



European Communities

EUROPEAN PARLIAMENT

WORKING DOCUMENTS

English Edition

1985-86

8 May 1985

SERIES A

DOCUMENT A 2-28/85

REPORT

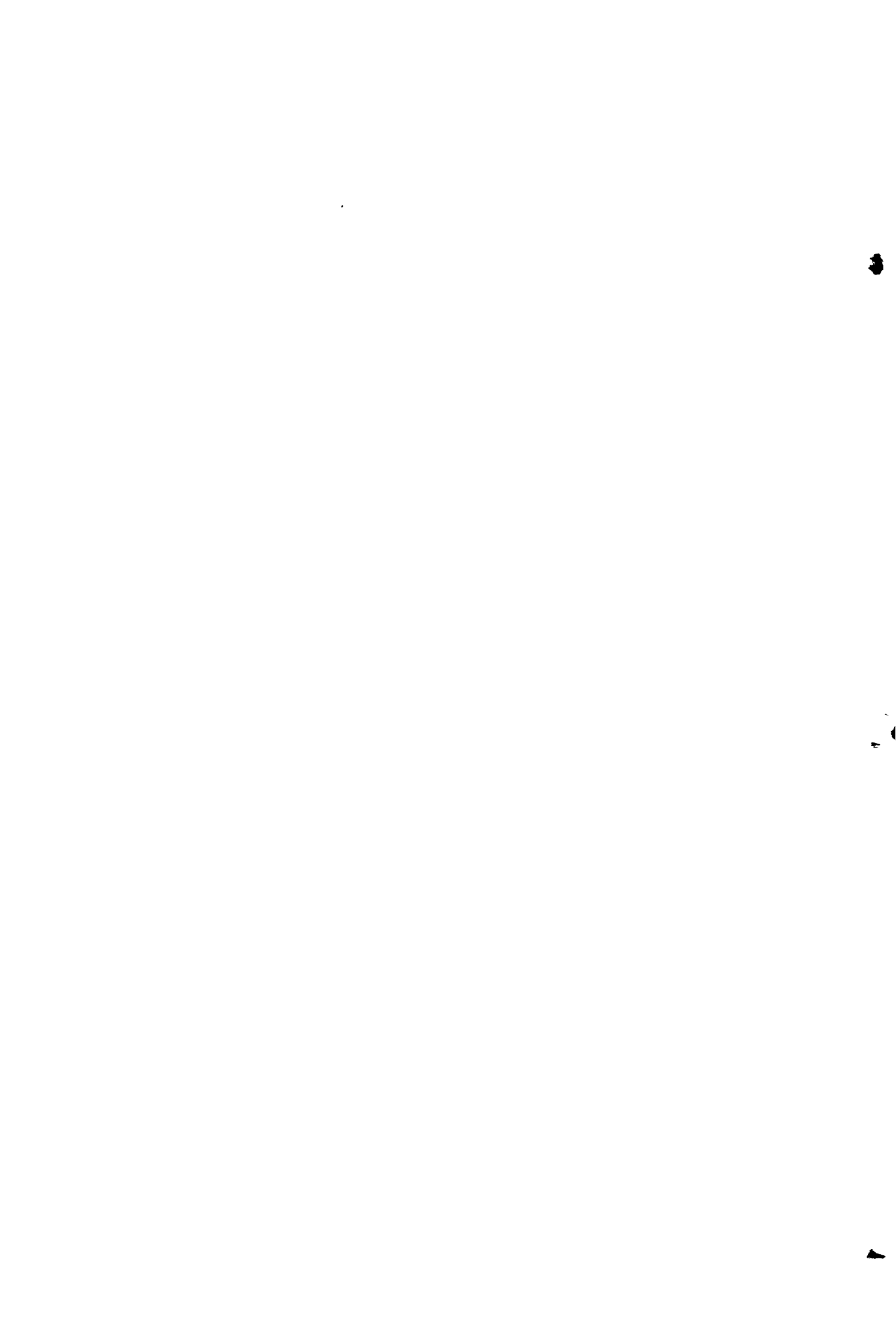
drawn up on behalf of the Committee on Legal Affairs and
Citizens' Rights

on the communication from the Commission of the European
Communities to the Council and to the European Parliament
concerning a draft Commission recommendation on the
establishment of preferential treatment for debts in
respect of the levies referred to in Articles 49 and 50
of the ECSC Treaty (COM(84) 652 final - Doc. 2-1564/84)

Rapporteur: Mr Florus WIJSENBEEK

WG(2)/1797E

PE 96.691/fin.
Or: Fr.



By letter of 24 January 1985, the President of the Commission of the European Communities, acting as President of the High Authority pursuant to the ECSC Treaty, requested the European Parliament to deliver an opinion on a draft Commission recommendation on the establishment of preferential treatment for debts in respect of the levies referred to in Articles 49 and 50 of the ECSC Treaty.

On 11 February 1985, the President of the European Parliament referred this draft recommendation to the Committee on Legal Affairs and Citizens' Rights as the committee responsible and to the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Budgetary Control for their opinions.

At its meeting of 28 February 1985, the Committee on Legal Affairs and Citizens' Rights appointed Mr Wijsenbeek rapporteur.

The committee considered the Commission's draft recommendation and the draft report at its meetings of 20/21 March and 24/25 April 1985.

At the last meeting, the committee decided unanimously to recommend to Parliament that it approve the Commission's proposal with the following amendment.

The committee then adopted the motion for a resolution as a whole unanimously.

The following took part in the vote: Mrs VAYSSADE, chairman, Mr GAZIS, vice-chairman; Mr WIJSENBEEK, rapporteur; Mr CASINI, Mr CICCIOMESSERE (deputizing for Mr TORTORA), Mr DE GUCHT, Mrs FONTAINE, Mr HOON, Mr MALANGRÉ, Lord O'HAGAN, Mr PORDEA, Mr PRICE, Mr SCHWALBA-HOTH, Mr Von STAUFFENBERG, Mr VETTER and Mr ZAGARI.

o
o o

The opinions of the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Budgetary Control are attached.

The report was tabled on 30 April 1985.

The deadline for the tabling of amendments to this report appears in the draft agenda for the part-session at which it will be debated.

C O N T E N T S

	<u>Page</u>
Amendments to the Commission's proposal	5
A. MOTION FOR A RESOLUTION	6
B. EXPLANATORY STATEMENT	8
ANNEX	14
Opinion of the Committee on Economic and Monetary Affairs and Industrial Policy	15
Opinion of the Committee on Budgetary Control	18

The Committee on Legal Affairs and Citizens' Rights hereby submits to the European Parliament the following amendment to the Commission's proposal and motion for a resolution, together with explanatory statement:

Text proposed by the Commission
of the European Communities

Amendment tabled by the Committee on
Legal Affairs and Citizens' Rights

Preamble and recitals unchanged
Articles 1, 2, 3 and first paragraph of Article 4 unchanged

Article 4, second paragraph

The Member States shall provide that Articles 1, 2 and 3 are to be applied to recovery proceedings in progress on the date of implementation of this recommendation.

Sole amendment

The Member States shall provide that Articles 1, 2 and 3 are to be applied to recovery proceedings in progress on the date of implementation of this recommendation, without prejudice to the rights of other creditors of the person liable which are considered vested under national law.

Article 5 unchanged

MOTION FOR A RESOLUTION

closing the procedure for consultation of the European Parliament on the draft recommendation from the Commission concerning the establishment of preferential treatment for debts in respect of the levies referred to in Articles 49 and 50 of the ECSC Treaty

The European Parliament,

- having regard to the draft recommendation from the Commission of the European Communities, pursuant to Article 14 of the ECSC Treaty¹,
 - having regard to its resolutions of 20 October 1966 and 17 October 1967² concerning its wish to be consulted even in cases in which the Treaties do not require its opinion,
 - having for this reason been consulted by the Commission (Doc. 2-1564/84),
 - having regard to the judgment of the Court of Justice of 17 May 1983 in Case 168/82 (ECSC v Ferriere Sant'Anna S.p.A.)³,
 - having regard to the report of the Committee on Legal Affairs and Citizens' Rights and to the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Budgetary Control (Doc. A 2-28/85),
 - having regard to the result of the vote on the Commission's draft recommendation,
- A. whereas the levies imposed on the production of coal and steel pursuant to Articles 49 and 50 of the ECSC Treaty are the main source of revenue for the ECSC operational budget and consequently for the funds necessary in particular for the accomplishment of the task which the Commission has set itself within the context of that Treaty,
- B. having regard to the current difficulties regarding the scope for actually recovering part of those levies due to the fact that some undertakings against which the Commission has instituted proceedings for execution of the debts arising from the application of the levies in question are insolvent,
- C. whereas these difficulties are all the more serious since the Court of Justice stated in its above-mentioned judgment that it does not necessarily follow from the nature and purpose which Articles 49 and 50 of the ECSC Treaty confer upon the levies that, in the event of the insolvency of the undertaking owing them, they must automatically enjoy the same preference as that accorded by the legislation of the Member States to similar domestic taxes,⁴

¹ OJ No. C 3 of 5.1.1985, p. 7

² See Official Journals of the European Communities No. 201 of 5.11.1966, p. 3465 and No. 268 of 6.11.1967, p. 7

³ [1983] ECR 1681 et seq.

⁴ See judgment of 17 May 1983, op. cit., paragraph 14 of the decision, page 1695.

- D. whereas, accordingly, unless they benefit from such preferential treatment, the debts arising from ECSC levies rank equally with ordinary debts where there are execution proceedings in case of bankruptcy or judicial composition proceedings in relation to an undertaking,
- E. whereas, according to the Court of Justice, such preferential treatment 'being contrary to the general principle that creditors should be treated equally, may be accorded only on the basis of specific, existing legislative provisions'¹,
- F. believing that conferring on debts arising from ECSC levies the same preferential treatment as that accorded to tax debts due to Member States, and more particularly the same status as that given by each of the Member States concerned to debts in respect of value-added tax, is not only likely to facilitate the recovery of them but is above all an essential addition to Articles 49 and 50 of the ECSC Treaty, the terms of which are clearly insufficient - in the light of the interpretation given by the Court of Justice - to give the levies on the production of coal and steel the importance due to them as the main source of revenue for the ECSC operational budget,
- G. aware, however, that a measure of this kind, such as the Commission draft recommendation in this instance, must be compatible with the legal principles laid down by the Court of Justice² so as not to affect adversely the rights of the other creditors of a debtor undertaking who have already enforced their claims in proceedings for the execution of the debts which are in progress at the date of implementation of the recommendation in question;
1. Approves the first steps taken by the Commission of the European Communities, by means of a recommendation within the meaning of Article 14 of the ECSC Treaty, to give debts arising from the levies provided for in Articles 49 and 50 of that Treaty the same preferential treatment as that accorded by the Member States to tax debts due to them;
 2. Expresses, however, its deep concern, as regards observance of the principles of equal treatment and legal certainty for Community citizens, over the fact that the recommendation in question also applies to recovery proceedings in progress on the date of its implementation which, combined with the very long limitation period for debts arising from ECSC levies, is likely to affect adversely the rights of other creditors which are considered vested under national law;
 3. Can, therefore, approve the Commission's draft recommendation only subject to acceptance by the Commission of its proposed amendment to the second paragraph of Article 4 of that draft;
 4. Instructs its President to forward to the Commission, as Parliament's opinion, the text of the Commission's draft recommendation as voted by Parliament and the corresponding resolution.

¹Idem, paragraph 15 of the decision, page 1695

²See judgment of 17 May 1983, op. cit., paragraphs 15 and 18 of the decision, pp 1695-1696.

EXPLANATORY STATEMENTI. INTRODUCTION - JUDGMENT OF THE COURT OF 17 MAY 1983 (CASE 168/82) AND ITS EFFECTS ON THE RECOVERY OF DEBTS ARISING FROM ECSC LEVIES

1. The draft recommendation drawn up by the Commission of the European Communities pursuant to Article 14 of the ECSC Treaty follows directly from the judgment of the Court of Justice of the European Communities of 17 May 1983 in Case 168/82 (ECSC v Ferriere Sant'Anna S.p.A.)¹. It relates to the recovery of Community debts arising from ECSC levies - pursuant to Articles 49 and 50 of that Treaty - which at present poses serious problems for the Commission which is responsible for the management of Community funds, because many ECSC undertakings have been declared bankrupt owing to the iron and steel crisis.

2. Taking into account the fact that the levies are the main source of revenue for the ECSC operational budget, the scope for actually recovering those levies is of considerable importance. As the Commission points out in its communication, 'the scope for recovering debts in respect of levies from bankrupt undertakings depends largely on the debt being preferential, since, where this is not the case, the admission of debts as ordinary debts in the statement of liabilities of a bankrupt undertaking is often tantamount to the loss of funds due to the High Authority'².

3. Drawn up with this in mind, Article 2 of Decision C(81) 1887 adopted by the Commission on 10 December 1981 and addressed to Ferriere Sant'Anna S.p.A. provided that the claims of the ECSC against that company are preferential debts ranking equally with similar debts owed to the State. However, the Court of Justice, in its above-mentioned judgment, whilst acknowledging the fiscal nature of the levies, 'ruled that they could not be accorded the same preference as that accorded by the legislation of the Member States to similar domestic taxes simply by placing a broad interpretation on Articles 49 and 50 of the Treaty and/or applying the principle of equal treatment more widely'³.

4. In the same judgment, however, the Court of Justice, with the aim of proposing ways of guarding against the consequences which might flow from its own judgment, points out that such preferential treatment cannot be accorded to debts arising from ECSC levies 'in the absence of a clear and precise provision of Community law establishing inter alia the preferential status of the levy and specifying the domestic tax to which it should be compared'⁴. This has been interpreted by the Commission of the European Communities as 'a clear invitation to the Community legislature to draw up the legal instruments necessary for the grant of such preferential treatment'⁵.

¹ [1983] ECR 1681 et seq.

² COM(84) 652 final, point A, page 1

³ See COM(84) 652 final, page 1. See also judgment of 17 May 1983, paragraph 14 of the decision, [1983] ECR 1695.

⁴ Paragraph 18 of the decision, [1983] ECR 1696.

⁵ See COM(84) 652 final, point A, page 1.

II. LEGAL INSTRUMENT - SUBSTANCE OF THE DRAFT RECOMMENDATION

5. The purpose of the draft recommendation is to comply with that invitation. The Community therefore required a text enabling the Commission to accord the debts arising from the ECSC levies preferential status intended to facilitate recovery of those debts in execution proceedings which had been or were to be instituted by the Commission against insolvent undertakings.

6. In order to do this, the choice of a recommendation within the meaning of the third paragraph of Article 14 of the ECSC Treaty seemed to the Commission to be the most appropriate 'because of the wide diversity of national laws governing preferential claims in general and fiscal preferential claims in particular'¹ which militated against adoption of a general decision. However, whilst acknowledging the advantages offered by the choice of a recommendation, the adoption of a general decision, in a very precise field, would nevertheless raise fewer problems over its implementation. We shall therefore return to this matter in Part III of the explanatory statement (see point 20 below).

7. Articles 1 and 2 of the draft recommendation contain the gist of the substantive rules. Article 1 provides that Member States shall confer on debts arising from the application of the levies referred to in Articles 49 and 50 of the ECSC Treaty the same preferential treatment as they confer on tax debts due to the State. This also means that the basis of assessment of this preferential treatment must be the same as that of the preferential treatment conferred on tax debts due to the State. As a result of that provision, Denmark cannot be regarded as an addressee of this recommendation, since that country does not confer any preferential treatment on tax debts.

8. Article 2 takes account of the fact that there are several ranks of tax preference in certain Member States, which raises the question of which national tax the ECSC levies are to be compared to. The tax chosen was value-added tax (VAT), a tax common to all Member States, being obligatory and partially harmonized by virtue of several EEC directives. In this case, accordingly, Article 2 provides that those Member States 'shall confer on debts arising from the application of ECSC levies general or special preference of the same rank as that conferred by the law of each of those States on debts in respect of value-added tax'.

9. Pursuant to the first paragraph of Article 3 of the draft recommendation, the period for which debts arising from the ECSC levies will be accorded preference coincides with the period of limitation of the claim arising from the application of the levy, which is normally three years or six years in the absence of declarations of production or in the event of incomplete or inaccurate declarations being made by the undertaking liable.²

¹ See COM(84) 652 final, point A, page 1.

² Pursuant to Article 1 of ECSC Decision No. 5-65 of 17 March 1965 (OJ of the ECSC No. 46, 22.3.1965, p. 695)

III. IMPLEMENTATION OF THE RECOMMENDATION - PROBLEMS ARISING FROM THE RETROACTIVE EFFECTS OF ITS IMPLEMENTATION

A. The provisions of Article 4 of the draft recommendation and their retroactive effects

10. Under Article 4 of the draft recommendation, the Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with that recommendation not later than one year after the date of adoption of the recommendation.

11. The second paragraph of that article requires the Member States to provide 'that Articles 1, 2 and 3 are to be applied to recovery proceedings in progress on the date of implementation of this recommendation'. The Commission of the European Communities, in its communication on the draft recommendation in question, justifies this extension of the applicability of the above-mentioned provisions as follows:

'Among the reasons which militate in favour of such an extension ... are the large number (approximately 50) of actions for recovery brought by the Commission in the past which have not yet been terminated, the scale of the total amount due from undertakings liable to the levy, the collection of which is currently in jeopardy, and the strong likelihood that all or a very large proportion of the amounts due to the Commission will be lost should such debts continue to be treated as ordinary debts in the bankruptcy or similar proceedings'¹.

12. The arguments put forward by the Commission, and nobody doubts the seriousness of them, are financial in nature and must certainly be taken into consideration, especially at present when the Communities in general are undergoing difficulties of this kind. However, it is impossible, as the Committee on Legal Affairs and Citizen's Rights, not to point out the dangers inherent in rules which would have retroactive effects as from the date of their implementation.

13. First, bearing in mind the fact that the Commission has acted at the 'invitation' of the Court of Justice to the Community legislature², it should be noted that the provision laid down in the second paragraph of Article 4 interprets incorrectly the guidelines laid down by the Court of Justice in its judgment in the case of the ECSC v Ferriere Sant'Anna S.p.A.. The Court of Justice in fact states, with regard to the preferential treatment accorded or to be accorded to certain types of debt in bankruptcy proceedings, that 'being contrary to the general principle that creditors should be treated equally, [they] may be accorded only on the basis of specific, existing legislative provisions³.

¹COM(84) 652 final, point B, Comments on the articles, p. 3

²See the above-mentioned judgment of 17 May 1983 and COM(84) 652 final

³Judgment of the Court of Justice of the European Communities of 17 May 1983, paragraph 15 of the decision, I1983I ECR 1695

14. In view of the wording of the second paragraph of Article 4, these conditions, or at least that of 'existing legislative provisions', do not seem to be fulfilled. The Commission of the European Communities, however, seems to be concerned by the consequences of such a provision and has, precisely in so doing, been led to contradict itself: in the seventh recital, it gives itself the right to 'exercise its preferential right in proceedings involving competition between creditors still in progress at the date of implementation of this recommendation ... without prejudice [however] to the rights of other creditors of the person liable which are considered vested under national law'. Curiously, this concern is not reflected in the second paragraph of Article 4 and we are obliged to note that the substance of that provision states quite to the contrary.

B. The retroactive effects of the provisions of Article 4 in the light of the position adopted by the Court of Justice in this regard

15. The Court of Justice has had occasion to give judgment many times on questions in which problems concerning the retroactive effects of Community measures arose and in which the interests of economic operators were more particularly involved. This was the case, for example, in the judgment of 22 February 1984 in Case 70/83 (Kloppenborg v Finanzant Leer) in which the Court stated that 'Community legislation must be unequivocal and its application must be predictable for those who are subject to it'¹. In the same judgment, raising the question of the validity of the 'amending measure', it concluded that 'such a question of validity could arise only if the intention to produce the above-mentioned effect (that of depriving individuals of the legal measures which the first measure has already conferred upon them) were expressly stated in the amending measure'¹.

16. It is true that the judgment in question concerned a case in which the amended measure and the amending measure were both Community measures. In this instance, it seems at first sight that a Community measure, the ECSC recommendation, is encroaching on the legal application of national measures relating, essentially, to rules of judicial procedure. This is not entirely true, for the following reason:

17. The Commission, in its attempt to recover debts arising from ECSC levies, claimed that they were 'preferential debts' on the basis of Articles 49 and 50 of the ECSC Treaty. As we have seen above (points 3 and 4), the Court rejected this interpretation and this is precisely why the Commission is attempting to facilitate recovery of those debts by means of a recommendation, the draft of which we are considering. The conclusion which may be drawn from this is that the draft recommendation is intended to modify the scope of Articles 49 and 50 of the ECSC Treaty and of the measures issued in implementation thereof. If this had not been the case, the Court, in its judgment of 17 May 1983 (Case 168/82, ECSC v Ferriere Sant'Anna S.p.A.) would merely have indicated that it was a matter of a simple interpretation of the articles in question, which it categorically denied (see point 3 above)².

¹ Judgment of the Court of Justice of the European Communities of 22 February 1984 in Case 70/83

² In this case, the 'retroactive' effect of the Community rule would be entirely justified, insofar as the interpretation (in this instance within the procedure under Article 177 of the EEC Treaty) 'clarifies and defines where necessary the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its coming into force' (judgment of the Court of Justice of the European Communities of 27 March 1980 in Joined Cases 66, 127 and 128/79, Amministrazione delle Finanze v Salumi, Vasanelli and Ultrocchi, [1980] ECR 1237 et seq.

Consequently, the problem is clearly that of the relationship between two Community measures, and the findings of the Court in its judgment of 22 February 1984 (Case 70/83, Kloppenburg v Finanzamt Leer) can perfectly well be applied to it. The question therefore arises as to whether the intention to produce effects in relation to creditors - whose rights are derived from national law and from the restricted scope of Articles 49 and 50 of the ECSC Treaty - is expressly stated in the measure, represented in this instance by the recommendation in question. It would be difficult to reply to this question in the negative!

C. Observations on the possible consequences of the retroactive effects of the recommendation and general comments

18. Concluding the above arguments, the Commission's attention should be drawn to the consequences which the implementation of that recommendation might involve because of the effects produced by the second paragraph of Article 4. We can only show comprehension for the financial and administrative concerns which prompt the Commission of the European Communities and which seem to form the basis of the provision in question. However, it is impossible in any case to be sure that the inclusion of such a provision would facilitate the task of recovering the debts, especially since the Commission would always be exposed to the possibility of actions before the Court of Justice under either Article 33 (application for annulment) or Article 41 (reference for a preliminary ruling on the validity of acts) of the ECSC Treaty.

19. Unfortunately, and this might even be described as a major instance of failure to act, no Community measure has hitherto accorded preferential status to debts arising from ECSC levies. This is all the more unfortunate as this draft recommendation has only been drawn up following a judgment of the Court of Justice which rejects the interpretation given by the Commission of the European Communities to Articles 49 and 50 of the ECSC Treaty. As has been constantly pointed out above, it would be inadvisable to redress partially this failure to act by a provision whose validity would give rise to serious doubts.

20. Secondly, insofar as the Commission hopes to remedy as soon as possible the difficulties in recovering debts arising from ECSC levies caused by undertakings going bankrupt, there is good reason to wonder why it chose the instrument of a recommendation instead of a general decision which would be immediately applicable. The difficulties which that would create can be appreciated especially as regards the actual implementation of such a decision in the Member States. However, a serious study of the scope afforded by national legislation in the tax field could smooth out certain difficulties and would give the Commission, by means of a draft general decision, the chance to bring forward considerably the date from which debts arising from the ECSC levies would be accorded preferential status.

CONCLUSIONS

21. As a result of the foregoing, the Committee on Legal Affairs and Citizen's Rights approves the draft recommendation drawn up by the Commission pursuant to Article 14 of the ECSC Treaty subject, however, to an amendment proposed to the second paragraph of Article 4 consisting in the addition of the following phrase at the end of that paragraph:

'... without prejudice to the rights of other creditors of the person liable which are considered vested under national law'.

This formula has the advantage of restricting the harmful effects which would ensue as the result of implementing the provision in question with absolute retroactive effect. It reduces to the minimum the risk of challenges by those subject to that provision whilst on the other hand helping as far as possible to attain the objective which the Commission set itself in drawing up this recommendation.

Provisions of the ECSC Treaty

Article 14

In order to carry out the tasks assigned to it the High Authority shall, in accordance with the provisions of this Treaty, take decisions, make recommendations or deliver opinions.

Decisions shall be binding in their entirety.

Recommendations shall be binding as to the aims to be pursued but shall leave the choice of the appropriate methods for achieving these aims to those to whom the recommendations are addressed.

Opinions shall have no binding force.

In cases where the High Authority is empowered to take a decision, it may confine itself to making a recommendation.

Article 49

The High Authority is empowered to procure the funds it requires to carry out its tasks:

- by imposing levies on the production of coal and steel;
- by contracting loans.

It may receive gifts.

Article 50

1. The levies are intended to cover:
 - the administrative expenditure provided for in Article 78;
 - the non-repayable aid towards readaptation provided for in Article 56;
 - in the case of the financing arrangements provided for in Articles 54 and 56, and after recourse to the reserve fund, any portion of the amounts required for servicing loans raised by the High Authority which may not be covered by receipts from the servicing of loans granted by it, and any payments to be made under guarantees granted by the High Authority on loans contracted directly by undertakings;
 - expenditure on the promotion of technical and economic research as provided for in Article 55(2).
2. The levies shall be assessed annually on the various products according to their average value; the rate thereof shall not, however, exceed one per cent unless previously authorized by the Council, acting by a two-thirds majority. The mode of assessment and collection shall be determined by a general decision of the High Authority taken after consulting the Council; cumulative imposition shall be avoided as far as possible.
3. The High Authority may impose upon undertakings which do not comply with decisions taken by it under this article surcharges of not more than 5 per cent for each quarter's delay.

OPINION
(Rule 101 of the Rules of Procedure)

of the Committee on Economic and Monetary Affairs and Industrial Policy

Draftsman: Mr E. MÜHLEN

At its meeting of 27 February 1985 the Committee on Economic and Monetary Affairs and Industrial Policy appointed Mr MÜHLEN draftsman of an opinion.

The draft opinion was considered at the meeting of 26 March 1985, and the conclusions were adopted by 18 votes to none with 3 abstentions.

The following took part in the vote: Mr Seal, chairman; Mr von Bismarck and Mr Beazley, vice-chairmen; Mr Muhlen, draftsman; Mr Besse, Mr Beumer, Mr Bonaccini, Mr Cassidy, Mr Chanterie, Mr Cryer, Mr de Gucht, Mr de Vries, Mr Falconer, Mr Gautier, Mr Herman, Mr Kilby, Mr Metten, Mr Mihr, Mrs Nielsen, Mr Raftery, Mr Rogalla, Mr Starita, Mrs Van Hemeldonck, Mrs Van Rooy, Mr Visser and Mr von Wogau.

I. Content

1. As the Commission states, at the time the draft recommendation was submitted (on 30 November 1984) proceedings had been instituted against 50 insolvent undertakings in 5 Member States for debts to the European Community arising from ECSC levies (Articles 49 and 50 of the ECSC Treaty). Some 1.6 m ECU in claims are involved.
2. The levies which the Commission is empowered to impose under Article 49 of the ECSC Treaty represent the Community's own resources, intended to cover administrative and other expenditure. (Article 50(1), first indent, ECSC Treaty). These levies are therefore fiscal in nature and the main source of revenue for the ECSC administrative budget.
3. The purpose of the recommendation¹ is to confer preferential treatment on claims arising from the ECSC levy where the person liable is insolvent.
4. In all Member States other than Denmark, tax debts due to the state enjoy preferential treatment in enforcement proceedings involving competition between creditors, that is to say at the expense of the other creditors. In order to protect creditors, some Member States are seeking to make knowledge of these preferential fiscal debts public. For example, outstanding debts to the state are entered in a register and thus made available to third parties, thereby losing their element of secrecy. Luxembourg is also considering such a registry of tax debts.
5. In the arrangements it recommends for giving preferential status to the ECSC levy, the Commission has taken the rules for the collection of value-added tax as a reference point.

II. Assessment of the recommendation

1. In the 1984 financial year, revenue from the ECSC levy amounted to 131 m ECU out of a financial requirement of 331.5 m ECU². The figure of 1.6 m ECU in claims lodged in winding-up proceedings currently in progress on account of outstanding ECSC levies is small by comparison. As these outstanding sums represent fiscal debts due to the Community, the committee has no objections to the ECSC levy being given the same preferential status as national tax debts where the person liable is insolvent.

¹The third and fifth subparagraphs of Article 14(3) and (5) of the ECSC Treaty state that:

Recommendations shall be binding as to the aims to be pursued but shall leave the choice of the appropriate methods for achieving these aims to those to whom the recommendations are addressed.

.....

In cases where the High Authority is empowered to take a decision, it may confine itself to making a recommendation.

² Aide-memoire on the ECSC operating budget of 10.8.1984, COM(84) 419, pp. 60 and 64

2. In absolute terms the Community's claims on insolvent undertakings on account of the ECSC levy are indeed small. However, in individual cases these claims may jeopardize the interests of the other creditors if they are enforceable over too long a period.
3. The committee shares the concern expressed in the recommendation to set a uniform period for the preference for ECSC levies. In order to protect the claims of other creditors of the insolvent undertakings (claims by the Member State concerned, banks, employees and suppliers) there might be objections to having the duration of the preference coincide with the periods of limitation of claims arising from the application of the ECSC levy, of three or six years³. Claims for levy dating back three or six years, of which the other creditors cannot be aware, may hit them very hard and prevent them from recovering their own claims.

Stricter limitations in time also occur in national bankruptcy law (e.g. para. 61(2) of the Bankruptcy Code of the Federal Republic of Germany). There, preferential status is enjoyed by public taxes only where they have arisen during the year before proceedings were instituted.

III. Conclusions

Pursuant to Rule 101(6) of the Rules of Procedure the Committee on Economic and Monetary Affairs and Industrial Policy hereby submits the following proposal to the Committee on Legal Affairs and Citizens' Rights as the committee responsible:

Passage for insertion in the motion for a resolution

Requests the Commission without delay to examine the possibility of introducing compulsory disclosure of preferential tax claims, for example by means of a registry.

³High Authority Decision No. 5/65 of 17 March 1965, OJ No. 46, 22.3.1965, p. 695

OPINION

OF THE COMMITTEE ON BUDGETARY CONTROL

Letter from the chairman of the committee to Mrs VAYSSADE,
chairman of the Committee on Legal Affairs and Citizens' Rights

17 April 1985

Subject: Communication from the Commission concerning a draft Commission recommendation on the establishment of preferential treatment for debts in respect of the levies referred to in Articles 49 and 50 of the ECSC Treaty (Doc. 2-1564/84)

Dear Madam Chairman,

The Committee on Budgetary Control considered the above draft recommendation at its meeting of 26/27 March and approved it unanimously.¹

The committee was guided in this respect by the following considerations:

1. It is the task of the Committee on Budgetary Control, inter alia, to ensure that the revenue owing to the Community is paid over to it properly.
2. The levies are the main source of revenue for the ECSC operational budget. For this reason it is important, for the regular continuance of the activities of the ECSC, that these contributions should be collected in full.
3. As a result of the steel crisis, many undertakings have found themselves in financial difficulties; this jeopardizes the payment of the levies owed to the ECSC.
4. There are, in the various Community Member States, different systems for the recovery of debts from bankrupt undertakings. In most of the Member States, the rules provide for preferential treatment for tax debts owed to the State.
5. For reasons of principle, the committee does not consider it advisable to put the Community in a worse position as regards the recovery of its debts than the Member States in respect of the recovery of their tax claims.

Yours sincerely,

(signed) Heinrich AIGNER

¹ The following took part in the vote; Mr AIGNER, chairman, Mr MARTIN, Mrs BOSERUP and Mr BATTERSBY, vice-chairmen, Mr ARNDT (deputizing for Mrs HOFF), Mr CORNELISSEN, Mr DIMITRIADIS, Mrs FUILLET, Mrs LENTZ-CORNETTE, Mr PRICE, Mr SCHON, Mr SIMMONDS and Mr WETTIG.