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Oral question (0-119/77) with debate pursuant
to Rule 47 of the Rules of Procedure

by Mr Van Aerssen, Mr Martinelli, Mr Vandewiele,
Mr Jahn, Mr Müller-Hermann, Mr Ripamonti, Mr Luster
and Mr Klepsch
to the Commission of the European Communities

Subject: Growing protectionism in dealings in patents
and licences

In recent years, many third countries have imposed stringent legal limitations on dealings in know-how and patents. The purpose of all these limitations of the contractual freedom of licence partners is to improve the position of domestic undertakings vis-à-vis economically stronger foreign licensors in the negotiation of licence agreements. A further intention is to deprive multinational companies of the possibility of misusing licence arrangements between parent and subsidiary companies as a way of reducing tax liability.

It is understandable that countries with a serious balance of payments deficit may impose exchange control regulations on licence transactions between their domestic industries and foreign countries to prevent the illicit transfer of money abroad through

licence dealings. But it is difficult to understand why the EC Commission should be seeking to limit the contractual freedom of partners in licence transactions through the application of Article 85(1) of the EEC Treaty with a view to protecting economically smaller patent holders of licensees against larger undertakings. These considerations conflict with the convention of 15.12.1975 on the European Patent for the Common Market.

Experience shows that licence transactions are a sector which reacts particularly sensitively to interventions by legislative and administrative bodies designed to limit the contractual freedom of the parties to licence agreements.

1. What action does the Commission propose to take - with a view to the avoidance of protectionist practices - to put an end to the legal uncertainty hitherto created by the application of Article 85(1)?
2. How does the Commission expect to be able to prevent any disturbance of licence dealings or their displacement into the 'grey zones' of commerce, at the expense of economically weaker undertakings which are supposedly to be protected?
3. Is the Commission prepared to draw the necessary consequences in the context of its work on a draft regulation on exemptions for patent licences?