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Information and Notices

<u>Notice No</u>	<u>Contents</u>	<u>Page</u>
	I Information	
	Commission	
87/C 290/01	ECU.....	1
87/C 290/02	State aid (Italy) (Articles 92 to 94 of the Treaty establishing the European Economic Community).....	2
87/C 290/03	State aid (Italy) (Articles 92 to 94 of the Treaty establishing the European Economic Community).....	3
87/C 290/04	Commission communication concerning imports into France of certain textile products (categories 15 B, 68 and 71) originating in China.....	3
	Court of Justice	
87/C 290/05	Judgment of the Court of 1 October 1987 in Case 311/85: (reference for a preliminary ruling made by the Rechtbank van Koophandel, Brussels): Vzw Vereniging van Vlaamse Reisbureaus v. Vzw Sociale Dienst van de Plaatselijke en Gewestelijke Overheidsdiensten (<i>Travel agents — Statutory prohibition on the grant of rebates</i>) ...	4
87/C 290/06	Judgment of the Court (Third Chamber) of 7 October 1987 in Case 401/85: Francesco Schina v. Commission of the European Communities (<i>Officials — Interest in the event of interlocutory attachment order</i>).....	4
87/C 290/07	Judgment of the Court (First Chamber) of 7 October 1987 in Case 140/86: Gisela Strack v. Commission of the European Communities (<i>Official — Communication of personal file</i>).....	4
87/C 290/08	Case 277/87: Action brought on 18 September 1987 by Sandoz Prodotti Farmaceutici SpA against Commission of the European Communities.....	5
87/C 290/09	Case 284/87: Action brought on 24 September 1987 by Oskar Schäflein against the Commission of the European Communities.....	5
87/C 290/10	Case 289/87: Action brought on 28 September 1987 by Michele Giubilini against Commission of the European Communities.....	6
87/C 290/11	Case 290/87: Action brought on 28 September 1987 by the Commission of the European Communities against the Kingdom of the Netherlands.....	7
87/C 290/12	Case 294/87: Action brought on 1 October 1987 by the Commission of the European Communities against the Italian Republic.....	7
87/C 290/13	Case 303/87: Reference for a preliminary ruling by the Finanzgericht Baden-Württemberg, Außensenate Freiburg, by order of that court of 7 September 1987 in the case of the University of Stuttgart v. Hauptzollamt Stuttgart-Ost.....	8

I

(Information)

COMMISSION

ECU ⁽¹⁾

29 October 1987

(87/C 290/01)

Currency amount for one unit:

Belgian and Luxembourg franc con.	43,2730	Spanish peseta	138,149
Belgian and Luxembourg franc fin.	43,4877	Portuguese escudo	165,762
German mark	2,06746	United States dollar	1,19300
Dutch guilder	2,32813	Swiss franc	1,71255
Pound sterling	0,692114	Swedish krona	7,40254
Danish krone	7,97816	Norwegian krone	7,83202
French franc	6,96949	Canadian dollar	1,57177
Italian lira	1509,74	Austrian schilling	14,5534
Irish pound	0,778363	Finnish markka	5,07262
Greek drachma	161,746	Japanese yen	164,753
		Australian dollar	1,78459
		New Zealand dollar	2,02718

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

Users of the service should do as follows:

- call telex number Brussels 23789;
- give their own telex code;
- type the code 'cccc' which puts the automatic system into operation resulting in the transmission of the conversion rates of the ECU;
- the transmission should not be interrupted until the end of the message, which is marked by the code 'ffff'.

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

⁽¹⁾ Council Regulation (EEC) No 3180/78 of 18 December 1978 (OJ No L 379, 30. 12. 1978, p. 1), as amended by Regulation (EEC) No 2626/84 (OJ No L 247, 16. 9. 1984, p. 1).

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

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

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

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

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

STATE AID

(Italy)

(Articles 92 to 94 of the Treaty establishing the European Economic Community)

(87/C 290/02)

1. Communication pursuant to Article 93 (2) of the EEC Treaty to parties concerned other than Member States concerning Decree Law of the Italian Government No 273 of 10 July 1987:

- providing for aid to producers of rectified concentrated must (Article 1 (1)), and
- fixing a maximum price for rectified concentrated must in order to promote use of the must in respect of which the aid was given (Article 1 (2)).

These measures constitute operational aids, their effects, which will come to an end when the measures themselves terminate, being without lasting impact on the sector's development. They are moreover additional aids to the intervention arrangements provided for by Council Regulation (EEC) No 822/87 on the Common organization of the market in wine ⁽¹⁾ and are on that account a violation of that regulation.

2. No derogation can be made under Article 92 (3) of the EEC Treaty in respect of an aid violating a common

⁽¹⁾ OJ No L 84, 27. 3. 1987, p. 1.

organization of the market and any such aid is therefore incompatible with the common market.

3. In the light of the facts as stated above the Commission has decided to open in respect of the said aid the procedure provided for in the first subparagraph of Article 93 (2) of the EEC Treaty.

4. The Commission draws attention to its communication published in *Official Journal of the European Communities* No C 318, page 3, of 24 November 1983 and informs present and potential beneficiaries under the measures indicated in paragraph 1 above of the risk attaching to acceptance thereof, since any recipient of an aid granted illegally, i.e. before the Commission has come to a final decision thereon, may be required to repay it.

5. The Commission hereby gives notice to parties concerned other than Member States to submit their comments on the measure indicated in paragraph 1 above within two weeks of the date of this communication, to the following address:

Commission of the European Communities,
rue de la Loi, 200,
B-1049 Brussels.

STATE AID

(Italy)

(Articles 92 to 94 of the Treaty establishing the European Economic Community)

(87/C 290/03)

Communication pursuant to Article 93 (2) of the EEC Treaty to parties concerned other than Member States concerning draft Sicilian Regional Law No 86 ('norme stralciate') on measures in respect of citrus-growing and the damage caused to holdings by bad weather during the period from December 1986 to March 1987.

1. In accordance with Article 93 (3) of the EEC Treaty, by letter of 23 June 1987 the Italian Government notified the Commission of the draft measures referred to above.
2. The draft measures include, in Article 9, regional aid to mandarin growers which would be equal to the Community aid for the industrial processing of 'biondo comune' oranges.

The aid infringes Regulation (EEC) No 1035/72 (1) and is therefore incompatible with the common market.

Aid which constitutes an infringement does not qualify under any of the exemptions provided for in Article 92 (3) of the Treaty.

3. The Commission has accordingly decided to initiate the procedure provided for in the first sentence of Article 93 (2) of the EEC Treaty in respect of the said aid.
4. The Commission wishes to draw attention to its communication published in the *Official Journal of the European Communities* No C 318, page 3, of 24 November 1983 and hereby informs recipients, potential or otherwise, of the measures referred to in paragraph 1 above of the risk attaching to those aids, in that any recipient of an aid granted illegally, i.e. without the Commission having reached a final decision, may have to refund that aid.
5. The Commission hereby gives notice to the parties concerned other than Member States to submit their comments on the measure referred to in paragraph 1 above within two weeks from the publication of this communication to the following address:
Commission of the European Communities,
rue de la Loi, 200,
B-1049 Brussels.

(1) OJ No L 118, 20. 5. 1972, p. 1.

Commission communication concerning imports into France of certain textile products (categories 15 B, 68 and 71) originating in China

(87/C 290/04)

Pursuant to Article 12 (5) of Council Regulation (EEC) No 2072/84 of 29 June 1984 on common rules for imports of certain textile products originating in China (1), the Commission has presented to the Chinese authorities a request dated 23 October 1987 for consultations with a view to reaching an agreement or joint conclusions on a suitable level of limitation for imports into France of products of categories 15 B, 68 and 71 originating in China.

Pending a mutually satisfactory solution, the Commission has asked the Chinese authorities to limit for a provisional period of three months, starting on 23 October 1987, exports to France of products of category 15 B at the level of 48 000 pieces, of category 68 at the level of 45,5 tonnes and of category 71 at the level of 16,75 tonnes.

(1) OJ No L 198, 27. 7. 1984, p. 1.

COURT OF JUSTICE

JUDGMENT OF THE COURT

of 1 October 1987

in Case 311/85: (reference for a preliminary ruling made by the Rechtbank van Koophandel, Brussels): *Vzw Vereniging van Vlaamse Reisbureaus v. Vzw Sociale Dienst van de Plaatselijke en Gewestelijke Overheidsdiensten* ⁽¹⁾

(Travel agents — Statutory prohibition on the grant of rebates)

(87/C 290/05)

(Language of the case: Dutch)

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

In Case 311/85: reference to the Court under Article 177 of the EEC Treaty by the Rechtbank van Koophandel [Commercial Court] Brussels, for a preliminary ruling in the proceedings pending before that court between *Vzw Vereniging van Vlaamse Reisbureaus* [Association of Flemish Travel Agencies] and *Vzw Sociale Dienst van de Plaatselijke en Gewestelijke Overheidsdiensten* [social service of the local and regional public services] — on the interpretation of Articles 30, 34 and 85 ⁽¹⁾ of the EEC Treaty — the Court, composed of Lord Mackenzie Stuart, President, T. F. O'Higgins and F. A. Schockweiler (Presidents of Chambers), G. Bosco, O. Due, U. Everling, K. Bahlmann, R. Joliet and J. C. Moitinho de Almeida, Judges; C. O. Lenz, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 1 October 1987, the operative part of which is as follows:

1. *Legislative provisions or regulations of a Member State requiring travel agents to observe the prices and tariffs for travel set by tour-operators, prohibiting them from sharing the commission paid in respect of the sale of such travel with their customers or granting rebates to their customers and regarding such acts as contrary to fair trading practice are incompatible with the obligations of the Member States pursuant to Article 5, in conjunction with Articles 3 (f) and 85, of the EEC Treaty, where the object or effect of such national provisions is to reinforce the effects of agreements, decisions or concerted practices which are contrary to Article 85;*
2. *Legislative provisions or regulations of a Member State of the kind referred to in the reply to the first question are not incompatible with Articles 30 and 34 of the Treaty.*

⁽¹⁾ OJ No C 293, 15. 11. 1985.

JUDGMENT OF THE COURT

(Third Chamber)

of 7 October 1987

in Case 401/85: *Francesco Schina v. Commission of the European Communities* ⁽¹⁾

(Officials — Interest in the event of interlocutory attachment order)

(87/C 290/06)

(Language of the case: French)

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

In Case 401/85: Francesco Schina, official of the Commission of the European Communities, residing at Strassen, Luxembourg, represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Nicolas Decker, of the Luxembourg Bar, 16, Avenue Marie-Thérèse, against Commission of the European Communities (Agents: Dimitrios Gouloussis and Marie Wolfcarius) — application for the payment of interest on sums withheld as the result of an interlocutory attachment order on Mr Schina's remuneration — the Court (Third Chamber), composed of J. C. Moitinho de Almeida, President of Chamber, U. Everling and Y. Galmot, Judges; J. L. da Cruz Vilaça, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 7 October 1987, the operative part of which is as follows:

1. *The application is dismissed;*
2. *The parties shall bear their own costs.*

⁽¹⁾ OJ No C 359, 31. 12. 1985.

JUDGMENT OF THE COURT

(First Chamber)

of 7 October 1987

in Case 140/86: *Gisela Strack v. Commission of the European Communities* ⁽¹⁾

(Official — Communication of personal file)

(87/C 290/07)

(Language of the case: German)

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

In Case 140/86: Gisela Strack, widow and beneficiary of the estate of Gerhard Strack, former official of the Commission of the European Communities, residing at Biebertal (Federal Republic of Germany), represented by B. Potthast and H. J. Rüber, Rechtsanwälte, Cologne, with an address for service in Luxembourg at the

⁽¹⁾ OJ No C 195, 2. 8. 1986.

Chambers of Victor Biel, 18A Rue des Glacis, against Commission of the European Communities (Agent: Henri Étienne) — application for the annulment of the Commission's decision refusing to authorize the applicant to inspect the entire personal file of Mr Gerhard Strack — the Court (First Chamber), composed of G. Bosco, President of Chamber, R. Joliet and F. A. Schockweiler, Judges; M. Darmon, Advocate-General; B. Pastor, Administrator, for the Registrar, gave a judgment on 7 October 1987, the operative part of which is as follows:

1. *The application is dismissed;*
2. *The Commission is ordered to pay the costs.*

**Action brought on 18 September 1987 by Sandoz
Prodotti Farmaceutici SpA against Commission of the
European Communities**

(Case 277/87)

(87/C 290/08)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 18 September 1987 by Sandoz Prodotti Farmaceutici SpA, whose registered office is in Milan, Italy, represented by Giorgio Bernini of the Bologna Bar and Ernest Arendt of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 4 Avenue Marie Thérèse.

The applicant claims that the Court should:

1. Primarily declare void and/or, in any event, without effect the Commission Decision of 13 July 1987 concerning a proceeding initiated under Article 85 of the EEC Treaty (IV/31741 — Sandoz), on the grounds that the decision is unlawful, erroneous and does not state the reasons on which it is based;
2. Following the annulment of the aforesaid decision, declare that the applicant is not obliged to pay the fine of 800 000 ECU imposed on it by the Commission;
3. Alternatively, and in the unlikely event that the Court might consider it appropriate to uphold the aforesaid decision even in part, reduce the fine already imposed on the applicant by exercising its discretion in a manner consistent with the criteria set out above and having regard to the fact that: (a) the applicant's conduct is exclusively the result of forgetfulness on its part owing to the specific reasons given earlier; (b) such conduct has neither restricted competition nor had an adverse effect on intra-Community trade; (c) from the outset the applicant has followed the Commission's instructions and/or its suggestions and has demonstrated throughout the course of the proceeding initiated by the Commission its readiness

to provide the latter with all possible assistance in a spirit of cooperation; (d) the amount of the fine must also be determined by reference to the market share held by the products involved in the infringement;

4. In any event, order the Commission to pay the whole of the costs and the fees incurred.

Contentions and main arguments adduced in support:

- Absence of a statement of reasons. The Commission's reasoning is circuitous. It infers the existence of an agreement from the mere fact that the invoice is stamped with the words 'export forbidden'. It goes on to infer an infringement of Article 85 of the EEC Treaty from the alleged existence of the agreement whose terms supposedly include a clause with the aforesaid words. An invoice is only an accounting document and can in no way be described as reflecting either an intention to enter into a contract or a subsequent agreement between the parties. In this case, it is an oppressive clause whose validity is expressly subject to twofold acceptance on the part of the party concerned (Article 1341 of the Civil Code). Even the Commission has acknowledged that no standard written contract exists between Sandoz and its customers. The applicant adds that the Commission has been unable to furnish any proof either of the existence of an alleged oral contract or of an agreement of a kind likely to give rise to a concerted practice. In the absence of proof of the existence of an agreement, the Commission must produce evidence of the restrictive effects of the clause, viewed on its own. Instead, the Commission has produced no evidence whatsoever regarding the significance of the effects resulting from the inclusion in the invoice of the 'export forbidden' clause.
- The fine imposed would appear to be manifestly out of proportion to the objective nature and subjective details of the actual conduct in question.

**Action brought on 24 September 1987 by Oskar
Schäfflein against the Commission of the European
Communities**

(Case 284/87)

(87/C 290/09)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 24 September 1987 by Oskar Schäfflein, 20.Via al Roccio, CH-6900 Massagno (Lugano), represented by Bernd Potthast, Hans-Josef Rüber and Albert Potthast, Rechtsanwälte, 56-58 Komödienstraße, D-5000 Köln 1, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 4 Avenue Marie-Thérèse.

The applicant claims that the Court should:

1. Declare unlawful and void the defendant's salary statements for the applicant for February and March 1987 in so far as the weighting applied to the pension payable was other than that applicable to Switzerland;
2. Declare that as from February 1987 the applicant is entitled to a pension to which the weighting for Switzerland is applied;
3. Order the defendant to issue fresh salary statements for the applicant from February 1987 in accordance with the Court's view of the law and to pay the applicant the difference as calculated;
4. Order the defendant to pay the applicant Sfr 3 054,87 for January 1987;
5. Order the defendant to pay the costs.

Contentions and main arguments adduced in support:

The applicant claims that the weighting for Switzerland should be applied since that is the centre of his interests and where in fact he has his main residence. By reason only of the Swiss law on aliens he is obliged to use his Swiss residence for no more than 180 days a year. He therefore has his main residence for formal purposes at his brother's house in Germany, where however, he merely stays as a visitor for periods of varying lengths. In view of the purpose of the weighting Article 3 (3) of Council Regulation (EEC) No 1679/85⁽¹⁾ cannot be interpreted as meaning that the residence to be proved for the purposes of that provision must coincide with the place in which the person concerned is registered as an inhabitant.

⁽¹⁾ OJ No L 162, 1985, p. 1.

Action brought on 28 September 1987 by Michele Giubilini against Commission of the European Communities

(Case 289/87)

(87/C 290/10)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 28 September 1987 by Michele Giubilini, residing at 42 Via Lago, Besozzo (Varese), represented by Angelo Ulgheri of the Milan Bar and Roland Michel of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 7 Côte d'Eich.

The applicant claims that the Court should:

1. Declare that the criteria applied by the appointing authority — pursuant to which on 2 March 1987 the applicant was deprived of the post he had occupied as a member of the auxiliary staff since 3 March 1986, during which period he replaced continuously a member of the temporary staff for an indefinite period, who was no longer able on grounds of health (throat cancer) to do shift work as from 29 August 1983 and whose place was taken for seven months by other shift workers (as a result of which 1 000 hours were worked overtime), for twelve months by Mr A.B. under two contracts for a fixed period as a member of the auxiliary staff (21 March 1984 to 20 March 1985), and for a further twelve months by Mr R.C. also under two contracts as a member of the auxiliary staff (13 March 1985 — 13 March 1986) — are contrary to the terms of: Articles 1 to 9 of Italian Law No 230 of 18 April 1982, the relevant legislation of other Member States of the Community and, more particularly, Article 3, Title I, and Articles 51 and 52, Title III, of the Conditions of Employment of Other Servants of the European Communities, in addition to any other relevant provisions;
2. Declare that the Decision of the Commission of the European Communities of 28 July 1987, notified on 5 August 1987, is unlawful and that the contracts of employment between the parties are null and void having regard to the terms regulating the employment relationship.
3. Consequently, declare that the applicant is entitled:
 - (a) to the status and salary of a member of the temporary staff as from 3 March 1986 or such other date as the Court may consider appropriate;
 - (b) to the maintenance of the employment relationship;
 - (c) to pecuniary damages in the form of the salaries and emoluments payable for the period from 2 March 1987 until the date of his reinstatement, the appropriate amount to be calculated by the Community's administrative departments.

Contentions and main arguments adduced in support:

The applicant does not seek an amendment of the contracts for a fixed period dated 27 February 1986 and 26 September 1986 but the annulment thereof, and he requests the Court to determine whether or not the Commission's decision of 28 July 1987 — taken in response to the observations formulated by the applicant with regard not just to his formal employment relationship but also to the duties entrusted to him thereunder — is well founded in the light of the rules of Community law in force and the relevant rules of all the Member States.

If the Court were to uphold the principle that the Commission of the European Communities may infringe the EEC Treaty and the legislation of the Member States at will by taking on members of the auxiliary staff and making them carry out, without even informing them, duties invariably entrusted in the past to members of the temporary staff who are no longer able to perform them, the concern would be justified that in practice there is no legal protection whatever for staff who have been taken on in order to meet contingent requirements and have instead been used to meet ordinary, continuing requirements that are anything but contingent.

Action brought on 28 September 1987 by the Commission of the European Communities against the Kingdom of the Netherlands

(Case 290/87)

(87/C 290/11)

An action against the Kingdom of the Netherlands was brought before the Court of Justice of the European Communities on 28 September 1987 by the Commission of the European Communities, represented by its Legal Adviser R. Fischer, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

Declare pursuant to the second paragraph of Article 169 of the EEC Treaty that by exceeding catch quotas allocated to the Netherlands for the years 1983 to 1985 the Kingdom of the Netherlands has failed to fulfil its obligations under Article 5 (2) of Regulation (EEC) No 170/83 ⁽¹⁾ and Articles 1 and 6 to 10 inclusive of Regulation (EEC) No 2057/82 ⁽²⁾ in conjunction with Regulations (EEC) Nos 198/83 ⁽³⁾, 3264/83 ⁽⁴⁾, 320/84 ⁽⁵⁾ and 1/85 ⁽⁶⁾;

Order the Kingdom of the Netherlands to pay the costs.

Contentions and main arguments adduced in support:

The instances of exceeding quotas, which are not disputed by the Netherlands Government, justify the presumption that the Netherlands authorities failed in their duty under Article 10 (2) of Regulation (EEC) No 2057/82 to determine in good time the date from which

⁽¹⁾ OJ No L 24, 27. 1. 1983, p. 1.

⁽²⁾ OJ No L 220, 29. 6. 1982, p. 1.

⁽³⁾ OJ No L 25, 27. 1. 1983, p. 32.

⁽⁴⁾ OJ No L 365, 27. 12. 1983, p. 1.

⁽⁵⁾ OJ No L 37, 31. 1. 1984, p. 1.

⁽⁶⁾ OJ No L 1, 1. 1. 1985, p. 1.

the applicable quota was to be deemed to have been exhausted and to prohibit provisionally as from that date the catching, retention on board, transshipment and landing of fish from the stocks concerned.

These are cases in which the Commission has on its own initiative closed fishing (the closure in 1984 of fishing for whiting in zone VII, with the exception of sub-zone VIIa, and for saithe in zones IIa (EEC-zone), IIIa, IIb, c, d (EEC-zone) or in which the Netherlands authorities, only under pressure from the Commission, proceeded to close fishing (mackerel fishing in 1984 in zones Vb (EEC-zone), VI, VII and VIII (EEC-zone)). In these instances of exceeding quotas the negligence on the part of the Netherlands authorities is undeniable. But even in cases of exceeding quotas in which the Netherlands authorities closed fishing on their own initiative there is nothing to show that they did so in good time. It may be accepted that even a prohibition on fishing issued in good time cannot in itself prevent fishermen from unlawfully continuing to fish and from unlawfully landing their catches or transshipping them to other vessels. However, it is for the Member State to limit that risk as far as possible, in particular by laying down suitable rules for the use of quotas allocated to it in accordance with its obligations under Article 5 (2) of Regulation (EEC) No 170/83 and by appropriate action in the matter of inspections and penal sanctions in accordance with the obligations laid down in Article 1 (1) and (2) of Regulation (EEC) No 2057/82.

Action brought on 1 October 1987 by the Commission of the European Communities against the Italian Republic

(Case 294/87)

(87/C 290/12)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 1 October 1987 by the Commission of the European Communities, represented by Sergio Fabro, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, Jean Monnet building, Kirchberg.

The applicant claims that the Court should:

— Declare that, by failing to complete by the prescribed date of 1 November 1985 permanent computerized files of olive-oil data containing the information referred to in Article 16 (2) of Council Regulation (EEC) No 2261/84 of 17 July 1984 ⁽¹⁾, the Italian

⁽¹⁾ OJ No L 208, 3. 8. 1984, p. 3.

Republic has failed to fulfil its obligations under Article 16 (2) of that Regulation and under Article 11 of Commission Regulation (EEC) No 3061/84 of 31 October 1984 ⁽¹⁾;

— Order the Italian Republic to pay the costs.

Contentions and main arguments adduced in support:

Under the second paragraph of Article 189 of the EEC Treaty Regulations have general application and are binding in their entirety. Consequently the Italian Republic was under a duty to implement the measures in question.

⁽¹⁾ OJ No L 288, 11. 11. 1984, p. 52.

Reference for a preliminary ruling by the Finanzgericht Baden-Württemberg, Außensenate Freiburg, by order of that court of 7 September 1987 in the case of the University of Stuttgart v. Hauptzollamt Stuttgart-Ost

(Case 303/87)

(87/C 290/13)

Reference has been made to the Court of Justice of the European Communities by order of the Finanzgericht [Finance Court] Baden-Württemberg, Außensenate Freiburg, of 7 September 1987, which was received at the Court Registry on 5 October 1987, for a preliminary ruling in the case of the University of Stuttgart, 1 Bandtäle, D-7000 Stuttgart 80 v. Hauptzollamt Stuttgart-Ost [Principal Customs Office, Stuttgart East], on the following question:

Is Commission Decision 85/C 57/03 of 1 March 1985 (OJ No L 57, 1985, p. 3) invalid?