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Commission

Amendment

I

(Information)

COUNCIL

COUNCIL RESOLUTION

of 18 June 1992

concerning nationals of Member States who hold a diploma or certificate awarded in a third country

(92/C 187/01)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAVING REGARD TO Council Directive 92/51/EEC of 18 June 1992 [1] on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC,

NOTING that this Directive in principle refers only to diplomas, certificates and other evidence of formal qualifications awarded in Member States to nationals of Member States,

ANXIOUS, however, to take account of the special position of nationals of Member States who hold diplomas, certificates or other evidence of formal qualifications awarded in third countries and who are thus in a position comparable to one of those described in Articles 3, 5 or 6 of the Directive,

INVITES the Governments of the Member States to allow the persons referred to above to take up and pursue regulated professions with the Community by recognizing these diplomas, certificates and other evidence of formal qualifications in their territories.

Done at Luxembourg, 18 June 1992.

For the Council

The President

Vitor MARTINS

[1] OJ No L 209, 24. 7. 1992.

COMMISSION

Ecu (1)

23 July 1992

(92/C 187/02)

Currency amount for one unit:

Belgian and Luxembourg franc	42,0164	United States dollar	1,37029
Danish krone	7,85722	Canadian dollar	1,62584
German mark	2,03967	Japanese yen	173,752
Greek drachma	250,680	Swiss franc	1,80535
Spanish peseta	130,298	Norwegian krone	8,02234
French franc	6,88637	Swedish krona	7,40845
Irish pound	0,765437	Finnish markka	5,59076
Italian lira	1546,98	Austrian schilling	14,3551
Dutch guilder	2,30030	Icelandic krona	75,1328
Portuguese escudo	173,629	Australian dollar	1,83193
Pound sterling	0,718367	New Zealand dollar	2,49597

The Commission has installed a telex with an automatic answering device which gives the conversion rates in a number of currencies. This service is available every day from 3.30 p.m. until 1 p.m. the following day.

Users of the service should do as follows:

— call telex number Brussels 23789;

— give their own telex code;

— type the code 'cccc' which puts the automatic system into operation resulting in the transmission of the conversion rates of the ecu;

— the transmission should not be interrupted until the end of the message, which is marked by the code 'ffff'.

Note: The Commission also has an automatic telex answering service (No 21791) providing daily data on calculation of monetary compensatory amounts for the purposes of the common agricultural policy.

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(1) Council Regulation (EEC) No 3180/78 of 18 December 1978 (OJ No L 379, 30. 12. 1978, p. 1), as last amended by Regulation (EEC) No 1971/89 (OJ No L 189, 4. 7. 1989, p. 1).

Council Decision 80/1184/EEC of 18 December 1980 (Convention of Lomé) (OJ No L 349, 23. 12. 1980, p. 34).

Commission Decision No 3334/80/ECSC of 19 December 1980 (OJ No L 349, 23. 12. 1980, p. 27).

Financial Regulation of 16 December 1980 concerning the general budget of the European Communities (OJ No L 345, 20. 12. 1980, p. 23).

Council Regulation (EEC) No 3308/80 of 16 December 1980 (OJ No L 345, 20. 12. 1980, p. 1).

Decision of the Council of Governors of the European Investment Bank of 13 May 1981 (OJ No L 311, 30. 10. 1981, p. 1).

Nomination of a new member of the Committee on Commerce and Distribution

(92/C 187/03)

The Committee on Commerce and Distribution was instituted by Commission Decision 81/428/EEC of 20 May 1981 [1], and amended by the Act of Accession in respect of Spain and Portugal [2].

By decision of 15 July 1992 the Commission has appointed Mr E. F. T. CRIBB as member of the Committee from 15 June 1992, in place of Mr Roger SAOUL, who has resigned.

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[1] OJ No L 165, 23. 6. 1981.
[2] OJ No L 302, 15. 11. 1985.

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

of 16 June 1992

in Case C-351/90: Commission of the European Communities v. Grand Duchy of Luxembourg (1)

(Failure of a Member State to fulfil obligations — Freedom of establishment — Access to the professions of medicine, dentistry and veterinary medicine)

(92/C 187/04)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case C-351/90: Commission of the European Communities (Agent: Etienne Lasnet) against Grand Duchy of Luxembourg, represented by Louis Schiltz, of the Luxembourg Bar — application for a declaration that, by not providing that the rule laid down in its regulations that persons exercising the professions of medicine, dentistry or veterinary medicine must have a single practice does not prevent nationals of Member States established in another Member State or working as employed persons there who wish to set up in Luxembourg or work as employed persons from maintaining their practice or from continuing to be employed in a Member State other than Luxembourg, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Articles 48 and 52 of the EEC Treaty — the Court, composed of O. Due, President, F. A. Schockweiler, F. Grévisse and P. J. G. Kapteyn, (Presidents of Chambers), G. F. Mancini, C. N. Kakouris, J. C. Moitinho de Almeida, M. Díez de Velasco and M. Zuleeg, Judges; F. G. Jacobs, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 16 June 1992, the operative part which is as follows:

1. *By preventing medical practitioners, dentists and veterinary surgeons established in another Member State or working as employed persons there from establishing themselves in Luxembourg or working there as employed persons while retaining their practice or employment in the other Member State the Grand Duchy of Luxembourg has failed to fulfil its obligations under Articles 48 and 52 of the EEC Treaty.*

2. *The Grand Duchy of Luxembourg is ordered to pay the costs.*

(1) OJ No C 326, 28. 12. 1990.

JUDGMENT OF THE COURT

of 17 June 1992

in Case C-26/91: (reference for a preliminary ruling by the French Cour de cassation) Jakob Handte et Cie GmbH, Maschinenfabrik, against Société Traitements mécano-chimiques des surfaces (TMCS) (1)

(Brussels Convention — Interpretation of Article 5 (1) — Jurisdiction in contractual matters — Chain of contracts — Action for liability brought by a subsequent purchaser of a product against its manufacturer)

(92/C 187/05)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case C-26/91: reference to the Court under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (2) by the French Cour de cassation for a preliminary ruling in the proceedings pending before that court between Jakob Handte et Cie GmbH, Maschinenfabrik, and Société Traitements mécano-chimiques des surfaces (TMCS) on the interpretation of Article 5 (1) of the aforesaid Convention of 27 September 1968 — the Court, composed of O. Due, President, F. A. Schockweiler (President of Chamber), G. F. Mancini, C. N. Kakouris, J. C. Moitinho de Almeida, M. Díez de Velasco and M. Zuleeg, Judges; F. G. Jacobs, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 17 June 1992, the operative part of which is as follows:

(1) OJ No C 50, 26. 2. 1991.

(2) OJ No L 304, 30. 10. 1978.

Article 5 (1) of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters must be interpreted as meaning that it does not apply to an action between the subsequent purchaser of a product and the manufacturer, who is not the seller, for defects in the product or its unsuitability for the use for which it is intended.

JUDGMENT OF THE COURT

(Second Chamber)

of 25 June 1992

in Case C-116/91 (reference for a preliminary ruling made by Petersfield Magistrates' Court): Licensing Authority South Eastern Traffic Area v. British Gas plc (1)

(Social provisions in the road transport sector — Vehicles used in connection with the gas service)

(92/C 187/06)

(Language of the case: English)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case C-116/91: reference to the Court under Article 177 of the EEC Treaty by Petersfield Magistrates' Court, in proceedings before that Court between Licensing Authority South Eastern Traffic Area and British Gas plc, for a preliminary ruling on the interpretation of Article 4 (6) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport (2) and of Article 3 (1) of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (3), the Court (Second Chamber) composed of F. A. Schockweiler, President of the Chamber, G. F. Mancini and J. L. Murray, Judges; M. Darmon, Advocate-General; J. A. Pompe, Deputy Registrar, gave a judgment on 25 June 1992, the operative part of which is as follows:

The derogation from the requirement to install and use a tachograph in vehicles registered in a Member State which are used for the carriage of passengers or goods by road, laid down for vehicles used in connection with the gas service under Article 3 (1) of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport in conjunction with Article 4 (6) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport, applies solely to vehicles used, at the relevant time, for carriage wholly and exclusively in connection with the production, transport or distribution of gas, or the maintenance of the necessary installations for that purpose. However, that derogation does not apply to vehicles wholly or partly used at the relevant time in connection with the carriage of domestic gas appliances

(1) OJ No C 145, 4. 6. 1991.
(2) OJ No L 370, 31. 12. 1985, p. 1.
(3) OJ No L 370, 31. 12. 1985, p. 8.

JUDGMENT OF THE COURT

of 30 June 1992

in Case C-312/90: Kingdom of Spain v. Commission of the European Communities (1)

(Action for annulment — State aid — Letter commencing the procedure under Article 93 (2) — Contestable act)

(92/C 187/07)

(Language of the case: Spanish)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case C-312/90: Kingdom of Spain (Agents: initially Carlos Bastarreche Sagües, then Alberto Navarro González and Rosario Silva de Lapuerta, Abogado del Estado) against the Commission of the European Communities (Agents: Antonino Abate and Daniel Calleja) — application for the annulment of the Commission decision of 3 August 1990 on the commencement of the procedure under Article 93 (2) of the EEC Treaty with regard to the aid which the Spanish authorities are presumed to have granted to the private group of manufacturers of electrical equipment Cenemesa, Conelec and Cademesa — the Court, composed of O. Due, President, R. Joliet, F. A. Schockweiler, F. Grévisse and P. J. G. Kapteyn (Presidents of Chambers), G. F. Mancini, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias, M. Díez de Velasco, M. Zuleeg and J. L. Murray, Judges; W. Van Gerven, Advocate-General; H. A. Rühl, Principal Adminstrator, for the Registrar, gave a judgment on 30 June 1992, the operative part of which is as follows:

(1) OJ No C 288, 16. 11. 1990.

1. *The objection of inadmissibility raised by the Commission is rejected.*

2. *The proceedings will be continued on the substance of the case.*

3. *The costs are reserved.*

JUDGMENT OF THE COURT OF JUSTICE

(Fourth Chamber)

of 1 July 1992

in Case C-28/91: (reference for a preliminary ruling by the Verwaltungsgericht Frankfurt am Main): Helmut Haneberg GmbH & Co. KG v. Bundesanstalt für landwirtschaftliche Marktordnung (1)

(Common agricultural policy — Special aid measures for peas, field beans and sweet lupins)

(92/C 187/08)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case C-28/91: reference to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht [Administrative Court] Frankfurt am Main for a preliminary ruling in the proceedings pending before that Court between Helmut Haneberg GmbH & Co. KG and Bundesanstalt für landwirtschaftliche Marktordnung [Federal Office for the Organization of Agricultural Markets] — on the interpretation of Article 6 (5) of Commission Regulation (EEC) No 3540/85 of 5 December 1985 laying down detailed rules for the application of the special measures for peas, field beans and sweet lupins (2) — the Court (Fourth Chamber), composed of P. J. G. Kapteyn, President of the Chamber, C. N. Kakouris and M. Díez de Velasco, Judges; G. Tesauro, Advocate-General; J. A. Pompe, Deputy Registrar, gave a judgment on 1 July 1992, the operative part of which is as follows:

Commission Regulation (EEC) No 3540/85 of 5 December 1985 laying down detailed rules for the application of the special measures for peas, field beans and sweet lupins must be interpreted as meaning that, should the minimum price not have been fully paid to the producer, the first buyer is not entitled a priori to claim the aid provided. That aid may, however, be claimed once the first buyer has paid the producer an additional sum to make up the minimum price.

(1) OJ No C 56, 5. 3. 1991.

(2) OJ No L 342, 19. 12. 1985.

Action brought on 16 May 1992 by the Syndicat Français de l'Express International (SFEI), DHL International, Service CRIE and May Courier against the Commission of the European Communities

(Case C-222/92)

(92/C 187/09)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 16 May 1992 by the Syndicat Français de l'Express International (SFEI), DHL International, Service CRIE and May Courier, represented by E. Morgan de Rivery, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Alex Schmitt.

The applicants claim that the Court should:

— declare the application admissible and well-founded,

— declare the Commission's decision contained in its letter No 06873 (1) of 10 March 1992 void,

— order the Commission to pay the costs.

Pleas in law and main arguments adduced in support:

— Infringement of essential procedural requirements:

  — failure to state reasons and insufficient reasons (Article 190 of the EEC Treaty),

  — infringement of the rights of the defence: the applicants were not informed of the statements, observations and arguments of the French Post Office.

— Infringement of Article 92 of the EEC Treaty:

  — mistakes in the assessment of the facts: the SFMI's entry into the international market in express courier in 1985 and 1986 with immediate availability of an infrastructure and market penetration clearly superior to that of the leader was possible only with the help of State aid, that is to say with the help of the Post Office which is supported by a postal network largely subsidized out of State funds (without which it is in principle

(1) Informing the applicants of its decision "to close the file opened following the request of 21 December 1990", that is to say a complaint seeking a declaration that certain aid given by the French State to the Société Française de Messagerie Internationale (SFMI) must be regarded as incompatible with the common market pursuant to Article 3 (f), the second paragraph of Article 5 and Article 92 *et seq.* of the EEC Treaty.

uneconomical, according to the admissions of the Post Office itself). Even in the unlikely event that a private investor had made the initial investment, he could never have offered the ultimate consumer tariffs comparable to those proposed by the SFMI because of the unreasonable cost of maintaining an integrated network of such a size. The prices charged by the SFMI are economically unprofitable inasmuch as they do not cover the actual cost for the use of the assets made available to it. Thus SFMI's presence on the market can continue only by means of constant State aid.

— Wrong definition of aid: by refusing to regard as cross subsidization amounting to aid within the meaning of Article 92 of the Treaty the benefits, referred to in the complaint, which the Post Office made available to the SFMI, in particular the supply to the SFMI at a price substantially below the market price of premises (17 000 post offices), equipment (vehicles and the equipment of employees of the Post Office supplying services to the SFMI), staff of the Post Office (officials and servants of the Post Office working for SFMI) and various services (commercial assistance of various kinds, from the transfer of customers to the promotion of SFMI products, including the contribution of goodwill), the Commission wrongly applied the definition of aid.

— Infringement of Article 93 of the EEC Treaty: Article 93 (3) would serve no useful purpose at all if it were accepted that the Commission might declare today that assistance given by the Post Office to the SFMI did not constitute aid in reliance on the fact that in three years' time the economic situation would preclude such assistance from being regarded as aid. That would inevitably encourage the State providing aid not to observe the requirement of notification.

— Infringement of Commission Directive 80/723 as amended by Commission Directive 85/413/EEC: by not applying the rules which it had itself laid down regarding the information to be given by the Post Office on the use of its resources, in particular *vis-à-vis* its subsidiary SFMI, and by accepting the Post Office's argument that there were no adequate accounts, the Commission patently infringed the terms of the Directive.

— Infringement of the rules governing the application of the Treaty:

— disregard of the principle of legitimate expectations,

— disregard of the general principle of proportionality,

— disregard of the sound administration of justice in Community affairs.

— Misuse of powers: the Commission's negative decision and the difficulty in justifying it coherently, as betrayed by the laconic wording of the decision, is explicable only as a misuse of powers in order to avoid having to adopt a legal position contrary to the political consensus sought by certain Member States (in view of the political and social problems arising in the matter) in connection with the work of deregulating the postal services.

Appeal brought on 19 May 1992 by Shell International Chemical Company Limited against the judgment delivered on 10 March 1992 by the First Chamber of the Court of First Instance of the European Communities in case T-11/89 between Shell International Chemical Company Limited and the Commission of the European Communities

(Case C-234/92 P)

(92/C 187/10)

An appeal against the judgment delivered on 10 March 1992 by the First Chamber of the Court of First Instance of the European Communities in case T-11/89 between Shell International Chemical Company Limited and the Commission of the European Communities, was brought before the Court of Justice of the European Communities on 19 May 1992 by Shell International Chemical Company Limited, represented by Kenneth Parker, QC, instructed by John W. Osborne of Messrs Clifford Chance, London, solicitors, with an address for service in Luxembourg at the Chambers of Jean Hoss, 15, Côte d'Eich.

The appellant requests that the Court should:

1. set aside the decision of the Court of First Instance (First Chamber) of 10 March 1992 in Case T-11/89 (1), particularly insofar as it refused (i) to re-open the oral procedure in the said case and/or (ii) to order measures of enquiry, as requested by the appellant in its application to the Court of First Instance of 6 March 1992; and

either

(1) OJ No C 90, 10. 4. 1992, p. 12.

2. (a) declare the Commission's alleged decision of 23 April 1986 (iv/31.149 Polypropylene) non-existent or (b) annul the said alleged decision for lack of competence and/or for infringement of essential procedural requirements;

or

3. remit Case T-11/89 to the Court of First Instance for decision in accordance with the judgment of the Court; and

4. order any further measures of enquiry or measures of organization of procedure which the Court deems appropriate, having regard to the grounds of appeal set out hereafter; and

5. order the Commission to pay the appellant's costs in the proceedings before the Court of First Instance.

Pleas in law and main arguments adduced in support:

The appellant submits that:

(i) the Court of First Instance lacked competence to make the final orders 1 to 4 in its decision of 10 March 1992 in this case; and/or

(ii) committed a breach of procedure which adversely affected the interests of the appellant by refusing without due cause the appellant's application of 6 March 1992;

and/or

(iii) committed an infringement of Community law by reason of the said unjustified refusal of the said application, and refusal to declare the Commission's decision non-existent.

Further, and in the alternative, the appellant submits that in its application of 6 March 1992 it had put forward sufficient grounds, which no court could properly have rejected, for its contention that the alleged Commission decision of 23 April 1986 was probably vitiated by other procedural defects, and that accordingly, the Court of First Instance should properly have ordered appropriate measures of enquiry. By unjustifiably refusing the said application in that respect the Court of First Instance committed a breach of procedure which adversely affected the interests of the appellant and/or committed an infringement of Community law.

Appeal brought on 26 May 1992 by Leonella Kupka Floridi against the judgment delivered on 1 April 1992 by the Third Chamber of the Court of First Instance of the European Communities in Case T-26/91 between Leonella Kupka Floridi and the Economic and Social Committee

(Case C-244/92 P)

(92/C 187/11)

An appeal against the judgment delivered on 1 April 1992 by the Third Chamber of the Court of First Instance of the European Communities in Case T-26/91, Leonella Kupka Floridi v. Economic and Social Committee, was brought before the Court of Justice of the European Communities on 26 May 1992 by Leonella Kupka Floridi, represented by Pierre Gérard, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of A. Schmitt, 62 Avenue Guillaume.

The appellant claims that the Court should:

— annul the decision of 27 June 1990 of the Secretary-General of the ESC to dismiss the applicant at the end of her probationary period,

— order the respondent to draw from that annulment all the legal consequences, namely and in particular the possibility for the applicant of completing a second probationary period at the end of which her qualifications would be reassessed,

— order the respondent to pay the appellant's salary and all the advantages provided for by the Staff Regulations from 30 June 1990 until she takes up her duties again, with interest at the current rate,

— order the respondent to pay the costs.

The appellant relies on the *pleas in law and main arguments adduced in support* put forward in her action in Case T-26/91 (1).

With regard to the procedure before the Court of First Instance she objects that it was wrong for an official of the respondent who was her superior and also the reviser at the origin of the contested end-of-probation report to have been heard as a witness (and not as the respondent's representative without being sworn in or being granted exemption.

(1) OJ No C 137, 28. 5. 1991, p. 13.

Reference for a preliminary ruling by the Østre Landsret by judgment of that court of 10 April 1992 in the case of Gøttrup-Klim Grovvareforening and Others v. Dansk Landbrugs Grovvareselskab Amba

(Case C-250/92)

(92/C 187/12)

Reference has been made to the Court of Justice of the European Communities by judgment of the Østre Landsret of 10 April 1992, which was received at the Court Registry on 1 June 1992, for a preliminary ruling in the case of Gøttrup-Klim Grovvareforening and Others v. Dansk Landbrugs Grovvareselskab on the following questions:

Question 1:

Is Article 85 (1) of the Treaty establishing the European Economic Community to be interpreted as meaning that the prohibition in that Treaty provision of certain forms of anti-competitive conduct applies to the situation where a commercial cooperative society founded in 1969 (A) makes a change in its rules in 1988 with the purpose of excluding undertakings or associations from membership of the society if they are participants in associations, societies or other cooperative organizations which compete with A on the wholesale market with regard to the purchase and sale of fertilisers and plant protection products, where what was envisaged was cooperative purchase arrangements (B) existing between a number of its members at the time of the rule change?

Question 2:

Is it relevant to the answer to Question 1 that the rule change was also intended to prevent the continuation of a situation where A's management organs (shareholders' committee and board of directors) included persons who at the same time, either as members of a board of directors or in any other way, took part in or exercised actual influence over the management of the competing purchasing cooperative B, so that there was a risk of abuse for the benefit of B of the knowledge that those persons had acquired or would acquire of A's business secrets?

Question 3:

Is it relevant to the answer to Question 1 that the rule change was carried out in the face of protests from a number of members who voted against the exclusion provision in the rules in question, partly because the provision would prevent those members of undertaking A from making organized purchases of fertiliser and plant-protection products outside A and partly because they considered that by purchasing through B they might be able to obtain lower prices or better conditions than A could offer?

Question 4:

Is it relevant to the answer to Question 1 that by means of their exclusion the expelled (excluded) undertakings or associations were placed in the same position as members which lawfully resigned, with the result that:

(a) on the one hand, they have no claim to a share in A's undistributed assets (a proportional share of A's net worth after deduction of share capital), but are repaid their registered share capital, about DKr 37 million, over a period of 10 years; but

(b) on the other hand, there was no confiscation of share capital, which would have been possible under Paragraphs 8 (4) and 7 (3) of the rules?

Question 5:

Is it relevant to the answer to Question 1 that subsequent developments have shown that the excluded members were able through B to continue their activities in respect of fertiliser and plant-protection products on the Danish market for farmer's supplies with a market share which in terms of total turnover corresponded in 1990 to the turnover of undertaking A?

Question 6:

Is it relevant to the answer to Question 1 that the case brought before the Østre Landsret by the excluded members of A against A concerns the question whether the excluded undertakings are entitled to a share in A's undistributed assets (cf. Question 4) and that the plaintiff undertakings have not submitted a claim to be readmitted as members of A?

Question 7:

Is it relevant to the answer to Question 1 that under A's rules members are entitled to make purchases of fertiliser and plant-protection products outside undertaking A if that is done through unorganized collaboration, that is to say either individually by each member for itself or by several members together, but in that case only as an *ad hoc* common purchase of a single consignment or shipload?

Question 8:

Is it relevant to the answer to Question 1 that the provision of the rules is formulated in such a way that cooperative arrangements managed by A for the purchase of fertiliser and plant-protection products can be proposed under which A acts as an intermediary and renounces any profit on the goods?

Question 9:

Is it relevant to the answer to Question 1 that after the rule change and the exclusion of members it was possible for outsiders, including the excluded members, to purchase from A its entire range of goods, including fertiliser and plant-protection products, on the normal commercial wholesale conditions prevailing in the sector?

Question 10:

Is it relevant to the answer to Question 1 that the rule change is restricted to fertiliser and plant-protection products, which at the time of the rule change accounted for the shares of A's total turnover described in the introduction?

Question 11:

Is it relevant to the answer to Question 1 that satisfactory information is provided to the Østre Landsret on the nature of the products in question, including the existence and sale of substitute products, and information on the products, turnover figures and market shares of A, B and the undertakings competing with A and B?

Question 12:

Must it be assumed that fertiliser and plant-protection products are covered by Council Regulation No 26/62 of 4 April 1962 and for example Council Directive 91/414/EEC of 15 July 1991 on the placing of plant-protection products on the market, which refer for their legal basis in particular to Article 43 of the Treaty?

Question 13:

Is the condition in Article 85 (1) and Article 86 of the Treaty regarding the effect on trade between Member States fulfilled where the purchases of fertiliser and plant-protection products made through B by the excluded members at the time when the rule change in question was made were in part made direct from producers established outside the common market?

Question 14:

How must the exemption provision in Article 85 (3) of the Treaty be understood and applied in relation to the situations set out in the above questions, where the rule change in paragraph 7 was notified to the Commission with a view to negative clearance under Article 2 of Council Regulation No 17/62 or in the alternative exemption under Article 4 of that Regulation?

Question 15:

Must Article 86 of the Treaty be interpreted as meaning that a rule change such as that described in Question 1 can constitute an infringement of that provision of the Treaty where at the time of the rule change undertaking A had the market share in fertiliser and plant-protection products stated in the introduction?

Question 16:

Is it relevant for the application of Article 86 of the Treaty that at the time of the rule changes A was registered as a dominant single undertaking in the register of the Danish Restrictive Trade Practices Office (it should be observed that the registration lapsed on 1 January 1990 in conjunction with the new law on competition introduced in Denmark with effect from the same date, and that A's registration was not replaced by any new registration under that law)?

Question 17:

Is it relevant for the application of Article 86 of the Treaty that on 22 February 1989 the Danish Monopolies Council stated that having regard to the circumstances described in Question 2 it did not consider that there were grounds for taking action in relation to A's rule change?

Appeal brought on 2 June 1992 by BASF Aktiengesellschaft against a judgment delivered on 26 March 1992 by the Court of First Instance of the European Communities (First Chamber) in Case T-4/89: BASF Aktiengesellschaft v. Commission of the European Communities

(Case C-255/92 P)

(92/C 187/13)

An appeal against the judgment delivered on 26 March 1992 by the First Chamber of the Court of First Instance of the European Communities in the case of BASF Aktiengesellschaft against the Commission of the European Communities was brought before the Court of

Justice of the European Communities on 2 June 1992 by BASF Aktiengesellschaft, represented by Dr Ferdinand Hermanns, Rechtsanwalt, 44 Hildegundisallee, D-W-4005 Meerbusch, with an address for service in Luxembourg at the Chambers of J. Loesch and Wolter, 8 Rue Zithe.

The appellant claims that the Court should:

1. set aside the order of the Court of First Instance of 26 March 1992;

2. reopen the proceedings;

3. set aside the judgment of the Court of First Instance of 17 December 1991 and

   (a) declare the respondent's decision of 23 April 1986, notified on 28 May 1986, concerning a procedure under Article 85 of the EEC Treaty (IV.31.148 — Polypropylene) to be non-existent;

   (b) alternatively declare the respondent's contested decision to be void;

   (c) in the further alternative: quash or reduce the fine imposed on the appellant in Article 3 of the said decision;

4. in the further alternative: set aside the contested judgment and refer the case back to the Court of First Instance for judgment;

5. stay the proceedings until judgment of the Court in the appeal in Case T-10/89 (Hoechst AG v. Commission of the European Communities) and in the parallel polypropylene proceedings;

6. not give judgment without a hearing;

7. order the respondent to pay the costs.

Pleas in law and main arguments adduced in support:

— Upon the application of 10 March 1992 the Court of First Instance should have reopened the proceedings since it was only after the conclusion of the hearing on 10 July 1991 and notification of the judgment of 17 December 1991 and after the expiry of the period allowed for appeal, that the appellant attained certainty as regards new facts of which it had previously been unaware and which must mean that the Commission's decision is non-existent or void and thus that the judgment of the Court of First Instance has to be set aside.

  Disregard of the appellant's objections represents a serious breach of the duties of the Court of First Instance regarding the investigation of the facts and, as such, must lead to the contested order being set aside.

— The Commission may not of its own accord repeal Article 12 of its Rules of Procedure or disregard it as 'obsolete'. Disregard of that provision is a serious defect and, as such, means that the decision is non-existent.

Action brought on 4 June 1992 by the Federal Republic of Germany against the Commission of the European Communities

(Case C-256/92)

(92/C 187/14)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 4 June 1992 by the Federal Republic of Germany, represented by Ernst Röder and Joachim Karl, with an address for service at the Bundesministerium für Wirtschaft, Postfach 14 02 60, 76 Villemombler Straße, D-W-5300 Bonn 1.

The applicant claims that the Court should:

— declare void the Commission recommendation of 3 March 1992 concerning the information to be provided by the person responsible for placing a dangerous preparation on the market when making use of provisions relating to the confidentiality of the chemical name of a substance;

— order the defendant to pay the costs.

Pleas in law and main arguments adduced in support:

Contrary to its formal description, the contested 'recommendation' contains, by virtue of its substance and the expressions used, mandatory rules which the Commission has no power, in particular under the provisions of Council Directive 88/379/EEC (1), to adopt.

(1) OJ No L 187, 16. 7. 1988, p. 14.

Since in view of its contents it constitutes a legislative measure, the second indent of Article 155 of the EEC Treaty, cited by the Commission as a legal basis, does not apply.

Reference for a preliminary ruling by the Kriminalret, Slagelse, by letter of that court of 3 June 1992 in the case of Anklagemyndigheden v. Klaus Warming Rasmussen and Peter Ove Frandsen

(Case C-257/92)

(92/C 187/15)

Reference has been made to the Court of Justice of the European Communities by a document of the Kriminalret (Criminal Court), Slagelse, of 3 June 1992, which was received at the Court Registry on 9 June 1992, for a preliminary ruling in the case of Anklagemyndigheden (public prosecutor) v. Klaus Warming Rasmussen and Peter Ove Frandsen on the following questions:

How should the phrase 'road tests' in Article 4 (11) of Council Regulation (EEC) No 3820/85 [1] be understood, and when can a vehicle be regarded as having been put into service under the Community rules?

With regard to road tests, should the journey to or from a factory or undertaking for the purpose of an individual adjustment to or adaptation of a vehicle be regarded as part of the road tests referred to in Article 4 (11), or does that term cover only a journey which on technical grounds is necessary in carrying out development, repair or maintenance of the vehicle?

With regard to the question when a vehicle can be regarded as having been put into service, does that depend on whether the vehicle is being driven on provisional plates or is definitively registered in accordance with the provisions laid down in the individual Member State, so that a vehicle is only regarded as being in service when it has been definitively registered?

Furthermore, is the use to which the owner or user actually puts the vehicle decisive for the application of the rule? If so, what actual use should mean that the vehicle is regarded as having been put into service?

[1] On the harmonization of certain social legislation relating to road transport, OJ No L 370, 31. 12. 1985, p. 1.

Reference for a preliminary ruling by the Tribunal de première instance de Liège (Court of First Instance, Liège), Seventh Chamber, by decision of that court of 11 June 1992 in the case of Jean-Marc Bosman v. SA Royal Football Club de Liège and Others

(Case C-269/92)

(92/C 187/16)

Reference has been made to the Court of Justice of the European Communities by decision of the Tribunal de Première Instance de Liège (Seventh Chamber) of 11 June 1992, which was received at the Court Registry on 15 June 1992, for a preliminary ruling in the case of Jean-Marc Bosman against SA Royal Football Club de Liège, with the intervention of Asbl Union royale belge des sociétés de football association, and of Jean-Marc Bosman against Union des associations européennes de football, with the intervention of Union nationale des footballers professionnels (UNFP) and Vereniging van Contractspelers (VVCS) on the following question:

Is the system of 'transfers' of professional footballers contrary to Article 48, 85 or 86 of the Treaty of Rome in so far as it allows a club to require the payment of a sum of money before its players who have come to the end of their contract may be engaged by a new employer?

Reference for a preliminary ruling by order of the Tribunale di Torino in the proceedings for review instituted by Pietro Boero, notary

(Case C-270/92)

(92/C 187/17)

Reference has been made to the Court of Justice of the European Communities by an order of the Tribunale di Torino (District Court, Turin) of 26 May 1992, which was received at the Court Registry on 11 June 1992, for a preliminary ruling in the proceedings instituted before that court by Pietro Boero, notary, on the following question:

(a) Is the tax legislation concerning the charge payable in respect of administrative measures (tassa di concessione governativa) on the instrument of incorporation of capital companies (in the present case a private limited company) at present in force, to which reference is made in paragraphs 2 to 4 of the grounds of this judgment, compatible with Directive 335/69/EEC [1]?

[1] Official Journal, English Special Edition, 1969, p. 410.

(b) may that charge be regarded as constituting duties paid by way of fees or dues within the meaning of Article 12 (e) of Directive 335/69/EEC?

Reference for a preliminary ruling by the Cour de cassation, Chambre commerciale, financière et économique of the French Republic by judgment of that court of 2 June 1992 in the case of Laboratoire de prothèses oculaires (LPO) v. Union nationale des syndicats d'opticiens de France (UNSOF) and Others

(Case C-271/92)

(92/C 187/18)

Reference has been made to the Court of Justice of the European Communities by judgment of the Cour de cassation, Chambre commerciale, financière et économique of the French Republic of 2 June 1992, which was received at the Court Registry on 16 June 1992, for a preliminary ruling in the case of Laboratoire de prothèses oculaires (LPO) and 1. Union nationale des syndicats d'opticiens de France (UNSOF), 2. Groupement d'opticiens lunetiers détaillants (GOLD/GIE), 3. Syndicat des opticiens français indépendants (SOFI) and 4. Syndicat national des opticiens d'optique de contact (SNADOC) on the following questions:

1. Must Article 30 of the Treaty be interpreted as meaning that it applies to the sale of contact lenses and related products subject to conditions such as those laid down in Articles L 505 and L 508 of the Code de la Santé Publique reserving to holders of an optician's certificate (Diplôme d'opticien-lunetier) the sale of optical appliances and corrective lenses?

2. May such legislation be justified by mandatory requirements relating to the protection of consumers or human health and life, as referred to in Article 36 of the Treaty establishing the European Economic Community?

Reference for a preliminary ruling made by order of the High Court of Justice, Queen's Bench Division, Commercial Court, dated 3 April 1992, in the case of HM Customs and Excise against 1. Gerhart Schindler and 2. Jörg Schindler

(Case C-275/92)

(92/C 187/19)

The Court of Justice of the European Communities has received a reference for a preliminary ruling made by order of the High Court of Justice, Queens's Bench Division, Commercial Court, dated 3 April 1992, in the proceedings between HM Customs and Excise and 1. Gerhart Schindler and 2. Jörg Schindler, on the following questions:

1. Do tickets in, or advertisements for, a lottery which is lawfully conducted in another Member State constitute goods for the purposes of Article 30 of the Treaty of Rome?

2. If so, does Article 30 apply to the prohibition by the United Kingdom of the importation of tickets or advertisements for major lotteries, given that the restrictions imposed by United Kingdom law on the conduct of such lotteries within the United Kingdom apply without discrimination on grounds of nationality and irrespective of whether the lottery is organized from outside or within the United Kingdom?

3. If so, do the concerns of the United Kingdom to limit lotteries for social policy reasons and to prevent fraud constitute legitimate public policy or public morality considerations to justify the restrictions of which complaint is made, whether under Article 36 or otherwise, in the circumstances of the present case?

4. Does the provision of tickets in, or the sending of advertisements for, a lottery which is lawfully conducted in another Member State constitute the provision of services for the purposes of Article 59 of the Treaty of Rome?

5. If so, does Article 59 apply to the prohibition by the United Kingdom of the importation of tickets or advertisements for major lotteries, given that the restrictions imposed by United Kingdom law on the conduct of such lotteries within the United Kingdom apply without discrimination on grounds of nationality and irrespective of whether the lottery is organized from outside or within the United Kingdom?

6. If so, do the concerns of the United Kingdom to limit lotteries for social policy reasons and to prevent fraud constitute legitimate public policy or public morality considerations to justify the restrictions of which complaint is made, whether under Article 56 read with Article 66 or otherwise, in the circumstances of the present case?

Reference for a preliminary ruling by the Arrondissementsrechtbank, Leeuwarden, by judgment of that court of 15 June 1992 in the case of Openbaar Ministerie v. Coöperatieve Zuivelindustrie 'Twee Provinciën' WA

(Case C-285/92)

(92/C 187/20)

Reference has been made to the Court of Justice of the European Communities by judgment of the Arrondissementsrechtbank [District Court], Leeuwarden, of 15 June 1992, which was received at the Court Registry on 24 June 1992, for a preliminary ruling in the case of Openbaar Ministerie v. Coöperatieve Zuivelindustrie 'Twee Provinciën' WA, on the following question:

Is a national measure requiring cheese producers to affix a cheese stamp not merely indicating the country of production and the brand of cheese, but also a specific letter depending on the region of production, though there are no appreciable regional differences in quality, consistent as regards the latter requirement with the provisions of Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs [1] for sale to the ultimate consumer?

[1] OJ No L 33, 8. 2. 1979, p. 1.

Reference for a preliminary ruling by order of the Tribunal Superior de Justicia del País Vasco of 2 June 1992 in the case of Doman SA against Administración del Estado

(Case C-286/92

(92/C 187/21)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunal Superior de Justicia del País Vasco (High Court of Justice of the Basque Country) of 2 June 1992, which was received at the Court Registry on 25 June 1992, for a preliminary ruling in the case of Doman SA against Administración del Estado (State Administration) on the following questions:

A. Must Articles 9 and 13 of the EEC Treaty, in conjunction with Article 35 of the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic, be interpreted as prohibiting a particular tariff or public-port charge of a higher amount from being levied in respect of goods which are loaded or unloaded and are bound for, or originate in and come from Community countries, in a vessel flying any flag, than in respect of goods which are loaded or unloaded and are bound for or originate in Spanish ports, being carried by way of coastal shipping in vessels flying the Spanish flag?

B. Must Article 95 of the EEC Treaty be interpreted as prohibiting a particular tariff or public-port charge for the use of port services and property from being levied at a higher rate in respect of goods that are loaded or unloaded and are bound for or originate in and come from Community countries, in a vessel flying any flag, than in respect of goods which are loaded or unloaded and are bound for or originate in Spanish ports, being carried by way of coastal shipping, in vessels flying the Spanish flag?

Removal from the Register of Case C-155/90 [1]

(92/C 187/22)

By order of 12 June 1992, the President of the Court of Justice of the European Communities ordered the removal from the Register of Case C-155/90 — Commission of the European Communities v. Ireland.

[1] OJ No C 146, 15. 6. 1990.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 18 June 1992

in case T-49/91: Mariette Turner v. Commission of the European Communities (1)

(Official — Measure reorganizing a department)

(92/C 187/23)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case T-49/91: Mariette Turner, an official of the Commission of the European Communities, represented by Georges Vandersanden of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Alex Schmitt, 62 Avenue Guillaume, against the Commission of the European Communities (Agent: Gianluigi Valsesia, assisted by Denis Waelbroeck, of the Brussels Bar) — application for annulment of the Commission decision of 23 August 1990 reorganizing the medical offices of the Commission — the Court of First Instance (Fifth Chamber), composed of K. Lenaerts, President of the Chamber, H. Kirchner and D. Barrington, Judges; P. Van Ypersele de Strihou, for the Registrar, gave a judgment on 18 June 1992, the operative part of which is as follows:

1. *The application is dismissed.*

2. *The parties are ordered to bear their own costs.*

(1) OJ No C 205, 6. 8. 1991.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 30 June 1992

in Case T-24/91: Carlos Gómez Gonzáles and Others v. Council of the European Communities (1)

(Official — Recognition that a contract as a member of the auxiliary staff has the characteristics of a contract as a member of the temporary staff — Severance grant — Deduction of contributions to the pension scheme)

(92/C 187/24)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case T-24/91: Carlos Gómez González, Angeles Sierra Santisteban, Javier Mir Herrero and Lidón Torrella Ramos, former members of the temporary staff of the Council of the European Communities, represented by Georges Vandersanden and Jean-Nöel Louis, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson Sàrl, 1 rue Glesener, against the Council of the European Communities (Agent: Moyra Sims) — application for the annulment of the decision of the Council of the European Communities of 27 July 1990 to deduct, in the calculation of the applicants' severance grant, both the contributions to the Community pension scheme which they paid as members of the temporary staff and the employer's contribution paid by the Council to the Belgian social security scheme — the Court of First Instance (Fourth Chamber), composed of R. García-Valdecasas, President of the Chamber, R. Schintgen and C. P. Briët, Judges; B. Pastor, for the Registrar, gave a judgment on 30 June 1992, the operative part of which is as follows:

1. *The application is dismissed.*

2. *The parties shall bear their own costs.*

(1) OJ No C 137, 28. 5. 1991.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 30 June 1992

in Case T-25/91: Pilar Arto Hijós v. Council of the European Communities (1)

(Official — Recognition that a contract as a member of the auxiliary staff has the characteristics of a contract as a member of the temporary staff — Severance grant — Deduction of contributions to the pension scheme)

(92/C 187/25)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case T-25/91: Pelar Arto Hijós, a former member of the temporary staff of the Council of the European Communities, represented by Thierry Demaseure, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson Sàrl, 1 rue Glesener, against the Council of the European Communities (Agent: Moyra Sims) — application for the annulment of the decision of the Council of the European Communities of 27 July 1990 to deduct, in the calculation of the applicant's severance grant, both the contributions to the Community pension scheme which she paid as a member of the temporary staff and the employer's contributions paid by the Council to the Belgian social security scheme — the Court of First Instance (Fourth Chamber), composed of R. García-Valdecasas, President of the Chamber, R. Schintgen and C. P. Briët, Judges; B. Pastor, for the Registrar, gave a judgment on 30 June 1992, the operative part of which is as follows:

1. *The application is dismissed.*

2. *The parties shall bear their own costs.*

(1) OJ No C 137, 28. 5. 1991.

Action brought on 18 June 1992 by Cetin Tarlan against the Economic and Social Committee

(Case T-48/92)

(92/C 187/26)

An action against the Economic and Social Committee was brought before the Court of First Instance of the European Communities on 18 June 1992 by Cetin Tarlan, residing at B-7041 Havay (Belgium), represented by J.-N. Louis, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson Sárl, 1 rue Glesener, L-1631.

The applicant claims that the Court should:

— annul the decision of the Economic and Social Committee of 5 September 1991,

— order the defendant to pay the applicant the flat-rate allowance for the annual travel expenses of the applicant, his wife and children for 1991, together with default interest at 8 % running from 2 September 1991 until the future date of payment,

— order the defendant to pay the costs.

Pleas in law and main arguments adduced in support:

The applicant argues that the decision of the Economic and Social Committee of the 5 September 1991, by which it refused to pay him the lump-sum allowance for the expenses entailed in travelling to his place of origin, designated as Izmir (Turkey), on the ground that Izmir lies outside Europe, is based on new rules for the interpretation of Article 8 of Annex VII of the Staff Regulations, adopted by the financial controller of the Economic and Social Committee. The applicant claims that these rules were enacted by an authority having no powers, in contravention of Article 110 of the Staff Regulations, inasmuch as the rules amount to general provisions giving effect to those Regulations. The applicant further maintains that the rules were adopted in disregard of the fundamental purpose of Article 8 and contrary to the principles of sound administration and the entitlement of officials to retain their domestic, social and cultural ties with their place of origin. He concludes that the contested decision is illegal inasmuch as it applies those rules and must, accordingly, be annulled.

Removal from the Register of Joined Cases T-29/90 and T-36/90 (1)

(92/C 187/27)

By Order of 30 June 1992 the President of the First Chamber of the Court of First Instance of the European Communities ordered the removal from the Register of Joined Cases T-29/90 and T-36/90: Quantel SA v. Commission of the European Communities.

(1) OJ No C 179, 19. 7. 1990.
OJ No C 249, 30. 10. 1990.

Removal from the Register of Case T-26/92 (1)

(92/C 187/28)

By Order of 1 July 1992 the President of the Fifth Chamber of the Court of First Instance of the European Communities ordered the removal from the Register of Case T-26/92: Colette Zaoui v. The Council of the European Communities.

(1) OJ No C 138, 28. 5. 1992.

Removal from the Register of Case T-8/91 (1)

(92/C 187/29)

By Order of 2 July 1992 the President of the Fifth Chamber of the Court of First Instance of the European Communities ordered the removal from the Register of Case T-8/91: Barbara Engelhardt v. The European Parliament.

(1) OJ No C 61, 9. 3. 1991.

Removal from the Register of Case T-62/91(1)

(92/C 187/30)

By Order of 2 July 1992 the President of the Fifth Chamber of the Court of First Instance of the European Communities ordered the removal from the Register of Case T-62/91: Barbara Engelhardt v. The European Parliament.

(1) OJ No C 274, 19. 10. 1991.

III

(Notices)

COMMISSION

Prior notification of a concentration

(Case No IV/M.232 — PepsiCo/General Mills)

(92/C 187/31)

1. On 13 July 1992, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 [1] by which the undertaking PepsiCo Inc. acquires within the meaning of Article 3 (1) b of the Regulation control of the whole of the European snack food business of General Mills Inc. through a newly established holding company, Newco. PepsiCo will transfer its snack foods business in Greece, Spain and Portugal to the holding company.

2. The business activities of the undertakings concerned are:

— PepsiCo: restaurants and manufacture and sale of soft drinks and snack foods;

— General Mills: restaurants and manufacture and sale of consumer foods, including snack foods.

3. Upon preliminary examination, the Commission finds that the notified concentration could fall within the scope of Council Regulation (EEC) No 4064/89. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax or by post, under reference number IV/M.232 — PepsiCo/General Mills, to the following address:

Commission of the European Communities,
Directorate General for Competition (DG IV),
Merger Task Force,
150, Avenue de Cortenberg,
B-1049 Brussels.
Fax (32 2) 236 43 01.

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[1] OJ No L 395, 30. 12. 1989, p. 1; OJ No L 257, 21. 9. 1990, p. 13 (corrigendum).

AMENDMENT

Amendment to the information relating to the action brought on 23 April 1992 by Thierry Marcel Arnaud and 32 other applicants against the Commission of the European Communities: Case C-131/92

(Official Journal of the European Communities No C 138 of 28 May 1992, page 5)

(92/C 187/32)

The said action was brought against the Council of the European Communities and not against the Commission of the European Communities.