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## Information and Notices

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## I

(Information)

## COMMISSION

ECU (\*)

21 November 1988

(88/C 297/01)

Currency amount for one unit:

Belgian and Luxembourg franc con.	43,4145	Spanish peseta	136,353
Belgian and Luxembourg franc fin.	43,6802	Portuguese escudo	172,226
German mark	2,07215	United States dollar	1,19377
Dutch guilder	2,33657	Swiss franc	1,73992
Pound sterling	0,657183	Swedish krona	7,22591
Danish krone	7,99828	Norwegian krone	7,82936
French franc	7,08087	Canadian dollar	1,44864
Italian lira	1540,44	Austrian schilling	14,5784
Irish pound	0,775681	Finnish markka	4,91655
Greek drachma	172,238	Japanese yen	146,178
		Australian dollar	1,39623
		New Zealand dollar	1,85369

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.

(\*) 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).

**Notice concerning participation in the Comett programme**

(88/C 297/02)

1. By its Decision of 24 July 1986, the European Community launched a programme of cooperation between universities and enterprises in education and training for technology (Comett) <sup>(1)</sup>. The programme is to last for four years (1986 to 1989). It has been operational since 1 January 1987 and invitations to tender have already been made for the periods 1987 to 1988 and 1988 to 1989. The aims of the programme are as follows:

- (a) to give a European dimension to cooperation between universities and enterprises in relation to training related to innovation and the development and application of new technologies;
- (b) to foster the joint development of training programmes and the exchange of experience together with the optimum use of training resources at Community level;
- (c) to improve the training available at local, regional and national level with the assistance of the authorities concerned, thus contributing to the balanced economic development of the Community;
- (d) to develop the level of training in response to technological and social change by identifying the resulting priorities in existing training structures which call for supplementary action both within Member States and at Community level, and by promoting equal opportunities for men and women.

2. This opinion, which calls for proposals for Comett, is being published in order to give interested parties the necessary time to locate partners and develop proposals.

The 1989 call for applications will be limited to new projects under Strand B only (student placement and secondments).

Renewals of projects accepted in 1987 and 1988 will be subject to a separate application procedure, which will also apply to existing university-enterprise training partnerships (UETPs) wishing to apply for pools of student placement grants. Separate forms for the project renewals and for student placement pools will be sent to the relevant promoters.

The closing date for the submission of proposals for Comett is 28 February 1989 (date of postmark).

Proposals should be submitted to the following address:

'Comett Technical Assistance Unit',  
c/o ECSMU,  
avenue de Cortenberg 71,  
B-1040 Brussels,  
telefax 734 56 41.

The information file contains application forms with a description of the programme, the conditions for eligibility and the criteria applied, together with the principles governing the granting of Community assistance.

Finally, candidates are reminded that there is a Comett information centre in each Member State and that these centres are at the disposal of potential promoters. The addresses are as follows:

<sup>(1)</sup> OJ No L 222, 8. 8. 1986, p. 17; Council Decision 86/365/EEC.

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Comett Information Centres*Belgium*

Dhr Raymond Totte,  
Directeur-generaal  
Bestuur Hoger Onderwijs en Wetenschappelijk  
Onderzoek  
Ministerie van Onderwijs  
Manhattan Center, Toren 2  
Kruisvaartenstraat 3  
B-1210 Brussels

M. André Philippart,  
directeur de la Recherche scientifique  
Direction générale de l'enseignement supérieur et de la  
recherche scientifique  
Ministère de l'éducation nationale  
Cité administrative de l'État  
Boulevard Pachéco 34  
B-1010 Brussels

*Germany*

Arbeitsgemeinschaft Comett  
Deutscher Akademischer Austauschdienst — DAAD  
Carl-Duisberg-Gesellschaft e. V. — CDG  
Kennedyallee 50  
D-5300 Bonn 2

*Denmark*

Ms Zeuthen  
COMETT-Kontoret  
Akademiet for De Tekniske Videnskaber  
Lundtoftevej 266  
DK-2800 Lyngby

*Spain*

CEPCOMETT  
Dr R. López de Arenosa — M. A. Oria de Rueda  
Secretaría de Estado de Universidades e Investigación  
Ministerio de Educación y Ciencia  
Serrano 150  
E-28006 Madrid

*France*

Assemblée permanente des Chambres de Commerce  
et d'Industrie  
Direction formation, emploi  
Programme Comett  
45, avenue d'Iéna  
F-75016 Paris

*Greece*

Comett Info Office  
Mr. Raphael Koumeri  
Mr. Chrysanthacopoulos  
Ministry of Industry, Energy and Technology  
Messogion 14  
GR-11510 Athens

*Italy*

Prof. Remo Rossi  
Direttore CINECA  
Via Magnanelli 6/3  
I-40033 Casalecchio di Reno (Bologna)

*Ireland*

NBST (National Board for Science and Technology)  
Shelbourne House  
Shelbourne Road  
IRL-Dublin 4

*Luxembourg*

M. Yves Oestreicher — Lux Innovation  
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BP 1304  
L-1013 Luxembourg

*The Netherlands*

Mr J. E. Hagen  
Ms M. Meijerink  
Netherlands Universities Foundation for International  
Cooperation (NUFFIC)  
PO Box 90734  
NL-2509 LS The Hague

*Portugal*

Conselho de Cooperação Universidade — Empresa  
Av. 5 de Outubro, 107, 1º  
P-1051 Lisbon-Codex

*United Kingdom*

Mr Richard Faith  
Department of Education and Science  
Elizabeth House — York Road  
London SE1 7PH

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**Preliminary notice concerning participation in the research and technological development programme in the field of energy**

**— Non-nuclear energies and rational use of energy —**

**JOULE**

1989 to 1992

(88/C 297/03)

**I**

The JOULE programme proposed by the Commission of the European Communities covers the projects provided for in item 5.3 of the framework programme for Community activities in the field of research and technological development (1987 to 1991). It is based on experience with, and the results of, the Community programmes implemented since 1975. It ensures continuity while at the same time bringing the scientific and technical content into line with new trends in energy research and development and new advanced-technology developments. The programme is currently in the process of being adopted by the Council of Ministers and the European Parliament.

**II**

In its present form, the programme consists of the following few subprogrammes:

1. *Models for energy and environment;*
2. *Rational use of energy;*
3. *Energy from fossil sources;*
4. *Renewable energies.*

A more detailed description of the subprogrammes has been given in the Annex.

**III**

The 122 million ECU available will be used mainly to finance cost-sharing research contracts for projects submitted in response to public calls for proposals.

**IV**

Priority themes or projects will be defined as precisely as possible in order to help the applicants in framing their projects and to avoid an excessive rejection rate.

**V**

Efforts will be made to involve all sectors engaged in research: universities, public and private research organizations and industry, particularly SMEs. As a general

rule, the projects will have to be implemented by participants from more than one Member State. The association or involvement of non-member states will be made possible through suitable arrangements on a project-by-project basis as appropriate.

**VI**

The proposals will be assessed, confidentially, by the Commission, calling in independent experts, on the basis of their quality, relevance to the programme, prospect of success and potential for industrial application. The decision to fund will be made by the Commission after consultation with the Management and Coordination Advisory Committee (CGC) which assists it.

**VII**

Research contracts will be in a model format adapted to the needs of the Commission's R & D programmes.

Information and patents will be governed by standard conditions.

**VIII**

The Commission will contribute to the actual allowable costs of research projects as follows:

- universities and colleges of higher education:  
contribution up to 100 % of the actual marginal costs incurred as additional expenditure on the R & D project,
- other organizations:  
contribution up to 50 % of the actual full economic costs of the R & D project.

**IX**

Advance notice of the first call for proposals for the new JOULE programme is now given so that those interested, in particular SMEs, will have sufficient time to find partners and prepare proposals.

Formal proposals may be submitted following the official call for proposals, which will be published in the *Official Journal of the European Communities*, probably towards the end of 1988. The most likely final date for submission of proposals is 30 April 1989.

However, in order to obtain the opinion of the Commission on the relevance and acceptability of the intended proposals, future applicants are encouraged to submit a preliminary proposal. This will allow a better coordination of the final proposals and the regrouping of applicants for each project and prevent too large a number of proposals being rejected.

Details of the programme and how to apply are available in the information package which may be obtained on written request from:

Commission of the European Communities,  
Directorate-General for Science, Research and Development,  
Directorate XII-E,  
Programme JOULE,  
Subprogramme (*see II*),  
200, rue de la Loi,  
B-1049 Brussels;  
telex 21877 COMEU B,  
telefax (32-2) 235 01 45.

The information package contains the standard form to be used in making the preliminary proposal, as well as the aims of the programme, eligibility and criteria, instructions on how to submit an application, the principles governing contracts and an outline of the evaluation procedure.

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## ANNEX CONTENTS

### 1. MODELS FOR ENERGY AND ENVIRONMENT

### 2. RATIONAL USE OF ENERGY

#### 2.1. Conservation in end-use sectors

##### 2.1.1. Buildings

- (a) Energy conservation
- (b) Solar-energy applications

##### 2.1.2. Combustion technology

##### 2.1.3. Industry

#### 2.2. Energy conservation and storage

##### 2.2.1. Fuel cells

- (a) For large-scale power applications
- (b) For small-scale applications

##### 2.2.2. High-temperature superconductors

##### 2.2.3. Storage

### 3. ENERGY FROM FOSSIL SOURCES

#### 3.1. Hydrocarbons

##### 3.1.1. Techniques for exploration and reconnaissance

##### 3.1.2. Research on drilling problems

##### 3.1.3. Production techniques

##### 3.1.4. Supporting studies for offshore production

##### 3.1.5. Natural gas development and conversion

##### 3.1.6. Hydrocarbon conversion

## 3.2. Solid fuels

Combined cycle technologies

3.2.1. Pressurized fluidized bed combustion combined cycle

3.2.2. Afterburner combined cycle

3.2.3. Circulating atmospheric fluidized bed combustion combined cycle

3.2.4. Coal gasification combined cycle

3.2.5. Generic R &amp; D

## 4. RENEWABLE ENERGIES

## 4.1. Solar-derived energy sources

4.1.1. Wind energy

4.1.2. Solar photovoltaic

4.1.3. Hydraulic energy

4.1.4. Biomass

## 4.2. Geothermal energy and deep geology

4.2.1. Geothermal energy

4.2.2. Deep geology

**Communication C(88) 2164 of Decisions under sundry tendering procedures in agriculture**

(88/C 297/04)

*(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's Decision	Minimum selling price
Commission Regulation (EEC) No 3442/88 of 4 November 1988 opening an invitation to tender for the sale of olive oil held by the Spanish intervention agency (OJ No L 302 of 5. 11. 1988, p. 17)	—	16. 11. 1988	Lampante virgin olive oil 3°: 21 675 Pta/100 kg



## STATE AID

(France)

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

(88/C 297/05)

Notice pursuant to Article 93 (2) of the EEC Treaty to interested parties, other than the Member States, concerning a proposal by the French Government to grant aid to the steel undertaking Usinor/Sacilor for non-steel activities carried out by five of its subsidiaries: Valexy (small tubes), Trefilunion (wire-drawing), GTS (large welded tubes), CFEM offshore oil, CFEM engineering.

The Commission had already adopted a Decision on 25 March 1987 on aid to Usinor/Sacilor for the abovementioned subsidiaries, in which it considered that the aid, totalling FF 3 147 million, was illegal pursuant to Article 93 (3) of the EEC Treaty and was also incompatible with the common market pursuant to Article 92 of the EEC Treaty; France was required to withdraw and recover the aid.

The French authorities brought an action before the Court of Justice against the Commission Decision.

The aids referred to in this communication would be paid only in the event of a reimbursement of the aids objected to by the Commission. There would not, therefore, be any cumulation of the illegal aids with the proposed aids.

The Commission notes that the industries in which these undertakings operate are suffering from overcapacity

and that trade between the Member States in these sectors can be regarded as significant. These industries are particularly sensitive to any distortions of competition, in particular as the amounts in question are considerable (FF 2 215,1 million, i.e. some 320 million ECU).

On the basis of the information available to it, the Commission cannot at this stage consider the proposed aids compatible with the common market. It has therefore opened the procedure pursuant to Article 93 (2) of the EEC Treaty against them.

Your attention is drawn to the terms of the Commission communication published in *Official Journal of the European Communities* No C 318 of 24 November 1983, page 3, which states that existing and potential recipients of State aid should be aware of the risk attaching to any aid granted illegally, i.e. without the Commission having reached a final decision, in that they may have to refund the aid. The Commission gives interested parties, other than Member States, notice to submit their comments on the aid measures referred to within one month from the date of this notice to the following address, to which they may also apply for further information if necessary: Commission of the European Communities, DG IV.E.5, Rue de la Loi 200, B-1049 Brussels.

## Outcome of the invitations to tender (Community food aid)

(88/C 297/06)

as provided for in Article 9 (5) of Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid (*Official Journal of the European Communities* No L 204 of 25 July 1987, page 1)

14 and 15 November 1988

Regulation (EEC) No	Action No	Lot	Recipient	Product	Quantity (tonnes)	Delivery stage	No of tenders	Successful tenderer	Awarded price (ECU/tonne)
3244/88	1058/88	C1	Bolivia	BO	100	EMB(*)	2	VIV — Vreeland (NL)	1 939,00
	1058/88	C2	Bolivia	BO	100	EMB(*)	2	VIV — Vreeland (NL)	1 939,00
3359/88	1057/88	A	Bolivia	LEP	1 000	EMB(*)	3	D.M. Kontor — Hamburg (D)	1 929,87
	1087/88	B	LSCR/Mauritania	LEP	100	DEB	4	D.M. Kontor — Hamburg (D)	2 040,87
	1086/88	C	LSCR/Mali	LEP	85	DEST	3	D.M. Kontor — Hamburg (D)	2 379,73
	1085/88	D	LSCR/Madagascar	LEP	50	DEB	4	Marquardt Molk. — Hamburg (D)	2 078,79
3330/88	1059/88	AA	Bolivia	FBLT	4 380	DEST	4	n.a. (1)	n.a. (1)
		AB		FBLT	2 555	DEST	3	n.a. (1)	n.a. (1)
		AC		FBLT	2 555	DEST	3	n.a. (1)	n.a. (1)
	1050/88	B1	Sri Lanka	BLT	20 000	DEB	10	L. Dreyfus — Paris (F)	167,37
		B2		BLT	20 000	DEB	9	L. Dreyfus — Paris (F)	167,37
	790/88	C	Grenada	CBL	200	DEB	4	Corimex — Vercelli (I)	459,00
3329/88	993/88	1	PAM/Mauritania	BLT	5 120	EMB	9	Conagra — Cergy Pontoise (F)	154,86
	969/88	1	PAM/Tunisia	DUR	6 750	EMB	3	C. André — Paris (F)	176,97
3358/88	1100/88	A	Bangladesh	BLT	34 000	DEN	11	G.&P. Lévy — Paris (F)	178,68
		B		BLT	33 000	DEN	10	G.&P. Lévy — Paris (F)	178,68
		C		BLT	33 000	DEN	9	Richco — Rotterdam (NL)	170,89
3360/88	897/88	1	UNWRA/Lebanon	HTOUR	110	DEB	6	AOH — Utrecht (NL)	658,89
	898/88	1	UNWRA/Syria	HTOUR	55	DEB	6	AOH — Utrecht (NL)	644,64
	899/88	1	UNWRA/Jordan	HTOUR	105	DEB	6	AOH — Utrecht (NL)	652,64
	900/88	1	UNWRA/Israel	HTOUR	43,85	DEB	6	AOH — Utrecht (NL)	658,89

n.a.: No contract was awarded.

(1) Second invitation to tender to be held on 29 November 1988 at 12 noon (amended Regulation (EEC) No 3330/88).

(\*) Award at EMB basis.

BLT: Common wheat  
 FBLT: Common wheat flour  
 CBL: Long-grained milled rice  
 CBR: Round-grained milled rice  
 BRI: Broken rice  
 FHAF: Rolled oats  
 MAI: Maize  
 SOR: Sorghum

DUR: Durum wheat  
 FMAI: Maize flour  
 GMAI: Maize groats  
 LEP: Skimmed-milk powder  
 LEPv: Vitaminized skimmed-milk powder  
 LENP: Whole milk powder  
 BO: Butteroil  
 B: Butter

HOLI: Olive oil  
 HCOLZ: Refined rape or colza oil  
 HPALM: Semi-refined palm oil  
 HTOUR: Refined sunflower oil  
 DEB: Free at port of landing — landed  
 DEN: Free at port of landing — ex ship  
 EMB: Free at port of shipment  
 DEST: Free at destination

# COURT OF JUSTICE

## JUDGMENT OF THE COURT

(Fourth Chamber)

of 18 October 1988

in Case 121/87: (reference for a preliminary ruling made by the Verwaltungsgericht Frankfurt am Main):  
Bayernwald Fruchteverwertung GmbH v. Federal Republic of Germany<sup>(1)</sup>)

*(Aid for products processed from fruit and vegetables — Conditions for grant)*

(88/C 297/07)

*(Language of the case: German)*

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

In Case 121/87: reference to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht (Administrative Court) Frankfurt am Main: for a preliminary ruling in the proceedings pending before that court between Bayernwald Fruchteverwertung GmbH and the Federal Republic of Germany — on the interpretation and validity of Article 4 (2) of Commission Regulation (EEC) No 1530/78 of 30 June 1978 laying down rules for the application of the system of aid in respect of certain products processed from fruit and vegetables (Official Journal, No L 179, 1978, p. 21) — the Court (Fourth Chamber), composed of T. Koopmans (President of the Chamber), C. N. Kakouris and G. C. Rodríguez Iglesias, Judges; Sir Gordon Slynn, Advocate-General; B. Pastor, Administrator, acting for the Registrar, gave a judgment on 18 October 1988, the operative part of which is as follow:

1. Article 4 (2) of Commission Regulation (EEC) No 1530/78 laying down rules for the application of the system of aid in respect of certain products processed from fruit and vegetables must be interpreted as meaning that the keeping of stock accounts showing each of the items mentioned therein constitutes a condition for the grant of the production aid provided for in Council Regulation (EEC) No 516/77, and that any doubts as to the accuracy of certain entries in those stock accounts may be elucidated with the aid of other supplementary documents.
2. Consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Article 4 (2) of Commission Regulation (EEC) No 1530/78.

Action brought on 7 October 1988 by Antonino Pitrone against the Commission of the European Communities

(Case 292/88)

(88/C 297/08)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 7 October 1988 by Antonino Pitrone, who resides at 8 Edelweisslaan, B-1981 Tervuren, represented by Nicolas Decker, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's chambers, 16 Avenue Marie-Thérèse.

The applicant claims that the Court should:

1. Declare the application admissible;
2. Declare it well founded;
3. Consequently, annul the appointment of Maurice Walker as head of Specialized Department XXI-01;
4. Order the reinstatement of the applicant as the person in charge of data processing in Directorate-General XXI;
5. Order the Commission to pay the costs.

*Contentions and main arguments adduced in support:*

The applicant relies on the following contentions:

1. Infringement of Article 4 of the Staff Regulations of Officials and of the Conditions of Employment of Other Servants: the Commission appointed Mr Walker without first deciding that there was a vacant post to be filled and without informing the Commission's staff of that vacancy.
2. Infringement of Articles 5, 7 and 86 to 89 of Annex IX to the Staff Regulations of Officials: the applicant's duties were reduced to a level below that of an official in Grade A 4 and below the level of the duties he previously performed. The Commission's refusal to reinstate him in the performance of his previous duties amounts to a covert disciplinary measure.
3. Infringement of the principle of the protection of legitimate expectation and failure to honour the undertaking of the applicant's superiors to reinstate him in his former post when the urgent tasks which had been temporarily assigned to him had been completed.

<sup>(1)</sup> OJ No C 136, 21. 5. 1987.

4. Conduct damaging to the applicant on the part of the Director of Directorate A: if new tasks were assigned to the applicant precisely in order to convince him to commit the error of leaving his previous duties to a member of the temporary staff who was employed solely for the purpose of assisting him during the difficult initial phase of a project, such conduct must be regarded as damaging.
5. Infringement of the second paragraph of Article 25: failure on the part of the Commission to state the grounds on which its decision is based.
6. Misuse of powers owing to the insufficient nature and inconsistency of the grounds relied on by the Director General to justify the assignment to Mr Walker of the duties previously exercised by the applicant.
7. Use of powers for a purpose other than that for which they were intended.

**Action brought on 7 October 1988 by Case Poclain SA and Tenneco Europe Limited against the Commission of the European Communities**

(Case 294/88)

(88/C 297/09)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 7 October 1988 by Case Poclain SA, whose registered office is in Plessis-Belleville, and Tenneco Europe Limited, whose registered office is in London, represented by Thierry Brocas and Olivier d'Ormesson, Avocats, Paris, and by Michael Hutchings, Solicitor, with an address for service in Luxembourg at the chambers of Marc Loesch, 8 Rue Zithe.

The applicant claims that the Court should:

1. Declare void Commission Decision 88/468/EEC of 29 March 1988 on aids granted by the French Government to a farm machinery manufacturer <sup>(1)</sup>;
2. Order the Commission to pay the costs.

*Contentions and main arguments adduced in support:*

1. Infringement of Article 92 of the EEC Treaty: the equity loan of FF 135 million does not involve any element of aid. In the alternative, infringement of the

general principle of proportionality in the conditions under which the alleged aid is to be recovered: the Commission cannot condemn *a priori* a financial instrument set up under French law merely because the loans provided for thereunder are equity loans. In fact, having regard to the expected results for 1988, the rate of return on the equity loan for 1988 should be around 10 %, that is to say, well above the average rate for medium-term loans negotiated with the banks in 1986.

2. Manifest error in the assessment of the facts and infringement of Article 92 (3) of the Treaty inasmuch as the Commission considered in its decision that the grant of FF 40 million was accompanied by an increase in staff and in the capacity of the undertaking receiving it, that the aid was not 'necessary' and that it influenced the geographical distribution of the group's investments: the French Government's intervention was necessary in order to re-establish customers' confidence in International Harvester France and it had a significant effect on the commercial banks and other creditors. The decision to use the Saint-Dizier plant rather than Meltham for the production of new transmissions is in no way due to the French Government's aid and is entirely justified by a series of technical considerations.

3. Insufficient statement of the reasons on which the decision is based and error of assessment in regard to the alleged distortions of competition and the effect on trade between the Member States: any possible effect the aid may have had was largely neutralized by the costs arising from the restructuring plan, including FF 69 million simply for additional social charges related to the closure of factories. Moreover, the distribution of investment within a single group is not covered by the rules on competition.

4. Infringement of the principles of non-discrimination and the protection of legitimate expectations: the Commission has discriminated against International Harvester/Tenneco and its conduct is not in accordance with the positions it adopted earlier. In an identical situation concerning Massey-Ferguson, the Commission reached exactly the opposite conclusions (see *Bulletin of the European Communities* No 12/1985, paragraph 2.1.77).

5. Infringement of the right to a fair hearing.

6. Infringement of the principle of the protection of legitimate expectations and of Article 93 (2) of the Treaty, having regard to the Commission's delay in reaching its decision.

<sup>(1)</sup> OJ No L 229, 18. 8. 1988.

**Reference for a preliminary ruling by the Landgericht Kiel by judgment of that court of 2 September 1988 in the case of Goeke Kruse v. Provinzial Brandkasse Versicherungsanstalt Schleswig-Holstein**

(Case 296/88)

(88/C 297/10)

Reference has been made to the Court of Justice of the European Communities by judgment of the Landgericht [Regional Court] Kiel of 2 September 1988, which was received at the Court Registry on 11 October 1988, for a preliminary ruling in the case of Goeke Kruse, 14 Auf dem Kamp, D-2358 Kaltenkirchen v. Provinzial Brandkasse Versicherungsanstalt Schleswig-Holstein [Provincial Fire Insurance Institution, Schleswig-Holstein], 33 Sophienblatt, 2300 Kiel 1 on the following questions:

1. Does a decision adopted before 12 March 1962 by an association of public-law fire insurers to employ in fire insurance on buildings, which is subject to competition, General Conditions of Insurance which, by way of derogation from the statutory rules laid down in the Versicherungsvertragsgesetz [Law on Insurance Contracts],
  - (a) exclude the purchaser's exceptional right of termination;
  - (b) preclude the exceptional right of termination exercisable in the event of the materialization of the insured risk;
  - (c) prohibit the conclusion of fire insurance in respect of buildings (for example in respect of extensions, renovation or conversions) without the consent of the insurer, on pain of sanctions,

constitute a decision which may affect trade between the Member States, in particular in the light of the decision of the Court of Justice of 27 January 1987 in Case 45/85 (fire insurance), *Verband der Sachversicherer v. Commission*?

2. If question 1 is answered in the negative, does the concerted application of the General Conditions of Insurance referred to in question 1 after 31 October 1962 affect trade between the Member States within the meaning of Article 85 (1) of the EEC Treaty?
3. If question 1 or question 2 is answered in the affirmative, is the decision or is the application on the basis of that decision, of the said General Conditions of Insurance exempt from notification under Article 5 (2) of Council Regulation No 17 read together with Article 4 (2) (1) thereof because the decision does not relate to imports and exports between Member States (see the Judgment of the Court of Justice of 18 March 1979 in Case 43/69, *Bilger v. Jehle*, [1970] ECR 127, at 135)?

4. If question 3 is answered in the affirmative, is the decision of the Court of Justice in paragraph 9 (p. 136) of the aforementioned judgment with regard to the expression 'authorities in Member States' to be understood as meaning any court before which a relevant case has been brought or is the Bundesgerichtshof [Federal Court of Justice] correct in its view that the courts of the Member States have jurisdiction only in so far as they are called upon to review administrative measures (WuW/E BGG 1113 (1117))?
5. If the first alternative in question 4 is answered in the affirmative, is the totality of the consequential contracts concluded after 12 March 1962 on the basis of an old cartel to be regarded as being in pursuance of and hence as still being part of that old cartel, or is it to be regarded as a new cartel?
6. Can the uniform application of General Conditions of Insurance whose content restricts competition within the meaning of Article 85 (1) of the EEC Treaty be based at the same time on a decision of an association of undertakings and on concerted practices among the undertakings belonging to that association and, if so, are the individual contracts entered into as a consequence between the undertakings and third parties also to be regarded as being in pursuance of the concerted practices and are the provisions of those contracts as described in question 1 (a), (b) and (c) liable to be void under Article 85 (2) of the EEC Treaty?
7. Is a building fire insurance contract concluded on the basis of General Conditions of Insurance containing provisions as described in question 1 (a), (b) and (c) to be regarded — in itself or together with approximately two million similar building fire insurance contracts — as a (vertical) agreement which may affect trade between Member States within the meaning of Article 85 (1) of the EEC Treaty?

**Action brought on 19 October 1988 by the Commission of the European Communities against the Kingdom of Spain**

(Case 307/88)

(88/C 297/11)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 19 October 1988 by the Commission of the European Communities, represented by its Legal Advisers, José Luis Iglesias Buhigues and Jörn Sack, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Centre Wagner, Kirchberg.

The applicant claims that the Court should:

1. Declare that by imposing a levy on imports of goods from other Member States of the European Communities for the work done by stowers and customhouse markers during the customs clearance of such goods and calculating the amount of the levy in proportion to the value of the goods at the frontier pursuant to Article 27 of the Ordenanzas Generales de la Renta de Aduanas, in the version laid down by Royal Decree 1520/1978 of 14 April 1978, and the Order of the Minister of Finance of 28 June 1979, the Kingdom of Spain has acted in breach of its obligations under Article 35 of the Act of Accession of Spain and Portugal to the European Communities.
2. Order the Kingdom of Spain to bear the costs.

*Contentions and main arguments adduced in support:*

The fee or levy at present charged by the Spanish administration for the work done by stowers and customhouse markers during the customs clearance of goods from other Member States of the European Communities, which is governed by Article 27 of the Ordenanzas Generales de la Renta de Aduanas, amended by Royal Decree 1520/1978 of 14 April 1978 and by the

provisions of the Order of the Minister of Finance of 28 June 1979, as far as concerns the procedures for its payment, constitutes a charge equivalent to a customs duty according to the criteria laid down in the case-law of the Court of Justice and consequently contravenes Articles 9, 12, 13 and 16 of the EEC Treaty and Article 35 of the Act of Accession of Spain and Portugal.

The fee constitutes a unilaterally imposed pecuniary charge since, in the first place, the economic operator has no real alternative to using that service and, in the second place, it is charged in the course of intra-Community trade in goods, irrespective of whether or not a service is actually provided by customhouse employees. Furthermore, the amount of the levy is calculated on the basis of the value of the goods and is not in proportion to the real cost of the work done by the auxiliary customs staff assigned to such tasks.

The nature of the pecuniary charge described has not been changed by the new Royal Decree 435/1988 of 6 May 1988 since the method of calculating the amount of the levy will continue to be the same until a ministerial order, whose date of publication is not specified, is issued in the future.

## II

*(Preparatory Acts)*

## COMMISSION

**Proposal for a Council Regulation (EEC) on structural improvements in inland waterway transport***COM(88) 111 final**(Submitted by the Commission to the Council on 19 May 1988)**(88/C 297/12)*

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the structural overcapacity manifest for some time in the fleets operating on the linked inland waterway networks of Belgium, France, Germany, Luxembourg and the Netherlands appreciably affects the economics of transport services, particularly of the carriage of goods by inland waterway in those countries;

Whereas forecasts show no sign of a sufficient increase in demand in this sector to absorb this overcapacity in the next few years; whereas in fact the share of the total transport market taken by inland waterway transport is continuing to decline as a result of progressive changes in the basic industries supplied mainly by inland waterway;

Whereas the results of the national vessel-scraping schemes organized by certain Member States, while positive, have been insufficient, for want of international coordination of these schemes;

Whereas a common approach, allowing Member States to take joint measures to attain the same objective, is a *sine qua non* for effectively reducing overcapacity; whereas, to this end, scrapping funds should be introduced in the Member States particularly concerned by inland waterway transport; whereas undertakings established in other Member States but providing

transport services on the linked inland waterways of the Member States concerned must contribute to one of the scrapping funds set up;

Whereas, in view of the present severity of structural overcapacity, of the likely lack of financial resources to reduce this overcapacity rapidly and of the danger of a further decline in demand in the wake of other industrial changes, it appears advisable to set up, for an indefinite period, the legal, administrative and financial instruments needed to remedy this overcapacity;

Whereas overcapacity generally effects every sector of the inland waterway transport market; whereas the measures adopted must, therefore, be generally applicable and cover all cargo vessels and pusher craft; whereas, however, vessels which in no way contribute to the overcapacity on the abovementioned network of linked inland waterways either because of their size or because they are operated solely on closed national markets, could be exempted from these measures; whereas, by contrast, private fleets performing carriage on own account must be included in the system because of their impact on transport markets;

Whereas, in view of the fundamental differences between the dry cargo and liquid cargo markets, it is advisable to keep separate accounts in each fund for dry cargo carriers and tanker vessels;

Whereas, in the context of an economic policy compatible with the Treaty, responsibility for structural improvements in a given sector of the economy lies primarily with operators in the sector; whereas, therefore, the cost of any system introduced must be borne by the inland waterway transport undertakings; whereas, in order to launch the system on a fully operational basis from the outset, arrangements should be made, however, for the Member States concerned to pay an advance in the form of repayable loans; whereas, in view of the difficult economic situation of the undertakings, these loans should be interest-free;

Whereas, in accordance with Article 74 of the Treaty, the objectives of the Treaty are to be pursued as regards transport within the framework of a common policy: whereas, as Article 77 makes clear, this policy may include the granting of aids, in particular if they meet the needs of coordination of transport; whereas the Community's action in this area, including aids, must however take into account the various general objectives of Article 3 and in particular that of Article 3 (f), concerning competition; whereas, as with all aids subject to the rules of Article 92 *et seq* of the Treaty, it is desirable to ensure that the measures provided for in this Regulation and their implementation do not distort or threaten to distort competition by favouring certain undertakings to an extent which is contrary to the common interest; whereas, in order to place the enterprises concerned in similar conditions of competition, the contributions to be paid to the scrapping funds and the scrapping premiums should be set at uniform rates; whereas likewise the scrapping programmes should be started at the same time, be of the same duration and subject to the same conditions in all the Member States concerned;

Whereas steps should be taken to prevent the gains from the coordinated scrapping scheme being cancelled out by extra capacity coming into service at the same time; whereas, in cases of serious and persistent overcapacity, temporary measures may have to be taken to curb investment without, however, totally blocking access to the inland waterway market or imposing a quota on the national fleets;

Whereas, as part of the proposed system, social measures should be taken to help workers who wish to leave the inland waterway industry or to retrain for jobs in another sector;

Whereas, since the system is a Community one, decisions on its operation must be taken at Community level after consultation with the Member States and the organizations representing the inland waterway transport industry; whereas the requisite power for the adoption of those decisions, as well as for ensuring their implementation and the maintenance of the conditions of competition laid down in this Regulation, must be conferred on the Commission;

Whereas, in order to prevent distortion of competition on the markets in question and to render the proposed system more effective, it is desirable for Switzerland to adopt similar measures for its fleet on the linked inland waterway network of the Member States concerned; whereas, as provided for by the Treaty, the Commission should therefore open negotiations on this subject with Switzerland, on behalf of the Community,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. Inland waterway vessels used to carry goods by inland waterway in the Member States shall be subject to a system for structural improvements in inland waterway transport under the conditions laid down hereinafter.
2. The system shall comprise:
  - measures to reduce structural overcapacity by means of scrapping schemes;
  - supporting measures to avoid aggravation of existing overcapacity or the emergence of further overcapacity.

#### Article 2

1. This Regulation shall apply to cargo-carrying vessels and pusher craft providing transport services on own account or for hire or reward and registered in a Member State or, if not registered, operated by an undertaking established in a Member State.

For the purposes of this Regulation 'undertaking' means any natural or legal person exercising an economic activity on a non-industrial or industrial scale.

2. The following shall be exempt from this Regulation:
  - (a) vessels sailing exclusively on national waterways not linked to other waterways in the Community;
  - (b) — pusher craft with a motive power not exceeding 300 kilowatts;
    - sea-going inland waterway vessels and ship-borne barges used exclusively for transport operations which include a sea crossing;
    - ferries;
    - vessels providing a non-profit-making public service.

#### Article 3

1. Each of the Member States whose inland waterways are linked to those of another Member State and the tonnage of whose fleet is above 100 000 tonnes, hereinafter referred to as 'the Member States concerned', shall set up, under its national legislation and with its own administrative resources, a Scrapping Fund, hereinafter referred to as 'the Fund':



2. The competent authorities in the Member State concerned shall administer the Fund. Each Member State shall involve its national organizations representing inland waterway carriers in this administration.

3. Each Fund shall consist of two separate accounts, one for dry cargo carriers, the other for tanker vessels.

#### *Article 4*

1. For each vessel referred to in Article 2 and not exempted from this Regulation the owner shall pay into one of the Funds set up under Article 3 a contribution fixed in accordance with Article 6.

2. The contribution for vessels registered in one of the Member States concerned or for non-registered vessels operated by an undertaking established in one of those States shall be paid into the Fund of the Member State where the vessel is registered or the undertaking is established, respectively.

3. The contribution for vessels registered in another Member State or for non-registered vessels operated by an undertaking established in another Member State shall be paid into one of the Funds set up in the Member States concerned, at the choice of the vessel owner.

This choice shall be made once only and shall apply to all vessels belonging to the same owner or operated by the same undertaking.

#### *Article 5*

1. Any owner scrapping a vessel for which a contribution has been paid shall receive a scrapping premium from the Fund to which his vessel belongs in so far as the financial means are available, subject to the conditions set out in Article 6. This scrapping premium shall be granted only in respect of vessels which the owner proves form part of his active fleet.

2. There shall be mutual financial support as between the various Funds. It shall come into play where a Fund cannot meet requests for scrapping premiums through lack of financial resources and where other Funds have an excess of liquidity since insufficient requests have been made of them.

#### *Article 6*

1. The Commission shall lay down separately for dry cargo carriers, for tankers and for pusher craft:

- the rate for the annual contributions to the Fund for each vessel;
- the rate for the scrapping premiums;
- the period covered by the scrapping programmes, during which scrapping premiums will be paid, and the conditions under which they may be obtained;

— the adjustment coefficients for each type and category of inland waterway vessel.

2. Rates of contributions and scrapping premiums shall be expressed in ECU and shall be the same for each Fund.

3. Contribution rates shall be fixed at a level allowing the Funds sufficient financial resources to make an effective contribution to reducing the structural imbalance between supply and demand in the inland waterway transport sector. In addition, they shall be set at a level acceptable to inland waterway undertakings in a difficult economic position.

Contributions shall be calculated on the basis of the deadweight tonnage and motive power of the vessel. They shall be paid annually at the start of the year in return for a certificate of payment. From 1 March of the year concerned this certificate must be on board the vessel or, in the case of unmanned vessels, on board the pusher craft.

In duly proven cases where the vessel has been laid up for more than three consecutive months, the contribution may be refunded in respect of the period for which the vessel was laid up.

4. The Commission shall lay down the periods during which scrapping premiums may be obtained and the conditions for granting these premiums on the basis of the objectives to be attained, the vessel types or categories and the financial resources of the Funds.

5. The Commission shall lay down detailed rules for the mutual financial support referred to in Article 5 (2).

6. The Commission shall take the decisions referred to in paragraphs 1 to 5 after consulting the Member States and the organizations representing inland waterway carriers at Community level.

The decisions reached by the Commission shall also take account of the results of observation of the transport markets in the Community and of any foreseeable changes therein, as well as of the need to avoid any distortion of competition which is contrary to the common interest.

#### *Article 7*

Without prejudice to the provisions of the Treaty on aids and to the rules adopted in implementation thereof, the Member States concerned may make advance payments, in the form of loans, to the Fund set up in their territory. The sums granted in this way shall be repaid, free of interest, by the Fund, according to a predetermined schedule.

*Article 8*

1. Throughout the duration of the scrapping schemes decided upon by the Commission in accordance with Article 6, vessels covered by this Regulation pursuant to Article 2 which are newly constructed, imported from a third country or exempted under Article 2 (2) (a) may be brought into service on inland waterways as referred to in Article 3 only where:

- the owner of the vessel to be brought into service scraps a tonnage of carrying capacity equivalent to the new vessel without receiving a scrapping premium;
- or, where the owner scraps no vessel, he pays into the Fund covering his new vessel or into the Fund chosen by him in accordance with Article 4, a special contribution equal to the scrapping premium fixed for the current scrapping period for a tonnage equal to that of the new vessel;
- or, where the owner scraps a tonnage smaller than that of the new vessel to be brought into service, he pays into the Fund in question a special contribution equivalent to the scrapping premium corresponding at the time to the difference between the tonnage of the new vessel and the tonnage scrapped.

These conditions shall not apply to vessels which the owner proves were under construction on the date on which the scrapping scheme was instituted.

2. In cases where serious structural overcapacity is expected to persist in the Community inland waterway transport sector or on one of its markets, the Commission may, after consulting the organizations representing inland waterway carriers at Community level and with the agreement of the Member States concerned, decide to increase to up to double the original values the values for the tonnage to be scrapped and for the special contributions for bringing new capacity into service, as provided for in paragraph 1.

At the same time the Commission shall lay down the period for which this measure is to apply.

*Article 9*

The Member States shall take measures:

- to make it easier for inland waterway carriers leaving the trade to obtain an early retirement pension or to transfer to another economic activity;
- to grant early retirement pensions to workers leaving the inland waterways as a result of scrapping schemes and to organize vocational training courses or retraining courses.

*Article 10*

The Commission shall negotiate, on behalf of the Community, arrangements with Switzerland for the latter to apply measures comparable to the Community measures adopted under this Regulation.

*Article 11*

1. By 31 October 1988 Member States shall adopt the measures necessary to implement this Regulation, after consulting the Commission.

These measures shall provide for, *inter alia*, permanent and effective verification of compliance with the obligations imposed on undertakings by this Regulation, of the national provisions adopted in implementation thereof and of the appropriate penalties in the event of infringement.

2. Throughout the duration of a scrapping scheme Member States shall communicate to the Commission every six months all relevant information on progress with the current scheme and, in particular, on the financial position of the Fund, the number of applications to scrap vessels and the tonnage actually scrapped.

3. By 30 November 1988 the Commission shall adopt the decisions which it is required to take under Article 6 and, where appropriate, under Article 8 (2).

*Article 12*

This Regulation shall apply from 1 July 1988.

This Regulation shall be binding in its entirety and directly applicable in all Member States.