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Information and Notices

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I

(Information)

EUROPEAN PARLIAMENT

WRITTEN QUESTIONS TO WHICH NO ANSWER HAS BEEN GIVEN (*)

(88/C 259/01)

This list is published pursuant to Rule 62 (3) of the Rules of Procedure of the European Parliament, which states: 'Questions to which no answer has been given within one month by the Commission, or within two months by the Council or the Foreign Ministers, shall be recorded, pending an answer, in the Official Journal of the European Communities'.

WRITTEN QUESTION No 281/88

by Lord O'Hagan (ED—GB)

to the Council of the European Communities

(27. 9. 1988)

Subject: Sheep production**WRITTEN QUESTION No 282/88**

by Mr Gerhard Schmid (S—D)

to the Council of the European Communities

(27. 9. 1988)

Subject: Airbus**WRITTEN QUESTION No 342/88**

by Mr Bram van der Lek (ARC—NL)

to the Council of the European Communities

(27. 9. 1988)

Subject: Damage to the ozone layer**WRITTEN QUESTION No 653/88**

by Mr Florus Wijsenbeek (LDR—NL)

to the Commission of the European Communities

(30. 6. 1988)

Subject: Inland-waterway container terminals in the northern Netherlands**WRITTEN QUESTION No 655/88**

by Mrs Winifred Ewing (RDE—GB)

to the Commission of the European Communities

(30. 6. 1988)

Subject: The RU 486 abortion pill**WRITTEN QUESTION No 658/88**

by Mr Kenneth Stewart (S—GB)

to the Commission of the European Communities

(30. 6. 1988)

Subject: New housing bill proposed by the UK Government**WRITTEN QUESTION No 662/88**

by Sir James Scott-Hopkins (ED—GB)

to the Commission of the European Communities

(30. 6. 1988)

Subject: Internal market publicity costs**WRITTEN QUESTION No 663/88**

by Sir James Scott-Hopkins (ED—GB)

to the Commission of the European Communities

(30. 6. 1988)

Subject: Enquiry into monopoly and merger policy**WRITTEN QUESTION No 664/88**

by Sir James Scott-Hopkins (ED—GB)

to the Commission of the European Communities

(30. 6. 1988)

Subject: Cancer research**WRITTEN QUESTION No 665/88**

by Lord O'Hagan (ED—GB)

to the Commission of the European Communities

(30. 6. 1988)

Subject: Dairy inspection charges

(*) The answers will be published as soon as they are received from the institution concerned. The full text of these questions appeared in the Bulletin of the European Parliament No 13/D-88 and No 16/D-88

WRITTEN QUESTION No 666/88

by Lord O'Hagan (ED—GB)

to the Commission of the European Communities

(30. 6. 1988)

Subject: Light dues**WRITTEN QUESTION No 670/88**

by Mr Michael Hindley (S—GB)

to the Commission of the European Communities

(30. 6. 1988)

Subject: Foodstuffs contaminated by radiation**WRITTEN QUESTION No 672/88**

by Mr Victor Manuel Arbeloa Muru (S—E)

to the Commission of the European Communities

(30. 6. 1988)

Subject: The spread of subjects covered by the ERASMUS programme**WRITTEN QUESTION No 673/88**

by Mr André Fourçans (LDR—F)

to the Commission of the European Communities

(30. 6. 1988)

Subject: Fiscal approximation and the VAT compensation scheme**WRITTEN QUESTION No 674/88**

by Mr André Fourçans (LDR—F)

to the Commission of the European Communities

(30. 6. 1988)

Subject: Fiscal approximation**WRITTEN QUESTION No 675/88**

by Mr André Fourçans (LDR—F)

to the Commission of the European Communities

(30. 6. 1988)

Subject: Disputes regarding VAT compensation**WRITTEN QUESTION No 680/88**

by Mr Ben Visser (S—NL)

to the Commission of the European Communities

(30. 6. 1988)

Subject: Cost-comparative research into international road haulage firms**WRITTEN QUESTION No 681/88**

by Mr Francisco Lucas Pires (PPE—P)

to the Commission of the European Communities

(30. 6. 1988)

Subject: Insulation materials for the shipbuilding and aircraft industries**WRITTEN QUESTION No 684/88**

by Mr Thomas Megahy (S—GB)

to the Commission of the European Communities

(30. 6. 1988)

Subject: Mutual health aid between Member States in the event of a nuclear accident**WRITTEN QUESTION No 685/88**

by Mr Jean-Claude Pasty (RDE—F)

to the Commission of the European Communities

(30. 6. 1988)

Subject: Warnings issued by the German authorities concerning imported cheeses**WRITTEN QUESTION No 686/88**

by Mr Jean-Claude Pasty (RDE—F)

to the Commission of the European Communities

(30. 6. 1988)

Subject: Premiums paid to UK sheep-farmers**WRITTEN QUESTION No 688/88**

by Mr Hans-Jürgen Zahorka (PPE—D)

to the Commission of the European Communities

(30. 6. 1988)

Subject: Absence of equal treatment for non-Greek EC nationals in respect of admission fees for museums and excavation sites in Greece**WRITTEN QUESTION No 689/88**

by Mr Jakob von Uexküll and Mr Egbert Nitsch (ARC—D)

to the Commission of the European Communities

(30. 6. 1988)

Subject: Discrimination against Community languages in the UK**WRITTEN QUESTION No 690/88**

by Mr Jesús Cabezón Alonso (S—E)

to the Commission of the European Communities

(30. 6. 1988)

Subject: Timescale, financing and implementation of projects**WRITTEN QUESTION No 692/88**

by Mr Jesús Cabezón Alonso (S—E)

to the Commission of the European Communities

(30. 6. 1988)

Subject: European Social Fund (1988) and Cantabria (Spain)**WRITTEN QUESTION No 693/88**

by Mr Jesús Cabezón Alonso (S—E)

to the Commission of the European Communities

(30. 6. 1988)

Subject: Meningitis epidemic in the Sudan and Egypt

WRITTEN QUESTION No 694/88

by Mrs Undine-Uta Bloch von Blottnitz (ARC—D)
to the Commission of the European Communities
(30. 6. 1988)

Subject: 'Swimming-pool' research reactors

WRITTEN QUESTION No 695/88

by Mr Kenneth Collins (S—GB)
to the Commission of the European Communities
(30. 6. 1988)

Subject: Pesticide residue levels

WRITTEN QUESTION No 696/88

by Mr Luis Planas Puchades (S—E)
to the Commission of the European Communities
(30. 6. 1988)

Subject: Euro-Arabian University

WRITTEN QUESTION No 697/88

by Mrs Renate-Charlotte Rabbethge (PPE—D)
to the Commission of the European Communities
(30. 6. 1988)

Subject: Community payments to NGOs in Chile

WRITTEN QUESTION No 698/88

by Mr Carlos Robles Piquer (ED—E)
to the Commission of the European Communities
(30. 6. 1988)

Subject: European participation in new experiments in the field of thermonuclear fusion

WRITTEN QUESTION No 699/88

by Mr Carlos Robles Piquer (ED—E)
to the Commission of the European Communities
(30. 6. 1988)

Subject: European evaluation of the new technology arising from the American Strategic Defence Initiative (SDI)

WRITTEN QUESTION No 701/88

by Mrs Elise Boot (PPE—NL)
to the Commission of the European Communities
(30. 6. 1988)

Subject: Information for local authorities throughout Europe

WRITTEN QUESTION No 702/88

by Mr George Patterson (ED—GB)
to the Commission of the European Communities
(30. 6. 1988)

Subject: Equal treatment of men and women in social security payments

WRITTEN QUESTION No 703/88

by Mrs Elise Boot (PPE—NL)
to the Commission of the European Communities
(5. 7. 1988)

Subject: Conclusions of the European Retail Forum

WRITTEN QUESTION No 706/88

by Mr Gijs de Vries (LDR—NL)
to the Commission of the European Communities
(5. 7. 1988)

Subject: Product liability for computer programmes

WRITTEN QUESTION No 707/88

by Mr Claude Wolff (LDR—F)
to the Commission of the European Communities
(5. 7. 1988)

Subject: Difficulties in exporting stainless steel products to Spain

WRITTEN QUESTION No 708/88

by Mr Andrew Pearce (ED—GB)
to the Commission of the European Communities
(5. 7. 1988)

Subject: Official Journal

WRITTEN QUESTION No 709/88

by Mr Andrew Pearce (ED—GB)
to the Commission of the European Communities
(5. 7. 1988)

Subject: Food aid to Kampuchea

WRITTEN QUESTION No 711/88

by Mr Andrew Pearce (ED—GB)
to the Commission of the European Communities
(5. 7. 1988)

Subject: EDF4 and EDF5 — Outstanding payments

WRITTEN QUESTION No 712/88

by Mr Andrew Pearce (ED—GB)
to the Commission of the European Communities
(5. 7. 1988)

Subject: ERDF aid to UK

WRITTEN QUESTION No 714/88

by Mr Andrew Pearce (ED—GB)
to the Commission of the European Communities
(5. 7. 1988)

Subject: Food aid — Niger

WRITTEN QUESTION No 717/88

by Mr Andrew Pearce (ED—GB)
to the Commission of the European Communities
(5. 7. 1988)

Subject: Poor Commission accounting

WRITTEN QUESTION No 720/88
by Mrs Else Hammerich (ARC—DK)
to the Commission of the European Communities
(5. 7. 1988)
Subject: ESPRIT

WRITTEN QUESTION No 722/88
by Lord O'Hagan (ED—GB)
to the Commission of the European Communities
(5. 7. 1988)
Subject: Common agricultural policy

WRITTEN QUESTION No 726/88
by Mr Ib Christensen (ARC—DK)
to the Commission of the European Communities
(5. 7. 1988)
Subject: State aid for ecological farming in Denmark

WRITTEN QUESTION No 727/88
by Mr Willy Kuijpers (ARC—B)
to the Commission of the European Communities
(5. 7. 1988)
Subject: The establishment of the single market and the harmonization of national rules governing market surveys by telephone

WRITTEN QUESTION No 728/88
by Mr Willy Kuijpers (ARC—B)
to the Commission of the European Communities
(5. 7. 1988)
Subject: Biological screening of job applicants

WRITTEN QUESTION No 729/88
by Mr Willy Kuijpers (ARC—B)
to the Commission of the European Communities
(5. 7. 1988)
Subject: Medical research programme and the care and rehabilitation of coma patients

WRITTEN QUESTION No 730/88
by Mr Jaak Vandemeulebroucke (ARC—B)
to the Commission of the European Communities
(5. 7. 1988)
Subject: Award of honorary rank

WRITTEN QUESTION No 731/88
by Mrs Jessica Larive (LDR—NL), Mr Bram van der Lek (ARC—NL) and Mrs Nel van Dijk (ARC—NL)
to the Commission of the European Communities
(5. 7. 1988)
Subject: Waste dump in Weeze-Wemb (FRG)

WRITTEN QUESTION No 732/88
by Mr Stephen Hughes (S—GB)
to the Commission of the European Communities
(5. 7. 1988)
Subject: Safety of national and international luxury coaches

WRITTEN QUESTION No 733/88
by Mr François Roelants du Vivier (ARC—B)
to the Commission of the European Communities
(5. 7. 1988)
Subject: Comparison of the number of civil servants

WRITTEN QUESTION No 734/88
by Mr Ib Christensen (ARC—DK)
to the Commission of the European Communities
(5. 7. 1988)
Subject: The Commission's railway plans for North Jutland

WRITTEN QUESTION No 736/88
by Mr Dieter Schinzel (S—D)
to the Commission of the European Communities
(5. 7. 1988)
Subject: Uniform identity card for the disabled

WRITTEN QUESTION No 737/88
by Mr John Marshall (ED—GB)
to the Commission of the European Communities
(5. 7. 1988)
Subject: Development projects for women

WRITTEN QUESTION No 738/88
by Mr François Roelants du Vivier (ARC—B)
to the Commission of the European Communities
(5. 7. 1988)
Subject: Export of Italian waste to Venezuela

WRITTEN QUESTION No 739/88
by Mr François Roelants du Vivier (ARC—B)
to the Commission of the European Communities
(5. 7. 1988)
Subject: Export of Dutch waste to Suriname

WRITTEN QUESTION No 740/88
by Mr François Roelants du Vivier (ARC—B)
to the Commission of the European Communities
(5. 7. 1988)
Subject: Polaroid photography

WRITTEN QUESTION No 741/88
by Mr François Roelants du Vivier (ARC—B)
to the Commission of the European Communities
(5. 7. 1988)
Subject: Electrical pollution

WRITTEN QUESTION No 742/88
by Mr Alberto Tridente (ARC—I)
to the Commission of the European Communities
(5. 7. 1988)

Subject: EIB financing

WRITTEN QUESTION No 744/88
by Mr Jakob von Uexküll (ARC—D)
to the Commission of the European Communities
(5. 7. 1988)

Subject: Natural medicines and therapies

WRITTEN QUESTION No 745/88
by Mr Alfred Lomas (S—GB)
to the Commission of the European Communities
(5. 7. 1988)

Subject: State aid

WRITTEN QUESTION No 747/88
by Mr Jaak Vandemeulebroucke (ARC—B)
to the Commission of the European Communities
(5. 7. 1988)

Subject: Liability in respect of nuclear accidents in the
Community

WRITTEN QUESTION No 748/88
by Mr Giovanni Papapietro (COM—I)
to the Commission of the European Communities
(5. 7. 1988)

Subject: Reinstatement of a European School teacher,
Francesca Mauro

WRITTEN QUESTION No 749/88
by Mr Hemmo Muntingh (S—NL)
to the Commission of the European Communities
(5. 7. 1988)

Subject: Submission by the Commission of a proposal entitled
ENVIREG

WRITTEN QUESTION No 751/88
by Mr Hemmo Muntingh (S—NL)
to the Commission of the European Communities
(5. 7. 1988)

Subject: Formulation of National Conservation Strategies inside
and outside the European Community

COMMISSION

ECU (1)

5 October 1988

(88/C 259/02)

Currency amount for one unit:

Belgian and Luxembourg franc con.	43,4710	Spanish peseta	136,951
Belgian and Luxembourg franc fin.	43,9711	Portuguese escudo	169,883
German mark	2,07416	United States dollar	1,11143
Dutch guilder	2,33879	Swiss franc	1,76329
Pound sterling	0,656488	Swedish krona	7,10874
Danish krone	7,97510	Norwegian krone	7,66835
French franc	7,06317	Canadian dollar	1,34139
Italian lira	1545,78	Austrian schilling	14,5842
Irish pound	0,773441	Finnish markka	4,89309
Greek drachma	168,405	Japanese yen	148,621
		Australian dollar	1,40635
		New Zealand dollar	1,82143

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).

Average prices and representative prices for table wines at the various marketing centres (*)

(88/C 259/03)

(Established on 4 October 1988 for the application of Article 30 (1) of Regulation (EEC) No 822/87)

Type of wine and the various marketing centres	ECU per % vol/hl	Type of wine and the various marketing centres	ECU per % vol/hl
R I		A I	
Heraklion	No quotation	Athens	No quotation
Patras	No quotation	Heraklion	No quotation
Requena	No quotation (1)	Patras	No quotation
Reus	No quotation	Alcázar de San Juan	No quotation
Villafranca del Bierzo	No quotation (1)	Almendralejo	2,651
Bastia	No quotation	Medina del Campo	No quotation (1)
Béziers	2,490	Ribadavia	No quotation
Montpellier	2,541	Vilafranca del Penedés	No quotation
Narbonne	2,528	Villar del Arzobispo	No quotation (1)
Nîmes	2,488	Villarrobledo	No quotation (1)
Perpignan	2,594	Bordeaux	No quotation
Asti	No quotation	Nantes	2,813
Firenze	No quotation	Bari	1,934
Lecce	No quotation	Cagliari	No quotation
Pescara	No quotation	Chieti	No quotation
Reggio Emilia	No quotation	Ravenna (Lugo, Faenza)	2,293
Treviso	No quotation	Trapani (Alcamo)	1,996
Verona (for local wines)	2,464	Treviso	No quotation
Representative price	2,509	Representative price	2,512
R II			ECU/hl
Heraklion	No quotation	A II	
Patras	No quotation	Rheinfalz (Oberhaardt)	25,412
Calatayud	No quotation	Rheinhessen (Hügelland)	No quotation
Falset	No quotation (1)	The wine-growing region of the Luxembourg Moselle	No quotation (1)
Jumilla	No quotation (1)	Representative price	25,412
Navalcarnero	No quotation (1)		
Requena	No quotation	A III	
Toro	No quotation	Mosel-Rheingau	66,918
Villena	No quotation (1)	The wine-growing region of the Luxembourg Moselle	No quotation (1)
Bastia	No quotation	Representative price	66,918
Brignoles	No quotation		
Bari	2,121		
Barletta	No quotation		
Cagliari	No quotation		
Lecce	No quotation		
Taranto	No quotation		
Representative price	2,121		
	ECU/hl		
R III			
Rheinfalz-Rheinhessen (Hügelland)	No quotation		

(*) Since 1 September 1988, the Spanish prices published are to be multiplied by a factor of 1,35 for the ratio between the Community and Spanish guide prices, in accordance with Regulation (EEC) No 481/86 of 25 February 1986.

(1) Quotation not taken into account in accordance with Article 10 of Regulation (EEC) No 2682/77.

Conversion rate to be used for sales of alcohol by invitation to tender

(88/C 259/04)

(Article 15 of Regulation (EEC) No 1915/86)

Currency	= ... ECU	1 ECU = ... national currency
1 Bfr	0,0207096	48,2869
1 Dkr	0,111981	8,93007
1 DM	0,427144	2,34113
1 FF	0,127359	7,85183
1 £ Irl	1,14430	0,873900
1 Fl	0,379097	2,63785
1 £	1,35800	0,736377
100 Lit	0,0579677	17,2510 (*)
100 Dra	0,530858	1,88374 (*)
100 Pta	0,649657	1,53927 (*)
100 Esc	0,521803	1,91643 (*)

(*) 1 ECU = 100 × ... national currency.

**Communication of Decisions under sundry tendering procedures in agriculture
(milk and milk products)**

(88/C 259/05)

*(See notice in Official Journal of the European Communities No L 360 of 21 December 1982,
page 43)*

(ECU)

Standing invitation to tender	Tender No	Date of Commission Decision	Use to which the butter is to be put	Maximum buying-in price	Maximum aid level	Processing security
Commission Regulation (EEC) No 1589/87 of 5 June 1987 on the sale by tender of butter to intervention agencies (OJ No L 146, 6. 6. 1987, p. 27)	29	30. 9. 1988	Butter with a fat content of less than 82 %:			
			— Spain	—	—	—
			— Ireland	—/100 kg butter	—	—
			— Belgium, Denmark, Germany, Greece, France, Italy, Luxembourg, Netherlands, United Kingdom	—/100 kg butter	—	—
			Butter with a fat content of 82 % or more:			
			— Spain	318,39/100 kg butter	—	—
			— Ireland	—/100 kg butter	—	—
			— Belgium, Denmark, Germany, Greece, France, Italy, Luxembourg, Netherlands, United Kingdom	—/100 kg butter	—	—

Standing invitation to tender pursuant to Commission Regulation (EEC) No 570/88 of 16 February 1988 on the sale of butter at reduced prices and the granting of aid for butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs

(Official Journal of the European Communities No L 55 of 1 March 1988, page 31)

Tender no: 8

Date of Commission decision: 30 September 1988

(ECU/100 kg)

Formula		A/C—D		B		
Incorporation procedure		With tracers	Without tracers	With tracers	Without tracers	
Minimum price	Butter \geq 82 %	Unaltered	149	151	178	180
		Concentrated	135	—	169	170
	Butter $<$ 82 %	Unaltered	134	136	176	—
		Concentrated	124	126	—	—
Processing security		211		161		
Maximum aid amount	Butter \geq 82 %	156	154	—	104	
	Butter $<$ 82 %	—	149	—	—	
	Concentrated butter	210	208	142	141	
Processing security		232	—	159	—	

Communication of decisions under sundry tendering procedures in agriculture

(88/C 259/06)

(See notice in Official Journal of the European Communities No L 360 of 21 December 1982, page 43)

Invitation to tender	Tender No	Date of Commission Decision	Minimum selling price
Commission Regulation (EEC) No 2575/88 of 17 August 1988 opening an invitation to tender for the sale for export of olive pomace-oil held by the Italian intervention agency (OJ No L 229, 18. 8. 1988, p. 35)	—	30. 9. 1988	Olive residue oil 10°: — Lit/100 kg

Commission notice C(88) 1696 concerning 'force majeure in European agricultural law'

(88/C 259/07)

The aim of this notice is to ensure greater transparency and consistency in the application of the *force majeure* clause in European law, and particularly in agriculture. This is all the more necessary in that this clause appears frequently in Community legislation, the fulfilment of various requirements being expressed to be 'subject to cases of *force majeure* (¹)'. What is more, the attempt to set out in such legislation an exhaustive list of circumstances constituting *force majeure* has long since been abandoned (²).

This notice is accordingly divided into three chapters: definition of the concept (I), details of its application (II), and requisite proof (III).

The conclusion is that the *force majeure* clause should be interpreted restrictively.

I. Definition of the concept of *force majeure*

1. The Court of Justice was called upon to interpret the concept of *force majeure* as early as 1968 (³). In the course of subsequent years, its interpretation has varied only very slightly; the definition given in Case 11/70 (Internationale Handelsgesellschaft (⁴)) is still, in substance, valid:

the concept of *force majeure* 'is not limited to absolute impossibility but must be understood in the sense of unusual circumstances, outside the control of the trader, the consequences of which, in spite of the exercise of all due care, could not have been avoided except at the cost of excessive sacrifice'. This definition has been repeated

by the Court on numerous occasions in a large number of Judgments, not only concerning agriculture (⁵) but also other spheres (⁶).

2. According to a consistent line of Decisions of the Court, the concept of *force majeure* accordingly comprises an objective element (the unusual circumstance, outside the control of the trader) and a subjective element (consequences which could not have been avoided in spite of the exercise of all due care).

(a) With regard to the objective element, it is important to establish the definition of an 'unusual' circumstance which is 'outside the control of the trader'. The Court has not as yet been required to give a very precise ruling; nevertheless, it makes a distinction between normal commercial risks (inherent in each transaction of the same type) and those which are abnormal (⁷).

1. An abnormal circumstance is one which is to be regarded as unforeseeable or, at least, so improbable that a businessman exercising all due care may consider the risk to be negligible (⁸) (e.g. a stroke of lightning, ice-bound waterways (⁹), an avalanche blocking roads which are normally open in winter, etc.).

2. A circumstance which is 'outside the control of the trader' is one which is beyond his control in the broad sense (a natural disaster, a sovereign act, a wildcat strike, etc.); acts which are not beyond the trader's control are those which, even if fraudulent, are committed by those with whom he has contractual relations (¹⁰) since it is the

(¹) Commission Regulation (EEC) No 3183/80 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products (OJ No L 338, 13. 12. 1980, p. 1) contains a whole section (Articles 36 and 37) on *force majeure*. Although this Regulation contains detailed rules on the effects of a case of *force majeure*, it does not set out the conditions which must be met if a case of *force majeure* is to be recognized as such.

(²) See Article 8 (2) of Regulation No 87, OJ No 66, 28. 7. 1962, p. 1895/62. As a first example, see Article 3 of Regulation No 111/63/EEC (amending Article 8 of the abovementioned Commission Regulation No 87), OJ No 147, 14. 10. 1963, p. 2490.

(³) Case 4/68 *Schwarzwaldmilch* [1968] ECR 38.

(⁴) 1970/ECR 1125.

(⁵) See most recently, Case 266/84 *Denkavit* [1986] ECR 149 ground 27.

(⁶) See the recent judgment in Case 209/83 *Ferriera Valsabbia* [1984] ECR 3089. The varying forms of words used by the Court in its Decisions must be regarded as resulting from the specific characteristics of the cases in question e.g. See Case 42/79 *Eierkontor* [1979] ECR 3703 ground 10.

(⁷) See, in particular, Case 38/79 *Nordmark* [1980] ECR 655 ground 9; Case 808/79 *Pardini* [1980] ECR 2122 ground 21.

(⁸) See Case 4/68 *Schwarzwaldmilch* [1968] ECR 386.

(⁹) See, in this connection, Case 71/82 *BALM v. Brüggem* [1982] ECR 4654 ground 3.

(¹⁰) See, in this connection, Case 42/79 *Eierkontor* [1979] ECR 3716 ground 10.

trader's responsibility to select his trading partners with care and to place them under an obligation in the contract, in a way that is sufficiently binding on them, to comply with the terms thereof (where appropriate by making provision for penalties in the event of failure to fulfil contractual obligations).

- (b) The subjective element entails the obligation to guard against the consequences of the abnormal occurrence by taking all appropriate measures (with the exception of those involving excessive sacrifices). In particular, the trader must carefully monitor the progress of the operation and take action, without delay, should he detect an anomaly⁽¹⁾; he must, where appropriate, obtain supplies elsewhere or deal with the goods in another way; he must protect himself in an appropriate manner from the loss of important documents⁽²⁾; he must exercise all due care in order to comply with the time limits prescribed in the rules.

II. Applicability of the *force majeure* clause

1. In specialized articles on Community law, writers are divided on the question of whether the *force majeure* clause should be recognized as a general principle of Community law (which applies even in the absence of a specific legislative provision)⁽³⁾.

- (a) In this regard, however, it is common ground that the Court of Justice has never ruled explicitly that the *force majeure* clause constitutes one of the general principles of Community law, while the Advocates General have expressed divergent views on this question⁽⁴⁾. In the absence of case law which is clear and unambiguous, it is prudent to take the view that, at present, the *force majeure* clause does not indisputably constitute one of the general principles of Community law which apply even in the absence of an express provision. It constitutes, rather, an exception to the general rule of scrupulous compliance with legislative provisions. Accordingly, as an exception, *the force majeure clause must be inter-*

preted and applied strictly, which immediately circumscribes the manner in which it is dealt with by the Commission and the national authorities⁽⁵⁾.

- (b) This conclusion must be drawn, in particular, because the Court of Justice has, in a number of cases⁽⁶⁾, declined to apply a *force majeure* clause in the absence of an express provision to that effect and because the purpose of certain provisions of Community law does not, in all cases, allow account to be taken of situations involving an occurrence which may be considered to be a case of *force majeure*. This is so, in particular, in the case of conditions which must be scrupulously met because failure to fulfil them would frustrate normal operation of the rules. An example of this is compliance with the time limit prescribed for the submission of tenders in connection with a procedure for the award of a contract. Such time limit must be respected absolutely and there can be no question of taking account of a situation possibly constituting *force majeure* since otherwise it would be impossible to ensure equal treatment as regards comparing tenders. It is possible to conceive of other exclusionary time limits the non-observance of which necessarily entails the loss of a right or a benefit, even where the delay is due to a case of *force majeure*, although it is not possible to set out an exhaustive list here. In any event, it has to be recognized that every administrative authority has an overriding need of exclusionary time limits since they constitute the only means whereby a particular case may be definitively closed. In the absence of such exclusionary time limits, all cases would have to remain unresolved for an indefinite period since, in theory, a case of *force majeure* could always be invoked in order to justify the delay.
- (c) A practice has recently been observed whereby private individuals include in their contracts, on their own initiative, a *force majeure* clause which they undertake to interpret on an informal basis. They claim that they are thereby doing two things simultaneously: in the first place, remedying the deficiencies in Community law governing the matter and, on the other hand, judging themselves the question of the applicability of such clause.

It must be emphasized straightaway that such a course of action cannot produce the results which are anticipated from the standpoint of Community public law. *The concept of force majeure, as applied in the context of Community law, is an autonomous concept which is specific to that law.* It cannot be interpreted in the light of the national legal order governing the contract nor, *a fortiori*, according to the wishes of the contracting parties. The latter may, of course, by reason of their freedom of contract, include whatever clauses they choose, but they must

⁽¹⁾ See Case 266/84 *Denkavit v. FORMA* [1986] ECR 149 (not yet reported) ground 28.

⁽²⁾ See Case 808/79 *Pardini* [1980] ECR 2122, ground 21; Case 158/73 *Kampffmeyer v. EVS Getreide* [1974] ECR 100 grounds 11 and 12.

⁽³⁾ See, in particular, Gilsdorf, 'La force majeure dans le droit de la CEE', *Cahiers de droit européen*, 1982, p. 137 (in particular, p. 141), setting out the negative view; Flynn, 'Force Majeure Pleas', *European Law Review*, 1981, p. 102 (in particular, p. 114), setting out the affirmative view.

⁽⁴⁾ See, setting out the negative view, Advocate General Capotorti in Case 68/77 *IFG* [1978] ECR 353, in particular 380, and Case 38/79 *Nordmark* [1980] ECR 643, in particular 658; setting out the affirmative view, Advocate General Mayras in Case 32/72 *Wasaknacke* [1972] ECR 1197.

⁽⁵⁾ Similarly, See J. E. Thomson, *Force majeure: the contextual approach of the Court of Justice*; CMLR 24, 1987, pp. 259-271.

⁽⁶⁾ E.g. Case 38/79 *Nordmark* [1980] ECR 643.

recognize that such clauses govern their bilateral relations exclusively and they can in no event be relied on as against the Community.

- (d) It is on those grounds that it is expedient not to take the view that the *force majeure* clause constitutes one of the general principles of Community law which apply even in the absence of an express provision.

In accordance with that approach, the Commission will endeavour to make proposals, wherever it proves advisable, for the inclusion of a *force majeure* clause in instruments which do not currently contain one ⁽¹⁾.

2. Nevertheless, the view may be taken that the *force majeure* clause simply gives expression, in a practical form, to the principle of proportionality which is undeniably one of the general principles of Community law ⁽²⁾.

The Court has, on a number of occasions, ruled that the inclusion of a *force majeure* clause could protect a Regulation providing for stringent obligations accompanied by penalties for their non-fulfilment from criticisms based on an alleged breach of the principle of proportionality ⁽³⁾.

The Court has, moreover, recognized in exceptional cases that, even where the relevant rules do not contain any explicit reference to *force majeure*, it may be justified, in order to avoid excessive inequality of treatment, to relieve a trader of certain obligations imposed by the rules (e.g. observance of certain time limits) if his failure to fulfil those obligations was caused by circumstances that can be treated as *force majeure*, provided such relief is not incompatible with the essential objectives of the rules concerned ⁽⁴⁾.

⁽¹⁾ An example would be the recent amendment of Regulation (EEC) No 2220/85 by Regulation (EEC) No 1181/87 (OJ No L 113, 30. 4. 1987, p. 31).

⁽²⁾ See, on these lines, Case 25/70 *Köster* [1970] ECR 1161 ground 22.

⁽³⁾ Case 11/70 *Internationale Handelsgesellschaft* [1970] ECR 1125 ground 25; Case 25/79 *Köster* [1970] ECR 1161 grounds 31 and 40; Case 147/81 *Merkur* [1982] ECR 1389 ground 11 *et seq.*

⁽⁴⁾ See Case 64/74 *Reich* [1975] ECR 261 ground of judgment 3; Case 6/79 *Union française des céréales* [1978] ECR 1675 ground 4; Case 71/87 *Inter-KOM*, judgment of 19. 4. 1988, not yet reported.

This approach appears to rest, at least implicitly, on the link between the principle of proportionality (a superior principle of Community law applicable even in the absence of any written legal basis) and the applicability of a *force majeure* clause ⁽⁵⁾.

Thus, the possibility that observance of the principle of proportionality may, in certain exceptional cases, require the application of an unwritten *force majeure* clause cannot be wholly excluded. As a general rule, however, the wording of the rules must be strictly adhered to, since in many cases the application by analogy of an unwritten *force majeure* clause might impair the proper operation and the purpose of the rules, and hence would not be covered by the principle of proportionality. The subject must therefore be approached with great caution, and the national authorities are invited, in any case of doubt, to contact the Commission's departments.

III. Questions of evidence

Community rules (like national legislation) do not lay down specifically how *force majeure* is to be proved. It should be noted, however, that the use of the expression 'except in case of *force majeure*' has the effect of imposing the burden of proving that such a case exists on the traders who rely on it.

Since cases of *force majeure* are an exception to the legal rules, the standard of proof required must be at least as high as that required by the rules on the modes of proof that the obligation has been fulfilled. Consequently, incontrovertible documentary evidence must generally be required. Nevertheless, it is not easy to determine precisely the type of evidence that may be accepted in each situation. In case of doubt, it would be prudent to arrange consultations on individual cases presenting special features, to avoid inequalities of treatment depending on which Member State is responsible for the authorities who have to evaluate the evidence.

⁽⁵⁾ However, the Court has consistently held that the principle of proportionality does not preclude the total loss of the benefit conferred in the case of failure to observe a principal obligation; see in particular Case 66/82 *Fromançais* [1983] ECR 395 and Case 272/81 *RUMI* [1982] ECR 4167.

IV. Conclusion

The principles involved in the foregoing analysis may be summarized as follows:

1. *Force majeure* is an exception to the general rule that the rules in force must be strictly observed; hence, it must be interpreted and applied restrictively.
2. *Force majeure* is not a general principle of law, but can be regarded, in exceptional cases, as an embodiment of the principle of proportionality, in the strict conditions laid down by the Court's Decisions.

3. The proof required of traders who rely on *force majeure* must be incontrovertible.

This means in practice that the national administrations responsible for applying the *force majeure* clause in specific cases must approach the matter with the utmost caution, in evaluating both the facts relied on and the evidence adduced in support of the application. In case of doubt, they are invited to contact the Commission's departments.

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