95 of the EEC Treaty in conjunction with Directive 70/524/EEC, for a Member State to collect an annual levy from undertakings which obtained the authorization mentioned in question 3, where the levy was collected in the same amount from domestic producers and importers and where the total amount of the levy corresponded to the expenditure occasioned by the checks by random sampling carried out in accordance with Directive 70/524/EEC?

O.J. No.C 180 of 9.7.1988,p.6

JUDGMENT OF THE COURT

(Second Chamber)

of 14 June 1988

in Case 29/87: (reference for a preliminary ruling by the Østre Landsret, Copenhagen): Dansk Denkavit ApS v. Landbrugsministeriet (1)

(Additives in feedingstuffs — Identification and purity)

(88/C 180/06)

(Language of the case: Danish)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 29/87: reference to the Court under Article 177 of the EEC Treaty by the Østre Landsret, Copenhagen, for a preliminary ruling in the proceedings pending before that court between Dansk Denkavit ApS and Landbrugsministeriet [Ministry of Agriculture] — on the interpretation of Council Directive 70/524/EEC concerning additives in feedingstuffs (Official Journal, English Special Edition 1970 (III), p. 840), as amended by Council Directive 73/103/EEC of 28 April 1973 (Official Journal No L 124, p. 17) and the second Council Directive 75/296/EEC of 28 April 1975 (Official Journal No L 124, p. 29) — the Court (Second Chamber), composed of O. Due, President of the Chamber, K. Bahlmann and T. F. O'Higgins, Judges; M. Darmon, Advocate General; J.-G. Giraud, Registrar, gave a judgment on 14 June 1988, the operative part of which is as follows:

1. *Council Directive 70/524/EEC of 23 November 1970, as amended up to the adoption of Directive 84/587/EEC, provides for harmonization which precludes Member States from relying on Article 36 of the Treaty in order to impose, on the importation from other Member States of feedingstuffs containing additives, national measures intended to ensure the identification and the purity of the additives in question.*

2. *Article 30 of the Treaty must be interpreted as meaning that a national measure which subjects the importation of feedingstuffs containing additives to prior authorization constitutes a measure having an effect equivalent to quantitative restrictions on imports within the meaning of Article 30 of the Treaty.*

---

(1) OJ No C 57, 5. 3. 1987.

3. *Council Directive 70/524/EEC, as amended up to the adoption of Directive 84/587/EEC, did not provide, in the sector of feedingstuffs containing additives, for harmonization of such a nature as to deprive Member States of the power to have recourse to Article 36 of the Treaty in regard to the adoption of measures of health control in relation to the traders concerned.*

4. *An annual levy charged in like manner on importers and national producers of feedingstuffs containing additives and intended to cover the costs incurred by the State in checking samples taken pursuant to Directive 70/524/EEC is compatible with Articles 9 and 95 of the Treaty and the provisions of Directive 70/524/EEC.*

O.J. No. C 359 of 31.12.1985, p. 11

Action brought on 13 December 1985 by the Commission of the European Communities against Ireland

(Case 415/85)

(85/C 359/22)

An action against Ireland was brought before the Court of Justice of the European Communities on 13 December 1985 by the Commission of the European Communities, represented by its legal adviser Mr D. R. Gilmour, acting as Agent with an address for service in Luxembourg at the office of its legal adviser Mr G. Kremlis, Bâtiment Jean Monnet, Kirchberg

The applicant requests that the Court declare that:

— By maintaining in force the zero rate of value added tax on the items set out (1) Ireland has contravened the provisions of the Sixth VAT Directive (2) and has therefore failed to fulfil the obligations incumbent on it under the Treaty establishing the European Economic Community.

— Ireland is liable in costs.

Contentions and main arguments adduced in support:

The conditions for the application of Article 28 (2) of the Sixth VAT Directive are not met:

— The Commission does not accept that the simplification provisions of Article 27, as a whole, can be used to supplement the provisions of Article 28 (2). Articles 27 and 28 both provide for derogations to the general provisions of the Sixth Directive. Derogations are to be narrowly construed. Those zero rates which do not meet the requirements of Article 28 (2) cannot escape the prohibition via Article 27. Furthermore, whereas zero rates are permitted as a transitional measure, Article 27 provides for a permanent procedure of simplification; it is thus evident that no Member State can introduce a permanent zero rate as a simplification measure to a tax structure which itself is only tolerated on a transitional basis.

— Article 17 of the Second VAT Directive (3) permits zero rating only for the benefit of the final consumer and not for the benefit of industry. Under the VAT system, the zero rating of preceding stages does not provide any additional benefit to the final consumer.

(1) Animal feeding stuff, excluding feeding stuff which is packaged, sold or otherwise designated for the use of dogs, cats, cage birds or domestic pets;
fertilizer (within the meaning of the Fertilizers, Feeding Stuffs and Mineral Mixture Act, 1955) which is supplied in units of not less than 10 kilograms and the sale or manufacture for sale of which is not prohibited under section 4 or 6 of the said Act;
medicine of a kind used for animal oral consumption, excluding medicine which is packaged, sold or otherwise designated for the use of dogs, cats, cage birds or domestic pets;
seeds, plants, trees, spores, bulbs, tubers, tuberous roots, corms, crowns and rhizomes, of a kind used for sowing in order to produce food;
electricity (except for supplies made to final consumers).

(2) Directive 77/388/EEC; OJ No L 145, 13. 3. 1977.

(3) Directive 67/228/EEC; OJ No L 1303, 14. 4. 1967.

O.J. No. C 190 of 19.7.1988, p. 11

JUDGMENT OF THE COURT

of 21 June 1988

in Case 415/85: Commission of the European Communities v. Ireland

(Value added tax — Zero-rating)

(88/C 190/06)

(Language of the Case: English)

In Case 415/85: Commission of the European Communities (Agent: D. R. Gilmour) against Ireland (Agent: L. J. Dockery) — application for a declaration that by applying a system of zero-rating to certain groups of goods and services Ireland has failed to fulfil its obligations under Article 28 (2) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (2) — the Court, composed of Lord Mackenzie Stuart, President, G. Bosco, O. Due, J. C. Moitinho de Almeida und G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. N. Kakouris, R. Joliet, T. F. O'Higgins and F. A. Schockweiler, Judges; M. Darmon, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 21 June 1988, the operative part of which is as follows:

1. *By continuing to apply a zero rate of value added tax to supplies of electricity included in item (xx) (a) of the Finance Act 1985, in so far as it is not supplied to final consumers, Ireland has contravened the provisions of Council Directive 77/388/EEC of 17 May 1977 and has therefore failed to fulfil its obligations under the EEC Treaty;*

2. *For the rest, the application is dismissed;*

3. *The parties are ordered to bear their own costs.*

(1) OJ No C 359, 31. 12. 1985.

(2) OJ No L 145, 13. 6. 1977, p. 1.

O.J. No. C 359 of 31.12.1985, p. 11

Action brought on 13 December 1985 by the Commission of the European Communities against the United Kingdom

(Case 416/85)

(85/C 359/23)

An action against the United Kingdom was brought before the Court of Justice of the European Communities on 13 December 1986 by the Commission of the European Communities, represented by its legal adivser Mr D. R. Gilmour, as its Agent, with an address for service in Luxembourg at the office of its legal adviser Mr G. Kremlis, Bâtiment Jean Monnet, Kirchberg.

The applicant requests that the Court declare:

— That by maintaining in force the application of the zero rate of value added tax on the items set out (1), the United Kingdom of Great Britain and Northern Ireland has contravened the provisions of the Sixth VAT Directive (2) and has therefore failed to fulfil the obligations incumbent on it under the Treaty establishing the European Economic Community.

— That the United Kingdom is liable in costs.

Contentions and main arguments adduced in support:

The conditions for the application of Article 28 (2) of the Sixth VAT Directive are not met. The dispute between the Commission and the United Kingdom concerns the question whether the contested zero rates fulfil the requirements of Article 17, last indent, of the Second VAT Directive (3). The Commission does not accept that the requirements for clearly defined social reasons are met. Further, the Commission does not accept that supplies which do not benefit the final consumer solely or directly meet the requirements of Article 17 of the Second Directive.

(1) *Group 1 — Food*
General items
2. Animal feeding stuffs.
3. Seeds or other means of propagation of plants comprised in item 1 or 2.
4. Live animals of a kind generally used as, or yielding or producing, food for human consumption.

Group 2 — Sewerage services and Water
In so far as supplies to industry are concerned:
1. Services of
(a) reception, disposal or treatment of foul water or sewage in bulk; and
(b) emptying of cesspools, septic tanks or similar receptacles.
2. Water other than
(a) distilled water, deionised water and water of similar purity; and
(b) water comprised in any of the accepted items set out in Group 1.

Group 6 — News services
1. The supply to newspapers or to the public of information of a kind published in newspapers.

Group 7 — Fuel and power
1. Supplies of coal, coke and other solid substances, being supplies held out for sale solely as fuel.
2. Coal gas, water gas, producer gases and similar gases.
3. Petroleum gases, and other gaseous hydrocarbons, whether in a gaseous or liquid state.
4. Fuel oil, gas oil and kerosene.
5. Electricity, heat and air-conditioning.
All items in so far as not supplied to the final consumer.

Group 8 — Construction of buildings, etc.
1. The granting by a person constructing a building of a major interest in, or in any part of, the building or its site.
2. The supply in the course of the construction or demolition of any building or any civil engineering work, of any services other than the services of an architect, surveyor or any person acting as consultant or in a supervisory capacity.
3. The supply, by a person supplying services within item 2 and in connection with those services, of
(a) materials or of builder's hardware, sanitary ware or other articles of a kind ordinarily installed by builders as fixtures; or
(b) in respect of such goods, services described in paragraph 1 (1) of Schedule 2 to this Act.
All items in so far as the zero rate is not restricted to buildings by or for the final consumer, within a social policy.

Group 17 — Clothing and footwear
2. Protective boots and helmets for industrial use — in so far as sold to employers.

(2) Directive 77/388/EEC; OJ No L 145, 13. 3. 1977.
(3) Directive 67/228/EEC; OJ No L 1303, 14. 4. 1967.

O.J. No. C 190 of 19.7.1988, p. 11

JUDGMENT OF THE COURT

of 21 June 1988

in Case 416/85: Commission of the European Communities v. United Kingdom of Great Britain and Northern Ireland (1)

(Value added tax — Zero-rating)

(88/C 190/07)

(Language of the Case: English)

In Case 416/85: Commission of the European Communities (Agent: D. R. Gilmour) against the United Kingdom of Great Britain and Northern Ireland (Agent: S. J. Hay, assisted by D. Vaughan, QC) — application for a declaration that by applying a system of zero-rating to certain groups of goods and services the United Kingdom has failed to fulfil its obligations under Article

28 (2) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (2) — the Court, composed of Lord Mackenzie Stuart, President, G. Bosco, O. Due, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. N. Kakouris, R. Joliet, T. F. O'Higgins and F. A. Schockweiler, Judges; M. Darmon, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 21 June 1988, the operative part of which is as follows:

1. *By continuing to apply a zero rate of value added tax*

   — *to supplies to industry of water and sewerage services (emptying of cesspools and septic tanks) included in Group 2 of Schedule 5 to the Value Added Tax Act 1983, in so far as they are not supplied to final consumers,*

   — *to news services included in Group 6, in so far as they are not provided to final consumers,*

(1) OJ No C 359, 31. 12. 1985.
(2) OJ No L 145, 13. 6. 1977, p. 1.

   — *to supplies of fuel and power included in Group 7 and to protective boots and helmets included in Group 17, in so far as they are not supplied to final consumers,*

   — *to the provision of goods and services included in Group 8 in relation to the construction of industrial and commercial buildings and to community and civil engineering works, in so far as they are not provided to final consumers,*

   the United Kingdom of Great Britain and Northern Ireland has contravened the provisions of Council Directive 77/388/EEC of 17 May 1977 and has therefore failed to fulfil its obligations under the EEC Treaty;

2. *For the rest, the application is dismissed;*

3. *The United Kingdom is ordered to pay the costs.*

O.J. No. C 285 of 12.11.1986, p. 4

Action brought on 15 October 1986 by the Commission of the European Communities against the Italian Republic

(Case 257/86)

(86/C 285/06)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 15 October 1986 by the Commission of the European Communities, represented by Giuliano Marenco, a member of its Legal Department, acting as Agent, having an address for service in Luxembourg at the office of G. Kremlis, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

1. Declare that, by providing that value added tax is payable on free samples of low value that are imported although such tax is not payable on similar free samples produced in Italy, the Italian Republic has failed to fulfil its obligations under Article 14 (1) (a) of the Sixth Council Directive, of 17 May 1977, on value added tax and under Article 95 of the Treaty;

2. Order the Italian Republic to pay the costs.

Contentions and main arguments adduced in support:

The discrimination resulting from Presidential Decree No 24 of 29 January 1979 constitutes an infringement of Article 14 (1) (a) of the Sixth Council Directive, of 17 May 1977, on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment. As far as trade between Member States is concerned, Article 14 of the Directive is a provision implementing the rule set out in Article 95 of the Treaty. Accordingly, Article 95 is infringed as well in so far as value added tax is charged on imports from other Member States.

However, the Sixth Council Directive goes further than Article 95 in so far as it is applicable to all imports, including imports from non-member countries.

Following action taken by the Commission, the Italian authorities, which initially interpreted the rules as entailing a difference in treatment between domestic transactions, on the one hand, and imports, irrespective of their provenance, on the other (cf. Annexes I and II to the application), had their attention drawn to the Geneva Convention of 7 November 1952 and accordingly thought fit to exempt from VAT imports from countries which were parties to the Convention, which include all the Member States of the Community.

However, that does not signify that there is no longer an infringement. On the one hand, the Italian authorities admit that there is still discrimination against imports from countries which are not parties to the Geneva Convention. On the other, even in the case of countries which are parties to that Convention, the present solution is a *de facto* one which does not guarantee the rights of importers, which, in the event that they are charged value added tax, might have difficulty in enforcing their rights before the courts.

O.J. No. C 190 of 19.7.1988, p. 12

JUDGMENT OF THE COURT

of 21 June 1988

in Case 257/86: Commission of the European Communities v. Italian Republic (1)

(Exemption from value-added tax in respect of samples of low value — Transposition into national law of Directive 77/388/EEC)

(88/C 190/08)

(Language of the Case: Italian)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 257/86: Commission of the European Communities (Agent: Giuliano Marenco) v. Italian Republic (Agent: Ivo M. Braguglia) — application for a declaration that, by providing that value-added tax is payable on imported free samples of low value, the Italian Republic has failed to fulfil its obligations under the EEC Treaty — the Court, composed of Lord Mackenzie Stuart, President, G. Bosco, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, Y. Galmot, C. N. Kakouris and F. A. Schockweiler, Judges; M. Darmon, Advocate-General; H. A. Rühl, Principal Administrator, acting for the Registrar, gave a judgment on 21 June 1988, the operative part of which is as follows:

1. *By adopting and maintaining in force legislation under which exemption from value-added tax is not granted in respect of all imports of free samples of low value and which lacks clarity and precision with regard to the exemption of certain imports of such samples, and by providing for exemption for similar samples produced in Italy, the Italian Republic has failed to fulfil its obligations under Article 95 of the Treaty and under Article 14 of Council Directive 77/388/EEC of 17 May 1977.*

2. *The Italian Republic is ordered to pay the costs.*

(1) OJ No C 285, 12 11 1986.

O.J. No. C 55 of 3.3.1987, p. 5

Reference for a preliminary ruling made by the High Court of Justice, Queen's Bench Division, by order of that Court of 18 December 1986, in the case of the Queen against the Commissioners of Customs and Excise, *ex parte* Tattersalls Limited

(Case 10/87)

(87/C 55/08)

The Court of Justice of the European Communities has received a reference for a preliminary ruling made by the High Court of Justice, Queen's Bench Division, London, in the proceedings between the Queen and the Commissioners of Customs and Excise, *ex parte* Tattersalls Limited which was lodged at the Court Registry on 16 January 1987 on the following questions:

1. In Article 10 subparagraph (c) of Council Directive 85/362/EEC are the words '(such goods) ... have been acquired subject to the rules governing the application of value added tax in the Member State of exportation, and have not benefited by virtue of their exportation from any exemption from value added tax;' on their true meaning apt to refer to goods the acquisition of which in the Member State of export was exempt from value added tax?

2. In Article 11 second paragraph subparagraph (b) of Council Directive 85/362/EEC are the words 'the goods were not acquired pursuant to the rules governing the application of value added tax in the Member State of exportation or by virtue of being exported benefited from exemption from value added tax;' on their true meaning apt to refer to goods the acquisition of which in the Member State of export was exempt from value added tax?

O.J. No. C 193 of 22.7.1988, p. 8

JUDGMENT OF THE COURT

of 21 June 1988

in Case 10/87: (reference for a preliminary ruling made by the High Court of Justice of England and Wales, Queen's Bench Division): The Queen v. Commissioner's of Customs and Excise, *ex. parte* Tattersalls Limited (1)

(Value added tax — Exemption for temporary imports)

(88/C 193/08)

(Language of the Case: English)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 10/87: reference to the Court under Article 177 of the EEC Treaty by the High Court of Justice of England and Wales, Queen's Bench Division, for a preliminary ruling on the proceedings pending before that court between The Queen and Commissioners of Customs and Excise, *ex parte* Tattersalls Limited — on the interpretation of the Seventeenth Council Directive of 16 July 1985 on the harmonization of the laws of the Member States relating to turnover taxes — Exemption from value added tax on the temporary importation of goods other than means of transport (Official Journal No L 192, 1985, p. 20) — the Court, composed of Lord Mackenzie Stuart, President, G. Bosco, O. Due and J. C. Moitinho de Almeida (Presidents of Chambers), U. Everling, K. Bahlmann, Y. Galmot, T. F. O'Higgins and F. Schockweiler, Judges; J. L. da Cruz Vilaça, Advocate General; D. Louterman, Administrator, for the Registrar, gave a judgment on 21 June 1988, the operative part of which is as follows:

Articles 10 (c) and 11 (b) of the Seventeenth Directive must be interpreted as meaning that temporary importation exemption must be granted for goods the purchase of which in the Member State of exportation is lawfully exempted from value added tax, provided that the exemption was not granted by virtue of the exportation of the goods in question.

---

(1) OJ No C 55, 3. 3. 1987

O.J. No. C 92 of 9.4.1988, p.4

Reference for a preliminary ruling by the First Chamber of the Tribunal de Grande Instance, Tarbes, by judgment of that court of 7 August 1986 in the case of SEE Crespin Sàrl v. Direction Générale des Impôts

(Case 59/88)

(88/C 92/07)

Reference has been made to the Court of Justice of the European Communities by a judgment of the First Chamber of the Tribunal de Grande Instance [Regional Court], Tarbes, of 7 August 1986, which was received at the Court Registry on 24 February 1988, for a preliminary ruling in the case of SEE Crespin Sàrl v. Direction Générale des Impôts on the following question:

Must the concept of turnover tax or taxes, duties or charges which can be characterized as turnover tax, referred to in Article 33 of the Sixth VAT Directive, be interpreted as applying to taxes, duties or charges which, although treated by French domestic legislation as constituting flat-rate indirect taxation *stricto sensu*, nevertheless presuppose the existence of a business and whose yield, as a result of a difference in the applicable rates depending on the age of the taxable machines, their location or the greater or lesser degree of sophistication of their mechanisms, appears related to foreseeable turnover, although it is not expressed as a percentage of actual takings, the amount of which is difficult to assess?

O.J. No.C 213 of 13.8.1988,p.8

Removal from the Register of Case 59/88 (1)

(88/C 213/15)

By order of 22 June 1988 the Court of Justice of the European Communities ordered the removal from the Register of Case 59/88 (reference for a preliminary ruling made by the Tribunal de Grande Instance (First Chamber), Tarbes): Sàrl S.E.E. Crespin v. Directeur des Services Fiscaux des Hautes-Pyrénées.

---

(1) OJ No C 92, 9. 4. 1988.

O.J. No. C 98 of 26.4.1986, p. 3

Action brought on 9 January 1986 by the Commission of the European Communities against the Italian Republic

(Case 3/86)

(86/C 98/03)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 9 January 1986 by the Commission of the European Communities, represented by Føns Buhl and Guido Berardis, members of its Legal Department, acting as Agents, with an address for service in Luxembourg at the Chambers of G. Kremlis, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

1. Declare that, by establishing and maintaining in force a flat-rate scheme which is incompatible with the provisions of Article 25 (3) and (5) of the Sixth Council Directive on value added tax (77/388/EEC of 17 May 1977 (1)), inasmuch as it fails to comply with certain restrictions or with the percentages of value added tax refunded to the producer in respect of beef, pigmeat and fresh milk, the Italian Republic has failed to fulfil its obligations under the EEC Treaty and the abovementioned Directive.

2. Order the Italian Republic to pay the costs.

Contentions and main arguments adduced in support:

The flat-rate compensation percentages fixed at 14 %

— are granted on the basis of statistics relating to agriculture as a whole, whereas Article 25 (3) of the Sixth Directive on value added tax lays down that the percentages 'shall be based on macroeconomic statistics for flat-rate farmers alone';

— obtain for farmers a refund greater than the value added tax charge on input (which does not exceed 7 %).

Moreover, Article 34 of Presidential Decree No 633/72 includes in the scheme in question products supplied to flat-rate farmers, which is contrary to Article 25 (5) of the Sixth Directive on value added tax.

(1) OJ No L 145, 13. 6. 1977, p. 1.

O.J. No. C 199 of 29.7.1988, p. 9

JUDGMENT OF THE COURT

of 28 June 1988

in Case 3/86: Commission of the European Communities v. Italian Republic (1)

(Failure by a State to fulfil its obligations — Sixth Directive, Article 25 (3) and (5) — Flat-rate system of compensation for cattle, swine and milk)

(88/C 199/03)

(Language of the Case: Italian)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 3/86: Commission of the European Communities (Agents: Johannes Føns Buhl and Guido Berardis) against the Italian Republic (Agent: Ivo M. Braguglia) — application for a declaration that the Italian Republic has failed to fulfil its obligations under Community provisions and in particular the provisions of Article 25 (3) and (5) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (2) — the Court, composed of Lord Mackenzie Stuart, President, G. Bosco, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, Y. Galmot, C. N. Kakouris and F. A. Schockweiler, Judges; C. O. Lenz, Advocate-General; B. Pastor, Administrator, for the Registrar, gave a judgment on 28 June 1988, the operative part of which is as follows:

1. *By fixing in relation to value added tax under the flat-rate scheme for farmers the flat-rate compensation percentages at 15 % and then 14 % for the beef, pigmeat and unconcentrated and unsugared fresh milk sectors from 1981 and 1983 respectively and by providing that flat-rate compensation percentages should apply to supplies and services intended for flat-rate farmers, the Italian Republic has failed to fulfil its obligations under the Treaty and Article 25 (3), (5) and (8) of the Sixth Council Directive 77/388/EEC of 17 May 1977.*

2. *The Italian Republic is ordered to bear the costs.*

(1) OJ No C 98, 26. 4. 1986,
(2) OJ No L 145, 13. 6. 1977, p. 1.

O.J. No. C 243 of 10.9.1987, p. 4

Reference for a preliminary ruling by the Tribunal de Grande Instance [Regional Court], Lille, by judgment of that court of 29 July 1987 in the case of Christian Deville against Administration des Impôts [Tax Administration]

(Case 240/87)

(87/C 243/05)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Tribunal de Grande Instance [Regional Court], Lille, of 29 July 1987, which was received at the Court Registry on 3 August 1987, for a preliminary ruling in the case of Christian Deville against Administration des Impôts on the following question:

Is it in conformity with the general principles of Community law to impose a time limit, as does Article 18-V, paragraph 2, of Law No 85-695 of 11 July 1985, on the effects of the retroactive abolition of the special tax on vehicles exceeding 16 bhp which was declared contrary to the provisions of Article 95 of the Treaty of Rome by the judgment of that Court of 9 May 1985 in Case 112/84?

O.J. No. C 199 of 29.7.1988, p. 11

JUDGMENT OF THE COURT

(Fifth Chamber)

of 29 June 1988

in Case 240/87: (reference for a preliminary ruling made by the Tribunal de Grande Instance, Lille): C. Deville v. Administration des Impôts (')

(National taxes levied in breach of Community law — Limitation imposed, subsequent to a judgment of the Court, on the possibilities of bringing proceedings for recovery)

(88/C 199/08)

(Language of the Case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 240/87: reference to the Court under Article 177 of the EEC Treaty by the Tribunal de Grande Instance [Regional Court], Lille (France) for a preliminary ruling in the proceedings pending before that court between C. Deville, residing in Bachy, and Administration des Impôts [Tax Administration], in the person of the Directeur des Services Fiscaux du Nord [Director of the Tax Authorities for the Département du Nord], with an address for service at his offices in Lille — on the interpretation of the general principles of Community law governing the reimbursement of national taxes levied in breach of Community law — the Court (Fifth Chamber), composed of G. Bosco, President of the Chamber, U. Everling, Y. Galmot, R. Joliet and F. A. Schockweiler, Judges; Sir Gordon Slynn, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 29 June 1988, the operative part of which is as follows:

A national legislature may not adopt any procedural rule, subsequent to a judgment of the Court from which it follows that a particular piece of legislation is incompatible with the Treaty, which specifically reduces the possibilities of bringing proceedings for recovery of taxes which were wrongly levied under that legislation. It is for the national court to consider whether the procedural rule at issue reduces the possibilities of bringing proceedings for recovery which would otherwise have been available.

(') OJ No C 243, 10. 9. 1987.

O.J. No. C 308 of 2.12.1986, p. 6

Reference for a preliminary ruling by the Hoge Raad der Nederlanden by judgment of that court of 29 October 1986 in the case of W. J. R. Mol v. Inspecteur der Invoerrechten en Accijnzen, Leeuwarden

(Case 269/86)

(86/C 308/09)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Third Chamber of the Hoge Raad der Nederlanden [Supreme Court of the Netherlands] of 29 October 1986, which was received at the Court Registry on 5 November 1986, for a preliminary ruling in the case of W. J. R. Mol, Haule, v. Inspecteur der Invoerrechten en Accijnzen [Inspector of Customs and Excise] on the following question:

Must Article 2 of the Sixth Council Directive [of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Commom system of value added tax: uniform basis of assessment (77/388/EEC)] (1) be interpreted as meaning that the supply of amphetamine for consideration within the national territory cannot be subject to value added tax inasmuch as such supply is forbidden by law?

(1) OJ No L 145, 13. 6. 1977, p. 1.

O.J. No. C 211 of 11.8.1988, p. 4

JUDGMENT OF THE COURT

(Sixth Chamber)

of 5 July 1988

in Case 269/86 (reference for a preliminary ruling made by the Hoge Raad der Nederlanden): W. J. R. Mol v. Inspecteur der Invoerrechten en Accijnzen (1)

(VAT charged on the illegal supply of drugs effected within a Member State)

(88/C 211/04)

(Language of the Case: Dutch)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 269/86: reference to the Court under Article 177 of the EEC Treaty by the Hoge Raad der Nederlanden (Supreme Court of the Netherlands), for a preliminary ruling in the proceedings pending before that court between W. J. R. Mol, Haule, v. Inspecteur der Invoerrechten en Accijnzen, Leeuwarden — on the interpretation of Article 2 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (Official Journal 1977, No L 145, p. 1) — the Court (Sixth Chamber), composed of O. Due, President of the Chamber, T. Koopmans, K. Bahlmann, C. N. Kakouris and T. F. O'Higgins, Judges; G. F. Mancini, Advocate-General; B. Pastor, Administrator, acting for the Registrar, gave a judgment on 5 July 1988, the operative part of which is as follows:

1. *Article 2 of the Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as meaning that no liability to value added tax arises upon the unlawful supply of drugs effected for consideration within the country in so far as the products in question are not confined within economic channels strictly controlled by the competent authorities for use for medical and scientific purposes.*

2. *The unlawful supply of amphetamines is also not liable to value added tax in so far as the products in question are not confined within economic channels strictly controlled by the competent authorities.*

(1) OJ No C 308, 2. 12. 1986.

O.J. No. C 8 of 13.1.1987, p. 5

Reference for a preliminary ruling by the Gerechtshof, Amsterdam, by judgment of that court of 28 October 1986 in the case of Vereniging Happy Family Rustenburgerstraat v. Inspecteur der Omzetbelastingen, Amsterdam

(Case 289/86)

(87/C 8/08)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Second Collegiate Revenue Chamber of the Gerechtshof (Regional Court of Appeal), Amsterdam, of 28 October 1986, which was received at the Court Registry on 24 November 1986, for a preliminary ruling in the case of Vereniging Happy Family Rustenburgerstraat, Amsterdam, v. Inspecteur der Omzetbelastingen (Inspector of Turnover Taxes), Amsterdam, on the following questions:

1. Following the judgment of the Court of Justice of the European Communities of 28 February 1984 in Case 294/82, Einberger v. Hauptzollamt Freiburg, must Article 2 (1) of the Sixth Council Directive (No 77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (1) be interpreted as meaning that upon the supply of narcotic drugs within the territory of a Member State no turnover tax arises either?

2. If Question 1 must be answered in the affirmative, does that answer apply to the supply of all kinds of narcotic drugs, including the supply of hemp products?

3. If Question 2 must also be answered in the affirmative, can the fact that a policy of restraint pursued by the competent judicial authorities as regards the prosecution of offences makes it possible in certain circumstances to provide prohibited supplies of hemp products be a ground for taking a different view on the question whether turnover tax is due upon the supply of such products?

(1) OJ No L 145, 13. 6. 1977, p. 1.

O.J. No. C 211 of 11.8.1988, p. 4

JUDGMENT OF THE COURT

(Sixth Chamber)

of 5 July 1988

in Case 289/86 (reference for a preliminary ruling made by the Gerechtshof, Amsterdam): Vereniging Happy Family Rustenburgerstraat v. Inspecteur der Omzetbelasting (1)

(VAT charged on the illegal supply of drugs effected within a Member State)

(88/C 211/05)

(Language of the Case: Dutch)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 289/86: reference to the Court under Article 177 of the EEC Treaty by the Gerechtshof (Regional Court of Appeal), Amsterdam, for a preliminary ruling in the proceedings pending before that Court between Vereniging Happy Family Rustenburgerstraat, Amsterdam, and Inspecteur der Omzetbelasting, Amsterdam — on the interpretation of Article 2 (1) of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (Official Journal 1977, No L 145, p. 1) — the Court (Sixth Chamber), composed of O. Due, President of the Chamber, T. Koopmans, K. Bahlmann, C. N. Kakouris and T. F. O'Higgins, Judges; G. F. Mancini, Advocate-General; B. Pastor, Administrator, acting for the Registrar, gave a judgment on 5 July 1988, the operative part of which is as follows:

1. *Article 2 (1) of the Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as meaning that no liability to value added tax arises upon the unlawful supply of drugs within the territory of a Member State in so far as the products in question are not confined within economic channels strictly controlled by the competent authorities for use for medical and scientific purposes.*

2. *That also applies to the unlawful supply of hemp products even where, pursuant to a selective prosecution policy, the authorities of a Member State do not systematically bring criminal proceedings in respect of small retail dealing in such drugs.*

(1) OJ No C 8, 13. 1. 1987.

O.J. No. C 172 of 10.7.1986, p. 5

Reference for a preliminary ruling by the Cour d'Appel, Liège, by judgment of that court of 12 March 1986 in the case of Ministère Public and Ministre des Finances du Royaume de Belgique v. Yves Ledoux

(Case 127/86)

(86/C 172/07)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Cour d'Appel (Court of Appeal), Liège, of 12 March 1986, which was received at the Court Registry on 26 May 1986, for a preliminary ruling in the case of Ministère Public (Public Prosecutor) and Ministre des Finances (Minister of Finance) of the Kingdom of Belgium v. Yves Ledoux on the following question:

Do the Community rules concerning taxation, and in particular the rules concerning value-added tax, permit the Belgian State, under the Law of 3 July 1969 establishing the Value-Added Tax Code, the decrees implementing that law and in accordance with the interpretation of its provisions by the Minister of Finance of the Kingdom of Belgium, in proceedings brought against Yves Ledoux, to levy value-added tax on a motor vehicle which is owned by a company incorporated under French law with its registered office in France and is subject to value-added tax in France, where the tax has been paid, in so far as the vehicle is used by an employee of the company, who is resident in Belgium, for the performance of his duties under his contract of employment and for leisure purposes, taking account of the fact that the vehicle remains the property of the French employer and that the importation into Belgium is only temporary and of a provisional nature?

O.J. No. C 211 of 11.8.1988, p. 6

JUDGMENT OF THE COURT

(Fourth Chamber)

of 6 July 1988

in Case 127/86: (reference for a preliminary ruling made by the Cour d'Appel, Liège): Ministère Public and Ministre des Finances du Royaume de Belgique v. Yves Ledoux (1)

(Value added tax — Temporary importation of a motor vehicle for professional and private use)

(88/C 211/08)

(Language of the Case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 127/86: reference to the Court under Article 177 of the EEC Treaty by the Cour d'Appel (Court of Appeal), Liège for a preliminary ruling in the proceedings pending before that Court between Ministère Public (Public Prosecutor) and Ministre des Finances du Royaume de Belgique (Minister of Finance of the Kingdom of Belgium) — on the interpretation of the Community rules concerning taxation, and in particular the rules concerning value added tax, in order to determine whether Belgian legislation on value added tax is consistent with the provisions of Community law — the Court (Fourth Chamber), composed of G. C. Rodríguez Iglesias, President of the Chamber, T. Koopmans and C. N. Kakouris, Judges; J. Mischo, Advocate-General; B. Pastor, Administrator, acting for the Registrar, gave a judgment on 6 July 1988, the operative part of which is as follows:

'The Sixth Council Directive of 17 May 1977 (Directive 77/388/EEC) on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, prevents a Member State from levying value added tax on a motor vehicle which is owned by an employer established in another Member State where value added tax has been paid and which is used by a frontier-zone worker residing in the first Member State for the performance of his duties under his contract of employment and, secondarily, for leisure purposes.'

(1) OJ No C 172, 10. 7. 1986.

O.J. No. C 192 of 30.7.1986, p. 10

Reference for a preliminary ruling made by order of the London Value Added Tax Tribunal dated 15 May 1986 in the case of Direct Cosmetics Ltd and the Commissioners of Customs and Excise

(Case 138/86)

(86/C 192/09)

The Court of Justice of the European Communities has received a reference for a preliminary ruling made by order of the London Value Added Tax Tribunal dated 15 May 1986 in the proceedings between Direct Cosmetics Ltd and the Commissioners of Customs and Excise which was lodged at the Court Registry on 5 June 1986 on the following questions:

1. Is a measure, such as that contained in paragraph 3, Schedule 4 of the Value Added Tax Act 1983, within the limits allowed by Article 27 (1) of the Sixth Directive, or is it wider than is strictly necessary?

2. Is such a measure which is applied to:

   (i) a taxpayer who has been accepted as carrying on business without any intention to evade or to avoid value added tax and whose method of trading has evolved solely on account of commercial considerations;

   (ii) a taxpayer who has been accepted as carrying on business without any intention to evade or to avoid value added tax and whose method of trading has evolved ' soley on account of commercial considerations but which may have the objective result that some tax has been avoided;

   (iii) some taxpayers but not against other such taxpayers who are selling directly to unregistered resellers

   within the limits of the derogation allowed by Article 27 (1) of the Sixth Directive or is it wider than is strictly necessary?

3. Can such a measure be applied to taxpayers whose activities fall outside the matters referred to in Article 27 of the said Sixth Directive or outside the terms of the request for authorization or the terms of the actual authorization by the Council of Ministers?

4. Is the decision of authorization of the Council of Ministers invalid or of no effect for any substantive or procedural reason, such as the failure of the Council of Ministers or the Member States to evaluate or to be informed of the fact that the measure was not capable of being evaluated either against the criteria laid down in Article 27 of the Sixth Directive or against the principle of proportionality or against the basic principles of the Sixth Directive?

5. Does the decision of authorization of the Council of Ministers mean that an individual taxpayer, such as the Appellant, who has been accepted as carrying on business without any intention to evade or to avoid value added tax, cannot rely upon being taxed under the provisions laid down in Article 11A (1) (a) of the Sixth Directive on value added tax?

O.J. No.C 205 of 6.8.1988, p. 5

JUDGMENT OF THE COURT

of 12 July 1988

in Joined Cases 138 and 139/86: (reference for a preliminary ruling made by the London Value Added Tax Tribunal): Direct Cosmetics Ltd and Laughtons Photographs Ltd v. Commissioners of Customs and Excise (')

(Sixth VAT Directive — Authorization of derogating measures — Validity)

(88/C 205/07)

(Language of the Case: English)

In Joined Cases 138 and 139/88: reference to the Court under Article 177 of the EEC Treaty by the London Value Added Tax Tribunal for a preliminary ruling in the proceedings pending before that Tribunal between Direct Cosmetics Ltd and Laughtons Photographs Ltd against Commissioners of Customs and Excise — on the interpretation of Article 27 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (Official Journal 1977, No L 145, p. 1) and on the validity of Council Decision 85/369/EEC of 13 June 1985 (Official Journal 1985 No L 199, p. 60) which authorized the United Kingdom, under Article 27 of the Sixth Directive, to introduce for a period of two years a measure derogating from that Directive in order to prevent certain types of tax avoidance — the Court composed of G. Bosco, President of the Chamber, acting as President, O. Due and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. N. Kakouris, R. Joliet, T. F. O'Higgins and F. A. Schockweiler, Judges; Advocate-General J. L. da Cruz Vilaça, H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 12 July 1988, the operative part of which is as follows:

1. ***Article 27 (1) of the Sixth Directive permits the adoption of a measure derogating from the basic rule set out in Article 11 A. 1. (a) of that Directive even where the taxable person carries on business, not with any intention of obtaining a tax advantage but for commercial reasons.***

2. *Article 27(1) of the Sixth Directive permits the adoption of a derogating measure, such as that at issue in the main proceedings, which applies only to certain*

(1) OJ No C 192, 30. 7. 1986.

taxable persons amongst those selling goods to non-taxable resellers, on condition that the resultant difference in treatment is justified by objective circumstances.

3. *Consideration of the question raised has disclosed no factors of such a kind as to affect the validity of Council Decision 85/369/EEC of 13 June 1985 authorizing a derogating measure requested by the United Kingdom.*

O.J. No. C 192 of 30.7.1986, p. 11

Reference for a preliminary ruling made by order of the London Value Added Tax Tribunal dated 15 May 1986 in the case of Laughtons Photographs Ltd and the Commissioners of Customs and Excise

(Case 139/86)

(86/C 192/10)

The Court of Justice of the European Communities has received a reference for a preliminary ruling made by order of the London Value Added Tax Tribunal dated 15 May 1986 in the proceedings between Laughtons Photographs Ltd and the Commissions of Customs and Excise which was lodged at the Court Registry on 5 June 1986.

The questions put to the Court are identical to those put in Case 138/86 (Direct Cosmetics).

O.J. No. C 205 of 6.8.1988, p. 5

JUDGMENT OF THE COURT

of 12 July 1988

in Joined Cases 138 and 139/86: (reference for a preliminary ruling made by the London Value Added Tax Tribunal): Direct Cosmetics Ltd and Laughtons Photographs Ltd v. Commissioners of Customs and Excise (1)

(Sixth VAT Directive — Authorization of derogating measures — Validity)

(88/C 205/07)

(Language of the Case: English)

In Joined Cases 138 and 139/88: reference to the Court under Article 177 of the EEC Treaty by the London Value Added Tax Tribunal for a preliminary ruling in the proceedings pending before that Tribunal between Direct Cosmetics Ltd and Laughtons Photographs Ltd against Commissioners of Customs and Excise — on the interpretation of Article 27 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (Official Journal 1977, No L 145, p. 1) and on the validity of Council Decision 85/369/EEC of 13 June 1985 (Official Journal 1985 No L 199, p. 60) which authorized the United Kingdom, under Article 27 of the Sixth Directive, to introduce for a period of two years a measure derogating from that Directive in order to prevent certain types of tax avoidance — the Court composed of G. Bosco, President of the Chamber, acting as President, O. Due and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. N. Kakouris, R. Joliet, T. F. O'Higgins and F. A. Schockweiler, Judges; Advocate-General J. L. da Cruz Vilaça, H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 12 July 1988, the operative part of which is as follows:

1. *Article 27(1) of the Sixth Directive permits the adoption of a measure derogating from the basic rule set out in Article 11 A. 1. (a) of that Directive even where the taxable person carries on business, not with any intention of obtaining a tax advantage but for commercial reasons.*

2. *Article 27(1) of the Sixth Directive permits the adoption of a derogating measure, such as that at issue in the main proceedings, which applies only to certain taxable persons amongst those selling goods to non-taxable resellers, on condition that the resultant difference in treatment is justified by objective circumstances.*

---

(1) OJ No C 192, 30. 7. 1986.

3. *Consideration of the question raised has disclosed no factors of such a kind as to affect the validity of Council Decision 85/369/EEC of 13 June 1985 authorizing a derogating measure requested by the United Kingdom.*

O.J. No. C 200 of 28.7.1987, p. 6

Action brought on 5 June 1987 by the Commission of the European Communities against the French Republic

(Case 169/87)

(87/C 200/08)

An action against the French Republic was brought before the Court of Justice of the European Communities on 5 June 1987 by the Commission of the European Communities, represented by Henri Etienne, Legal Adviser, and by Daniel Calleja, a member of its Legal Department, acting as Agents, with an address for service in Luxembourg at the offices of Georgios Kremlis, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

1. (a) Declare that, by not fixing the retail price of manufactured tobacco at the level set by manufacturers or importers, subject only to the application of general legislation intended to curb the rise in prices, the French Republic has failed to fulfil its obligations under Article 5 (1) of Council Directive 72/464/EEC and Article 30 of the EEC Treaty;

   (b) Declare that, by not implementing the measures necessary in order to comply with the judgment of the Court of Justice of 21 June 1983, the French Republic has also failed to fulfil its obligations under Article 171 of the EEC Treaty;

2. Order the defendant to pay the costs.

Contentions and main arguments adduced in support:

Infringement of Article 5 of Directive 72/464/EEC

That Article provides that manufacturers and importers must be free to determine the retail price of manufactured tobacco. The only restriction on that freedom to determine prices is the right of the Member States to apply national price control provisions.

It has been established that producers or importers of manufactured tobacco in France have not been able freely to determine their maximum retail prices and that the French public authorities relied on existing distribution or price quotation mechanisms in refusing to authorize the prices determined by producers or importers.

The Commission does not accept that the obstacles put in the way of producers' or importers' price declarations were justified by a general price control policy. As such the continuance of price controls for tobacco products is no longer justified as the application of a general policy when price controls were abolished in a general fashion by Order No 86-1243 of 1 December 1986 on the freedom of prices and competition.

Infringement of Article 30 of the EEC Treaty

The Commission takes the view that the French system disadvantages the sale of imported products because it only takes account of the situation in the French market and does not enable manufacturers in other Member States to pass on the rise in production costs to delivery prices in France. It is therefore incompatible with Article 30 of the EEC Treaty. The Commission adds that the way in which the system of price restrictions in question disadvantages the sale of imported products is particularly serious because the losses of the sole French manufacturer (SEITA) which are considerable, are automatically borne by the budget of the French State.

Failure to comply with Article 171 of the EEC Treaty

It has been established that even after the Court's judgment of 21 June 1986 the French authorities fixed retail prices at a level different from those of producers or importers.

It is true that the notice published on 24 January 1985 constituted a legal instrument enabling the authorities responsible for implementing the judgment to comply with the provisions of the Treaty as interpreted by the Court.

However, that notice did not prevent the prices declared by foreign manufacturers or importers from being made subject in fact to price control measures which did not have the general character required by Article 5 of the Directive, nor did it prevent the delivery of manufactured tobacco on the French market from being made more difficult for importers or foreign manufacturers. As the Court has recently stressed, what is essential is that failures to comply with Community law should also be put to an end in fact.

O.J. No. C 211 of 11.8.1988, p. 10

JUDGMENT OF THE COURT

of 13 July 1988

in Case 169/87: Commission of the European Communities v. French Republic (')

(Fixing of the price of manufactured tobacco)

(88/C 211/19)

(Language of the Case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 169/87: Commission of the European Communities (Agents: H. Étienne and D. Calleja), supported by the Kingdom of the Netherlands (Agents: G. M. Borchardt and M. A. Fierstra), against the French Republic (Agents: R. de Gouttes and C. Chavance) — application for a declaration that by not fixing the retail price of manufactured tobacco at the level set by manufacturers or importers, subject only to the application of general legislation intended to curb the rise in prices, the French Republic has failed to fulfil its obligations under Article 5 (1) of Council Directive 72/464/EEC of 19 December 1972 (Official Journal, English Special Edition, 31 December 1972, L 303 p. 1), and by not taking the measures necessary to comply with the judgment of the Court of Justice of 21 June 1983, the French Republic has also failed to fulfil its obligations under Article 171 of the EEC Treaty — the Court, composed of Lord Mackenzie Stuart, President, G. Bosco and J. C. Moitinho de Almeida, (Presidents of Chambers), T. Koopmans, U. Everling, Y. Galmot and F. A. Schockweiler, Judges; J. L. da Cruz Vilaça, Advocate-General; J. A. Pompe, Deputy Registrar, gave a judgment on 13 July 1988, the operative part of which is as follows:

(') OJ No C 200, 28. 7. 1987.

1. *By not taking the necessary measures to comply with the judgment of the Court of Justice of 21 June 1983, the French Republic has failed to fulfil its obligations under Article 171 of the EEC Treaty.*
2. *The French Republic is ordered to pay the costs, apart from those incurred by the Kingdom of the Netherlands.*
3. *The Kingdom of the Netherlands is ordered to pay its own costs.*

O.J. No. C 1 of 3.1.1987, p. 5

Action brought on 28 November 1986 by the Commission of the European Communites against the Kingdom of Belgium

(Case 298/86)

(87/C 1/07)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 28 November 1986 by the Commission of the European Communities, represented by D. Jacob, a member of its Legal Department, and J. F. Bühl, Legal Adviser, acting as Agents, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

— Declare that by fixing the retail sale price of certain categories of manufactured tobacco at a different level from that freely determined by manufacturers and importers, the Kingdom of Belgium has failed to fulfil its obligations under the Treaty establishing the European Economic Community, in particular Article 30 thereof, and the provisions of Article 5 (1) of Council Directive No 72/464/EEC of 19 December 1972 (1) on taxes other than turnover taxes which affect the consumption of manufactured tobacco;

— Order the defendant to pay the costs.

Contentions and main arguments adduced in support

The Commission considers it incompatible with the provisions cited in its submissions for national rules to prevent an importer, in particular a retail importer, wishing to engage in parallel imports, from pursuing a price policy different from that of the official importer. It also considers that a reply to the reasoned opinion to the effect that no adjustment of the national rules is necessary in order to comply with the directive and that in future importers will be free to determine the sale prices of cigarettes is not likely to put an end to the infringement; the Belgian authorities must adopt an official measure to inform taxpayers of the precise scope of the law in view of the fact that it has been open to completely different interpretations.

(1) OJ No L 303, 31. 12. 1972, p. 1.

O.J. No. C 215 of 17.8.1988, p. 11

JUDGMENT OF THE COURT

of 14 July 1988

in Case 298/86: Commission of the European Communities v. Kingdom of Belgium (1)

(Retail sale price system for manufactured tobacco)

(88/C 215/12)

(Language of the Case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 298/86: Commission of the European Communities (Agents: Daniel Jacob and Johannes Føns Buhl) against the Kingdom of Belgium (Agent: Robert Hoebaer, assisted by Paul Bastin) — application for a declaration that by fixing the retail sale price of certain categories of manufactured tobacco at a level different from that freely determined by manufacturers and importers, the Kingdom of Belgium has failed to fulfil its obligations under the EEC Treaty, in particular Article 30 thereof, and the provisions of Article 5 (1) of Council Directive 72/464/EEC of 19 December 1972 on taxes other than turnover taxes which affect the consumption of manufactured tobacco — the Court composed of Lord Mackenzie Stuart, President, G. Bosco, O. Due and G. C. Rodríguez Iglesias, Presidents of Chambers, T. Koopmans, T. F. O'Higgins and F. A. Schockweiler, Judges; J. L. da Cruz Vilaça, Advocate-General; D. Louterman, Administrator, acting as Registrar, gave a judgment on 14 July 1988, the operative part of which is as follows:

(1) OJ No C 1, 3. 1. 1987.

1. *the application is dismissed;*

2. *the Commission is ordered to pay the costs.*

O.J. No. C 138 of 23.5.1987, p. 5

Reference for a preliminary ruling by the Tribunal de Première Instance (Troisième Chambre Bis), Brussels by judgment of that court of 6 April 1987 in the case of Léa Jorion (née Jeunehomme) v. Belgian State

(Case 123/87)

(87/C 138/07)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Tribunal de Première Instance (Troisième Chambre Bis) Court of First Instance (Chambers 3a), Brussels of 6 April 1987, which was received at the Court Registry on 9 April 1987, for a preliminary ruling in the case of Léa Jorion (née Jeunehomme) v. Belgian State on the following question:

Articles 18 (1) (a), 22 (3) (a) and 22 (3) (b) of the Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes provide that in order to exercise his right to deduct, a taxable person must hold an invoice stating clearly the price exclusive of value-added tax and the corresponding tax at each rate as well as any exemptions. In addition, the documents preparatory to the adoption of Article 22 (3) show that the method of invoicing comes not only within the scope of tax law but also, primarily, within that of commercial law.

In those circumstances, do Articles 18 (1) (a) and 22 (3) (a) and 22 (3) (b) of the Sixth Directive permit the Belgian State to make the exercise of the right of deduction subject to the holding of a document which must contain not merely the information normally set out in an invoice, as traditionally defined in commercial law, but also other information unconnected with the nature, essence and purpose of a commercial invoice, which is set out in Article 2 of Royal Decree No 1 of 23 July 1969, a measure adopted for the implementation of the Belgian Value-added Tax Code?

O.J. No. C 222 of 26.8.1988, p. 3

JUDGMENT OF THE COURT

(Fifth Chamber)

of 14 July 1988

in Joined Cases 123/87 and 330/87: (reference for a preliminary ruling made by the Tribunal de Première Instance, Brussels) Léa Jeunehomme and Société Anonyme d'Étude et de Gestion Immobilière (EGI) v. Belgian State (1)

(Sixth Directive 77/388/EEC — Right to deduct VAT — Method of invoicing)

(88/C 222/03)

(Language of the Case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Joined Cases 123/87 and 330/87: reference to the Court under Article 177 of the EEC Treaty by the Tribunal de Première Instance [Court of First Instance], Brussels, for a preliminary ruling in the proceedings pending before that court between Léa Jeunehomme and Société Anonyme d'Étude et de Gestion Immobilière (EGI), on the one hand, and the Belgian State, on the other, — on the interpretation of Article 18 (1) (a) and Article 22 (3) (a) and (b) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment — the Court (Fifth Chamber), composed of G. Bosco, President of the Fifth Chamber, J. C. Moitinho de Almeida, President of Chamber, U. Everling, Y. Galmot and R. Joliet, Judges; Sir Gordon Slynn, Advocate General; B. Pastor, Administrator, acting for the Registrar, gave a judgment on 14 July 1988, the operative part of which is as follows:

Article 18 (1) (a) and Article 22 (3) (a) and (b) of the Sixth Council Directive 77/388/EEC of 17 May 1977 allow Member States to make the exercise of the right to deduct dependent on the holding of an invoice which must contain certain particulars which are needed in order to secure the collection of value added tax and the supervision thereof by the tax authorities. Such particulars must not, by reason of their number or technical nature, make it practically impossible or excessively difficult to actually exercise the right to deduct.

(1) OJ No C 138, 23. 5. 1987.
OJ No C 317, 28. 11. 1987.

O.J. No. C 205 of 1.8.1987, p. 11

Reference for a preliminary ruling by the Finanzgericht Rheinland-Pfalz by order of that court of 15 June 1987 in the case of Gerd Weissgerber v. Finanzamt Neustadt an der Weinstraße

(Case 207/87)

(87/C 205/16)

Reference has been made to the Court of Justice of the European Communities by an order of the Third Senate of the Finanzgericht (Finance Court) Rheinland-Pfalz of 15 June 1987, which was received at the Court Registry on 7 July 1987, for a preliminary ruling in the case of Gerd Weissgerber, 5 Kellereistraße, D-6730 Neustadt an der Weinstraße v. Finanzamt (Tax Office) Neustadt an der Weinstraße, on the following questions:

1. In relation to transactions carried out between 1 January 1978 and 30 June 1978 and transactions carried out in 1979, is it possible for the provision concerning the exemption from turnover tax of transactions consisting of the negotiation of credit contained in Article 13 B (d) 1 of the Sixth Directive (77/388/EEC) (1) on turnover tax to be relied upon, in the absence of the implementation of that directive, by a credit negotiator where he refrained from passing that tax on to persons following him in the chain of supply?

2. If Question 1 is answered in the affirmative: must a credit negotiator pay turnover tax if he 'covertly' passed the tax on to the person following him in the chain of supply, or only if he 'overtly' passed the tax on?

3. If turnover tax is payable in the case of a covert passing on of tax: Is it sufficient for there to have been a covert passing-on of turnover tax, that the credit negotiator, in agreeing the agent's commission, expected that out of it he would have to pay turnover tax?

(1) OJ 1977, No L 145, p. 1.

O.J. No. C 215 of 17.8.1988, p. 12

JUDGMENT OF THE COURT

(Sixth Chamber)

of 14 July 1988

in Case 207/87: (reference for a preliminary ruling made by the Finanzgericht Rheinland-Pfalz) Gerd Weissgerber v. Finanzamt Neustadt an der Weinstraße (1)

(Exemption from VAT — Passing on VAT down the commercial chain)

(88/C 215/15)

(Language of the Case: German)

(Provisional translation: the definitive translation will be published in the Reports of Cases before the Court)

In Case 207/87: reference to the Court under Article 177 of the EEC Treaty by the Finanzgericht (Finance Court) Rheinland-Pfalz for a preliminary ruling in the proceedings pending before that court between Gerd Weissgerber and Finanzamt (Tax Office) Neustadt an der Weinstraße — on the interpretation of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (Official Journal No L 145 of 13. 6. 1977, p. 1) — the Court (Sixth Chamber), composed of O. Due, President of the Chamber, G. C. Rodríguez Iglesias, T. Koopmans, K. Bahlmann and T. F. O'Higgins, Judges; C. O. Lenz, Advocate-General; D. Louterman, Administrator, acting for the Registrar, gave a judgment on 14 July 1988, the operative part of which is as follows:

in the absence of implementation of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, a credit negotiator may rely on the provision for the exemption from tax provided for in Article 13B (d) (1) of the Directive in respect of transactions carried out between 1 January and 30 June 1978 and as from 1 January 1979 if he has not passed the tax on down the commercial chain so as to give the recipient of the services the right to deduct the amount as input tax.

(1) OJ No C 205, 1. 8. 1987.

O.J. No. C 317 of 28.11.1987, p. 10

Reference for a preliminary ruling by the Tribunal de Première Instance de Bruxelles [Court of First Instance, Brussels] (Fourth Chamber) by judgment of that court of 16 October 1987 in the case of Société Anonyme d'Etude et de Gestion Immobilière (EGI) v. Etat Belge

(Case 330/87)

(87/C 317/14)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Tribunal de Première Instance de Bruxelles (Fourth Chamber) of 16 October 1987, which has received at the Court Registry on 20 October 1987, for a preliminary ruling in the case of Société Anonyme d'Etude et de Gestion Immobilière (EGI) v. Etat Belge on the following questions:

Articles 18 (1) (a) and 22 (3) (a) and (b) of the Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes (1) provide that in order to exercise his right to deduct, the taxable person must hold an invoice stating clearly the price exclusive of VAT and the corresponding tax at each rate as well as any exemptions.

(1) OJ No L 145, 13. 6. 1977, p. 1, Directive 77/388/EEC.

The preparatory documents concerning Article 22 (3) also state that the method of invoicing 'is not only part of the fiscal domain but also, and primarily, of the commercial domain' (commentary accompanying the proposal for a Sixth Directive submitted by the Commission to the Council on 20 June 1973, Article 23 (3)),

In those circumstances, do Articles 18 (1) (a) and 22 (3) (a) and (b) of the Sixth Directive permit the Belgian State to provide the a taxable person may exercise the right to deduct only if he holds a document which must contain not merely the usual information contained in an invoice in the traditional sense as defined in commercial law but also additional information, alien to the nature, essence and purpose of a commercial invoice, specified in Article 2 of Royal Decree No 1 of 23 July 1969 implementing the Belgian VAT code, where such additional information is purely technical in nature and is designed to facilitate supervision of the collection of the tax on the basis of the accounts of another taxable person with whom the person in question has concluded a contract?

O.J. No. C 222 of 26.8.1988, p. 3

JUDGMENT OF THE COURT

(Fifth Chamber)

of 14 July 1988

in Joined Cases 123/87 and 330/87: (reference for a preliminary ruling made by the Tribunal de Première Instance, Brussels) Léa Jeunehomme and Société Anonyme d'Étude et de Gestion Immobilière (EGI) v. Belgian State (1)

(Sixth Directive 77/388/EEC — Right to deduct VAT — Method of invoicing)

(88/C 222/03)

(Language of the Case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Joined Cases 123/87 and 330/87: reference to the Court under Article 177 of the EEC Treaty by the Tribunal de Première Instance [Court of First Instance], Brussels, for a preliminary ruling in the proceedings pending before that court between Léa Jeunehomme and Société Anonyme d'Étude et de Gestion Immobilière (EGI), on the one hand, and the Belgian State, on the other, — on the interpretation of Article 18 (1) (a) and Article 22 (3) (a) and (b) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment — the Court (Fifth Chamber), composed of G. Bosco, President of the Fifth Chamber, J. C. Moitinho de Almeida, President of Chamber, U. Everling, Y. Galmot and R. Joliet, Judges; Sir Gordon Slynn, Advocate General; B. Pastor, Administrator, acting for the Registrar, gave a judgment on 14 July 1988, the operative part of which is as follows:

Article 18 (1) (a) and Article 22 (3) (a) and (b) of the Sixth Council Directive 77/388/EEC of 17 May 1977 allow Member States to make the exercise of the right to deduct dependent on the holding of an invoice which must contain certain particulars which are needed in order to secure the collection of value added tax and the supervision thereof by the tax authorities. Such particulars must not, by reason of their number or technical nature, make it practically impossible or excessively difficult to actually exercise the right to deduct.

(1) OJ No C 138, 23. 5. 1987.
OJ No C 317, 28. 11. 1987.

O.J. No.C 308 of 2.12.1986,p.5

Reference for a preliminary ruling by the Vredegerecht for the Canton of Beveren by judgment of that court of 28 October 1986 in the case of P. Van Eycke v. ASPA NV

(Case 267/86)

(86/C 308/07)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Vredegerecht [local court] for the Canton of Beveren of 28 October 1986, which was received at the Court Registry on 30 October 1986, for a preliminary ruling in the case of P. Van Eycke, Beveren, against ASPA NV, Antwerp, on the following questions:

1. Is the legislative scheme established by the Royal Decree of 29 December 1983 and confirmed with slight amendments by the Royal Decree of 13 March 1986, governing the interest which may be paid by financial institutions on saving deposits, a scheme which continues in legislative form the previously existing agreements or concerted practices among banks restricting the interest payable on savings deposits and makes such interest rates compulsory

   (a) as a uniform percentage for all market participants, or

   (b) as a limit to be observed by market participants in setting interest rates,

   under penalty of complete loss of the fiscal benefits available to holders of ordinary savings accounts, compatible with the Community rules on competition as laid down in Articles 85 *et seq.* of the EEC Treaty?

2. In the event that the answer to Question 1 (a) is in the affirmative, is the imposition, along with a uniform basic interest rate payable by financial institutions, of a compulsory maximum limit for fidelity or growth premiums, and the exclusion of any other form of competition for obtaining deposits, under penalty of the loss of the fiscal benefits referred to in Question 1 (Royal Decree of 13 March 1986, Art. 1), compatible with the Community rules on competition laid down in Articles 85 *et seq.* of the EEC Treaty?

3. Does the granting of fiscal advantages, including complete exemption from withholding tax, for certain savings deposits denominated in Belgian francs held at certain financial institutions established in Belgium constitute discrimination against similar deposits taken by financial institutions not established in Belgium or denominated in other currencies or baskets of currencies, and is the granting of such fiscal advantages compatible with Articles 59 to 66 and Article 95 of the EEC Treaty?

O.J. No. C 269 of 18.10.1988,p.7

JUDGMENT OF THE COURT

of 21 September 1988

in Case 267/86: (reference for a preliminary ruling made by the Vredegerecht for the Canton of Beveren (Belgium)): Pascal Van Eycke v. ASPA NV (1)

(State measure granting exemption from tax in respect of income from savings deposits — Competition between banks as regards interest paid)

(88/C 269/11)

(Language of the Case: Dutch)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 267/86: reference to the Court under Article 177 of the EEC Treaty by the Vredegerecht (Local Court) for the Canton of Beveren (Belgium) for a preliminary ruling in the proceedings pending before that court between Pascal Van Eycke, residing in Beveren, and ASPA NV, whose registered office is in Antwerp, — on the interpretation of Articles 59 to 66, 85, 86 and 95 of the EEC Treaty — the Court, composed of G. Bosco, President of Chamber, acting as President, J. Moitinho de Almeida (President of Chamber), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. N. Kakouris, R. Joliet and F. A. Schockweiler, Judges; G. F. Mancini, Advocate General; D. Louterman, Administrator, for the Registrar, gave a judgment on 21 September 1988, the operative part of which is as follows:

1. *A national law or regulation which restricts the benefit of an exemption from income tax provided in respect of the yield on a certain category of savings deposits solely to deposits for which the maximum interest rates and premiums fixed by regulation have been adhered to is not incompatible with the obligations imposed on the Member States by Article 5 of the EEC Treaty in conjunction with Article 3 (f) and Article 85 thereof, subject to a review by the national court in order to ascertain whether the law or regulation in question was limited to confirming both the method of restricting the yield on deposits and the level of maximum interest rates adopted by means of pre-existing agreements, decisions or concerted practices.*

2. *A national law or regulation which restricts the aforesaid tax exemption solely to savings deposits denominated in national currency and held at financial establishments whose registered office is in the Member State concerned is not incompatible with Articles 59 to 66 and 95 of the EEC Treaty.*

---

(1) OJ No C 308, 2. 12. 1986.

O.J. No.C 73 of 20.3.1987,p.6

Action brought on 18 February 1987 by the Commission of the European Communities against the French Republic

(Case 50/87)

(87/C 73/06)

An action against the French Republic was brought before the Court of Justice of the European Communities on 18 February 1987 by the Commission of the European Communities, represented by its Legal Adviser, J. F. Buhl, acting as Agent, and by P. Combescot, a member of its Legal Department, also acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

(a) Declare that the French Republic has failed to fulfil its obligations under Articles 99 and 100 of the EEC Treaty by:

(i) adopting Decree No 79.310 of 9 April 1979 and by retaining fiscal rules restricting certain taxable persons' right to deduct the VAT paid on inputs at the time when the deductible tax becomes chargeable;

(ii) failing to comply with the Sixth Council Directive (77/388/EEC) (1), of 17 May 1977, on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment, and in particular Articles 17 to 20 thereof;

(b) Order the French Republic to pay the costs.

(1) OJ No L 145, 13. 6 1977, p. 1

Contentions and main arguments adduced in support:

Under the national rules at issue the undertakings concerned are entitled to deduct only a fraction of the VAT charged on the purchase or construction of a building if the annual income from letting is less than one-fifteenth of the value of the property. However, the Community rules on the deductibility of VAT charged on inputs are designed to give traders full relief from the VAT charged or paid in connexion with their business activities.

O.J. No.C 269 of 18.10.1988,p.8

JUDGMENT OF THE COURT

of 21 September 1988

in Case 50/87: Commission of the European Communities v. French Republic (1)

(Failure of a Member State to fulfil its obligations — Articles 17 to 20 of Council Directive 77/388/EEC of 17 May 1977 — Restriction of the right to deduct VAT on let buildings)

(88/C 269/12)

(Language of the Case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases Before the Court)

In Case 50/87: Commission of the European Communities (Agents: Johannes F. Buhl and Alain van Solinge) against the French Republic (Agents: Régis de Gouttes and Bernard Botte) — application for a declaration that by introducing and maintaining fiscal rules restricting certain taxable persons' right to deduct the VAT paid on inputs at the time when the tax becomes chargeable, the French Republic has failed to fulfil its obligations under the EEC Treaty — The Court, composed of Lord Mackenzie Stuart, President, G. Bosco, J. C. Moitinho de Almeida and G. C. Rodriguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, Y. Galmot, C. N. Kakouris and F. A. Schockweiler, Judges; Sir Gordon Slynn, Advocate General; H. A. Rühl, Principal Administrator, acting for the Registrar, gave a judgment on 21 September 1988, the operative part of which is as follows:

1. *By introducing and maintaining, in disregard of the provisions of the Sixth Directive of 17 May 1977, fiscal rules restricting the right of undertakings which let buildings that they have purchased or constructed to deduct the VAT paid on inputs where the return from those buildings is less than one-fifteenth of their value, the French Republic has failed to fulfil its obligations under the Treaty;*

2. *The French Republic is ordered to pay the costs.*

(1) OJ No C 73, 20. 3. 1987.

O.J. No.C 207 of 4.7.1987,p.9

Reference for a preliminary ruling by the Tribunal de Grande Instance, Agen, by judgment of that court of 8 July 1987 in the case of Union Nationale Interprofessionnelle des Légumes de Conserve (UNILEC) v. Établissements Larroche Frères

(Case 212/87)

(87/C 207/11)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunal de Grande Instance (Regional Court), Agen, of 8 July 1987, which was received at the Court Registry on 10 July 1987, for a preliminary ruling in the case of Union Nationale Interprofessionnelle des Légumes de Conserve (National Joint-Trade Organization on Canning Vegetables), (UNILEC) v. Établissements Larroche Frères, on the following questions:

1. In the light of Articles 39, 42 and 85 (1) of the Treaty of Rome and Regulation No 26 of the Council of the European Communities of 4 April 1962, can the fixing of a minimum purchase price, by an inter-trade agreement extended by regulation to all the trades concerned with the production, packaging or marketing of an agricultural product, be regarded as a concerted practice which may affect trade between Member States of the Community and which has as its object or effect the prevention, restriction or distortion of competition within the Common Market?
2. Can a provision of national law enabling fees to be imposed on products originating in other Member States by the conclusion of an inter-trade agreement which may be extended by regulation, be regarded as incompatible with the provisions of Article 95 of the EEC Treaty?

O.J. No.C 271 of 20.10.1988,p.6

JUDGMENT OF THE COURT

(Fifth Chamber)

of 22 September 1988

in Case 212/87 (reference for a preliminary ruling made by the tribunal de grande instance, Agen): union nationale interprofessionelle des légumes de conserve (Unilec) v. Établissements Larroche frères (1)

(Joint trade agreement on agricultural products — Minimum price — Legality of fee)

(88/C 271/10)

(Language of the Case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 212/87: reference to the Court under Article 177 of the EEC Treaty by the tribunal de grande instance [Regional Court], Agen, for a preliminary ruling in the proceedings pending before that court between union nationale interprofessionnelle des légumes de conserve [National joint trade organization on canning vegetables] (Unilec) and Établissements Larroche frères — on the interpretation of Article 39, 42, 85 (1) and 95 of the EEC Treaty and Council Regulation No 26 applying certain rules of competition to production of and trade in agricultural products (Official Journal, English Special Edition 1959-1962, p. 129) — the Court (Fifth Chamber), composed of G. Bosco, President of the Chamber, U. Everling, Y. Galmot, R. Joliet and F. A. Schockweiler, Judges; G. F. Mancini, Advocate-General; B. Pastor, Administrator, acting as Registrar, gave a judgment on 22 September 1988, the operative part of which is as follows:

1. *Regulation (EEC) No 1035/72 on the common organization of the market in fruit and vegetables, in the version applicable before the entry into force of Council Regulation (EEC) No 3284/83, must be interpreted as having left no power to the Member States to extend to national producers and processors, not affiliated to a joint trade organization in the sector, the rules adopted by that organization in the framework of agreements fixing minimum purchase prices for certain vegetables;*

2. *it is for the national court to examine whether, in the main proceedings, the conditions to which Article 15b of Regulation (EEC) No 1035/72, as amended by Regulation (EEC) No 3284/83, subjects the Member States' power to extend to non-members, with effect from 1 January 1986, the rules contained in agreements concluded within a producers' organization or by associations of producers' organizations are satisfied and whether the extension in question is therefore applicable to the dispute in the main proceedings;*

(1) OJ No C 207, 4.8.1987

3. *the obligation imposed on producers who do not belong to a producers' organization to contribute to the financing of funds established by that organization is unlawful in so far as it helps to finance activities which are themselves adjudged to be contrary to Community law.*

O.J. No.C 152 of 10.6.1987,p.7

Action brought on 6 April 1987 by the Commission of the European Communities against the Italian Republic

(Case 103/87)

(87/C 152/12)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 6 April 1987 by the Commission of the European Communities, represented by Enrico Traversa, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

— Declare that, by charging value-added tax on transactions involving the issue and use of credit cards, the Italian Republic has failed to fulfil its obligations under the EEC Treaty and Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (1);

— Order the Italian Republic to pay the costs.

Contentions and main arguments adduced in support:

Pursuant to Resolution No 368825 of the Italian Ministry of Finance, both the membership charges paid by credit card holders to the issuers and the commissions paid by traders affiliated to a credit card scheme are treated as taxable transactions and are consequently subject to value-added tax. Payment of the annual charge by the card holder is synallagmatically connected with the grant by the issuer of permission to defer payment and therefore constitutes a credit transaction, for the purposes of Article 13B (d) (3) of Directive 77/388/EEC, which is exempt from value-added tax. Payment to the issuer of the commission representing a percentage of the price paid for any purchase effected by means of a credit card constitutes the issuer's remuneration for a two-fold service provided to the supplier of the goods (immediate sale and assured receipt of the price) and also comes within the scope of the transactions exempt from value-added tax that are listed in Article 13B (d). The exemptions from value-added tax which are listed in Article 13B (d) and relate to 'the negotiation of or any dealings in credit guarantees or any other security for money' and 'transactions ... concerning ... payments ... (and) ... debts' are *compulsory* exemptions, from which it follows, evidently, that no Member State may derogate, in any form or for any reason, from the aforesaid provisions.

(1) OJ No L 145, 13. 6. 1977, p. 1.

O.J. No.C 324 of 17.12.1988,p.7

Removal from the Register of Case 103/87 (1)

(88/C 324/07)

By order of 27 October 1988 the Court of Justice of the European Communities ordered the removal from the Register of Case 103/87: Commission of the European Communities v. Italian Republic.

(1) OJ No C 152, 10. 6. 1987.

O.J. No.C 237 of 3.9.1987,p.6

Reference for a preliminary ruling made by order of the Value Added Tax Tribunals for the United Kingdom, 16 July 1987 in the case of Naturally Yours Cosmetics Limited against The Commissioners of Customs and Excise

(Case 230/87)

(87/C 237/08)

The Court of Justice of the European Communities has received a reference for a preliminary ruling made by order of the Value Added Tax Tribunals for the United Kingdom in the proceedings between Naturally Yours Cosmetics Limited and The Commissioners of Customs and Excise which was lodged at the Court Registry on 29 July 1987 on the following question:

For the purposes of Article 11A of the Sixth Council Directive on the harmonization of the laws of the Member States relating to turnover taxes (Directive 77/388/EEC of 17 May 1977), where a supplier ('the wholesaler') supplies goods ('the inducement') to another ('the retailer') for a monetary consideration (namely a sum of money) which is less than that at which he supplies identical goods to the retailer for resale to the public on an undertaking by the retailer to apply the inducement in procuring another person to arrange, or in rewarding another for arranging, a gathering at which further goods of the wholesaler can be sold by the retailer to the public for their mutual benefit, is the taxable amount:

(a) only the monetary consideration received by the wholesaler for the inducement; or

(b) the monetary consideration at which the wholesaler supplies the identical goods to the retailer for resale to the public; or

(c) such amount as is to be determined in accordance with such criteria which may be determined by the Member State concerned; or

(d) the monetary consideration together with the value of the undertaking by the retailer to apply the inducement in so procuring or rewarding the other person and, if so, how the value of the undertaking is to be determined; or

(e) some other, and if so, what other, amount?

O.J. No.C 330 of 23.12.1988,p.7

JUDGMENT OF THE COURT

of 23 November 1988

in Case 230/87: (reference for a preliminary ruling made by the London Value Added Tax Tribunal) Naturally Yours Cosmetics Ltd v. Commissioners of Customs and Excise (1)

(Common system of value added tax — Taxable amount — Supplies of goods and services)

(88/C 330/07)

(Language of the Case: English)

In Case 230/87: reference to the Court under Article 177 of the EEC Treaty by the London Value Added Tax Tribunal for a preliminary ruling in the proceedings pending before that court between Naturally Yours Cosmetics Ltd and Commissioners of Customs and Excise — on the interpretation of Article 11 A (1) (a) of Directive 77/388/EEC on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment — the Court, composed of O. Due, President, T. Koopmans, R. Joliet and T. F. O'Higgins (Presidents of Chambers), C. N. Kakouris, F. A. Schockweiler and J. C. Moitinho de Almeida, Judges; J. L. da Cruz Vilaça, Advocate General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 23 November 1988, the operative part of which is as follows:

Article 11 A 1 (a) of the Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes must be interpreted as meaning that where a supplier ('the Wholesaler') supplies goods ('the Inducement') to another ('the Retailer') for a monetary consideration (namely a sum of money) which is less than that at which he supplies identical goods to the Retailer for resale to the public on an undertaking by the Retailer to apply the Inducement in procuring another person to arrange, or in rewarding another for arranging, a gathering at which further goods of the Wholesaler can be sold by the Retailer to the public for their mutual benefit, on the understanding that if no such gathering is held the Inducement must be returned to the supplier or paid for at its wholesale price, the taxable amount is the sum of the monetary consideration and of the value of the service provided by the Retailer which consists in applying the Inducement in procuring the services of another person or in rewarding that person for those services; the value of that service must be regarded as being equal to the difference between the price actually paid for that product and its normal wholesale price.

---

(1) OJ No C 237, 3. 9. 1987.

O.J. No. C 96 of 12.4.1988,p.4

Reference for a preliminary ruling by the Tribunal de Grande Instance, Millau, by judgments of that court of 3 December 1987 in the cases of Société Simatic (Cases 84, 85 and 86/88) and Léon André (Case 87/88) v. Directeur des Services Fiscaux, Aveyron

(Cases 84, 85, 86 and 87/88)

(88/C 96/05)

Reference has been made to the Court of Justice of the European Communities by judgments of the Tribunal de Grande Instance [Regional Court], Millau, of 3 December 1987, which was received at the Court Registry on 14 March 1988, for a preliminary ruling in the cases of Société Simatic (Cases 84, 85 and 86/88) and Léon André (Case 87/88) v. Directeur des Services Fiscaux [Director of Fiscal Services], Aveyron, on the following question:

Are the State tax and entertainments tax compatible with VAT which, since the law of 1 July 1985, applies in France to persons exploiting automatic machines, in view of the fact that Article 33 of the Sixth Community Directive provides that the imposition of VAT prevents the Member States from maintaining or introducing any taxes, duties, or charges which can be characterized as a State tax on turnover?

O.J. No.C 25 of 31.1.1989,p.8

Removal from the Register of Cases 84, 85, 86 and 87/88 (1)

(89/C 25/16)

By order of 7 December 1988 the Court of Justice of the European Communities ordered the removal from the Register of Cases 84, 85, 86 and 87/88 (references for preliminary rulings made by the Tribunal de Grande Instance de Millau): *Société Simatic* (84, 85 and 86/88), *and Léon André* (87/88) v. *Directeur des Services Fiscaux de l'Aveyron.*

(1) OJ No C 96, 12. 4. 1988.

O.J. No.C 350 of 29.12.1987,p. 12

Action brought on 23 November 1987 by the Commission of the European Communities against the Italian Republic

(Case 353/87)

(87/C 350/12)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 23 November 1987 by the Commission of the European Communities, represented by Giuliano Marenco, a member of the Commission's Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

— declare that, by failing to bring into force within the prescribed period the measures necessary to implement Council Directive 84/386/EEC of 31 July 1984 (Tenth VAT Directive), the Italian Republic has failed to fulfil its obligations under the EEC Treaty;

— order the Italian Republic to pay the costs.

Contentions and main arguments adduced in support:

Pursuant to Article 2 of Directive 84/386/EEC the Member States were to adopt the measures necessary to implement that Directive by 1 July 1985.

O.J. No. C 66 of 16.3.1989,p.5

JUDGMENT OF THE COURT

of 2 February 1989 in Case 353/87: Commission of the European Communities v. Italian Republic (1)

(Failure to fulfil obligations — VAT Directive — Transposition)

(89/C 66/07)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 353/87: Commission of the European Communities (Agents: Giuliano Marenco and Daniel Calleja) against Italian Republic (Agent: Luigi Ferraro Bravo, assisted by Franco Favara, Avvocato dello Stato) — application for a declaration that, by failing to adopt within the prescribed period the measures necessary to implement the Tenth VAT Directive, the Italian Republic has failed to fulfil its obligations under the EEC Treaty — the Court, composed of O. Due, President; R. Joliet, T. F. O'Higgins and F. Grévisse, Presidents of Chambers; Sir Gordon Slynn, G. F. Mancini, F. A. Schockweiler, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Judges; M. Darmon, Advocate-General; B. Pastor, Administrator, for the Registrar, gave a judgment on 2 February 1989, the operative part of which is as follows:

1. *by failing to adopt within the prescribed period the measures necessary to implement Council Directive 84/386/EEC of 31 July 1984 (Tenth VAT Directive) on the harmonization of the laws of the Member States relating to turnover taxes, amending Directive 77/388/EEC — Application of value added tax to the hiring out of movable tangible property, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;*

2. *the Italian Republic is ordered to pay the costs.*

---

(1) OJ No C 350, 29. 12. 1987.

O.J. No.C 227 of 25.8.1987,p.4

Action brought on 3 July 1987 by the Commission of the European Communities against the Italian Republic

(Case 203/87)

(87/C 227/05)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 3 July 1987 by the Commission of the European Communities, represented by Sergio Fabrio, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the offices of Giorgios Kremlis, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

1. Declare that, by maintaining in force in the years subsequent to 31 December 1983 and extending again for 1986 the special transitional arrangements authorized until 31 December 1983 by Council Decisions 81/390/EEC of 3 November 1981 (1), 82/424/EEC of 21 June 1982 (2) and 84/87/EEC of 6 February 1984 (3), the Italian Republic has infringed Article 2 of Council Directive 77/388/EEC (4) on value-added tax inasmuch as it granted an exemption from value-added tax with refund of the tax paid at the preceding stage in respect of certain transactions carried out for earthquake victims in Campania and Basilicata;

2. Order the Government of the Italian Republic to pay the costs.

Contentions and main arguments adduced in support:

Directive 77/388/EEC forms part of the Community legislation and as such cannot be amended or derogated from by a legislative provision of a Member State, but only by further Community legislation and within the limits laid down thereby.

(1) OJ No L 322, 11. 11. 1981, p. 40.

(2) OJ No L 184, 29. 6. 1982, p. 26.

(3) OJ No L 40, 11. 2. 1984, p. 30.

(4) OJ No L 145, 13. 6. 1977, p. 1.

O.J. No. C 68 of 18.3.1989,p.6

JUDGMENT OF THE COURT

of 21 February 1989

in Case 203/87: Commission of the European Communities v. Italian Republic (1)

(Temporary derogation from VAT arrangements)

(89/C 68/07)

(Language of the Case: Italian)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 203/87: Commission of the European Communities (Agent: S. Fabro) v. Italian Republic (Agent: Luigi Ferrari Bravo, assisted by P. G. Ferri, Avvocato dello Stato) — application for a declaration that the Italian Republic has infringed Article 2 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ No L 145, 1977, p. 1) — the Court, composed of O. Due, President; T. F. O'Higgins and F. Grévisse, Presidents of Chambers; G. F. Mancini, C. N. Kakouris, F. A. Schockweiler, J. C. Moitinho de Almeida, M. Díez de Velasco and M. Zuleeg, Judges; J. Mischo, Advocate-General; B. Pastor, Administrator, acting for the Registrar, gave a judgment on 21 February 1989, the operative part of which is as follows:

1. *by granting, for the period between 1 January 1984 and 31 December 1988, an exemption from value added tax with refund of the tax paid at the preceding stage in respect of certain transactions carried out for earthquake victims in Campania and Basilicata, the Italian Republic infringed the provisions of Article 2 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment;*

2. *the Italian Republic is ordered to pay the costs.*

(1) OJ No C 227, 25. 8. 1987.

O.J. No. C 15 of 21.1.1987, p. 5

Reference for a preliminary ruling by the Tribunal de Grande Instance, Argentan, by judgment of that court of 6 November 1986 in the case of Philippe Lambert v. Directeur des Services Fiscaux de l'Orne

(Case 317/86)

(87/C 15/07)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Tribunal de Grande Instance, [Regional Court], Argentan, of 6 November 1986, which was received at the Court Registry on 17 December 1986, for a preliminary ruling in the case of Philippe Lambert v. Directeur des Services Fiscaux de l'Orne [Director of the Orne Fiscal Services] on the following question:

Must the concept of 'turnover taxes' or that of taxes or charges which can be 'characterized as turnover taxes', as contained in Article 33 of the Sixth VAT Directive, be interpreted as applying to taxes or charges which, although treated by the domestic legislation of the Member State as properly constituting indirect taxation of a flat-rate nature, nevertheless presuppose the existence of a commercial exploitation and which, as a result of the difference in the applicable rates depending on the age of the machines subject to tax, their location and even the greater or lesser degree of sophistication of their automatic workings, prove to bear a relationship to the foreseeable turnover without however being defined as a percentage of the actual takings which are difficult to assess accurately?

O.J. No.C 92 of 13.4.1989, p 8

JUDGMENT OF THE COURT

(Second Chamber)

of 15 March 1989

in Joined Cases 317/86, 48, 49, 285, 363 to 367/87, 65 and 78 to 80/88 (reference for a preliminary ruling made by the Tribunaux de Grande Instance d'Argentan, Verdun, Nîmes and Bonneville) Philippe Lambert and Others v. Directeur des Services Fiscaux de l'Orne and Others (1)

(Value added tax — Automatic games)

(89/C 92/10)

(Language of the Case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Joined Cases 317/86, 48, 49, 285, 363 to 367/87, 65 and 78 to 80/88: references to the Court under Article 177 of the EEC Treaty (1) in Case 317/86 by the Tribunal de Grande Instance (regional court), Argentan, for a preliminary ruling in the proceedings pending before that court between Philippe Lambert, a trader, residing in Flers, and Directeur des Services Fiscaux de l'Orne (Director of the Fiscal Services Department for the Département de l'Orne); (2) in Cases 48 and 49/87 by the Tribunal de Grande Instance, Verdun, for a preliminary ruling in the proceedings pending before that court between Marie-Thérèse Charbonnelle, a trader, residing in Flize (Case 48/87), Willot Sàrl, having its registered office in Vandœuvre-les-Nancy (Case 49/87), and Directeur des Services Fiscaux de la Meuse (Director of the Fiscal Services Department for the Département de la Meuse); (3) in Case 285/87 by the Tribunal de Grande Instance, Nîmes, for a preliminary ruling in the proceedings pending before that court between Etablissements Dico Sàrl, having its registered office in Avignon, and Directeur des Services Fiscaux du Gard (Director of the Fiscal Services Department for the Département du Gard); (4) in Cases 363 to 367/87 and 78 to 80/88 by the Tribunal de Grande Intance, Bonneville, for a preliminary ruling in the proceedings pending before that court between Sofel Sàrl, having its registered office in Sallanches (Cases 363 and 366/87 and 79/88), Jean-Pierre Auber, a trader, residing in Megève (Cases 364 and 365/87), Pellerey Display Sàrl, having its registered office in Sallanches (Cases 367/87 and 78/88, Jean Mentreau, a trader, residing in Chatel (Case 80/88), and Directeur des Services Fiscaux de la Haute-Savoie (Director of the Fiscal Services Department for the Département de la Haute-Savoie); (5) in Case 65/88 by the Tribunal de Grande Instance, Nimes, for a preliminary ruling in the proceedings pending before that court between Louis Garcia, a trader, residing in Nimes, and Directeur des Services Fiscaux du Gard (Director of the Fiscal Services Department of the Département du Gard) — on the interpretation of Article 33 of the Sixth Council Directive on value added tax and Articles 30 and 95 of the EEC Treaty — the Court (Second Chamber), composed of T. F. O'Higgins, President of the Chamber; G. F. Mancini and F. A. Schockweiler, Judges; G. Tesauro, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 15 March 1989, the operative part of which is as follows:

---

(1) OJ No C 15, 21. 1. 1987,
OJ No C 103, 16. 4. 1987,
OJ No C 285, 23. 10. 1987,
OJ No C 16, 21. 1. 1988,
OJ No C 89, 6. 4. 1988,
OJ No C 90, 7. 4. 1988.

1. *Article 33 of the Sixth Council Directive on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax (VAT): uniform basis of assessment must be interpreted as meaning that as from the introduction of the common system of VAT the Member States are no longer entitled to impose on the supply of goods, the provision of services or imports liable to VAT, taxes, duties or charges which can be characterized as turnover taxes.*

2. *A charge which, although providing for different amounts according to the characteristics of the taxed article and possibly its location, is assessed exclusively on the basis of the placing thereof at the disposal of the public, without in fact taking account of the revenue which could be generated thereby, may not be regarded as a charge which can be characterized as a turnover tax.*

3. *Article 95 of the EEC Treaty also applies to internal taxation which is imposed on the use of imported products where those products are essentially intended for such use and have been imported solely for that purpose.*

4. *A system of taxation graduated according to the various categories of automatic games machines, which is intended to achieve legitimate social objectives and which procures no fiscal advantage for domestic products to the detriment of similar or competing imported products, is not incompatible with Article 95.*

5. *Article 30 of the EEC Treaty does not apply to the taxation of products originating in other Member States the compatibility of which with the Treaty falls under Article 95 thereof.*

O.J. No.C 103 of 16.4.1987,p.10

References for a preliminary ruling by the Tribunal de Grande Instance, Verdun, by judgments of that court of 12 February 1987 in the case of Marie-Thérèse Charbonnelle v. Directeur Général des Impôts and in the case of Sarl Willot v Directeur Général des Impôts

(Case 48/87)

(Case 49/87)

(87/C 103/13)

Reference has been made to the Court of Justice of the European Communities by judgments of the Tribunal de Grande Instance [Regional Court], Verdun, of 12 February 1987, for a preliminary ruling in the case of Marie-Thérèse Charbonnelle v Directeur Général des Impôts [Director-General of Taxation] and in the case of Sarl Willot v. Directeur Général des Impôts on the following questions:

— Is Article 33 of EEC Directive 77/388 (the Sixth VAT Directive) to be interpreted as prohibiting the continued imposition of turnover taxes on supplies of goods or services once value-added tax has been applied to such goods or services?

— Is the concept of turnover taxes or taxes which may be characterized as turnover taxes as referred to in Article 33 of the Sixth VAT Directive to be interpreted as including taxes on operating revenue, whether tax is charged on the basis of actual revenue or on an approximate basis where it is difficult to arrive at an exact determination of actual revenue?

— More particularly, does the concept of turnover taxes or taxes which may be characterized as turnover taxes as referred to in Article 33 of the Sixth VAT Directive include an annual flat-rate tax on each automatic machine installed in a public place and providing entertainment or a game, instituted in order to replace a tax on the turnover of the operator of the machine and adjusted roughly to take into account the profitability of each type of machine and, indirectly, the receipts of its operator?

— If the answer to the first and third questions is in the affirmative, does the prohibition on the combined imposition of VAT and other turnover taxes on the same revenue or turnover mean that, where VAT is applied for the first time at the beginning of the second half of a year and the turnover taxes imposed in addition to VAT must be paid at the beginning of the calendar year (unless payment is deferred), on the introduction of VAT one half of the tax in the nature of turnover tax due for the year during which VAT is introduced must be refunded or must not be charged?

— Is Article 95 of the EEC Treaty to be interpreted as prohibiting the imposition of a tax on operating revenue at a rate three times higher on products which are primarily of foreign manufacture or (sic) on similar products which are primarily of domestic manufacture? Is such discrimination increased where the same operating revenue is subject to VAT and to a second indirect tax?

— Is the imposition, pursuant to Community law, of VAT on revenue from the operation of certain products without abolishing existing taxes on such revenue to be regarded as contrary to Article 30 of the EEC Treaty where certain of the products in question are no longer manufactured in the Member State imposing these various taxes and in any event the combined application of these taxes may result in a reduction in imports of such products from other Member States of the Community?

O.J. No.C 92 of 13.4.1989,p.8

JUDGMENT OF THE COURT

(Second Chamber)

of 15 March 1989

in Joined Cases 317/86, 48, 49, 285, 363 to 367/87, 65 and 78 to 80/88 (reference for a preliminary ruling made by the Tribunaux de Grande Instance d'Argentan, Verdun, Nîmes and Bonneville) Philippe Lambert and Others v. Directeur des Services Fiscaux de l'Orne and Others (1)

(Value added tax — Automatic games)

(89/C 92/10)

(Language of the Case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Joined Cases 317/86, 48, 49, 285, 363 to 367/87, 65 and 78 to 80/88: references to the Court under Article 177 of the EEC Treaty (1) in Case 317/86 by the Tribunal de Grande Instance (regional court), Argentan, for a preliminary ruling in the proceedings pending before that court between Philippe Lambert, a trader, residing in Flers, and Directeur des Services Fiscaux de l'Orne (Director of the Fiscal Services Department for the Département de l'Orne); (2) in Cases 48 and 49/87 by the Tribunal de Grande Instance, Verdun, for a preliminary ruling in the proceedings pending before that

court between Marie-Thérese Charbonnelle, a trader, residing in Flize (Case 48/87), Willot Sàrl, having its registered office in Vandœuvre-les-Nancy (Case 49/87), and Directeur des Services Fiscaux de la Meuse (Director of the Fiscal Services Department for the Département de la Meuse); (3) in Case 285/87 by the Tribunal de Grande Instance, Nimes, for a preliminary ruling in the proceedings pending before that court between Etablissements Dico Sàrl, having its registered office in Avignon, and Directeur des Services Fiscaux du Gard (Director of the Fiscal Services Department for the Département du Gard); (4) in Cases 363 to 367/87 and 78 to 80/88 by the Tribunal de Grande Intance, Bonneville, for a preliminary ruling in the proceedings pending before that court between Sofel Sàrl, having its registered office in Sallanches (Cases 363 and 366/87 and 79/88), Jean-Pierre Auber, a trader, residing in Megève (Cases 364 and 365/87), Pellerey Display Sàrl, having its registered office in Sallanches (Cases 367/87 and 78/88, Jean Mentreau, a trader, residing in Chatel (Case 80/88), and Directeur des Services Fiscaux de la Haute-Savoie (Director of the Fiscal Services Department for the Département de la Haute-Savoie); (5) in Case 65/88 by the Tribunal de Grande Instance, Nimes, for a preliminary ruling in the proceedings pending before that court between Louis Garcia, a trader, residing in Nimes, and Directeur des Services Fiscaux du Gard (Director of the Fiscal Services Department of the Département du Gard) — on the interpretation of Article 33 of the Sixth Council Directive on value added tax and Articles 30 and 95 of the EEC Treaty — the Court (Second Chamber), composed of T. F. O'Higgins, President of the Chamber; G. F. Mancini and F. A. Schockweiler, Judges; G. Tesauro, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 15 March 1989, the operative part of which is as follows:

---

(1) OJ No C 15, 21. 1. 1987,
OJ No C 103, 16. 4. 1987,
OJ No C 285, 23. 10. 1987,
OJ No C 16, 21. 1. 1988,
OJ No C 89, 6. 4. 1988,
OJ No C 92, 7. 4. 1988.

1. *Article 33 of the Sixth Council Directive on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax (VAT): uniform basis of assessment must be interpreted as meaning that as from the introduction of the common system of VAT the Member States are no longer entitled to impose on the supply of goods, the provision of services or imports liable to VAT, taxes, duties or charges which can be characterized as turnover taxes.*

2. *A charge which, although providing for different amounts according to the characteristics of the taxed article and possibly its location, is assessed exclusively on the basis of the placing thereof at the disposal of the public, without in fact taking account of the revenue which could be generated thereby, may not be regarded as a charge which can be characterized as a turnover tax.*

3. *Article 95 of the EEC Treaty also applies to internal taxation which is imposed on the use of imported products where those products are essentially intended for such use and have been imported solely for that purpose.*

4. *A system of taxation graduated according to the various categories of automatic games machines, which is intended to achieve legitimate social objectives and which procures no fiscal advantage for domestic products to the detriment of similar or competing imported products, is not incompatible with Article 95.*

5. *Article 30 of the EEC Treaty does not apply to the taxation of products originating in other Member States the compatibility of which with the Treaty falls under Article 95 thereof.*

O.J. No.C 285 of 23.10.1987,p.7

Reference for a peliminary ruling by the First Chamber of the Tribunal de Grande Instance, Nimes, by judgment of that Court of 22 June 1987 in the case of Établissements Dico et Compagnie Sàrl v. Directeur des Services Fiscaux de Nimes

(Case 285/87)

(87/C 285/11)

Reference has been made to the Court of Justice of the European Communities by a judgment of the First Chamber of the Tribunal de Grande Instance [Regional Court], Nimes, of 22 June 1987, which was received at the Court Registry on 24 September 1987, for a preliminary ruling in the case of Établissements Dico et Compagnie Sàrl v. Directeur des Services Fiscaux de Nimes [Director of the Nimes Fiscal Services] on the following question:

Must the term 'turnover taxes' or taxes, duties or charges which can be 'characterized as turnover taxes' contained in Article 33 of the Sixth VAT Directive be interpreted as applying to taxes, duties or charges which, although treated by the domestic legislation of the Member State as properly constituting indirect taxation of a flat-rate nature, nevertheless presuppose the existence of a business and whose yield, as a result of a difference in the applicable rates depending on the age of the taxable machines, their location and the greater or lesser degree of sophistication of their mechanisms, appears related to foreseeable turnover, although it is not expressed as a percentage of actual takings, which are difficult to assess accurately.

O.J. No.C 92 of 13.4.1989,p.8

JUDGMENT OF THE COURT

(Second Chamber)

of 15 March 1989

in Joined Cases 317/86, 48, 49, 285, 363 to 367/87, 65 and 78 to 80/88 (reference for a preliminary ruling made by the Tribunaux de Grande Instance d'Argentan, Verdun, Nimes and Bonneville) Philippe Lambert and Others v. Directeur des Services Fiscaux de l'Orne and Others (1)

(Value added tax — Automatic games)

(89/C 92/10)

(Language of the Case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Joined Cases 317/86, 48, 49, 285, 363 to 367/87, 65 and 78 to 80/88: references to the Court under Article 177 of the EEC Treaty (1) in Case 317/86 by the Tribunal de Grande Instance (regional court), Argentan, for a preliminary ruling in the proceedings pending before that court between Philippe Lambert, a trader, residing in Flers, and Directeur des Services Fiscaux de l'Orne (Director of the Fiscal Services Department for the Département de l'Orne); (2) in Cases 48 and 49/87 by the Tribunal de Grande Instance, Verdun, for a preliminary ruling in the proceedings pending before that court between Marie-Thérèse Charbonnelle, a trader, residing in Flize (Case 48/87), Willot Sàrl, having its registered office in Vandœuvre-les-Nancy (Case 49/87), and Directeur des Services Fiscaux de la Meuse (Director of the Fiscal Services Department for the Département de la Meuse); (3) in Case 285/87 by the Tribunal de Grande Instance, Nimes, for a preliminary ruling in the proceedings pending before that court between Établissements Dico Sàrl, having its registered office in Avignon, and Directeur des Services Fiscaux du Gard (Director of the Fiscal Services Department for the Département du Gard); (4) in Cases 363 to 367/87 and 78 to 80/88 by the Tribunal de Grande Intance, Bonneville, for a preliminary ruling in the proceedings pending before that court between Sofel Sàrl, having its registered office in Sallanches (Cases 363 and 366/87 and 79/88), Jean-Pierre Auber, a trader, residing in Megève (Cases 364 and 365/87), Pellerey Display Sàrl, having its registered office in Sallanches (Cases 367/87 and 78/88, Jean Mentreau, a trader, residing in Chatel (Case 80/88), and Directeur des Services Fiscaux de la Haute-Savoie (Director of the Fiscal Services Department for the Département de la Haute-Savoie); (5) in Case 65/88 by the Tribunal de Grande Instance, Nimes, for a preliminary ruling in the proceedings pending before that court between Louis Garcia, a trader, residing in Nimes, and Directeur des Services Fiscaux du Gard (Director of the Fiscal Services Department of the Département du Gard) — on the interpretation of Article 33 of the Sixth Council Directive on value added tax and Articles 30 and 95 of the EEC Treaty — the Court (Second Chamber), composed of T. F. O'Higgins, President of the Chamber; G. F. Mancini and F. A. Schockweiler, Judges; G. Tesauro, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 15 March 1989, the operative part of which is as follows:

---

(1) OJ No C 15, 21. 1. 1987,
OJ No C 103, 16. 4. 1987,
OJ No C 285, 23. 10. 1987,
OJ No C 16, 21. 1. 1988,
OJ No C 89, 6. 4. 1988,
OJ No C 90, 7. 4. 1988.

1. *Article 33 of the Sixth Council Directive on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax (VAT): uniform basis of assessment must be interpreted as meaning that as from the introduction of the common system of VAT the Member States are no longer entitled to impose on the supply of goods, the provision of services or imports liable to VAT, taxes, duties or charges which can be characterized as turnover taxes.*

2. *A charge which, although providing for different amounts according to the characteristics of the taxed article and possibly its location, is assessed exclusively on the basis of the placing thereof at the disposal of the public, without in fact taking account of the revenue which could be generated thereby, may not be regarded as a charge which can be characterized as a turnover tax.*

3. *Article 95 of the EEC Treaty also applies to internal taxation which is imposed on the use of imported products where those products are essentially intended for such use and have been imported solely for that purpose.*

4. *A system of taxation graduated according to the various categories of automatic games machines, which is intended to achieve legitimate social objectives and which procures no fiscal advantage for domestic products to the detriment of similar or competing imported products, is not incompatible with Article 95.*

5. *Article 30 of the EEC Treaty does not apply to the taxation of products originating in other Member States the compatibility of which with the Treaty falls under Article 95 thereof.*

O.J No.C 16 of 21.1.1988.p.7

References for preliminary rulings by the Tribunal de Grande Instance, Bonneville, by judgments of that court of 28 October 1987 in the cases of SOFEL Sàrl (Case 363/87), Jean-Pierre Auber (Case 364/87), Jean-Pierre Auber (Case 365/87), SOFEL Sàrl (Case 366/87) and Pellerey Sàrl (Case 367/87) v. Directeur des Services Fiscaux de Haute-Savoie

(Cases 363, 364, 365, 366 and 367/87)

(88/C 16/11)

Reference has been made to the Court of Justice of the European Communities by judgments of the Tribunal de Grande Instance [Regional Court], Bonneville, of 28 October 1987, which were received at the Court Registry on 4 December 1987, for a preliminary ruling in the cases of SOFEL Sàrl (Case 363/87), Jean-Pierre Auber (Case 364/87), Jean-Pierre Aubert (Case 365/87), SOFEL Sàrl (Case 366/87) and Pellerey Sàrl (Case 367/87) v. Directeur des Services Fiscaux de Haute-Savoie [Director of the Fiscal Services of Upper Savoy] on the following question:

Must the term 'turnover tax' contained in Article 33 of the Sixth EEC Directive be interpreted as applying to taxes, duties or charges which, although treated by French domestic legislation as constituting indirect taxation of a flat-rate nature, nevertheless presuppose the existence of a business and whose yield, as a result of a difference in the applicable rates depending on the location of the taxable machines or the greater or lesser degree of sophistication of their mechanisms, appears related to foreseeable turnover, although it is not expressed as a percentage of actual takings?

O.J. No.C 92 of 13.4.1989,p.8

JUDGMENT OF THE COURT

(Second Chamber)

of 15 March 1989

in Joined Cases 317/86, 48, 49, 285, 363 to 367/87, 65 and 78 to 80/88 (reference for a preliminary ruling made by the Tribunaux de Grande Instance d'Argentan, Verdun, Nimes and Bonneville) Philippe Lambert and Others v. Directeur des Services Fiscaux de l'Orne and Others (1)

(Value added tax — Automatic games)

(89/C 92/10)

(Language of the Case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Joined Cases 317/86, 48, 49, 285, 363 to 367/87, 65 and 78 to 80/88: references to the Court under Article 177 of the EEC Treaty (1) in Case 317/86 by the Tribunal de Grande Instance (regional court), Argentan, for a preliminary ruling in the proceedings pending before that court between Philippe Lambert, a trader, residing in Flers, and Directeur des Services Fiscaux de l'Orne (Director of the Fiscal Services Department for the Département de l'Orne); (2) in Cases 48 and 49/87 by the Tribunal de Grande Instance, Verdun, for a preliminary ruling in the proceedings pending before that court between Marie-Thérèse Charbonnelle, a trader, residing in Flize (Case 48/87), Willot Sàrl, having its registered office in Vandœuvre-les-Nancy (Case 49/87), and Directeur des Services Fiscaux de la Meuse (Director of the Fiscal Services Department for the Département de la Meuse); (3) in Case 285/87 by the Tribunal de Grande Instance, Nimes, for a preliminary ruling in the proceedings pending before that court between Etablissements Dico Sàrl, having its registered office in Avignon, and Directeur des Services Fiscaux du Gard (Director of the Fiscal Services Department for the Département du Gard); (4) in Cases 363 to 367/87 and 78 to 80/88 by the Tribunal de Grande Intance, Bonneville, for a preliminary ruling in the proceedings pending before that court between Sofel Sàrl, having its registered office in Sallanches (Cases 363 and 366/87 and 79/88), Jean-Pierre Auber, a trader, residing in Megève (Cases 364 and 365/87), Pellerey Display Sàrl, having its registered office in Sallanches (Cases 367/87 and 78/88, Jean Mentreau, a trader, residing in Chatel (Case 80/88), and Directeur des Services Fiscaux de la Haute-Savoie (Director of the Fiscal Services Department for the Département de la Haute-Savoie); (5) in Case 65/88 by the Tribunal de Grande Instance, Nimes, for a preliminary ruling in the proceedings pending before that court between Louis Garcia, a trader, residing in Nimes, and Directeur des Services Fiscaux du Gard (Director of the Fiscal Services Department of the Département du Gard) — on the interpretation of Article 33 of the Sixth Council Directive on value added tax and Articles 30 and 95 of the EEC Treaty — the Court (Second Chamber), composed of T. F. O'Higgins, President of the Chamber; G. F. Mancini and F. A. Schockweiler, Judges; G. Tesauro, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 15 March 1989, the operative part of which is as follows:

---

(1) OJ No C 15, 21. 1. 1987,
OJ No C 103, 16. 4. 1987,
OJ No C 285, 23. 10. 1987,
OJ No C 16, 21. 1 1988,
OJ No C 89, 6. 4 1988,
OJ No C 90, 7 4. 1988.

1. *Article 33 of the Sixth Council Directive on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax (VAT): uniform basis of assessment must be interpreted as meaning that as from the introduction of the common system of VAT the Member States are no longer entitled to impose on the supply of goods, the provision of services or imports liable to VAT, taxes, duties or charges which can be characterized as turnover taxes.*

2. *A charge which, although providing for different amounts according to the characteristics of the taxed article and possibly its location, is assessed exclusively on the basis of the placing thereof at the disposal of the public, without in fact taking account of the revenue which could be generated thereby, may not be regarded as a charge which can be characterized as a turnover tax.*

3. *Article 95 of the EEC Treaty also applies to internal taxation which is imposed on the use of imported products where those products are essentially intended for such use and have been imported solely for that purpose.*

4. *A system of taxation graduated according to the various categories of automatic games machines, which is intended to achieve legitimate social objectives and which procures no fiscal advantage for domestic products to the detriment of similar or competing imported products, is not incompatible with Article 95.*

5. *Article 30 of the EEC Treaty does not apply to the taxation of products originating in other Member States the compatibility of which with the Treaty falls under Article 95 thereof.*

O.J. No. C 70 of 16.3.1988,p.6

Reference for a preliminary ruling by the Finanzgericht Hamburg by an order of that court of 22 December 1987 in the case of Knut Hamann v. Finanzamt Hamburg-Eimsbüttel

(Case 51/88)

(88/C 70/11)

Reference has been made to the Court of Justice of the European Communities by an order of the Sixth Senate of the Finanzgericht [Finance Court] Hamburg of 22 December 1987, which was received at the Court Registry on 17 February 1988, for a preliminary ruling in the case of Knut Hamann, 132 Bismarckstraße, D-2000 Hamburg 20 against Finanzamt [Tax Office] Hamburg-Eimsbüttel, 62 Grindelberg, D-2000 Hamburg 13 on the following question:

Is Article 9 (2) (d) of the Sixth Council Directive on the harmonization of the laws of the Member States relating to turnover taxes of 17 May 1977 (1) to be interpreted as meaning that ocean-going sailing yachts, rented out in order to exercise sailing as a sport, are a 'means of transport' within the meaning of that Directive?

(1) OJ No L 145, 13. 6. 1977, p. 1.

O.J. No.C 92 of 13.4.1989, p.8

JUDGMENT OF THE COURT

(Second Chamber)

of 15 March 1989

in Case 51/88: (reference for a preliminary ruling made by the Finanzgericht Hamburg): Knut Hamann v. Finanzamt Hamburg-Eimbüttel (1)

(VAT — Forms of transport — Ocean-going sailing yacht)

(89/C 92/09)

(Language of the Case: German)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 51/88: reference to the Court under Article 177 of the EEC Treaty by the Finanzgericht (finance court) Hamburg for a preliminary ruling in the proceedings pending before that court between Knut Hamann, residing in Hamburg, and the Finanzamt (tax office) Hamburg-Eimsbüttel — on the interpretation of Article 9 (2) (d) of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ No L 145, 1977, p. 1) — the Court (Second Chamber) composed of T. F. O'Higgins, President of the Chamber; G. F. Mancini and F. A. Schockweiler, Judges; F. Jacobs, Advocate-General; D. Louterman, Administrator, for the Registrar, gave a judgment on 15 March 1989, the operative part of which is as follows:

Ocean-going sailing yachts, used by those hiring them for the pursuit of sailing as a sport, are 'forms of transport' within the meaning of Article 9 (2) (d) of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax uniform basis of assessment.

(1) OJ No C 70, 16. 3. 1988.

O.J. No.C 92 of 9 4.1988,p.4

Reference for a preliminary ruling by the First Chamber of the Tribunal de Grande Instance, Nimes, by judgment of that court of 29 June 1987 in the case of Louis Garcia v. Directeur des Services Fiscaux, Gard

(Case 65/88)

(88/C 92/08)

Reference has been made to the Court of Justice of the European Communities by a judgment of the First Chamber of the Tribunal de Grande Instance [Regional Court], Nimes, of 29 June 1987, which was received at the Court Registry on 2 March 1988, for a preliminary ruling in the case of Louis Garcia v. Directeur des Services Fiscaux [Director of Fiscal Services], Gard, on the following question:

Must the concept of turnover tax or taxes, duties or charges which can be characterized as turnover tax, referred to in Article 33 of the Sixth VAT Directive, be interpreted as applying to taxes, duties or charges which, although treated by French domestic legislation as constituting flat-rate indirect taxation *stricto sensu* nevertheless presuppose the existence of a business and whose yield, as a result of a difference in the applicable rates depending on the age of the taxable machines, their location or the greater or lesser degree of sophistication of their mechanisms, appears related to foreseeable turnover, although it is not expressed as a percentage of actual takings, the amount of which is difficult to assess?

O.J. No.C 92 of 13.4.1989,p.8

JUDGMENT OF THE COURT

(Second Chamber)

of 15 March 1989

in Joined Cases 317/86, 48, 49, 285, 363 to 367/87, 65 and 78 to 80/88 (reference for a preliminary ruling made by the Tribunaux de Grande Instance d'Argentan, Verdun, Nimes and Bonneville) Philippe Lambert and Others v. Directeur des Services Fiscaux de l'Orne and Others (1)

(Value added tax — Automatic games)

(89/C 92/10)

(Language of the Case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Joined Cases 317/86, 48, 49, 285, 363 to 367/87, 65 and 78 to 80/88: references to the Court under Article 177 of the EEC Treaty (1) in Case 317/86 by the Tribunal de Grande Instance (regional court), Argentan, for a preliminary ruling in the proceedings pending before that court between Philippe Lambert, a trader, residing in Flers, and Directeur des Services Fiscaux de l'Orne (Director of the Fiscal Services Department for the Département de l'Orne); (2) in Cases 48 and 49/87 by the Tribunal de Grande Instance, Verdun, for a preliminary ruling in the proceedings pending before that court between Marie-Thérèse Charbonnelle, a trader, residing in Flize (Case 48/87), Willot Sàrl, having its registered office in Vandœuvre-les-Nancy (Case 49/87), and Directeur des Services Fiscaux de la Meuse (Director of the Fiscal Services Department for the Département de la Meuse); (3) in Case 285/87 by the Tribunal de Grande Instance, Nimes, for a preliminary ruling in the proceedings pending before that court between Etablissements Dico Sàrl, having its registered office in Avignon, and Directeur des Services Fiscaux du Gard (Director of the Fiscal Services Department for the Département du Gard); (4) in Cases 363 to 367/87 and 78 to 80/88 by the Tribunal de Grande Intance, Bonneville, for a preliminary ruling in the proceedings pending before that court between Sofel Sàrl, having its registered office in Sallanches (Cases 363 and 366/87 and 79/88), Jean-Pierre Auber, a trader, residing in Megève (Cases 364 and 365/87), Pellerey Display Sàrl, having its registered office in Sallanches (Cases 367/87 and 78/88, Jean Mentreau, a trader, residing in Chatel (Case 80/88), and Directeur des Services Fiscaux de la Haute-Savoie (Director of the Fiscal Services Department for the Département de la Haute-Savoie); (5) in Case 65/88 by the Tribunal de Grande Instance, Nimes, for a preliminary ruling in the proceedings pending before that court between Louis Garcia, a trader, residing in Nimes, and Directeur des Services Fiscaux du Gard (Director of the Fiscal Services Department of the Département du Gard) — on the interpretation of Article 33 of the Sixth Council Directive on value added tax and Articles 30 and 95 of the EEC Treaty — the Court (Second Chamber), composed of T. F. O'Higgins, President of the Chamber; G. F. Mancini and F. A. Schockweiler, Judges; G. Tesauro, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 15 March 1989, the operative part of which is as follows:

---

(1) OJ No C 15, 21. 1. 1987,
OJ No C 103, 16. 4. 1987,
OJ No C 285, 23. 10. 1987,
OJ No C 16, 21. 1. 1988,
OJ No C 89, 6. 4. 1988,
OJ No C 90, 7. 4. 1988.

1. *Article 33 of the Sixth Council Directive on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax (VAT): uniform basis of assessment must be interpreted as meaning that as from the introduction of the common system of VAT the Member States are no longer entitled to impose on the supply of goods, the provision of services or imports liable to VAT, taxes, duties or charges which can be characterized as turnover taxes.*

2. *A charge which, although providing for different amounts according to the characteristics of the taxed article and possibly its location, is assessed exclusively on the basis of the placing thereof at the disposal of the public, without in fact taking account of the revenue which could be generated thereby, may not be regarded as a charge which can be characterized as a turnover tax.*

3. *Article 95 of the EEC Treaty also applies to internal taxation which is imposed on the use of imported products where those products are essentially intended for such use and have been imported solely for that purpose.*

4. *A system of taxation graduated according to the various categories of automatic games machines, which is intended to achieve legitimate social objectives and which procures no fiscal advantage for domestic products to the detriment of similar or competing imported products, is not incompatible with Article 95.*

5. *Article 30 of the EEC Treaty does not apply to the taxation of products originating in other Member States the compatibility of which with the Treaty falls under Article 95 thereof.*

O.J. No.C 90 of 7.4.1988,p.7

Reference for a preliminary ruling by the Tribunal de Grande Instance de Bonneville by judgments of that court of 13 January 1988 in the case of Pellerey Display Sàrl (Case 78/88), Sofel Sàrl (Case 79/88) and Jean Mentreau (Case 80/88) v. Directeur des Services Fiscaux de la Haute Savoie

(Cases 78/88, 79/88 and 80/88)

(88/C 90/10)

Reference has been made to the Court of Justice of the European Communities by judgments of the Tribunal de Grande Instance [Regional Court], Bonneville, of 13 January 1988, which was received at the Court Registry on 10 March 1988, for a preliminary ruling in the cases of Pellerey Display Sàrl (Case 78/88), Sofel Sàrl (Case 79/88) and Jean Mentreau (Case 80/88) v. Directeur des Services Fiscaux de la Haute Savoie [Director of Fiscal Services of Upper Savoy] on the following question:

Must the term 'turnover tax' contained in Article 33 of the Sixth EEC Council Directive 77/388/EEC of 17 May 1977 (1), be interpreted as applying to taxes, duties or charges which, although treated by French domestic legislation as constituting indirect taxation of a flat-rate nature, nevertheless presuppose the existence of a business and whose yield, as a result of a difference in the applicable rates depending on the location of the taxable machines or the greater or lesser degree of sophistication of their mechanisms, appears related to foreseeable turnover, although it is not expressed as a percentage of actual takings?

---

(1) OJ No L 145, 13. 6. 1977, p. 1.

O.J. No.C92 of 13.4.1989,p.8

JUDGMENT OF THE COURT

(Second Chamber)

of 15 March 1989

in Joined Cases 317/86, 48, 49, 285, 363 to 367/87, 65 and 78 to 80/88 (reference for a preliminary ruling made by the Tribunaux de Grande Instance d'Argentan, Verdun, Nîmes and Bonneville) Philippe Lambert and Others v. Directeur des Services Fiscaux de l'Orne and Others (1)

(Value added tax — Automatic games)

(89/C 92/10)

(Language of the Case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Joined Cases 317/86, 48, 49, 285, 363 to 367/87, 65 and 78 to 80/88: references to the Court under Article 177 of the EEC Treaty (1) in Case 317/86 by the Tribunal de Grande Instance (regional court), Argentan, for a preliminary ruling in the proceedings pending before that court between Philippe Lambert, a trader, residing in Flers, and Directeur des Services Fiscaux de l'Orne (Director of the Fiscal Services Department for the Département de l'Orne); (2) in Cases 48 and 49/87 by the Tribunal de Grande Instance, Verdun, for a preliminary ruling in the proceedings pending before that court between Marie-Thérèse Charbonnelle, a trader, residing in Flize (Case 48/87), Willot Sàrl, having its registered office in Vandœuvre-les-Nancy (Case 49/87), and Directeur des Services Fiscaux de la Meuse (Director of the Fiscal Services Department for the Département de la Meuse); (3) in Case 285/87 by the Tribunal de Grande Instance, Nimes, for a preliminary ruling in the proceedings pending before that court between Etablissements Dico Sàrl, having its registered office in Avignon, and Directeur des Services Fiscaux du Gard (Director of the Fiscal Services Department for the Département du Gard); (4) in Cases 363 to 367/87 and 78 to 80/88 by the Tribunal de Grande Intance, Bonneville, for a preliminary ruling in the proceedings pending before that court between Sofel Sàrl, having its registered office in Sallanches (Cases 363 and 366/87 and 79/88), Jean-Pierre Auber, a trader, residing in Megève (Cases 364 and 365/87), Pellerey Display Sàrl, having its registered office in Sallanches (Cases 367/87 and 78/88, Jean Mentreau, a trader, residing in Chatel (Case 80/88), and Directeur des Services Fiscaux de la Haute-Savoie (Director of the Fiscal Services Department for the Département de la Haute-Savoie); (5) in Case 65/88 by the Tribunal de Grande Instance, Nimes, for a preliminary ruling in the proceedings pending before that court between Louis Garcia, a trader, residing in Nimes, and Directeur des Services Fiscaux du Gard (Director of the Fiscal Services Department of the Département du Gard) — on the interpretation of Article 33 of the Sixth Council Directive on value added tax and Articles 30 and 95 of the EEC Treaty — the Court (Second Chamber), composed of T. F. O'Higgins, President of the Chamber; G. F. Mancini and F. A. Schockweiler, Judges; G. Tesauro, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 15 March 1989, the operative part of which is as follows:

---

(1) OJ No C 15, 21. 1. 1987,
OJ No C 103, 16. 4. 1987,
OJ No C 285, 23. 10. 1987,
OJ No C 16, 21. 1. 1988,
OJ No C 89, 6. 4. 1988,
OJ No C 90, 7. 4. 1988.

1. *Article 33 of the Sixth Council Directive on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax (VAT): uniform basis of assessment must be interpreted as meaning that as from the introduction of the common system of VAT the Member States are no longer entitled to impose on the supply of goods, the provision of services or imports liable to VAT, taxes, duties or charges which can be characterized as turnover taxes.*

2. *A charge which, although providing for different amounts according to the characteristics of the taxed article and possibly its location, is assessed exclusively on the basis of the placing thereof at the disposal of the public, without in fact taking account of the revenue which could be generated thereby, may not be regarded as a charge which can be characterized as a turnover tax.*

3. *Article 95 of the EEC Treaty also applies to internal taxation which is imposed on the use of imported products where those products are essentially intended for such use and have been imported solely for that purpose.*

4. *A system of taxation graduated according to the various categories of automatic games machines, which is intended to achieve legitimate social objectives and which procures no fiscal advantage for domestic products to the detriment of similar or competing imported products, is not incompatible with Article 95.*

5. *Article 30 of the EEC Treaty does not apply to the taxation of products originating in other Member States the compatibility of which with the Treaty falls under Article 95 thereof.*

O.J. No.C 116 of 3.5.1988,p.13

Action brought on 30 March 1988 by the Commission of the European Communities against the French Republic

(Case 105/88)

(88/C 116/19)

An action against the French Republic was brought before the Court of Justice of the European Communities on 30 March 1988 by the Commission of the European Communities represented by Johannes Fons Buhl, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

1. Declare that, by instituting and maintaining in respect of automatic gaming machines tax rules imposing a general limitation on the right of taxpayers to deduct the input value added tax from the tax due on the receipts from such games, the French Republic has not adopted the laws, regulations and administrative provisions necessary to comply with the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, in particular Article 18 (4) thereof, and the derogation granted in that respect to the French Republic by Council Decision 84/517/EEC of 23 October 1984.

2. Order the French Republic to pay the costs.

Contentions and main arguments adduced in support:

The right to deduct the amount of value added tax already levied on inputs is a basic element of the value added tax system, providing a guarantee of complete neutrality in regard to the fiscal burden borne by all the economic activities subject to the system. The derogation from the provisions of Article 18 (4) of the Sixth Directive granted to France by Council Decision 84/517/EEC is intended to combat fraud and does not authorize national rules which are not limited to cases in which the danger of fraud is abnormally great. Even if it is not possible to establish with certainty the receipts from any existing automatic gaming machine, the French Republic is not thereby released from the obligation to reproduce in its legislation on the matter the terms of Council Decision 84/517/EEC of 23 October 1984.

O.J. No.C 116 of 9.5.1989,p.6

Removal from the Register of Case 105/88 (')

(89/C 116/10)

By order of 15 March 1989 the Court of Justice of the European Communities ordered the removal from the Register of Case 105/88: Commission of the European Communities v. French Republic.

(') OJ No C 116, 3. 5 1988.

O.J. No.C 79 of 26.3.1988,p.4

Action brought on 25 February 1988 by the Commission of the European Communities against the Kingdom of Denmark

(Case 60/88)

(88/C 79/09)

An action against the Kingdom of Denmark was brought before the Court of Justice of the European Communities on 25 February 1988 by the Commission of the European Communities, represented by its Legal Adviser, Johannes Føns Buhl, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Bâtiment Jean Monnet, Kirchberg.

The applicant claims that the Court should:

1. Declare that the Kingdom of Denmark, by infringing, through Instruction No 170 of 6 April 1987 of the Ministry for Fiscal Affairs amending the instruction on travellers' personal luggage, in conjunction with the circular of the Customs Directorate of 7 April 1987 annexed thereto and sent to the district customs offices, the exemptions from turnover tax and excise duty on imports in international travel laid down in Articles 1 and 2 (1) of Council Directive 69/169/EEC (1), as amended, has failed to fulfil its obligations under the EEC Treaty.

2. Order the Kingdom of Denmark to pay the costs.

Contentions and main arguments adduced in support:

— The terms 'travellers' and 'international travel' in Council Directive 69/169/EEC are Community concepts. It is not permissible for Denmark to introduce a distinction between 'genuine' travellers and travellers who make a short shopping trip abroad with the object of avoiding Danish taxation on consumer goods. The Community legislature has taken the differences in duty into account. The amounts allowed by way of exemptions from duty and the conditions for concessions reflect differences between tax systems which the legislature has taken into account. That is true both as regards the systems which apply generally and, to a quite special degree, as regards the exceptional provisions in favour of certain Member States, including those adopted by the Council in favour of Denmark.

— The Danish reduction of the duty allowance for the importation of luggage means that goods purchased in another Member State in normal circumstances are subjected to double taxation, which is plainly contrary to the objects of the directive on traveller's personal luggage and is incompatible with Article 95 of the EEC Treaty.

(1) Official Journal, English Special Edition 1969 (I), p. 232.

O.J. No.C 150 of 17.6.1989,p.9

Removal from the Register of Case 60/88 (1)

(89/C 150/12)

By order of 26 April 1989 the Court of Justice of the European Communities ordered the removal from the Register of Case 60/88: Commission of the European Communities v. Kingdom of Denmark.

(1) OJ No C 79, 26. 3. 1988.

O.J. No.C 43 of 16.2.1988,p.4

Reference for a preliminary ruling by the Commissione Tributaria di II Grado, Bolzano, by order of that court of 4 December 1987 in the case of SpA Maxi Di and the Ufficio del Registro, Bolzano

(Case 15/88)

(88/C 43/05)

Reference has been made to the Court of Justice of the European Communities by an order of the Commissione Tributaria di II Grado (Taxation Commission of Second Instance), Bolzano, of 4 December 1987, which was received at the Court Registry on 15 January 1988, for a preliminary ruling in the case of SpA Maxi Di, whose registered office is in Bolzano, and the Ufficio del Registro (Registration Office), Bolzano, on the following question:

Since Directive 69/335/EEC of the Council of the European Communities of 19 July 1969, which is addressed to all the Member States, appears to be of immediate application in the legal systems of those States in as much as it requires them not to take certain action (Article 11: 'Member States shall not subject to any form of taxation whatsoever:

(a) ...

(b) loans, including government bonds, raised by the issue of debentures...'

and since no discretion whatever is allowed in this respect, is Article 4 of Annex A — Scale of Duties — to the Decreto del Presidente della Repubblica (DPR) No 634 of 26 October 1972 compatible with that Directive?

O.J. No.C 153 of 21.6.1989, p.9

JUDGMENT OF THE COURT

(Second Chamber)

of 25 May 1989

in Case 15/88 (reference for a preliminary ruling made by the Commissione Tributaria di Secondo Grado di Bolzano): Maxi Di SpA v. Ufficio del Registro di Bolzano (1)

(Indirect taxes on the raising of capital)

(89/C 153/08)

(Language of the Case: Italian)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 15/88: reference to the Court under Article 177 of the EEC Treaty by the Commissione Tributaria di Secondo Grado [Taxation Commission of Second Instance], Bolzano for a preliminary ruling in the proceedings pending before that court between Maxi Di SpA and the Ufficio del Registro [Registration Office], Bolzano — on the interpretation of Article 11 of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (Official Journal, English Special Edition 1969 (II), p. 412) — the Court (Second Chamber), composed of T. F. O'Higgins, President of the Chamber, G. F. Mancini and F. A. Schockweiler, Judges; C. O. Lenz, Advocate-General; B. Pastor, Administrator, for the Registrar, gave a judgment on 25 May 1989, the operative part of which is as follows:

Article 11 of Directive 69/335/EEC must be interpreted as meaning that a Member State is not permitted to subject capital companies, as defined in Article 9 thereof, to any form of taxation, other than the taxes and duties set out in Article 12 thereof, on account of a loan raised by the issue of debentures — an operation covered by Article 11.

---

(1) OJ No C 43, 16. 2. 1988, p. 4.

O.J. No.C 339 of 17.12.1987,p.14

Reference for a preliminary ruling by the Hoge Raad der Nederlanden by judgment of that court of 4 November 1987 in the case of Stichting Uitvoering Financiële Acties (SUFA) v. Staatssecretaris van Financiën

(Case 348/87)

(87/C 339/16)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Hoge Raad der Nederlanden of 4 November 1987, which was received at the Court Registry on 16 November 1987, for a preliminary ruling in the case of Stichting Uitvoering Financiële Acties (SUFA), Rotterdam, v. Staatssecretaris van Financiën [State Secretary in the Ministry of Finance] on the following question:

Do the transactions which must be exempted from turnover tax pursuant to Article 13 (A) (1) (f) of the Sixth Directive cover the activities of a foundation *(stichting)* which consist exclusively in the organization and performance of work which is related to the acitivities of another foundation, against reimbursement of expenses actually incurred, where the other foundation acts as an umbrella organization for a number of bodies whose activities are exempt from or are not subject to tax and, solely for those bodies, performs services as defined in the aforesaid provision of the Sixth Directive?

O.J. No. C 183 of 20.7.1989, p.13

JUDGMENT OF THE COURT

(Fourth Chamber)

of 15 June 1989

in Case 348/87: (reference for a preliminary ruling made by the Hoge Raad der Nederlanden) Stichting Uitvoering Financiële Acties v. Staatssecretaris van Financiën (1)

(Sixth Directive on value added tax — Exemption)

(89/C 183/13)

(Language of the case: Dutch)

(Provisional translation; the definitive translation will be published in Reports of Cases before the Court)

In Case 348/87: reference to the Court under Article 177 of the EEC Treaty by the Hoge Raad der Nederlanden [Supreme Court of the Netherlands] for a preliminary ruling in the proceedings pending before that court between Stichting Uitvoering Financiële Acties, Rotterdam, and Staatssecretaris van Financiën [State Secretary for Finance] — on the interpretation of Article 13 (A) (1) (f) of the Sixth Council Directive (77/388/EEC) on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment *(Official Journal of the European Communities* No L 145 1977, p. 1) — the Court (Fourth Chamber), composed of T. Koopmans, President of the Chamber, C. N. Kakouris and M. Díez de Velasco, Judges; J. Mischo, Advocate-General; J. A. Pompe, Deputy Registrar, acting for the Registrar, gave a judgment on 15 June 1989, the operative part of which is as follows:

Transactions which must be exempted from turnover tax pursuant to Article 13 (A) (1) (f) of the Sixth Council Directive (77/338/EEC) of 17 May 1977 do not cover the activities of a foundation which consist exclusively in the organization and performance of work which is related to the activities of another foundation, against reimbursement of expenses actually incurred, where the other foundation acts as an umbrella organization for a number of bodies whose activities are exempt from or are not subject to tax and, solely for those bodies, performs services as defined in the aforesaid provision of the Sixth Directive.

---

(1) OJ No C 339, 17. 12. 1987.

O.J. No.C 74 of 22.3.1988,p.14

Reference for a preliminary ruling by the Finanzgericht München [Finance Court, Munich] (Third Senate) by judgment of that court of 9 December 1987 in the case of Dr Heinz Kühne v. Finanzamt München [Tax Office, Munich] III

(Case 50/88)

(88/C 74/23)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Finanzgericht München (Third Senate) of 9 December 1987, which was received at the Court Registry on 16 February 1988, for a preliminary ruling in the case of Dr Heinz Kühne v. Finanzamt München III on the following questions:

I. How should Article 6 (2) of the Sixth Council Directive (77/388/EEC) of 17 May 1977 (1) on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ No L 145, 1977, p. 1) (hereinafter referred to as 'the Sixth VAT Directive') be interpreted?

1. Does the conditional clause 'where the value added tax on such goods is wholly or partly deductible'

   (a) exclude only the taxation of private use in cases when input tax is not deductible on account of a tax-free use of the goods in the business (Article 15 (2) of the Umsatzsteuergesetz [Law on turnover tax] or on account of use of the goods other than for purposes of the taxable turnover of the taxable person (Article 17 (2) of the Sixth VAT Directive) or

   (b) does it also exclude such taxation when input tax is not deductible for other reasons, for example because of acquisition from a non-taxable person?

If Question 1 (b) is answered in the affirmative:

2. Is value added tax on goods partly deductible within the meaning of Article 6 (2) (a) of the Sixth VAT Directive when a taxable person may not deduct value added tax for the supply of the goods to him but may do so for services or supplies which he has made use of or received from other businesses for the maintenance (repairs, servicing, etc.) or for the use (fuels, lubricants, etc.) of the goods?

3. If Question 2 is answered in the negative:

   (a) Does the second sentence of Article 6 (2) allow Member States to make derogations only in the sense of refraining wholly or partly from taxing the use of goods within the meaning of Article 6 (2) (a), or

   (b) are they also authorized to tax such use irrespective of whether the value added tax on the goods used is wholly or partly deductible?

II. If Question 3 (a) is answered in the affirmative:

1. Did the German legislature improperly transpose the Sixth VAT Directive into national law insofar as, by Article 1 (1) (2) (b) of the Umsatzsteuergesetz 1980, it levies value added tax on the use of goods forming part of the assets of a business even when the value added tax on such goods is not wholly or partly deductible?

If Question 1 is answered in the affirmative:

2. May a taxable person rely on Article 6 (2) (a) of the Sixth VAT Directive as interpreted by the European Court of Justice in the courts responsible for financial matters in the Federal Republic of Germany?

(1) OJ No L 145, 13. 6. 1977, p. 1.

III. If Question I (1) (a), (2) or (3) (b) is answered in the affirmative or Question II (1) or (2) is answered in the negative:

How should Article 11 (A) (1) (c) of the Sixth VAT Directive be interpreted? Does the cost consist of all the expenses incurred by the taxable person for the service or only of (a proportion of) the sums disbursed by him for supplies and services to the extent that the value added tax on these is deductible?

O.J. No.L 188 du 25.7.1989,p.6

JUDGMENT OF THE COURT

(Sixth Chamber)

of 27 June 1989

in Case 50/88: (reference for a preliminary ruling made by the Finanzgericht, München [Finance Court, Munich]: H. Kühne v. Finanzamt München III [Tax Office, Munich III] (1)

(VAT — Taxation of private use of a business car purchased second-hand in circumstances where the residual proportion of the VAT was not deductible)

(89/C 188/07)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in Reports of Cases before the Court)

(1) OJ No C 74, 22. 3. 1988.

In Case 50/88: reference to the Court under Article 177 of the EEC Treaty by the Finanzgericht München for a preliminary ruling in the proceedings pending before that court between H. Kühne, Munich, and Finanzamt München, Munich III — on the interpretation of Article 6 (2) (a) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (*Official Journal of the European Communities* No L 145, 1977, p. 1) — the Court (Sixth Chamber), composed of T. Koopmans, President of the Chamber, T. F. O'Higgins, G. F. Mancini, C. N. Kakouris and F. A. Schockweiler, Judges; F. G. Jacobs, Advocate-General; J.-G. Giraud, Registrar, gave a judgment on 27 June 1989, the operative part of which is as follows:

1. *Article 6 (2) (a) of the Sixth Council Directive 77/388/EEC on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as precluding the taxation of the depreciation of business goods by reason of their private use where the value added tax on such goods was not deductible because they were purchased from a non-taxable person;*
2. *The reply given above is the same where, although the taxable person was not able to deduct the value added tax in respect of the supply of the goods to him, he was none the less able to deduct the value added tax on the goods or services which he sought and obtained from other taxable persons for the maintenance or use of the goods;*
3. *The second sentence of Article 6 (2) of the Sixth Directive does not allow Member States to tax the private use of business goods where the value added tax on such goods was not wholly or partly deductible;*
4. *Article 6 (2) of the Sixth Directive may be relied on by a taxable person before the courts of a Member State inasmuch as that provision precludes taxation of the private use of business goods where the value added tax on those goods was not wholly or partly deductible.*

O.J. No.C 307 of 17.11.1987, p.10

Action brought on 16 October 1987 by the Commission of the European Communities against the Italian Republic

(Case 323/87)

(87/C 307/19)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 16 October 1987 by the Commission of the European Communities, represented by Giuliano Marenco, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

— Declare that, by imposing heavier taxation on alcohol distilled from sugar cane and products containing such alcohol than on alcohol and other spirits of agricultural origin, the Italian Republic has failed to fulfil its obligations under Article 95 of the EEC Treaty;

— Order the defendant to pay the costs.

Contentions and main arguments adduced in support:

Once it has been established (as the Italian authorities acknowledge by implication) that the Italian provisions involve fiscal discrimination which is prohibited by Article 95 of the EEC Treaty, it is difficult to see how the existence of that infringement can be influenced by the considerations relied upon by the Italian authorities concerning the allegedly inadequate level of Community aid for the distillation of wines, which is granted in the context of the common organization of the market in wine.

O.J. No.C 198 of 3.8.1989, p.7

JUDGMENT OF THE COURT

of 11 July 1989

in Case 323/87: Commission of the European Communities v. Italian Republic (1)

(Taxation of rum)

(89/C 198/07)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 323/87: Commission of the European Communities (Agent: Giuliano Marenco) against the Italian Republic (Agent: L. Ferrari Brovo, assisted by Marcello Conti, Avvocato dello Stato) — application for a declaration that the Italian Republic has failed to fulfil its obligations under Article 95 of the EEC Treaty by taxing alcohol distilled from sugar cane and products containing such alcohol more heavily than other types of alcohol and other spirits of agricultural origin — the Court, composed of O. Due, President, R. Joliet and T. F. O'Higgins, Presidents of Chambers, Sir Gordon Slynn, G. F. Mancini, F. A. Schockweiler, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias and M. Zuleeg, Judges; F. G. Jacobs, Advocate General; J. A. Pompe, Deputy Registrar, acting for the Registrar, gave a judgment on 11 July 1989, the operative part of which is as follows:

1. *By taxing rum originating in other Member States more heavily than other spirits of agricultural origin, the Italian Republic has failed to fulfil its obligations under Article 95 of the Treaty;*

2. *The remainder of the application is dismissed;*

3. *The parties are ordered to bear their own costs.*

---

(1) OJ No C 307, 17. 11. 1987.

O.J. No.C 116 of 3.5.1988,p.12

Reference for a preliminary ruling by the Hoge Raad der Nederlanden by judgment of that court of 9 March 1988 in the case of Wisselink en Co. BV against the Secretary of State for Finance

(Case 93/88)

(88/C 116/16)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Third Chamber of the Hoge Raad der Nederlanden [Supreme Court of the Netherlands] of 9 March 1988, which was received at the Court Registry on 17 March 1988, for a preliminary ruling in the case of Wisselink Co. BV, Amsterdam, against the Secretary of State for Finance on the following questions:

1. Do the provisions of the First, Second and Sixth Directives preclude the levying of a special consumption tax on passenger cars whose main characteristics are as follows:

   — the chargeable events are the supply of passenger cars in the Netherlands by manufacturers and the importation into the Netherlands of such cars,

   — the taxable amount is the amount which is, or would be, charged upon the sale of the car to a non-trader at the time of issue of the number plates, less the turnover tax included in that amount (Article 50 of the Law on Turnover Tax),

   — however, for unused cars, that taxable amount is at least the catalogue price, being the selling price to the final consumer last recommended by the manufacturer or importer to his retailers at the time of supply or importation and for used cars a value derived therefrom (Article 25 of the abovementioned judgment),

   — there is no right to deduct as provided for in Articles 2 and 15 of the Law on Turnover Tax, Article 11 of the Second Directive and Article 17 of the Sixth Directive.

2. If so, must the conclusion be drawn that a taxable person may, pursuant to Article 17 of the Sixth Directive, deduct a special consumption tax on passenger cars borne by him in the way described in 4.1 above (1) from the tax he is liable to pay, even if the national legislation makes no provision for such a deduction?

(1) On the supply of the car to the appellant no consumption tax on passenger cars was levied or payable. The mentioning of special consumption tax on the invoice must be understood as meaning that the special consumption tax levied in respect of the importation of the car into the Netherlands is one of the factors which determined the price charged to the appellant and in that sense formed part of that price.

O.J. No.C 207 of 12.8.1989,p.12

JUDGMENT OF THE COURT

of 13 July 1989

in Joined Cases 93/88 and 94/88 (references for preliminary rulings made by the Hoge Raad der Nederlanden): Wisselink en Co BV and Others v. Staatssecretaris van Financiën (1)

(First, second and sixth directives on turnover tax — Special consumption tax on passenger cars)

(89/C 207/13)

(Language of the case: Dutch)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Joined Cases 93/88 and 94/88: references to the Court under the first and third paragraphs of Article 177 of the EEC Treaty by the Hoge Raad der Nederlanden [Supreme Court of the Netherlands] for a preliminary ruling in the proceedings pending before that court between Wisselink en Co BV, Amsterdam, on the one hand, and Staatssecretaris van Financiën, on the other, and between Abemij BV, Hart Bibbrig and Greeve BV, Sassenheim, constituting a single person for tax purposes, on the one hand, and Staatssecretaris van Financiën, on the other, — on the interpretation of the First Council Directive (67/227/EEC) of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes (2), the Second Council Directive (67/228/EEC) of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes (3) — structure and terms of application of the common system of value added tax and the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (4) — the Court, composed of O Due,

(1) OJ No C 116, 3. 5. 1988, p. 12.
(2) OJ English Special Edition, 1967, p. 14
(3) OJ English Special Edition, 1967, p. 16
(4) OJ No L 145, 13. 6. 1977, p. 1.

President, T. Koopmans and R. Joliet (Presidents of Chambers), Sir Gordon Slynn, G. F. Mancini, C. N. Kakouris, F. A. Schockweiler, G. C. Rodríguez Iglesias and M. Díez de Velasco, Judges; J. Mischo, Advocate General; D. Louterman, Principal Administrator, acting for the Registrar, gave a judgment on 13 July 1989, the operative part of which is as follows:

the provisions of the first, second and sixth directives on turnover tax do not preclude the levying of a special consumption tax on passenger cars such as the Bijzondere Verbruiksbelasting van Personenauto's.

O.J. No.C 116 of 3.5.1988,p.12

Reference for a preliminary ruling by the Hoge Raad der Nederlanden by judgment of that court of 9 March 1988 in the case of Abemij BV, Hart Nibbrig en Greeve BV and Others against the Secretary of State for Finance

(Case 94/88)

(88/C 116/17)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Third Chamber of the Hoge Raad der Nederlanden [Supreme Court of the Netherlands] of 9 March 1988, which was received at the Court Registry on 17 March 1988, for a preliminary ruling in the case of Abemij BV, Hart Nibbrig en Greeve BV and Others, Sassenheim, against the Secretary of State for Finance on the following questions:

1. Do the provisions of the First, Second and Sixth Directives preclude the levying of a special consumption tax on passenger cars whose main characteristics are as follows:

   — the chargeable events are the supply of passenger cars in the Netherlands by manufacturers and the importation into the Netherlands of such cars,

   — the taxable amount is the amount which is, or would be, charged upon the sale of the car to a non-trader at the time of issue of the number plates, less the turnover tax included in that amount (Article 50 of the Law on Turnover Tax),

   — however, for unused cars, that taxable amount is at least the catalogue price, being the selling price to the final consumer last recommended by the manufacturer or importer to his retailers at the time of supply or importation and for used cars a value derived therefrom (Article 25 of the abovementioned judgment),

   — there is no right to deduct as provided for in Articles 2 and 15 of the Law on Turnover Tax, Article 11 of the Second Directive and Article 17 of the Sixth Directive.

2. If so, must the conclusion be drawn that a special consumption tax on passenger cars, such as that which the appellant is liable to pay under Netherlands legislation on account of the importation of passenger cars in the period to which the case relates, may not be levied at all, or that it must be levied on a different basis?

O.J. No.C 207 of 12.8.1989,p.12

JUDGMENT OF THE COURT

of 13 July 1989

in Joined Cases 93/88 and 94/88 (references for preliminary rulings made by the Hoge Raad der Nederlanden): Wisselink en Co BV and Others v. Staatssecretaris van Financiën (1)

(First, second and sixth directives on turnover tax — Special consumption tax on passenger cars)

(89/C 207/13)

(Language of the case: Dutch)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Joined Cases 93/88 and 94/88: references to the Court under the first and third paragraphs of Article 177 of the EEC Treaty by the Hoge Raad der Nederlanden [Supreme Court of the Netherlands] for a preliminary ruling in the proceedings pending before that court between Wisselink en Co BV, Amsterdam, on the one hand, and Staatssecretaris van Financiën, on the other, and between Abemij BV, Hart Bibbrig and Greeve BV, Sassenheim, constituting a single person for tax purposes, on the one hand, and Staatssecretaris van Financiën, on the other, — on the interpretation of the First Council Directive (67/227/EEC) of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes (2), the Second Council Directive (67/228/EEC) of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes (3) — structure and terms of application of the common system of value added tax and the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (4) — the Court, composed of O. Due,

(1) OJ No C 116, 3. 5. 1988, p. 12.
(2) OJ English Special Edition, 1967, p. 14.
(3) OJ English Special Edition, 1967, p. 16
(4) OJ No L 145, 13. 6. 1977, p. 1.

President, T. Koopmans and R. Joliet (Presidents of Chambers), Sir Gordon Slynn, G. F. Mancini, C. N. Kakouris, F. A. Schockweiler, G. C. Rodríguez Iglesias and M. Díez de Velasco, Judges; J. Mischo, Advocate General; D. Louterman, Principal Administrator, acting for the Registrar, gave a judgment on 13 July 1989, the operative part of which is as follows:

the provisions of the first, second and sixth directives on turnover tax do not preclude the levying of a special consumption tax on passenger cars such as the Bijzondere Verbruiksbelasting van Personenauto's.

O.J. No.C193 of 22.7.1988,p.11

Reference for a preliminary ruling by the Højsteret by decision of that court of 21 June 1988 in the case of Skatteministeriet v. Morten Henriksen, Advokat

(Case 173/88)

(88/C 193/14)

Reference has been made to the Court of Justice of the European Communities by a decision of the Højesteret [Supreme Court] of 21 June 1988, which was received at the Court Registry on 27 June 1988, for a preliminary ruling in the case of Skatteministeriet [Ministry for Fiscal Affairs] v. Morten Henriksen, Advokat on the following questions:

1. Should Article 13 B (b) of Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes (Sixth VAT Directive) (1) be understood as meaning that tax liability on the letting of 'premises and sites for parking vehicles' also encompasses the letting of garages of the type in question in the case?

2. If the above question is answered in the affirmative, a clarification is requested as to whether the said Article is to be interpreted as meaning that the Member States are under a duty to subject the letting of garages of the type in question in the case to tax.

(1) OJ No L 145, 1977, p. 1.

O.J. No.C 207 of 12.8.1989,p.13

JUDGMENT OF THE COURT

(Third Chamber)

of 13 July 1989

in Case 173/88: (reference for a preliminary ruling made by the Højesteret): Skatteministeriet v. Morten Henriksen (1)

(Turnover tax — Exemption)

(89/C 207/15)

(Language of the case: Danish)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 173/88: reference to the Court under Article 177 of the EEC Treaty by the Højesteret [Danish Supreme Court] for a preliminary ruling in the proceedings pending before that court between Skatteministeriet [Ministry for Fiscal Affairs] and Morten Henriksen — on the interpretation of Article 13 B (b) of the Sixth Council Directive (77/338/EEC of 17 May 1977) on the harmonization of the laws of the Member States relating to turnover taxes — common system of value added tax: uniform basis of assesment (2) — the Court (Third Chamber), composed of F. Grévisse, President of the Chamber, J. C. Moitinho de Almeida and M. Zuleeg, Judges; F. G. Jacobs, Advocate General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 13 July 1989, the operative part of which is as follows:

1. *Article 13 B (b) of the Sixth Council Directive (77/388/EEC of 17 May 1977) must be interpreted as meaning that the expression 'premises and sites for parking vehicles' covers the letting of all places designed to be used for parking vehicles, including closed garages, but that such lettings cannot be excluded from the exemption in favour of the 'leasing or letting of immovable property' if they are closely linked to lettings of immovable property for another purpose which are themselves exempt from value added tax;*

2. *Article 13 B (b) of the Sixth Council Directive (77/388/EEC of 17 May 1977) must be interpreted as meaning that Member States may not exempt from value added tax lettings of premises and sites for parking which are not covered by the exemption provided for in that provision, that is to say, those which are not closely linked to lettings of immovable property for another purpose which are themselves exempt from value added tax.*

(1) OJ No C 193, 22. 7. 1988.
(2) OJ No L 145, 13. 6. 1977, p. 1.