

JUDGMENT OF THE COURT

15 January 1986 \*

In Case 44/84,

Reference to the Court under Article 177 of the EEC Treaty and Article 150 of the EAEC Treaty by the Commissioners for the special purposes of the Income Tax Acts ('Special Commissioners') for a preliminary ruling in the proceedings pending before them between

**Derrick Guy Edmund Hurd**

and

**Kenneth Jones (Her Majesty's Inspector of Taxes)**

on the interpretation of certain rules of Community law, in particular, Article 3 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties, annexed to the Treaty concerning the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the European Economic Community and to the European Atomic Energy Community, and Articles 5 and 7 of the EEC Treaty, with regard to the levying of domestic taxation on the salaries paid by the European School at Culham in the United Kingdom to the British members of its teaching staff,

THE COURT,

composed of: U. Everling, President of Chamber, acting as President, K. Bahlmann and R. Joliet (Presidents of Chambers), G. Bosco, T. Koopmans, O. Due, Y. Galmot, C. Kakouris and T. F. O'Higgins, Judges,

Advocate General: Sir Gordon Slynn

Registrar: P. Heim

\* Language of the Case: English.

after considering the observations submitted on behalf of

D. G. E. Hurd, by Francis Jacobs QC,

the United Kingdom, by R. Plender, Barrister,

the Government of Denmark, by L. Mikaelson,

the Government of Ireland, by J. O'Reilly, Barrister,

the Commission of the European Communities, by J. Grünwald,

after hearing the Opinion of the Advocate General delivered at the sitting on 22 May 1985,

gives the following

## JUDGMENT

### Facts and Issues

#### I — Facts and written procedure

##### A — *The foundation of the European Schools and the legal basis of the European School at Culham*

1. Following the installation of the institutions of the European Coal and Steel Community (ECSC) in Luxembourg, it became apparent in 1953 that it was necessary to provide appropriate schooling for the children of the officials of those institutions in their mother tongues. To that end, officials of the ECSC created an association which was financed by the High Authority. That association founded a school, for the provision of nursery and primary education, which began to operate on 4 October 1953. The teachers of that school were employed and paid by the association.

By the spring of 1954 it was apparent that that solution was inadequate. Therefore, at the invitation of the President of the High Authority, the representatives of the Education Ministers of the six Member States met in Luxembourg on 22 June, 27 July and 7 September 1954, in order to consider the creation of secondary education facilities. At those meetings it was decided to create a school with intergovernmental status and, to that end, the representatives formed themselves into a 'Conseil Supérieur' [Board of Governors], which was to supervise the development of the school and lay down the principles governing its organization and general guidelines for its administration. It was agreed, *inter alia*, that the teaching staff would be seconded to the school by the Member States, which would continue to pay them their respective national salaries, and that the level of the

teachers' salaries would be standardized by means of the payment of a supplement. On 12 October 1954 the first two years of the secondary school began to operate.

Over the next few years the representatives of the Governments held several meetings concerning in particular the drawing-up of a statute for the European School which was to take the form of a treaty between the six States. The necessary drafts were drawn up at the beginning of 1957 and were examined at a meeting of the Board of Governors which was held on 25, 26 and 27 January 1957. At that meeting decisions were taken concerning the adoption of regulations for members of the teaching staff and concerning the question of standard salaries for the staff, including the question of the taxes to be paid on those salaries.

2. On 12 April 1957 the Governments of the six Member States signed the Statute of the European School, which was subsequently ratified by all the Member States. In the preamble to the Statute it was stated that the presence, at the provisional seat of the European Coal and Steel Community, of children of officials from the Member States had made it necessary to organize schooling in the mother tongues of those concerned. Under Article 6, the school is to have the status of a public institution in the law of each of the contracting parties and is to have legal personality to the extent requisite for the attainment of its objectives. It is to be financially independent and may be a party to legal proceedings. The organs of the school are the Board of Governors, the Boards of Inspectors, the Administrative Board and the Headmaster (Article 7).

Article 8 provides that the Board of Governors is to consist of the Minister or Ministers of each Contracting Party whose responsibilities include National Education and/or External Cultural Relations. By

virtue of Article 27 the European Coal and Steel Community may have a seat on the Board of Governors under an agreement concluded between the Board and the Community. Under Article 9 the Board of Governors is to be responsible for the implementation of the Statute and for that purpose is to have the necessary powers in educational, budgetary and administrative matters. Article 28 authorizes the Board of Governors to conclude with the government of the country where the school is situated any additional agreements required to ensure that the school can operate in a favourable atmosphere under the best possible physical conditions.

Article 12 states that in administrative matters the Board of Governors shall:

- '(1) ...
- (2) appoint the Headmaster of the School and lay down the rules governing his service;
- (3) determine each year, on a proposal from the Boards of Inspectors, the staff requirements and settle with the Governments any questions concerning the assignment or secondment to the School of teaching staff for the primary and secondary levels and of supervisory staff so that they retain their rights to promotion and retirement pension under their national rules and enjoy the benefits granted to officials of their category abroad;
- (4) lay down unanimously, on a proposal from the Boards of Inspectors, and according to harmonized rules, the service rules of the teaching staff of the School.'

Article 13 provides that in budgetary matters the Board of Governors is responsible:

- '(1) for adopting the income and expenditure budget of the School prepared by the Administrative Board;
- (2) acting unanimously, for apportioning expenses equitably among all the Contracting Parties;
- (3) ...'

In accordance with Article 26, the income and expenditure budget of the School is to be financed by:

- '(1) contributions paid by the Contracting Parties on the basis of the apportionment of expenses by the Board of Governors;
- (2) subsidies from the institutions of the Community with which the School has concluded agreements;
- (3) donations and legacies accepted by the Board of Governors;
- (4) school fees charged to parents of pupils by decision of the Board of Governors.'

On the basis of that Statute the Board of Governors adopted financial regulations at its meeting on 13 and 14 April 1962. Under those regulations (Chapter C), as subsequently amended, the Member States make a contribution equal to the national salaries of the teachers whom they second to the school and the Commission of the European Communities makes a contribution equal to the difference between the total of the budget established by the Board

of Governors and other resources of the School.

Thus, in practice, the Commission's contribution accounts for the biggest proportion of the budget of the European School, approximately two thirds. That contribution is entered in the Community budget under the Commission's administrative appropriations. The chapter in question refers to the budgetary decisions of the Board of Governors and sets out the outline of the budgets of the various schools.

By virtue of the abovementioned financial regulations (Chapter D) the European School's accounts are audited by the Court of Auditors of the European Communities.

3. Following the creation of the European Economic Community and the European Atomic Energy Community and the establishment of the institutions of those Communities with their officials in various places, other European Schools were set up in Brussels (I) in 1958, in Mol (Belgium) and Varese (Italy) in 1960, Karlsruhe (Germany) in 1962, in Bergen (the Netherlands) in 1963 and in Brussels (II) in 1976. In order to facilitate the setting-up of those new schools and to provide them with a legal basis, the Governments of the Member States signed on 13 April 1962 in Luxembourg a Protocol on the setting-up of European Schools with reference to the Statute of the European School signed at Luxembourg on 12 April 1957, extending to other European Schools the Statute of the Luxembourg school. A further protocol signed on 15 December 1975 made provision for the setting-up in 1977 of a European School in Munich for the education and instruction together of children of the staff of the European Patent Office.

Article 1 of the Protocol on the setting-up of European Schools provides as follows:

'For the education and instruction together of children of the staff of the European Communities, establishments bearing the name "European School" may be set up on the territory of the Contracting Parties.

Other children, irrespective of their nationality, may also be admitted to them.

These establishments shall, subject to the following Articles, be governed by the provisions of the Statute of the European School, signed at Luxembourg on 12 April 1957, and of the Regulations for the European Baccalaureate signed at Luxembourg on 15 July 1957.'

Under Article 3 the powers conferred by the Statute of the European School on, *inter alia*, the Board of Governors are to be extended to any school set up in accordance with Article 1. Each school has separate legal personality.

Article 7 of the protocol provides that:

'In budgetary matters, by way of derogation from Article 13 of the Statute of the European School, the Board of Governors shall approve the draft budget and the accounts, in so far as they concern it, and transmit them to the appropriate authorities of the European Communities.'

4. In September 1972, with a view to its accession to the European Communities, the United Kingdom acceded, in accordance with Article 3 (1) of the Act concerning the Conditions of Accession and the Adjustments to the Treaties, to the Statute of the European School and to the annex concerning the European Baccalaureate and the Protocol on the setting-up of European Schools, which are regarded as agreements concluded by the original Member States relating to the functioning of the Communities or connected with their acti-

vities within the meaning of Article 3 (1). In October 1972 an Order in Council was made conferring on each European School the legal capacity of a body corporate on the basis of Section 2 (2) of the European Communities Act 1972.

In 1978 a European School was established at Culham, Oxfordshire, in order to serve the children of the staff posted to the Joint European Torus Joint Undertaking (JET) founded under the EAEC Treaty.

*B — The Regulations for Members of the Teaching Staff of the European School and the liability to domestic taxation of the salaries of teachers in Member States other than the United Kingdom*

1. The first regulations for teaching staff seconded or assigned to the School were adopted by the Board of Governors at its meeting on 25, 26 and 27 January 1957. They were based on the principle that throughout the period of their secondment or assignment to the School members of the teaching staff were to be subject to the authority of the head of the School and the relevant Board of Inspectors and that they were to 'maintain contact' with their national authorities and retain their rights and obligations under national regulations.

Articles 3 to 5 of the Regulations for Members of the Teaching Staff fixed standard salaries for each category of teachers, irrespective of their country of origin. Articles 6 to 8 provided for family and expatriation allowances and Article 9 for indexation on the basis of the cost of living in Luxembourg. Articles 11 and 12 provided for installation and resettlement allowances and reimbursement of travel and removal expenses.

Under the heading 'Compensation for which the School is responsible', Article 10 provided that:

‘With a view to aligning conditions of employment, deductions, other than tax deductions, made at source by national authorities shall be reimbursed to members of the teaching staff.’

Under Article 16, entitled ‘National Emoluments’,

‘The amount payable by the School to a member of the teaching staff shall be the difference between the sum of the emoluments which he receives from his national authorities and the salary, allowances and grants provided for in these Regulations calculated as herein specified.’

The minutes of the Board of Governors’ meeting on 25, 26 and 27 January 1957 show that it became clear, when the Regulations for Members of the Teaching Staff were discussed, that there were liable to be difficulties in a solution which consisted in aligning salary conditions completely by removing disparities resulting from differences in tax rates, either by exempting the national salaries paid by the Member States from domestic income tax or by reimbursing the domestic taxes. It was therefore proposed that tax should be paid by the teachers on the basic national salaries in accordance with their national rules and that the supplements or alignment payments or allowances specific to the European School should be exempt from all tax. In the minutes of the meeting it is stated that

‘The Board of Governors therefore *decided that members of the teaching staff should pay tax on the salary or part of the salary corresponding to their national salary. On the other hand, supplements resulting from the application of Articles 3, 4, 5 and 9 of the Regulations and allowances paid under Articles 6, 8, 9, 11 and 12 of the Regulations should be exempt from all tax. Teachers should not in any event be subject to double taxation on their salaries.*’

That decision appears in the Board of Governors’ Digest of Decisions, new and

updated editions of which are published from time to time.

2. The original Regulations for the Members of the Teaching Staff were subsequently amended and replaced by the Regulations for Members of the Teaching Staff and Conditions of Employment for Part-time Teachers adopted by the Board of Governors at its meeting on 4 and 5 December 1967. In the version applicable in this instance, which includes the amendments made before 1978/79 and 1979/80, the new Regulations for Members of the Teaching Staff contain in Chapter II detailed provisions on salaries and allowances. Those provisions are modelled on the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities. Under Article 23 the remuneration of members of the teaching staff is to be adjusted ‘on the basis of decisions taken with regard to variations in the weightings to apply the Staff Regulations of Officials of the European Communities in different places of employment’. According to Article 48 (1), certain articles which follow the provisions of the Staff Regulations of Officials of the European Communities are to be adapted automatically in the event of the latter regulations being amended, and any dispute as to the interpretation of those articles is to be resolved on the basis of the interpretation given by the European Communities.

Article 24 is headed ‘Compensation for which the School is responsible’. Article 24 (1), which corresponds to Article 10 of the original regulations, concerns the reimbursement of deductions made at source other than tax deductions. Article 24 (2) provides as follows:

‘Should the amount levied in taxes be higher than the amount which would be levied on the European salary under regulations laying down conditions and procedures for applying the tax for the benefit of the European Communities, a “differential”

allowance equal to the difference between the two amounts shall be granted.'

Article 30, which is headed 'National emoluments' provides, *inter alia*, that

'the sum due (sic) by the School to members of the teaching staff shall be the difference between the salary, allowances and grants provided for in these Regulations, calculated as therein specified, and the exchange value of all emoluments paid by the national authorities, converted into the currency of the country in which the teacher performs his duties on the basis of [a] ... rate ... confirmed every six months, at least, by the Representative of the Board of Governors.'

The rule laid down in Article 24 (2) was incorporated in the Regulations for Members of the Teaching Staff in 1966 because discrepancies in national taxation in the various Member States seriously threatened to undermine the principle that teachers should receive the same net income. Therefore, in order to ensure equal treatment, the Board of Governors decided to remove those discrepancies by introducing a 'differential allowance' which would offset any amount levied in taxes in excess of the tax payable on a comparable monthly income by Community officials under Community tax regulations.

3. As regards the levying of national taxes on the salaries of members of the teaching staff, the agreement concluded between the Government of the Grand-Duchy of Luxembourg and the Board of Governors on 13 October 1971, in accordance with Article 28 of the Statute of the European School of 12 April 1957, contains a provision (Article 9) according to which:

'the Headmasters, the members of the teaching personnel as well as the administrative personnel, when they are seconded

to the school, shall be exempt from all tax on wages, emoluments and allowances paid by the school in addition to the emoluments paid by the authorities of the country of origin, the latter remaining subject to the tax of the said country of origin.'

Article 9 of the agreement concluded between the Government of the Kingdom of Belgium and the Board of Governors on 12 October 1962 is phrased in almost identical terms.

The agreement concluded on 5 September 1963 between the Italian Government and the Board of Governors provides, in Article 7 as amended by a protocol of 14 May 1971 and by letters dated 16 November 1976, that:

'the Director, the members of the teaching staff and also the administrative staff of the school, who are not of Italian nationality or did not habitually reside in Italy prior to the establishment of the school, shall enjoy the following privileges and immunities:

...

- (c) exemption from the tax on incomes of natural persons on account of salaries, emoluments and allowances paid to them by the school by way of remuneration. However, the Italian Government reserves the right to take such remuneration into account for the purposes of determining the rates applicable to income deriving from other sources.'

Before the Board of Governors agreed to the terms of the aforesaid Article 7, at a meeting on 1 and 2 December 1970, the delegations of the Member States, with the exception of Italy, drew attention to the fact that those terms were inconsistent with the Board of Governor's decision, with existing practice in Italy and with the practice of the other Member States, because under them

the exemption did not apply to Italian nationals. However, since the representative of the Italian Government declared that in practice there was no problem because the European supplements had never been taxed, the Board of Governors gave its approval to the abovementioned protocol. It took the view that in that way the problem of the taxation of the Italian members of the school staff could be dealt with as it had been in the other countries which have European schools. At the same time it reserved the right to reconsider the question if there were any alteration in the existing circumstances.

The agreement between the Government of the Kingdom of the Netherlands and the Board of Governors, concluded on 29 April 1979, contains no provision concerning exemption from income tax. In reply to a question put by the Court, the Netherlands Government explained that as a matter of principle the Netherlands does not grant teachers of Netherlands nationality tax exemption in respect of the remuneration paid by the European School at Bergen under the Regulations for Members of the Teaching Staff. However, the tax levied on that remuneration is not borne by the persons concerned but by the Ministry of Education and Science. In correspondence relating to the abovementioned agreement it was in fact stated that agreement had been reached on the following point:

‘Although the Dutch Government does not wish, for reasons of principle, to exempt the Headmaster, members of the teaching staff and seconded members of the administrative staff, from paying tax on remunerations paid to the staff of the School from its (the School’s) own budget, it is however willing to appoint an official authority, should the occasion arise through the medium of the School, to undertake to settle that tax, with the parties concerned or on their behalf. This procedure shall be carried out in the following manner: the amount to be settled in each specific case shall be determined by subtracting from an amount equal to any

tax to which the person concerned is liable under Dutch law, the amount of tax which would be due without taking into account salaries, remunerations and allowances paid by the School from its own budget.’

In the Federal Republic of Germany, a federal regulation was adopted on 9 July 1970 conferring certain privileges and immunities on the staff of the European School at Karlsruhe, according to which:

‘the two allowances which the Board of Governors of the European Schools pays to the Headmaster and teachers of the European School in Karlsruhe on the basis of the provisions of the current edition of the Regulations for members of the teaching staff in European Schools are exempt from the amount of income tax attributable to them.’

*C — The main proceedings and the questions submitted for a preliminary ruling*

1. No agreement has been concluded between the Government of the United Kingdom and the Board of Governors on the exemption from income tax of the salaries, emoluments and allowances paid by the European School at Culham to its headmaster and other members of the teaching staff. There is no legislative provision dealing expressly with that question in the United Kingdom.

The practice followed by the Inland Revenue is to exempt from tax the sums paid by the European School at Culham to its teachers who are nationals of other Member States. It does not however grant such an exemption to British teachers at the European School at Culham.

There is some dispute as to whether the provisions of national law alone provide sufficient legal basis for the tax exemption granted to teachers from the other Member

States and, if they do, as to what is the relevant provision. The Inland Revenue cited in the first place the various agreements concerning double taxation, which contain provisions exempting from British taxes the remuneration paid by, or out of funds created by, the other State for services rendered to it in the discharge of functions of a governmental nature and the remuneration of professors and teachers from another Member State at a British school for a period not exceeding two years. The Inland Revenue then referred, with respect to teachers other than those of Irish nationality, to Section 373 of the Income and Corporation Taxes Act 1970 concerning consuls and other official agents of other States in the United Kingdom. The applicability of those provisions has, however, been questioned on the ground that the teachers from other Member States generally work at the European School at Culham for a period of more than two years and that they render their services not to another State in the discharge of functions of a governmental nature but to the European School, which is not a subdivision or authority of another State and which pays them the sums in question from its own budget. Further, they are not consuls or consular agents or employed in an official service or an agency of a foreign State, but members of the staff of the European School; they are subject to the authority of that school and they carry out the duties required by it.

The Inland Revenue's decision to charge income tax on the European supplements paid to British teachers at the school at Culham was discussed by the Board of Governors at meetings between May and December 1979.

At these meetings the Commission and the representatives of the Governments of all

the Member States except the United Kingdom expressed the view that the Board of Governors' decision of January 1957, with which all the other Member States complied, was binding on the United Kingdom. Like the other Member States concerned the United Kingdom was therefore under a duty to take the necessary measures to implement it. They declared that it was not desirable either to amend that decision or to amend Article 24 (2) of the Regulations for Members of the Teaching Staff, which guarantees equal treatment for teachers irrespective of their nationality. They considered that the United Kingdom should find a way of countering the budgetary consequences for the school at Culham of the position which the United Kingdom had adopted.

The United Kingdom took the view that it was not bound by the Board of Governor's decision of January 1957 and refused to consider introducing legislation to grant tax exemption to British teachers at the European School at Culham, who were already very well paid in relation to other British teachers. Moreover, it was unlikely that such a measure would secure the necessary parliamentary approval. It also rejected the possibility of an arrangement whereby the Department of Education and Science would meet the cost of the 'differential' allowance provided for in Article 24 (2) of the Regulations for Members of the Teaching Staff. As United Kingdom nationals residing in the United Kingdom, the British members of the teaching staff of the European School at Culham could not be treated differently to any other British teachers employed in any other school in the United Kingdom. If the Board of Governors wished to avoid the additional burden on the budget of the school at Culham which might result from the application of Article 24 (2) of the Regulations for Members of the Teaching Staff, the United Kingdom would be

prepared to exclude the application of that article in the agreement to be concluded in accordance with Article 28 of the Statute of the European School between itself and the Board of Governors.

2. Derrick Hurd is a British national and resides in the United Kingdom. He is the headmaster of the European School at Culham. As such under the abovementioned provisions, he is entitled to receive:

- (i) a salary from the United Kingdom Department of Education and Science calculated in accordance with the provisions of the Scales of Salaries for Teachers in Primary and Secondary Schools in England and Wales (hereinafter referred to as 'the national salary');
- (ii) additional salary from the European School to bring his salary up to the level laid down in the Regulations for Members of the Teaching Staff of the European School (hereinafter referred to as 'the European supplement'); and
- (iii) certain allowances also paid by the European School in accordance with those regulations.

In accordance with the practice referred to above, the Inspector of Taxes took the view that not only Mr Hurd's national salary but also the European supplement and the allowances paid by the European School were taxable income within the meaning of the British income tax legislation. He therefore made tax assessments on that basis for the tax years 1978/79 and 1979/80.

3. Mr Hurd appealed against those assessments to the Special Commissioners. In support of his appeal Mr Hurd claimed in particular that, under Community law, the European supplement paid by a European School was exempt from national income tax. The parties at the outset agreed

that it was not necessary to consider the position of the allowances paid by the European School. Mr Hurd contended:

- (i) that Article 5 of the EEC Treaty imposed an obligation on the Government of the United Kingdom to honour the decision adopted at the meeting of the Board of Governors on 25, 26 and 27 January 1957 concerning the exemption from taxation of the European supplement paid to the teaching staff;
- (ii) that the non-implementation of that decision constituted discrimination within the meaning of Article 7 of the EEC Treaty;
- (iii) that the Government of the United Kingdom was, by Article 3 of the Act of Accession, obliged to honour that decision, because:
  - (a) the Statute of the European School was an agreement within the meaning of the second sentence of Article 3 (1) of the abovementioned Act and the Board of Governors' decision was a matter of common understanding between the contracting parties to the Statute of the European School, with the result that the United Kingdom's accession to that Statute entailed acceptance of the Board of Governors' decision, or
  - (b) the original Member States within whose territories European Schools had been established had honoured the Governors' decision and the United Kingdom was placed in the same position by virtue of Article 3 (3) of the abovementioned Act.

The Inspector of Taxes contested that view. He contended, moreover, that if any obligation was incumbent on the United Kingdom under the Board of Governor's

decision, it was not one which conferred direct rights on individual citizens. He maintained finally that the Court of Justice did not have jurisdiction to interpret facts outside Article 3 of the Act of Accession, since the application of that article was exclusively a matter for national courts or tribunals.

4. Having regard to that dispute, the Special Commissioners decided on 14 February 1984 to refer the following questions to the Court for a preliminary ruling:

1. (a) Whether, in interpreting the provisions of Article 3 of the Act annexed to the Treaty of Accession to the European Economic Communities of 22 January 1972 the Court of Justice has jurisdiction to give a preliminary ruling on the question whether a particular matter falls within the meaning of the words "all other agreements concluded by the original Member States relating to the functioning of the Communities or connected with their activities" (in paragraph 1 of the article) and the words "declarations or resolutions... or other positions... concerning the European Communities adopted by common agreement of the Member States" (in paragraph 3 thereof);
- (b) If so, whether the United Kingdom is, by virtue of the said Article 3, under an obligation as a matter of Community law to give effect in its national law to a particular decision taken at a meeting in January 1957 that teaching staff of the European School should be exempt from all tax on their salaries and allowances (other than the part of their salaries corresponding to their national salaries), in the light of the circumstances in which that decision was taken, its subsequent history, the

instruments governing the European Schools and their governing body and the responses of the six original Member States to that decision preceding the date on which the aforementioned Treaty of Accession came into force (1 January 1973);

2. Alternatively, whether the United Kingdom is, by virtue of Article 5 or Article 7 of the EEC Treaty (and the aforementioned Treaty of Accession), or of any other provision of Community law (apart from Article 3 of the Act annexed to the Treaty of Accession) under an obligation as a matter of Community law to give effect in its national law to the said decision;
3. If the United Kingdom is under such obligation as is mentioned in Question 1 (b) or Question 2 above, whether (in the absence of the implementation of the said decision in the national law of the United Kingdom) a member of the teaching staff of the European School established in the United Kingdom is entitled as a matter of Community law to rely on the said decision in the courts and tribunals of the United Kingdom.'

In setting out the grounds for their decision, the Special Commissioners stated, in connection with Article 5 of the EEC Treaty, that although the European School undeniably played a part in facilitating the operation of the Community institutions, it was necessary in addition to show that taxation of the European supplement of British teachers operated to the detriment of the school at Culham.

As regards Article 7 of the EEC Treaty, the Special Commissioners took the view that differences between the position of the British teachers and that of the others was in fact the result of differences which existed between the tax regimes of the Member States and differences in the

relevant double taxation agreements. The lack of harmony between the tax regimes could not constitute discrimination. Moreover, the decision of the Board of Governors was itself more favourable to teachers from States with low national salary scales.

The Special Commissioners considered that in connection with Article 3 of the Act of Accession, which was intended to ensure accession of the new Member States to the *acquis communautaire*, it was common ground that the Statute of the European School was an agreement within the meaning of the second sentence of Article 3 (1). In their view, it was however necessary to consider in addition whether accession to that Statute necessarily imported a duty to give effect to the Board of Governors' decision or whether that decision could be regarded as a 'position' within the meaning of Article 3 (3) of the Act of Accession. As far as Article 3 (1) was concerned, the Special Commissioners took the view that the obligations arising under such agreements lay in the field of international law and did not have direct effect within the States concerned. The Board of Governors' decision did not moreover appear to be an integral part of the Statute of the European School and, further, it was doubtful whether the Board of Governors could have taken a decision which was binding on the Governments in such a matter. As regards Article 3 (3), the Special Commissioners considered that it would be surprising if that provision gave rise to obligations under Community law whilst the agreements referred to under Article 3 (1) did not. The drafting of that paragraph seemed to show that the provisions to which it referred did not have direct effect. The Board of Governors' decision amounted to the expression of an aspiration rather than a position adopted by common agreement. That was confirmed by the measures taken by five States to implement it. If there were an obligation equivalent to an obligation created by a directive, it would appear to be sufficiently precise to have direct effect.

#### D — *The written procedure before the Court*

The Special Commissioners' decision was registered at the Court on 17 February 1984.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the following: Mr Hurd, represented by Francis Jacobs, Queen's Counsel, instructed by John H. Overs of Messrs Berwin Leighton, Solicitors; the United Kingdom, represented by R. N. Ricks of the Treasury Solicitor's Department, acting as Agent, assisted by Richard Plender; the Government of the Kingdom of Denmark, represented by Laurids Mikaelsen, a Legal Adviser at the Ministry of Foreign Affairs; and the Commission of the European Communities, represented by Jürgen Grünwald, a member of its Legal Department, acting as Agent.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure. In accordance with Article 21 of the Protocol on the Statute of the Court of Justice of the EEC, the Court requested the parties to the proceedings and the Italian and Netherlands Governments to reply in writing, prior to the hearing, to certain questions and to provide the Court with certain information concerning the practice adopted in Italy and the Netherlands with regard to the taxation of the European supplement paid to teachers who are nationals of the State in which the European school is situated. It also asked for information concerning the origin and scope of Article 24 (2) of the Regulations for Members of the Teaching Staff and concerning the discussions held by the Board of Governors on the subject of the taxation of European supplements in general and at the school at Culham in particular. In reply to those questions certain information and a number of

documents were supplied to the Court, the principal elements of which have been incorporated into the summary of the facts set out above.

## II — Written observations submitted to the Court

### A — Observations submitted on behalf of Mr Hurd

1. (a) As regards *Question 1 (a) concerning the jurisdiction of the Court*, Mr Hurd points out that the Court has frequently interpreted instruments outside the framework of the Treaties, such as the General Agreement on Tariffs and Trade (GATT) (see judgment of 16 March 1983, Joined Cases 267 to 269/81 *Amministrazione delle Finanze dello Stato v Società Petrolifera Italiana SpA and SpA Michelin Italiano* [1983] ECR 801). In this instance the substantive question concerns the interpretation of Article 3 of the Act of Accession, which is within the jurisdiction of the Court. In any event, it would be unrealistic to suggest that the Court should decline to rule on that primary question, when it would be dealing with the same matters in ruling on the subsidiary questions, which concern Articles 5 and 7 of the EEC Treaty, and for which the Court undeniably has jurisdiction.

Question 1 (a) should therefore be answered in the affirmative.

(b) As to the *substance of the first question*, it is common ground that the Statute of the European School constitutes an agreement within the meaning of *Article 3 (1) of the Act of Accession*. The essential object and purpose of the Treaty and Act of Accession was to put the new members in the same position as the founding members in relation to the whole of the *acquis communautaire*, even where the rights and obligations in question did not have their legal foundation in the Community Treaties. Thus the obligations arising out of the

Statute of the European School are binding on Member States by virtue of the Treaty of Accession.

Although the Board of Governors' decision of 25, 26 and 27 January 1957 on exemption from national taxes was adopted before the signature of the Statute of the European School in April 1957, it was nevertheless taken pursuant to that Statute inasmuch as it has remained in force and has been accepted by the States parties to the Statute, who ratified it with full knowledge of its implications. The decision is therefore binding pursuant to the Statute.

Such a decision was within the competence of the Board of Governors. The Governments concerned could not bind themselves by such a decision. In any event, the decision acquired the force of a binding obligation through being implemented over a period of many years. Furthermore, it is too late, more than 20 years after the adoption of the decision, and in the light of the subsequent practice of the States parties, to query its validity.

The terms of Article 3 of the Act of Accession are sufficiently broad to include an obligation which, even though it does not flow directly from the Statute, forms part of the *acquis communautaire* inasmuch as it was the consistent and uniform practice of the original Member States, prior to the accession of the United Kingdom, to grant the tax exemption, and that practice finds support in *opinio iuris*. That practice is evidence of a legal obligation which existed at the date of the United Kingdom's accession. In any event, the Member States concerned considered themselves bound by a tacit mutual understanding which formed part of the *acquis communautaire*.

The practice of the United Kingdom itself is also evidence of the existence of the obligation inasmuch as the European supplement of teachers who are not United Kingdom nationals is exempt from domestic taxation. The Inland Revenue explained in

the first place that exemption was covered by various double taxation arrangements and then that it was based on certain provisions of national law. Those arguments are unfounded, as is clear from a detailed analysis of the arrangements and provisions in question. The exemption which is currently operated for teachers who are not United Kingdom nationals has no basis in United Kingdom law; it is in fact a partial implementation of the contested obligation to grant the tax exemption.

Mr Hurd takes the view therefore that the obligation to grant the tax exemption is binding on the United Kingdom by virtue of Article 3 of the Act of Accession.

2. (a) On *Question 2* Mr Hurd considers that the obligation in question is also binding on the United Kingdom by virtue of *Article 5 of the EEC Treaty*. Contrary to the doubts expressed by the Special Commissioners, that article itself creates obligations over and above those contained in the Treaty and Act of Accession. It is clear from decisions of the Court (see judgments of 15 December 1981, Case 208/80 *Lord Bruce of Donington v Aspden* [1981] ECR 2205; and of 10 February 1983, Case 230/81 *Luxembourg v European Parliament* [1983] ECR 255) that Article 5 imposes obligations on Member States, independently of other provisions of Community law, such as 'the duty not to take measures which are likely to interfere with the internal functioning of the institutions' and 'mutual duties of sincere cooperation'. Article 5 imposes on Member States a general duty to cooperate in facilitating the achievement of the Community's tasks (see judgments of 14 July 1976, Joined Cases 3, 4 and 6/76 *Kramer* [1976] ECR 1279, and of 4 October 1979, Case 141/78 *France v United Kingdom* [1979] ECR 2923).

Article 5 is to be read as supplementing the obligations contained in Article 3 of the Act

of Accession, which deals expressly with the substantive issue in this case, and as imposing a general duty of cooperation in achieving the objectives of that Act.

The taxation of the European supplement would operate to the detriment of the European School at Culham, to the detriment of the European Schools generally and to the detriment of the Community itself. As regards officials of the Community, the Court stated in its judgment of 16 December 1960 (Case 6/60 *Humblet v Belgian State* [1960] ECR 559) that the exemption of remuneration from all national tax was necessary to enable the Community to retain its power to determine the net salaries, to guarantee the equality of remuneration for officials of different nationalities and so as to not to make the recruitment of officials from certain Member States more difficult. Those same reasons apply in respect of the European School. Taxation of the British teachers of the European School would give rise to discrimination between teachers which would be prejudicial to staff unity and to the establishment of a positive and harmonious working atmosphere at the school. Finally, the United Kingdom's attitude is an obstacle to the conclusion of an agreement between it and the school.

Because of the close links between the European School and the Community institutions, that situation is detrimental to the Community itself. The function of the European School is to facilitate the operation of the Community institutions by providing educational facilities for the children of their staff. The school thus facilitates both recruitment and the transfer of officials to different places in the Community, as the Court recognized in its judgment of 24 February 1981 (Joined Cases 161 and 162/80 *Carbognani and Coda Zabetta* [1981] ECR 543). The close re-

relationship between the European School and the Community is apparent in the rules governing the administration and the budget of the school. Moreover, by virtue of Article 24 (2) of the Regulations for Members of the Teaching Staff, the refusal to grant a tax exemption would have an effect on the differential allowance. According to the calculations which appear in the annex to Mr Hurd's observations, for the period from September 1978 to April 1979, in addition to a national salary of £5 176 and a European supplement of £8 384, a differential allowance of £3 932 would be payable in the first instance. Since the allowance itself would be regarded as subject to tax, it would have to be increased to a total of £21 762. The burden of the differential allowance would fall on the Community budget, so that the refusal to grant an exemption would result in an unjustified benefit to the funds of one Member State at the Community's expense.

(b) As regards *Article 7 of the EEC Treaty*, it is not the effect of different tax regimes in different Member States which is at issue here, but the fact that United Kingdom teachers at the European School in Culham are liable to tax on the European supplement, whilst teachers at the school who are not United Kingdom nationals are exempt from any tax anywhere on that supplement. The discrimination lies in the fact that the United Kingdom recognizes the exemption for teachers of other nationalities but not for United Kingdom teachers. It is discrimination which has no foundation in national law. It is unnecessary, gratuitous and arbitrary and it operates against the United Kingdom's own nationals contrary to Article 7 and to the general principle of equality.

(c) Mr Hurd then *refers to certain general principles of law*. In accordance with the principle of the protection of legitimate expectations, the teachers of the European

School are entitled to rely on the obligation in question, which was clearly laid down in the decision of 1957 and which has been consistently observed since that date. In accordance with the principle of good faith, the United Kingdom is under a duty to comply with that obligation. Since the United Kingdom did not express any reservations in that respect either when it acceded to the Treaty or when the European School at Culham was set up, the principle of estoppel precludes it from refusing to accept the Board of Governors' decision at this stage. Finally, the refusal to accord the exemption is contrary to the principle of Community solidarity, which is an independent and fundamental principle of Community law.

3. With regard to *Question 3*, concerning the *direct effect* of the obligation to grant tax exemption, Mr Hurd takes the view that that obligation is sufficiently precise, clear and unconditional to have such an effect. It is not qualified by any reservation on the part of the Member States and its nature makes it ideally suited to produce effects in the legal relationship between Member States and their subjects. Whatever its legal foundation, it must therefore have direct effect.

In conclusion Mr Hurd proposes that in reply to the Special Commissioners it should be stated as follows:

- '(1) Member States are obliged, under Community law, to exempt teaching staff of the European School from all tax on their salaries and allowances, other than the part of the salaries corresponding to their national salaries.
- (2) That obligation is directly enforceable in the courts and the tribunals of the Member States.'

**B — Observations submitted by the United Kingdom**

1. (a) With regard to *Question 1 (a)*, the United Kingdom considers that, although *the Court* clearly has *jurisdiction* under Article 1 (3) of the Treaty of Accession to give preliminary rulings on the interpretation of the Act of Accession, including Article 3 thereof, it is not the function of the Court to interpret and define other 'matters'. The decision whether such 'matters' do in fact possess the characteristics described in Article 3 is a function not of the interpretation of Community law but of its application to a specific case, which does not fall within the Court's jurisdiction in a reference for a preliminary ruling.

The Court does not have jurisdiction in a reference for a preliminary ruling to interpret instruments other than those listed in Article 177 of the EEC Treaty. It does not therefore have jurisdiction to interpret agreements adopted by the Representatives of the Governments within the meaning of the first sentence of Article 3 (1) of the Act of Accession or, *a fortiori*, agreements within the meaning of the second sentence of that provision.

The Court's jurisdiction is one of attribution. Thus, where the Court has ruled that it has jurisdiction to interpret international treaties, it has relied on the fact that the treaties in question were acts of the institutions or could be regarded as such: (see judgments of 30 April 1974, Case 181/73 *Haegeman v Belgium* [1974] ECR 449 and of 16 March 1983, Joined Cases 267 to 269/81 *Amministrazione delle Finanze dello Stato v Società Petrolifera Italiana SpA* cited above. In the case of the conventions referred to in Article 3 (2) of the Act of Accession, it has been considered necessary to adopt separate protocols to invest the Court with jurisdiction. That is the case with regard to the interpretation of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of

Judgments in Civil and Commercial matters. As regards the first sentence of Article 3 (1) of the Act of Accession, it is widely maintained by legal writers that the Court has no jurisdiction to determine whether a Member State has failed to comply with a decision or agreement of the Representatives of the Member States meeting in Council. That argument applies with even greater force to the agreements falling within the second sentence of Article 3 (1). The wording of Article 3 (3) of the Act of Accession is vague and refers to political positions reached by the Member States outside the Council. Before the entry into force of the Treaty of Accession, the Court had no jurisdiction to interpret such positions and it did not obtain such jurisdiction under the Act of Accession.

The dispute between the parties in this case is concerned less with the construction of Article 3 of the Act of Accession than with the interpretation of the Board of Governors' decision and an assessment of the behaviour of Member States in which European Schools are established. It is not for the Court to assess the legal basis of the Statute of the European School or the obligations of Member States under that Statute or under the decision in question. It is not the function of the European Court to analyse the positions taken up by Member States, for the purpose of determining whether such positions were adopted by common agreement, or to interpret them for the purpose of determining whether they give rise to obligations.

The United Kingdom therefore proposes that the Court should answer Question 1 (a) as follows:

'In interpreting the provisions of Article 3 of the Act annexed to the Treaty of Accession to the European Communities of 22 January 1972, the Court of Justice has jurisdiction to give a preliminary ruling on the meaning of the words "all other agreements concluded by the original Member States relating to the functioning of the Communities or

connected with their activities” (in paragraph 1 of the article) and the words “declarations or resolutions . . . or other positions . . . concerning the European Communities adopted by common agreement of the Member States” (in paragraph 3 thereof) so as to indicate to the national court the considerations to be taken into account in the application of that article. The Court of Justice does not, however, have jurisdiction under that article or otherwise to interpret the other agreements concluded by the original Member States or the “declarations or resolutions . . . or other positions mentioned” in that article or other matters related to such agreements, declarations, resolutions or positions.’

(b) It is impossible to answer *Question 1 (b)* without interpreting the Board of Governors’ decision and appraising the circumstances surrounding it. In fact that decision referred only to the European School in Luxembourg in view of the position taken at the time by the Luxembourg Government. It was not intended to establish a binding rule, which moreover the Board of Governors was not competent to adopt, but established a negotiating position for an agreement under Article 28 of the Statute. On that view, the decision cannot be binding on the United Kingdom under Article 3 of the Act of Accession.

No obligation of the kind referred to in the question arises under Article 3 (1) of the Act of Accession, since the United Kingdom’s accession to the Statute did not involve acceptance of the disputed decision of the Board of Governors or of the consequences which Mr Hurd attributes to that decision. Nor does an obligation arise under Article 3 (3), since the positions of the Member

States in relation to the decision were not adopted by common agreement.

The disputed decision does not form part of the basis on which the Statute of the European School was founded. The Statute makes no mention of the taxation of teachers’ salaries; in fact, it does not mention their salaries at all. It does not authorize the Board of Governors to take decisions requiring Member States to confer privileges or immunities upon the teachers. If the minutes of the Board of Governors’ meeting are examined closely, it is clear that the decision was concerned only with the European School in Luxembourg and that it was preceded by a proposal made by the Luxembourg member of the Board of Governors, on which one member was unable to express an opinion and with regard to which another expressed reservations. Further, the members of the Board of Governors appear to have considered that they were empowered only to make proposals to the national authorities. They did not express any wish that the decision should be given legal or even formal status by incorporation in the Statute of the European School or in the Regulations for Members of the Teaching Staff.

Even if the decision purported to apply to European Schools in all Member States for an indefinite period and to impose obligations on the Member States, it did not become binding on the United Kingdom merely because of that State’s accession to the Statute of the European School. There is no support in international practice or in the decisions of international courts and tribunals for the view that an earlier instrument to which the State in question has not acceded can acquire binding force by the vehicle of a later treaty. In international law the provisions of a treaty do not bind a party in relation to any act which

took place before the date of entry into force of the treaty with respect to that party.

Neither the decision in question nor the practice of the original Member States amounts to a 'position' within the meaning of Article 3 (3) of the Act of Accession. The decision was incapable of amounting to such a position for the reason that it was not taken by the Member States but by the future Board of Governors of the European School. The practice of the original Member States is too diverse to constitute 'common agreement' within the meaning of Article 3 (3). In any event, in view of that diversity the substance of any such agreement would not be such as to impose on the original Member States or on new Member States an obligation to accord a tax exemption. Nothing in Article 3 (3) converts a non-binding political position into a binding legal obligation.

The United Kingdom Government therefore considers that Question 1 (b) must be answered in the negative.

2. (a) As regards *Article 5 of the EEC Treaty*, the United Kingdom points out that the first sentence of that article requires Member States to take appropriate measures to ensure fulfilment of obligations arising out of the EEC Treaty or resulting from action taken by the institutions. The decision in question did not give rise to obligations. In any event, the Board of Governors is not an institution of the Community.

The taxation of the European supplement would not jeopardize the attainment of the Community's objectives, nor would the exemption of the European supplement from taxation facilitate the Community's tasks. The taxation of the European supplement does not operate to the detriment of the European School at Culham. The second and third sentences of Article 5 are therefore not applicable either.

In its judgment of 15 September 1981 (*Lord Bruce of Donington*, cited above) the Court

held that, in the absence of any provision granting a tax exemption, the Member States were entitled to tax any emoluments derived by the Members of the European Parliament from the exercise of their mandate. That principle applies with at least equal force to teachers at the European School. On the other hand, the Court's reasoning in that case on the basis of Article 5, with regard to an internal decision of the Parliament concerning the reimbursement of subsistence and travel expenses, cannot be applied in this instance because the European School is not an institution of the Community and the European supplement does not represent the reimbursement of expenses. The imposition of taxation does not therefore entail, as it did in that case, the substitution by the national authorities of their appraisal of a system of allowances for the one undertaken by an institution, the internal functioning of which the Member States must not hamper.

(b) As regards *Article 7 of the EEC Treaty*, the situation of which Mr Hurd complains arises from the provisions of national law which do not provide for an exemption for United Kingdom citizens. That is not discrimination 'within the scope of application of the EEC Treaty' because it does not relate to a matter regulated by that Treaty. Moreover, Article 7 does not require the Member States to confer on their own nationals an advantage conferred other than by means of the application of the EEC Treaty on nationals of other Member States or to eliminate differences between the legislation of the Member States.

The United Kingdom therefore proposes that Question 2 should be answered in the negative.

3. The United Kingdom's primary submission is that *Question 3*, concerning direct effect, calls for no answer from the Court because the United Kingdom is under no obligation to accord the tax exemption.

Even if such an obligation existed, it would be an obligation to take positive legislative

measures enacted under national law and would be both conditional and imprecise since the national authorities would need to determine, among other issues, whether the detailed rules for the implementation of the obligation should be the same as those adopted in Italy or the Netherlands.

Article 3 (1) of the Act of Accession is neither clear nor unconditional. Even if that provision encompasses a duty to abide by the decision in question, new Member States will need to determine whether they are obliged to give effect to all, and all parts, of the Board of Governors' decisions; and if not, to identify those decisions and parts of decisions to which they must give effect and all other arrangements connected with the 'other agreements' mentioned in Article 3 (1). The original Member States will need to determine to what extent they are bound equally with the new Member States by such an obligation.

The same considerations apply with even greater force to an obligation arising under Article 3 (3) of the Act of Accession, since it would be difficult to find a provision less precise than Article 3 (3) in the Community's basic Treaties. The declarations and resolutions referred to in that provision do not constitute legal commitments the breach of which might incur the sanction of the Court; they involve a political undertaking only.

Further, any obligation such as arises under Article 3 of the Act of Accession is not unconditional since it is contingent on the conclusion of an agreement or the making of arrangements between the Board of Governors and the Member State under Article 28 of the Statute. That is why there is a specific and different solution for Luxembourg, Belgium, Italy and the Netherlands.

In so far as an obligation is said to arise under Article 5 of the EEC Treaty, an indi-

vidual is not entitled to rely on such an obligation (Case 9/73 *Schlüter v Hauptzollamt Lörrach* [1973] ECR 1135, paragraph 39; and Case 10/73 *REWE v Hauptzollamt Kehl* [1973] ECR 1175, paragraph 26).

As far as Article 7 is concerned, that provision produces direct effects only in conjunction with other specific provisions of the Treaty, thereby entitling a national of one Member State to be treated equally with nationals of another when exercising in the territory of the latter State rights conferred on him by the Treaty. (See for example, 2/74 *Reyners v Belgium*, [1974] ECR 631; Case 118/75 *Watson and Belmann* [1976] ECR 1185, and Case 1/78 *Kenny*, [1978] ECR 1489).

The United Kingdom therefore takes the view that the third question must be answered in the negative.

#### *C — Observations submitted by the Danish Government*

1. (a) As regards *Question 1 (a)* concerning the *jurisdiction of the Court*, the Danish Government submits that the Court's function is to interpret Community law; it does not have jurisdiction to interpret general international agreements, unless they specifically confer jurisdiction on the Court. Community law includes the original Treaties and measures which have been adopted through one of the procedures provided for in the Treaties. Measures adopted by different procedures, through agreements between States, come within the scope of international law. That distinction is reflected in Articles 2 and 3 of the Act of Accession. The Court has jurisdiction to interpret Article 3 of the Act of Accession and to make a ruling on whether a specific agreement falls within the scope of Article 3. However, the Court is precluded from interpreting such an agreement itself inasmuch as it is an agreement under general international law and can therefore

be interpreted by the Court only if it specifically confers jurisdiction on the Court.

The Court has no general power of interpretation. There are several examples of conventions entered into by the Member States which contain provisions governing their interpretation. Such provisions are inconsistent with the view that the Court of Justice has a general power of interpretation. Examples of such conventions include the Convention on Jurisdiction and the Enforcement of Judgments and the 1980 Convention on the Law Applicable to Contractual Obligations, under which the Court's jurisdiction is more limited than under Article 177, and the Convention of 19 April 1972 setting up a European University Institute, Article 29 of which provides that differences between the participating States are to be settled by arbitration.

(b) As regards the substance, there is nothing in the circumstances leading to the adoption of the Board's decision and its later implementation to suggest that it is an agreement which falls within the scope of Article 3. In that respect the Danish Government shares the doubts expressed by the Special Commissioners in the decision requesting a preliminary ruling.

2. As regards *Questions 2 and 3*, the Danish Government considers that the United Kingdom is under no obligation under Articles 5 and 7 of the EEC Treaty or under any other provisions of Community law to implement the decision in question in national law. Even if a binding agreement was entered into, that agreement cannot produce legal effects in Community law in conjunction with the first paragraph of Article 5 of the Treaty, because it is an agreement governed by international law which cannot be assimilated to Community law through a wide interpretation of that provision. Moreover, the failure to implement the Board's decision is not likely to jeopardize the objectives of the Treaty within the meaning of the second paragraph of Article 5. In this instance there has been no infringement of Article 7 inasmuch as the

tax exemption for the other teachers is apparently based on double taxation arrangements.

In conclusion the Danish Government proposes that the Court should answer Questions 1 (a) and (b) as follows:

'The Court has jurisdiction to interpret Article 3 of the Act of Accession. The decision in question is not an agreement which falls within the scope of Article 3. The United Kingdom is not required under Community law, in pursuance of Article 3, to implement the Board's decision.'

It proposes that the second question should be answered in the negative, with the result that the third question becomes devoid of purpose.

#### D — *Observations submitted by the Commission*

1. (a) As regards *Question 1 (a)*, the Commission states that in making a preliminary ruling regarding the interpretation of the Act of Accession, for which the Court has jurisdiction under Article 1 (3) of the Treaty of Accession, *the Court has jurisdiction* to rule on whether a particular matter falls within the meaning of certain terms used in Article 3 of the act. There is merely a difference of words between the question whether matter X falls within the meaning of term Y and the question whether term Y can be interpreted as applying to matter X. The Court has always looked to the substance of a question when the content of the question corresponded to the requirements of Article 177 of the Treaty — irrespective of the wording. *Question 1 (a)* should therefore be answered in the affirmative.

(b) *Question 1 (b)* concerns the *interpretation of Article 3 (1) and (3) of the Act of Accession* with regard to the Board of Governors' decision of January 1957 concerning the exemption from taxes of the European supplement. In the first place, it is

common ground that the Statute of the European School and the Protocol of 13 April 1962 constitute agreements within the meaning of Article 3 (1) of the Act, to which the United Kingdom acceded by virtue of that article. Although the Regulations for Members of the Teaching Staff were issued before the adoption of the Statute, they were founded on the Statute of the European School and formed part of the body of provisions applicable to the European School to which the new Member States were bound to accede. Upon their accession to the Statute, the new Member States also acceded to all derivative law based on the Statute or related to it and adopted in conformity with its provisions, and therefore to the Regulations for Members of the Teaching Staff. By acceding to the Statute of the European School, the United Kingdom did not accede to the dead letter of the Statute but to the living organism constituted by the School with its legal ramifications, its history and its traditions, and is therefore subject to the effect of decisions taken over the years.

Like the Regulations for Members of the Teaching Staff, the Board of Governors' decision forms part of the body of provisions applicable to the European School to which the United Kingdom acceded when it acceded to the Statute of the European School.

The question how teachers of the European Schools should be taxed constitutes a problem of Community law, as does the same question with regard to officials of the Community and Members of the European Parliament. As regards officials, the question is dealt with by Article 13 of the Protocol on the Privileges and Immunities of the European Communities. As far as Members of the European Parliament are concerned, the Court filled a lacuna with its judgment of 15 September 1981 (*Lord Bruce*

*of Donington's* case, cited above). For the same reasons, the taxation of European School staff required a decision at Community level, which was taken in January 1957 by the representatives of the Governments of the ECSC Member States. At that meeting, the representatives of the Member States were acting in a dual capacity, as members of the Board of Governors, which they had set up at the meeting of 22 June 1954, and as representatives of the Governments who were meeting to finalize the draft of an agreement which the Governments were to adopt in the near future. Depending upon the subjects under discussion and the legal powers required, they acted in one or the other of those capacities. Thus, despite the wording of the Minutes, it was in their capacity as representatives of the Governments that they adopted the decision to exempt the European supplement from tax. It was therefore a decision of the Governments, not a decision of the Governors.

Those two functions must be clearly distinguished, since the powers of the Board of Governors are confined to the tasks assigned to it, namely to fix the principles that govern the organization of the School and to lay down general guidelines for its administration. All other questions relating to the setting-up of the European School had to be decided by the representatives of the Governments acting in that capacity. Even though, after the school had been established in fact in the autumn of 1954, the Board had begun to operate, there remained, until the conclusion of the international treaty giving the school its Statute, certain points which had to be dealt with by the representatives of the Governments, such as the adoption of the school's Statute and the question of the tax exemption for teachers.

By its nature, the 'decision of the Governments' does not in itself constitute an agreement to which the new Member

States could accede under the second sentence of Article 3 (1) of the Act. It has an accessory character inasmuch as it presupposed the adoption of the Regulations for Members of the Teaching Staff and the Statute of the European School which was to provide the legal basis for those regulations. At the same time those instruments could not have been applied as intended without the implementation of the 'decision of the Governments', which was indispensable in achieving the objective of a standard salary level. Unlike other deductions made at source (see Article 10 of the first Regulations for Members of the Teaching Staff), tax contributions could not be reimbursed since any reimbursement would in turn be regarded as taxable income and it would therefore be necessary to resort to the mathematics of infinite series. Consequently the entire salary scheme and the whole delicate equilibrium in the school's internal structure would collapse without the cornerstone of tax exemption for the European supplement. That exemption is thus not a quasi-diplomatic privilege for the teachers, but a means of ensuring equal treatment. Legally, the 'decision of the Governments' has the following facets: it obliges the Member States not to tax the European supplement, it confirms that the Statute of the European School and the Regulations for Members of the Teaching Staff were drafted and based on the underlying principle of that exemption; and it constitutes the precondition for the introduction and maintenance of a standard salary system for all teachers of the European Schools.

Therefore, by acceding to the Statute of the European School, the United Kingdom acceded to all legal provisions governing the setting-up and functioning of the European Schools, including the decision not to tax the European supplement. Any other solution would render accession to the Statute meaningless and would give rise to endless argument over matters not expressly

mentioned in the Statute. It would also lead to disparities in the application of the Statute of the European School and discrimination to the detriment of teachers, students and parents.

2. The Commission does not deal with *Question 2*, which was submitted in the alternative.

3. (a) As regards *Question 3*, the Commission examines in the first place the *jurisdiction of the Court* to decide on issues relating to the Statute of the European School, because, unlike Questions 1 (a) and (b), *Question 3* does not involve the interpretation of the Act of Accession. It is therefore necessary to consider whether the Statute of the European School and the 'decision of the Governments' are 'acts of the Institutions of the Communities' within the meaning of Article 177 of the EEC Treaty, having regard to the fact that they were not adopted by the Council but by the Member States in the pursuit of Community objectives.

The European Schools undeniably pursue Community objectives. The competence to establish such schools is legally rooted in the power and the obligation of the Communities to provide adequate schooling for the children of officials. The Communities have certain social duties (*Fürsorgepflicht, devoir de sollicitude*) in relation to the members of their staff and their families, who under Article 20 of the Staff Regulations must reside in the place where they are employed. Such duties include the provision of adequate schooling for the children of expatriate families. Expatriation allowances do not compensate for the inconvenience of living abroad in respect of education. The Communities' duty to provide adequate local schooling in the mother tongue was expressly recognized in the first recital in the preamble to the Statute of the European School. Accordingly, the Communities finance the

European Schools by means of a large contribution which is entered in the budget of the Communities and the budget procedure of the Schools is grafted on to the Community procedure under Article 7 of the Protocol concerning the setting-up of European Schools. Other aspects which reveal the relationship with the Community are the fact that the allowances and the sickness insurance scheme are modelled upon those applicable to officials of the Community, the fact that the Communities are represented on the Board of Governors and the fact that the Community weighting is applied to salaries.

The functional, financial and organizational links between the European Schools and the Communities are so close that the Statute of the European School and the supplementary Protocol of 1962 must be regarded as provisions of complementary Community law. It would have been more appropriate for the Council to have established the European Schools by an act of Community law, as, moreover, was requested by the European Parliament in a resolution (Official Journal 1975, C 239 p. 11 *et seq.*, paragraph 18). The fear that the Communities, and more specifically the ECSC, lacked the authority to establish a school is unfounded. That authority resides in the Communities' power and obligation to make social provision for its staff and to provide all the facilities necessary for satisfying their basic family needs, including education.

The Court therefore has jurisdiction to interpret the Statute of the European School.

(b) As regards *the substance of Question 3*, the Commission points out that the terms of employment play a crucial role in a teacher's decision whether to apply for a post with a European School. He must

therefore be able to rely on the information contained in the Statute of the School, the Regulations for Members of the Teaching Staff and other provisions and decisions, and on the established practice of more than 20 years. By acceding to the Statute of the European School, the United Kingdom incorporated the provisions applicable to the European Schools into national law. The 'decision of the Governments' thus became an integral part of national law. Parties to legal proceedings who are adversely affected by the failure to apply that decision may therefore rely on it before the courts.

In conclusion the Commission proposes that the Court should answer the questions referred to it as follows:

- (1) In interpreting the provisions of Article 3 of the Act annexed to the Treaty of Accession of 22 January 1972 the Court of Justice has jurisdiction to give a preliminary ruling on the question whether a particular matter falls within the meaning of the words 'all other agreements concluded by the original Member States relating to the functioning of the Communities or connected with their activities' (in paragraph 1 of the article) and the words 'declarations or resolutions . . . or other positions . . . concerning the European Communities adopted by common agreement of the Member States' (in paragraph 3 thereof).
- (2) The United Kingdom is, by virtue of the second sentence of Article 3 (1) under an obligation as a matter of Community law to give effect in its national law to the decision taken in January 1957 by the representatives of the Governments of the Member States of the European Communities in their original composition that teaching staff of the European School should be exempt

from all tax on their salaries and allowances other than the part of their salaries corresponding to their national salaries.

- (3) A member of the teaching staff of the European School established in the United Kingdom is entitled as a matter of Community law to rely on the said decision in the courts and tribunals of the United Kingdom.

### III — Replies to the questions put by the Court

In addition to the matters which have been incorporated in the summary of facts above, it is clear from the replies submitted by *Mr Hurd*, the *United Kingdom* and the *Commission* that they hold the view that Article 24 (2) of the Regulations for Members of the Teaching Staff, which provides for the payment of a differential allowance, would also apply to domestic taxes on the European supplement, if a Member State were in fact entitled to levy domestic income tax on that supplement.

As regards the amount of the differential allowance which in those circumstances the European School at Culham would have to pay to *Mr Hurd* in order to offset domestic taxes on his European supplement, the *United Kingdom* corrected the calculation set out in *Mr Hurd's* written observations. Although it confirmed that that differential allowance would itself be subject to domestic taxation, it explained that under the national provisions applicable *Mr Hurd's* calculation of the infinite series would be simplified. According to the *United Kingdom's* calculations, which for the purposes of these proceedings are based on the data provided by *Mr Hurd*, the total amount of domestic taxation levied on *Mr Hurd's* European supplement and his differential allowance could therefore amount to £7 847 and give rise to a total differential allowance of £6 838 for a national salary of £5 176 and a European supplement of £8 384.

### IV — Oral procedure

At the sitting on 7 March 1985 the following presented oral argument: *Mr Hurd*, represented by *F. Jacobs QC*; the *United Kingdom*, represented by *R. Plender*, Barrister; the *Danish Government*, represented by *L. Mikaelson*; the *Irish Government*, represented by *J. O'Reilly*, Barrister; and the *Commission of the European Communities* represented by *J. Grünwald*.

*Mr Hurd*, the *United Kingdom* and the *Government of Denmark* essentially confirmed the positions which they had adopted in the written procedure.

The *Government of Ireland* limited its argument to Question 1 (a) concerning the jurisdiction of the Court. It takes the view that the Court has jurisdiction to interpret Article 3 of the Act of Accession by virtue of Article 1 (2) and (3) of the Treaty of Accession and that the Statute of the European School and its Protocol are covered by Article 3 (1) of the Act of Accession. According to the *Irish Government*, Article 3 of the Act of Accession is not, however, intended to convert political agreements into legal obligations and the jurisdiction of the Court to interpret it does not include the power to rule on matters of a political nature.

The *Commission* was content for the main part to refer to its written observations and to express its support for the views put forward on behalf of *Mr Hurd* regarding Articles 5 and 7 of the EEC Treaty. In addition it advanced arguments on the different aspects of the Vienna Convention on the Law of Treaties in order to show that, strictly from the point of view of international law, the 1957 decision of the Board of Governors was binding on the *United Kingdom*.

The Advocate General delivered his opinion at the sitting on 22 May 1985.

## Decision

- 1 By a decision of 14 February 1984, which was received at the Court on 17 February 1984, the Commissioners for the special purposes of the Income Tax Acts (hereinafter referred to as 'the Special Commissioners') referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty various questions on the interpretation of certain provisions and general principles of Community law, and in particular Article 3 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties (hereinafter referred to as 'the Act of Accession'), annexed to the Treaty concerning the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the European Economic Community and to the European Atomic Energy Community (hereinafter referred to as the 'Treaty of Accession'), and Articles 5 and 7 of the EEC Treaty. The purpose of those questions is to determine whether domestic income tax may be levied on a specific part of the emoluments paid to teaching staff of the European Schools.
  
- 2 The questions were raised in proceedings between Derrick Guy Edmund Hurd, headmaster of the European School at Culham, Oxfordshire, and the Inspector of Taxes. Those proceedings concern income tax assessments for the tax years 1978/79 and 1979/80 in respect of the amounts paid by the European School to Mr Hurd during those years.
  
- 3 The European Schools were set up in the various places where the institutions of the European Communities are located: in Luxembourg, Belgium, Italy, the Federal Republic of Germany and the Netherlands, and — since 1978 — in Culham in the United Kingdom. Their purpose is to provide schooling for the children of officials and servants of the Communities in their mother tongues. The schools were established on the basis of two agreements, namely the Statute of the European School of 12 April 1957 (United Nations Treaty Series, Volume 443, p. 129), which set up the first European School at Luxembourg, and the Protocol of 13 April 1962 on the setting-up of European Schools with reference to the Statute of the European School (United Nations Treaty Series, Volume 752, p. 267). Those two agreements were concluded between the six original Member States of the European Communities. The United Kingdom acceded to those agreements after its accession to the European Communities.

- 4 The Board of Governors, which is composed of the competent ministers of the Member States and a representative of the European Communities, and is responsible under the abovementioned agreements for their implementation with regard to educational, budgetary and administrative matters, adopted provisions concerning the rights and obligations of members of the teaching staff of the European Schools. Those provisions are set out in the Regulations for Members of the Teaching Staff and Conditions of Employment for Part-time Teachers of 4 and 5 December 1967, as subsequently amended (hereinafter referred to as 'the Regulations for Members of the Teaching Staff').
  
- 5 As regards the financing of the Schools, Article 13 of the Statute of the European School provides that the Board of Governors must adopt the budget and, acting unanimously, apportion expenses equitably among the Contracting Parties. Article 26 of the Statute provides that the budget adopted by the Board of Governors is to be financed *inter alia* by (i) contributions paid by the Contracting Parties on the basis of the apportionment of expenses by the Board of Governors; and (ii) subsidies from the institutions with which the school has concluded agreements. The negotiation of such an agreement with the European Communities is expressly provided for in Article 27 of the Statute and Article 4 of the Protocol on the setting-up of European Schools. According to the financial regulations adopted by the Board of Governors, the Member States pay a contribution equal to the national salaries of the teachers whom they second and the Commission of the European Communities pays a contribution which covers the rest of the budget, taking into account any other income which the school may have. That contribution from the Community is entered in the budget of the European Communities under the Commission's administrative appropriations.
  
- 6 The teaching staff of the European Schools are employed by their national authorities and seconded to the European Schools by those authorities. They receive, first, a salary paid by their national authorities calculated according to the salary scale applied in their State of origin, and, secondly, an amount paid by the European School, hereinafter referred to as 'the European supplement'. That European supplement corresponds to the difference between the national salary and a standard salary established by the Regulations for Members of the Teaching Staff on the basis of the Staff Regulations of Officials of the European Communities.
  
- 7 The levying of national taxation on teachers' salaries is the subject-matter of a decision (hereinafter referred to as 'the 1957 decision') which appears in the

Minutes of a meeting held on 25, 26 and 27 January 1957 between the representatives of the six original Member States of the European Coal and Steel Community, who had formed themselves into the Board of Governors of the first European School at Luxembourg, which was then in the process of being set up. According to that decision:

‘The Board of Governors therefore decided that members of the teaching staff should pay tax on the salary or part of the salary corresponding to their national salary. On the other hand, supplements resulting from the application of Articles 3, 4, 5 and 9 of the Regulations and allowances paid under Articles 6, 8, 9, 11 and 12 of the Regulations should be exempt from all tax. Teachers should not in any event be subject to double taxation on their salaries.’

- 8 In order to ensure that, regardless of their State of origin and in spite of the differences between the national income tax charged in the different Member States, the net remuneration of teachers was standardized, the Board of Governors made provision, in 1966, for the payment of a ‘differential allowance’. Article 24 (2) of the Regulations for Members of the Teaching Staff provides that:

‘Should the amount levied in taxes be higher than the amount which would be levied on the European salary under regulations laying down conditions and procedures for applying the tax for the benefit of the European Communities, a “differential” allowance equal to the difference between the two amounts shall be granted.’

- 9 Consequently, the national salaries of all the teaching staff of the various European Schools are subject to national income tax in their States of origin. For teaching staff of the European Schools in Luxembourg, Belgium, Italy, the Netherlands and the Federal Republic of Germany, irrespective of their nationality, the European supplements and the differential allowances paid by those schools are, by virtue of varying legal rules and administrative practices, in one way or another exempted from national income tax, both in the teacher’s State of origin and in the State in which the school concerned is situated.

- 10 In the United Kingdom the European supplements and the differential allowances paid by the European School at Culham to teachers who are not United Kingdom nationals are not subject to income tax. The dispute in the main proceedings concerns the question whether such payments may, on the other hand, be charged to tax when they are made to United Kingdom nationals.

- 11 Mr Hurd, a United Kingdom national, was seconded to the European School in Culham by the United Kingdom authorities. H. M. Inspector of Taxes made tax assessments concerning the European supplements which that school paid to him for the tax years 1978/79 and 1979/80. The Inspector of Taxes takes the view that, as is the case for all the teaching staff of United Kingdom nationality at the European School in Culham, those sums are liable to tax since no exemption is provided for in the United Kingdom legislation or in the Statute of the European School or the Regulations for Members of the Teaching Staff. Mr Hurd appealed against those assessments to the Special Commissioners.
  
- 12 Mr Hurd claimed that the supplements paid by the European School should be exempt from national taxation under Community law. Since the United Kingdom had acceded to the Statute of the European School, as it was required to do by virtue of Article 3 of the Act of Accession, it had as a result accepted the 1957 decision and was in the same situation as the original Member States with regard to that decision. In addition, in his view, Article 5 of the EEC Treaty imposed an obligation on the United Kingdom to honour that decision. Moreover, the failure to implement it in respect of United Kingdom nationals constituted discrimination prohibited under Article 7 of the Treaty.
  
- 13 The Special Commissioners considered that their decision depended upon various questions of interpretation of Community law. They therefore referred the following questions to the Court of Justice for a preliminary ruling:
  1. (a) Whether, in interpreting the provisions of Article 3 of the Act annexed to the Treaty of Accession to the European Economic Communities of 22 January 1972 the Court of Justice has jurisdiction to give a preliminary ruling on the question whether a particular matter falls within the meaning of the words 'all other agreements concluded by the original Member States relating to the functioning of the Communities or connected with their activities' (in paragraph 1 of the article) and the words 'declarations or resolutions . . . or other positions . . . concerning the European Communities adopted by common agreement of the Member States' (in paragraph 3 thereof);
  
  - (b) If so, whether the United Kingdom is, by virtue of the said Article 3, under an obligation as a matter of Community law to give effect in its national law to a particular decision taken at a meeting in January 1957 that teaching staff of the European School should be exempt from all tax on

their salaries and allowances (other than the part of their salaries corresponding to their national salaries), in the light of the circumstances in which that decision was taken, its subsequent history, the instruments governing the European Schools and their governing body and the responses of the six original Member States to that decision preceding the date on which the aforementioned Treaty of Accession came into force (1 January 1973);

2. Alternatively, whether the United Kingdom is, by virtue of Article 5 or Article 7 of the EEC Treaty (and the aforementioned Treaty of Accession), or of any other provision of Community law (apart from Article 3 of the Act annexed to the Treaty of Accession) under an obligation as a matter of Community law to give effect in its national law to the said decision;
3. If the United Kingdom is under such obligation as is mentioned in Question 1 (b) or Question 2 above, whether (in the absence of the implementation of the said decision in the national law of the United Kingdom) a member of the teaching staff of the European School established in the United Kingdom is entitled as a matter of Community law to rely on the said decision in the courts and tribunals of the United Kingdom.

### **The jurisdiction of the Court**

- 14 Question 1 (a) is essentially intended to establish whether the Court has jurisdiction to give a preliminary ruling under Article 177 of the EEC Treaty, and under Article 150 of the EAEC Treaty, on the interpretation of Article 3 of the Act of Accession with regard to the instruments concerning the European Schools and their teaching staff.
- 15 According to Article 1 (3) of the Treaty of Accession the provisions concerning the powers and jurisdiction of the institutions as set out in the EEC and EAEC Treaties are to apply in respect of the Treaty of Accession, and the provisions of the Act of Accession which is annexed to that Treaty form a part of it. The powers and jurisdiction to which that provision refers include the jurisdiction of the Court to give a preliminary ruling under the first paragraph of Article 177 of the EEC Treaty and the first paragraph of Article 150 of the EAEC Treaty. The Court therefore has jurisdiction to give a preliminary ruling on the interpretation of Article 3 of the Act of Accession.

- 16 However, in the United Kingdom's view, the Court may not, in interpreting Article 3 of the Act of Accession, rule on the question whether instruments such as the Statute of the European School and the Protocol on the setting-up of European Schools and provisions adopted on the basis of those instruments are covered by that article; the Court does not have jurisdiction to interpret such instruments themselves and a reply to this question necessarily presupposes the interpretation thereof.
- 17 The Danish Government also takes the view that the jurisdiction of the Court may not be extended by means of the interpretation of Article 3 of the Act of Accession to include the interpretation of instruments which are not covered by Article 177 of the EEC Treaty and Article 150 of the EAEC Treaty. However, it concedes that the Court may determine whether or not a particular agreement or provision falls within the categories of measures covered by Article 3 of the Act of Accession.
- 18 Ireland considers that the Court has jurisdiction to interpret Article 3 of the Act of Accession and that it may determine whether that provision covers a specific measure. It may not, however, rule on the legal effect produced by that measure with regard to the Member State concerned.
- 19 According to Mr Hurd and the Commission, the Court's jurisdiction to interpret Article 3 of the Act of Accession includes the power to determine the obligations which arise for the Member States under the measures which come under that provision. They argue that the functional, financial and organizational links between the European Schools and the Communities are so close that the Statute of the European School and the supplementary Protocol of 1962, together with the provisions of secondary law applicable to the European School, are part of 'complementary Community law' and, as such, fall within the jurisdiction of the Court.
- 20 In order to resolve this issue it should be stated in the first place that the European Schools were set up not on the basis of the Treaties establishing the European Communities or on the basis of measures adopted by the Community institutions, but on the basis of international agreements concluded by the Member States, namely the abovementioned Statute of the European School and the Protocol on the setting-up of European Schools. Those agreements together with the instruments, measures and decisions of organs of the European Schools adopted on that basis do not fall within any of the categories of measures covered by

Article 177 of the EEC Treaty and Article 150 of the EAEC Treaty. The mere fact that those agreements are linked to the Community and to the functioning of its institutions does not mean that they must be regarded as an integral part of Community law, the uniform interpretation of which throughout the Community falls within the jurisdiction of the Court. The Court therefore does not have jurisdiction to give a preliminary ruling, under Article 177 of the EEC Treaty and Article 150 of the EAEC Treaty, on the interpretation of such instruments.

- 21 However, in order to determine the scope of Article 3 of the Act of Accession with regard to such instruments, it may be necessary to define their legal status and, consequently, to subject them to such scrutiny as is necessary for that purpose. In performing that task the Court does not however acquire, on the basis of Article 3 of the Act of Accession, full and complete jurisdiction to interpret the instruments in question which it does not have under Article 177 of the EEC Treaty and Article 150 of the EAEC Treaty.
- 22 In reply to question 1 (a) it must therefore be stated that the Court of Justice has jurisdiction to interpret Article 3 of the Act of Accession; by virtue of such jurisdiction it may interpret the measures covered by that provision only in order to determine its scope, and not for the purpose of defining Member States' obligations under such measures.

### Article 3 of the Act of Accession

- 23 Question 1 (b) is intended to establish whether Article 3 of the Act of Accession imposes an obligation on the new Member States to give effect in their national law to the 1957 decision on the exemption from domestic taxation.
- 24 Mr Hurd argues that Article 3 of the Act of Accession requires the United Kingdom to implement the 1957 decision and to exempt all the teaching staff of the European School at Culham from tax on the European supplement. The Statute of the European School constitutes an agreement within the meaning of Article 3 (1). The obligations which derive therefrom for a Member State form part of the *acquis communautaire* which the new Member States are under a duty to accept. Although it was adopted before the signing of the Statute of the

European School in April 1957, the decision of the Board of Governors in January 1957 became binding under the Statute when that instrument was ratified. Moreover, its validity and its binding force have been recognized in the practice of the Member States over a long period of time; they consider themselves bound by the 1957 decision. The United Kingdom itself has partly recognized the validity of that decision by implementing it in respect of members of the teaching staff of the Culham School who are not United Kingdom nationals.

- 25 The United Kingdom considers that neither Article 3 (1) nor Article 3 (3) of the Act of Accession covers the 1957 decision. That decision was never intended to have any binding legal effect and the Board of Governors was, moreover, not competent to adopt a rule which was binding on the Member States. In any event, that decision, which was taken in the absence of the United Kingdom, did not have any effect on the United Kingdom under international law.
- 26 The Danish Government also takes the view that a measure such as the 1957 decision, which was not intended to have binding effect on the Member States, does not constitute an agreement within the meaning of Article 3 (1) of the Act of Accession.
- 27 According to the Commission, the 1957 decision, which was adopted by the representatives of the Governments acting in that capacity and not as members of the Board of Governors, has an accessory character in relation to the Statute of the European School, which for its part *does* constitute an agreement within the meaning of Article 3 (1) of the Act of Accession. In the Commission's view, as an essential element in the creation of the internal structure of the European School, an important aspect of which is a uniform level of remuneration for the teaching staff, that decision became binding on the United Kingdom with the latter's accession to the Statute of the European School.
- 28 The Court finds in the first place that the Statute of the European School and the Protocol on the setting-up of European Schools are agreements concluded by the original Member States relating to the functioning of the Communities or connected with their activities, within the meaning of the second sentence of Article 3 (1) of the Act of Accession, and that the United Kingdom acceded to those agreements in accordance with its obligation under that provision. On the other hand, the 1957 decision adopted by the representatives of the Member States, who had formed themselves into the Board of Governors of the first European School in Luxembourg, which was then in the process of being set up, was of a secondary nature in relation to the Statute of the European School and cannot itself be regarded as an international agreement within the meaning of Article 3 (1) of the Act of Accession.

- 29 Article 3 (3) of the Act of Accession extends the *acquis communautaire* which the new Member States are under a duty to accept by virtue of their accession to the Communities to all 'declarations or resolutions or other positions . . . concerning the European Communities adopted by common agreement of the Member States'. The 1957 decision, which was adopted for the purposes of the implementation of the agreement on the Statute of the European School concluded in connection with the functioning of the Communities, is one of the 'positions' covered by that provision. Consequently, in relation to the 1957 decision the new Member States are 'in the same situation as the original Member States' by virtue of Article 3 (3).
- 30 However, Article 3 (3) of the Act of Accession does not attach any additional legal effect to the measures to which it applies; it merely stipulates that the new Member States 'will . . . observe the principles and guidelines deriving from those declarations, resolutions or other positions and will take such measures as may be necessary to ensure their implementation'. It is therefore intended to ensure that the new Member States are subject to the same obligations as the original Member States by virtue of the measures in question and to make it impossible for a new Member State to rely on the fact that such measures were adopted in its absence.
- 31 The Commission also drew attention, in particular at the hearing, to the question whether, by virtue of the Statute of the European School and more generally by virtue of the rules of international law and in the light of the powers which the Member States had given to their representatives on the Board of Governors for the meeting in question, the 1957 decision can create binding legal effects. However, as has been stated above, that question is not within the jurisdiction of the Court in the context of proceedings under Article 177 of the EEC Treaty and Article 150 of the EAEC Treaty.
- 32 In reply to question 1 (b) it must therefore be stated that Article 3 (3) of the Act of Accession must be interpreted as applying to the decision adopted on 25, 26, and 27 January 1957 by the representatives of the six original Member States of the ECSC, who had formed themselves into the Board of Governors of the European School in Luxembourg, but that it does not add to the legal scope of that decision.

## Article 5 of the EEC Treaty

- 33 By their second question the Special Commissioners ask in the first place whether Article 5 of the EEC Treaty requires Member States to give effect to the 1957 decision. It is clear from their decision that that question is intended to establish whether the Member States are under an obligation to exempt from domestic taxation the European supplements paid to teaching staff of the European Schools situated within their territory where those staff are their nationals.
- 34 According to Mr Hurd, because of the close link between the European Schools and the Community institutions, Article 5 creates an obligation for the Member States to refrain from taking measures detrimental to the functioning of the European Schools. In his view, it is necessary to ensure that in the European Schools there is no discrimination between members of the teaching staff as regards the level of remuneration. In addition, compensation paid by the European Schools in respect of domestic taxation levied on the European supplement represents a burden not only on the budget of the European Schools but also on that of the Community and is therefore directly detrimental to the Community. In that respect Mr Hurd refers *inter alia* to Article 24 (2) of the Regulations for the Teaching Staff and to the budgetary consequences of paying the differential allowance which is provided for therein.
- 35 The United Kingdom contends that taxation of the European Supplement does not jeopardize the attainment of the Community's objectives and does not operate to the detriment of the European School at Culham. Referring to the judgment of the Court of 15 September 1981 (Case 208/80, *Lord Bruce of Donington v Aspden* [1981] ECR 2205), it considers that the reasoning in that case cannot be applied in this instance because in this case there is no impairment of the internal functioning of a Community institution.
- 36 The Court considers that the Statute of the European School and the Protocol on the setting-up of European Schools are to be viewed in the context of a whole series of agreements, decisions and other acts by which the Member States collaborate and coordinate their activities so as to contribute to the proper functioning of the Community institutions and to facilitate the achievement of the tasks of those institutions. The European Schools were set up, as is clear from the first recital in the preamble to the Statute of the European School, because the presence at the centres of activity of the Community institutions of officials from the

Member States made it necessary to organize schooling for their children in their mother tongues and, as is stated in the first paragraph of Article 1 of the Protocol on the setting-up of European Schools, the purpose of those schools is to ensure that children of the staff of the European Communities receive education and instruction together.

- 37 However, such cooperation between the Member States and the rules relating thereto do not have their legal basis in the Treaties establishing the European Communities and are not part of the law created by the Communities and derived from the Treaties. The provisions of the Treaties do not therefore apply to the Statute of the European School or to decisions adopted on the basis of that instrument.
- 38 As regards, more specifically, Article 5 of the EEC Treaty, it should be noted that the second sentence of the first paragraph of that article imposes on Member States an obligation to facilitate the achievement of the Community's tasks, while the second paragraph requires Member States to abstain from any measure which could jeopardize the attainment of the objectives of the Treaty. As the Court held in particular in its judgment of 10 February 1983 (Case 230/81 *Luxembourg v European Parliament* [1983] ECR 255), that provision is the expression of the more general rule imposing on Member States and the Community institutions mutual duties of genuine cooperation and assistance. Those duties, which are derived from the Treaties, cannot be applied to agreements between the Member States which lie outside that framework, such as for example the Statute of the European School.
- 39 The position would be different if the implementation of a provision of the Treaties or of secondary Community law or the functioning of the Community institutions were impeded by a measure taken to implement such an agreement concluded between the Member States outside the scope of the Treaties. In that event the measure in question could be regarded as contrary to the obligations arising under the second paragraph of Article 5 of the EEC Treaty.
- 40 Such are the considerations that must be borne in mind when considering the question whether the taxation of the European supplement paid to members of the teaching staff of a European School is, as Mr Hurd claims, detrimental to the functioning of the Community institutions by reason of the operation of Article 24 (2) of the Regulations for Members of the Teaching Staff.

- 41 Under Article 24 (2) of the Regulations for Members of the Teaching Staff, the European School grants, according to the information provided by the parties, a differential allowance to compensate for the domestic taxation charged on its teachers' salaries in so far as the amount thereof exceeds the amount which would be charged under the provisions applicable to officials of the European Community. If a Member State taxes the European supplements, the School therefore refunds the tax by means of a differential allowance, which may itself be taxed. That process could theoretically be repeated *ad infinitum*. It is true that in this case, as the United Kingdom points out, national legislation makes it possible to avoid such repetition by means of a simplified calculation.
- 42 The financial burden of that process falls entirely on the Community budget since, as has been explained above, the Community must pay for the difference between, on the one hand, the European School's own income and the national salaries of the teachers and, on the other hand, the total budget of the European School. Any additional payment which the School makes under Article 24 (2) of the Regulations for Members of the Teaching Staff therefore falls directly on the Community budget.
- 43 In order to assess the detrimental nature of the consequences which result for the Community from such a practice on the part of a Member State, it is not sufficient to take into consideration only the case of Mr Hurd or the British teachers at the European School at Culham. It is also necessary to consider the situation which might result if similar practices were adopted in other Member States.
- 44 If the attitude of the United Kingdom authorities in Mr Hurd's case were adopted generally the result would be an effective transfer of funds from the Community budget to the national budget, and the financial consequences would be directly detrimental to the Community. In that way a Member State could unilaterally interfere with the system adopted for financing the Community and apportioning financial burdens between the Member States.
- 45 Such consequences cannot be accepted. Conduct giving rise to them is contrary to the duty of genuine cooperation and assistance which Member States owe the Community and which finds expression in the obligation laid down in Article 5 of

the Treaty to facilitate the achievement of the Community's tasks and to refrain from jeopardizing the attainment of the objectives of the Treaty.

- 46 In that context the Special Commissioners seek to establish by their third question whether the prohibition deriving from Article 5 of the EEC Treaty against the imposition of domestic taxation on the European supplement of members of the teaching staff of a European School is capable of producing direct effects in the legal relations between the Member States and their subjects and whether, consequently, Mr Hurd is entitled to rely on it before the courts and tribunals of the United Kingdom.
- 47 According to a consistent line of decisions of the Court, a provision produces direct effect in relations between the Member States and their subjects only if it is clear and unconditional and not contingent on any discretionary implementing measure.
- 48 Those requirements are not fulfilled with regard to the obligation at issue in these proceedings, namely the obligation arising from Article 5 of the EEC Treaty to refrain from any unilateral measure that would interfere with the system adopted for financing the Community and apportioning financial burdens between the Member States. The differences which exist in that respect between the practices of the Member States concerning the detailed rules and procedures for exempting teachers from domestic taxation show that the substance of that obligation is not sufficiently precise. It is for each Member State concerned to determine the method by which it chooses to prevent its tax treatment of teachers at the European Schools from producing detrimental effects for the system of financing the Community and apportioning financial burdens between the Member States.
- 49 In answering the first point raised by the second question, in conjunction with the third question, it must therefore be stated that, by virtue of the duty of genuine cooperation and assistance which Member States owe the Community and which finds expression in the obligation laid down in Article 5 of the EEC Treaty to facilitate the achievement of Community's tasks and to refrain from jeopardizing the attainment of the objectives of the Treaty, Member States are prohibited from subjecting to domestic taxation the salaries paid by the European Schools to their teachers, where the burden of such taxation is borne by the Community budget. That obligation does not produce direct effects capable of being relied upon in relations between Member States and their subjects.

**Article 7 of the EEC Treaty and the general principles of Community law**

- 50 The second question referred to the Court by the Special Commissioners also seeks to establish whether Article 7 of the EEC Treaty or any other provision of Community law requires a Member State to extend to its own nationals the exemption from domestic income tax which it grants to teachers of the European School who are nationals of another Member State and, more specifically, to apply the 1957 decision in relation to them.
- 51 In Mr Hurd's view, the fact that the United Kingdom grants the tax exemption to teachers of other nationalities, but not to teachers of United Kingdom nationality, constitutes discrimination on grounds of nationality, contrary to Article 7 of the EEC Treaty.
- 52 The United Kingdom considers that, since the matter in question is outside the scope of the EEC Treaty, Article 7 is not relevant. In addition, that article does not require Member States to accord the same treatment to their own nationals as to nationals of other Member States.
- 53 In that respect, it should be noted in the first place that it is common ground between the parties that the remuneration of teachers at the European School in Culham who are not United Kingdom nationals is in fact not subject to United Kingdom taxation. There is some dispute between the parties as to whether that difference of treatment is covered by provisions of national law or by double taxation conventions, and as to what those provisions are, but that is not a matter for the Court. In replying to the question raised by the Special Commissioners the Court must therefore proceed on the assumption that the question concerns a Member State whose legislation provides for such a difference of treatment according to the nationality of the teachers at a European School situated on its territory.
- 54 In order to reply to that question it is necessary to consider whether such a situation falls within the 'scope of application of this Treaty', within the meaning of Article 7 of the EEC Treaty. It is true that teachers at the European School may be regarded as workers within the meaning of Article 48 of the EEC Treaty who, where they are employed in a school situated in another Member State, have made use of their right to free movement within the Community. That is however not the case with regard to a teacher who is a national of the Member State in which the European School in question is situated and who has not moved within the Community to take up a post with that school.

- 55 As the Court has already held in its judgments of 28 March 1979 (Case 175/78 *Saunders* [1979] ECR 1129) and of 27 October 1982 (Joined Cases 35 and 36/82 *Morson and Jhanjan* [1982] ECR 3723), the principle of non-discrimination enshrined in Article 7 of the EEC Treaty, together with the specific expression of that principle in Article 48, cannot be applied to situations which are wholly internal to a Member State and which are in no way connected to any situations envisaged by Community law. The mere fact that nationals of a Member State are employed by a European School situated on the territory of that State is not sufficient to confer on those persons the benefit of the Community rules on the free movement of workers and to limit the power of that Member State to adopt measures in relation to them which are more restrictive than those applied to nationals of other Member States.
- 56 It follows that Article 7 of the EEC Treaty cannot be relied upon to prohibit a Member State from applying to the teaching staff of a European School situated on its territory tax treatment which is less favourable to its own nationals than to the nationals of other Member States.
- 57 Mr Hurd also referred to the general principles of Community law, and in particular the principles of the protection of legitimate expectations, estoppel and Community solidarity, from which it is, in his view, clear that the United Kingdom is bound to respect the 1957 decision.
- 58 In that respect it is sufficient to point out that the principles relied on by Mr Hurd do not have, in a case such as this, any independent existence outside the obligation which Article 5 of the EEC Treaty imposes on Member States. As regards legitimate expectations, it should be noted that by reason of the application of Article 24 (2) of the Regulations for Members of the Teaching Staff, the financial burden imposed on him as a result of the taxation of the European supplement is limited.
- 59 In reply to the second question it must therefore be stated that neither Article 7 of the EEC Treaty nor the general principles of Community law require a Member State to give effect to the abovementioned decision of 1957 and to exempt the salaries of teachers at a European School situated on its territory from domestic taxation, where those teachers are nationals of that Member State.

## Costs

- 60 The costs incurred by, Denmark, Ireland, the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

## THE COURT,

in answer to the questions referred to it by the Commissioners for the special purposes of the Income Tax Acts by a decision of 14 February 1984, hereby rules:

- (1) The Court of Justice has jurisdiction to interpret Article 3 of the Act of Accession. By virtue of such jurisdiction it may interpret the measures covered by that provision only in order to determine its scope, and not for the purpose of defining Member States' obligations under such measures.
- (2) Article 3 (3) of the Act of Accession must be interpreted as applying to the decision adopted on 25, 26 and 27 January 1957 by the representatives of the six original Member States of the ECSC, who had formed themselves into the Board of Governors of the European School in Luxembourg. It does not, however, add to the legal scope of that decision.
- (3) By virtue of the duty of genuine cooperation and assistance which Member States owe the Community and which finds expression in the obligation laid down in Article 5 of the EEC Treaty to facilitate the achievement of the Community's tasks and to refrain from jeopardizing the attainment of the objectives of the Treaty, Member States are prohibited from subjecting to domestic taxation the salaries paid by the European Schools to their teachers, where the burden of such taxation is borne by the Community budget. That obligation does not produce direct effects capable of being relied upon in relations between the Member States and their subjects.

- (4) Neither Article 7 of the EEC Treaty nor the general principles of Community law require a Member State to give effect to the abovementioned decision of 1957 and to exempt salaries of teachers at a European School situated on its territory from domestic taxation, where those teachers are nationals of that Member State.

|          |          |        |          |           |
|----------|----------|--------|----------|-----------|
| Everling | Bahlmann | Joliet | Bosco    |           |
| Koopmans | Due      | Galmot | Kakouris | O'Higgins |

Delivered in open court in Luxembourg on 15 January 1986.

P. Heim  
Registrar

U. Everling  
President of Chamber,  
acting as President