The information provided indicates rather that the provisions contained in the procedural documents supposedly cannot lead to a satisfactory result.

In order to be able to answer the question fully, the Commission would be particularly grateful to the Honourable Member if he could forward the additional information he has on the subject of the breaches of Community procurement law alleged to have occurred in the contract award procedure initiated by Poste Italiane.

When it has examined this information, the Commission will assess the possibility of initiating infringement proceedings under Article 226 (ex Article 169) of the EC Treaty, should it be of the opinion that an infringement of Community law has taken place.


WRITTEN QUESTION P-1344/00
by Jean-Louis Bernié (EDD) to the Commission
(18 April 2000)

Subject: The Commission’s challenging of the principle of ‘assumption of employment’ for performing artists laid down in Article L 762-1 of the French Labour Code

France is threatened with legal proceedings before the European Court of Justice for its refusal to waive the ‘assumption of employment’ for foreign artists referred to in Article L762-1 of the French Labour Code.

Is this measure not excessive, given that to apply this article exclusively to French artists in effect puts them at a disadvantage in their own country?

In fact, it means that those who employ foreign artists would no longer have to pay social costs but would have to do so when employing French artists.

This downwards harmonisation will prejudice French performing artists. Is this not tantamount to a sentence of death for this specifically French provision which offers performing artists one of the highest standards of social protection in Europe?

Answer given by Mr Bolkestein on behalf of the Commission
(26 May 2000)

Firstly, the Commission would like to stress that it has not yet decided to refer the matter of ‘assumption of employment’ for foreign artists to the Court of Justice. However, it has delivered a reasoned opinion. As yet the French Government has not replied.

In this reasoned opinion, the Commission called on France to take the necessary measures to ensure that ‘assumption of employment’, as provided by Article L 762-1 of the French Labour Code, is compatible with the free movement of services, as referred to in Articles 49 and 50 (ex Articles 59 and 60) of the EC Treaty.

Freedom to provide services is one of the fundamental freedoms of the EC Treaty. The concept of service provider, as per Articles 49 and 50 of the EC Treaty, has Community implications and cannot be defined simply by referring to the legislation of a Member State. Otherwise, the effectiveness of the free movement of services could be compromised, as the meaning of this term could be laid down and modified unilaterally by national legislation which could at will exclude certain categories of persons from the benefits gained under the Treaty.

The Commission would therefore point out that it does not wish to harmonise the conditions of access to and pursuit of artists’ activities at Community level, or to discriminate against French artists in relation to foreign artists, nor does it want the employers of foreign artists to pay greater social costs.

On the other hand, it calls for recognition of the status of self-employed service providers who are established as such in another Member State where they legally and regularly provide services similar to those they wish to offer occasionally in France. It seems that ‘assumption of employment’ in France does
not take into account the recognition of such status arising in another Member State. This seems unjustifiable, particularly where a foreign artist in this situation cannot pursue his activities in France unless his social security contributions are paid in France (e.g. for a supplementary pension scheme), although he actually cannot benefit from social advantages in France because his activities in this Member State are temporary.

The Commission would also point out that the Community rules which coordinate the various national security systems (contained in Council Regulation (EEC) No 1408/71, of 14 June 1971, on the application of social security schemes to employed persons and their families moving within the Community (1) and its implementing regulation, Council Regulation (EEC) No 574/72, of 21 March 1972 (2)) guarantee for migrant workers the principle of being subject to a single social security scheme which, in principle, is that of the Member State of employment. A lex loci laboris derogation exists for posted workers, which allows workers who are subject to a Member State’s social security system, by reason of the activity they normally pursue there, to remain part of this country's system while undertaking temporary work in another Member State, whatever the nature of the activity undertaken in the latter. The Court of Justice specified the way in which this procedure is to be applied to posted self-employed persons in a ruling of 30 March 2000 on the Banks case, C-178/97, which relates to performing artists, subject to the British social security system for self-employed persons, who performed temporarily in an opera in Belgium.

(2) OJ L 74, 27.3.1972.

(2001/C 26 E/203) WRITTEN QUESTION P-1392/00
by Maria Sanders-ten Holte (ELDR) to the Commission

(27 April 2000)

Subject: Cross-subsidisation and State support in the postal industry

Article 14 of Directive 97/67/EC (1) stipulates that Member States must take the measures necessary to ensure that universal service providers keep separate accounts, in order to preclude cross-subsidisation. Liberalised and non-liberalised services must keep separate accounts. A clear distinction must also be made between services which are part of the universal service and services which are not.

1. Does the Commission agree that keeping separate accounts is essential to prevent the cross-subsidisation of activities?

2. How does the Commission supervise compliance with the rules on separate accounts? Is such supervision effective?

In Germany the Deutsche Post AG has the statutory monopoly for the delivery of letters up to 200 grams and ‘direct mail’ up to 50 grams. The monopoly will expire at the earliest on 31 December 2002.

3. Does the Commission consider it permissible to use the profits from State monopolies (such as the Deutsche Post) to subsidise liberalised postal services?

4. Does the Commission consider that investing the profits from State monopolies in liberalised postal services via cross-subsidisation is a form of state support that is incompatible with the Treaty?

5. If it does, what does this imply for present and future cases in which the situation described in Question 4 occurs?