

# Official Journal

## of the European Communities

ISSN 0378-6986

C 71

Volume 33

21 March 1990

English edition

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## I

*(Information)*

## COMMISSION

Ecu <sup>(1)</sup>

20 March 1990

(90/C 71/01)

Currency amount for one ecu:

Belgian and Luxembourg franc	42,3381	Portuguese escudo	180,587
German mark	2,03587	United States dollar	1,20716
Dutch guilder	2,29336	Swiss franc	1,81919
Pound sterling	0,744930	Swedish krona	7,39445
Danish krone	7,80368	Norwegian krone	7,91534
French franc	6,88322	Canadian dollar	1,42384
Italian lira	1505,33	Austrian schilling	14,3217
Irish pound	0,765527	Finnish markka	4,82622
Greek drachma	194,835	Japanese yen	185,118
Spanish peseta	130,772	Australian dollar	1,59361
		New Zealand dollar	2,06528

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.

(<sup>1</sup>) Council Regulation (EEC) No 3180/78 of 18 December 1978 (OJ No L 379, 30. 12. 1978, p. 1), as last amended by Regulation (EEC) No 1971/89 (OJ No L 189, 4. 7. 1989, 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).

**Recapitulation of current tenders, published in the *Supplement to the Official Journal of the European Communities*, financed by the European Economic Community under the European Development Fund (EDF) or the European Communities budget**

(week: 13 to 17 March 1990)

(90/C 71/02)

Invitation to tender No	Number and date of 'S' Journal	Country	Subject	Final date for submission of bids
3205	S 50, 13. 3. 1990	Belgium	B-Brussels: management and supervision of electricity distribution in the Yucatán Peninsula	5. 4. 1990
3198	S 52, 15. 3. 1990	Mozambique	MZ-Maputo: various supplies	15. 5. 1990
3209	S 52, 15. 3. 1990	Chad	TD-N'Djamena: vehicles, lightweight motorcycle and agricultural equipment	16. 5. 1990
3208	S 53, 16. 3. 1990	Ethiopia	ET-Addis Ababa: various supplies	10. 5. 1990

## COURT OF JUSTICE

### JUDGMENT OF THE COURT

(Fourth Chamber)

of 7 February 1990

in Case C-343/87: *A. Culin v. Commission of the European Communities* <sup>(1)</sup>

(Official — Annulment of appointment)

(90/C 71/03)

(Language of the case: French)

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

In Case C-343/87: A. Culin, an official of the Commission of the European Communities, represented by J. N. Louis, of the Brussels Bar, with an address for service in Luxembourg at the office of Y. Hamilius, 11 Boulevard Royal, against the Commission of the European Communities (represented by S. Fabro and C. Verbraeken) — application for annulment of the decision appointing another official to a post of head of division for which the applicant was also a candidate, the decision rejecting the applicant's candidature, and the decision whereby his complaint against these decisions was expressly rejected — the Court (Fourth Chamber), composed of C. N. Kakouris, President of Chamber, T. Koopmans and M. Díez de Velasco, Judges, J. Mischo, Advocate-General; B. Pastor, Administrator, gave a judgment on 7 February 1990, the operative part of which is as follows:

1. *The Commission's decision of 24 November 1986 appointing Mr N. Argyris to the post of Head of the 'Textiles, Clothing, Leather and other manufacturing industries' Division in the Directorate-General for Competition is declared void.*
2. *The Commission's decision rejecting Mr A. Culin's candidature for this post is also declared void.*
3. *The Commission is ordered to pay to Mr Culin one franc by way of compensation for non-material damage.*
4. *The application is dismissed for the rest.*
5. *The Commission is ordered to pay the costs.*

<sup>(1)</sup> OJ No C 329, 8. 12. 1987.

### JUDGMENT OF THE COURT

(Third Chamber)

of 7 February 1990

in Case C-81/88: *Helmut Müllers v. Economic and Social Committee of the European Communities* <sup>(1)</sup>

(Officials — Reorganization of departments — Establishment)

(90/C 71/04)

(Language of the case: French)

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

In Case C-81/88: Helmut Müllers, an official of the Economic and Social Committee of the European Communities, represented and assisted by E. Lebrun, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of T. Biever, 83 Boulevard Grande-Duchesse Charlotte, against the Economic and Social Committee of the European Communities (Agents: M. Bruggemann and D. Lagasse) — application for the annulment of the following decisions of the Bureau of the Economic and Social Committee of the European Communities relating to the filling of the vacant post of Head of the Transport and Communications Division in Directorate B (Vacancy Notice No 46/87):

- (a) The decision adopted on 29 June 1987 to select two candidates to fill two of the three vacant posts of Head of Division, including the post at issue, by means of internal promotion;
- (b) The decision adopted on 30 June 1987 proposing that the Council of the European Communities should appoint one of the two candidates to the post at issue;
- (c) The decision notified by letter of 13 July 1987 not to accept the applicant's candidature for that post;

and also the annulment of:

- (d) The decision of the Council of the European Communities of 3 December 1987 promoting the proposed candidate to Grade A3 and appointing him Head of the Transport and Communications Division in Directorate B of the General Secretariat of the Economic and Social Committee with effect from 1 August 1987;

<sup>(1)</sup> OJ No C 100, 15. 4. 1988.

(e) The decision of the Chairman of the Economic and Social Committee of 15 December 1987 transferring the applicant to the Section for Energy, Nuclear Questions and Research in Directorate C;

(f) The express decision rejecting his complaint notified to him by memorandum of 18 December 1987,

— the Court (Third Chamber), composed of M. Zuleeg, President of the Chamber, J. C. Moitinho de Almeida and F. Grévisse, Judges, F. Jacobs, Advocate-General; J.-G. Giraud, Registrar, gave a judgment on 7 February 1990, the operative part of which is as follows:

1. *The application is rejected.*
2. *The parties are to bear their own costs.*

**JUDGMENT OF THE COURT**  
(Third Chamber)

of 7 February 1990

in Case C-95/88: **Claude Laval v. Economic and Social Committee of the European Communities** (1)

**(Officials — Reorganization of departments — Establishment)**

(90/C 71/05)

*(Language of the case: French)*

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

In Case C-95/88: Claude Laval, an official of the Economic and Social Committee of the European Communities, represented and assisted by E. Lebrun, of the Brussels Bar, with an address for service in Luxemburg at the Chambers of T. Biever, 83 Boulevard Grande-Duchesse Charlotte, against the Economic and Social Committee of the European Communities (Agents: M. Bruggemann and D. Lagasse) — application for the annulment of the following decisions of the Bureau of the Economic and Social Committee of the European Communities relating to the filling of the vacant post of Head of the Agriculture Division in Directorate C (Vacancy Notice No 47/87):

- (a) The decision adopted on 29 June 1987 to select two candidates to fill two of the three vacant posts of Head of Division, including the post at issue, by means of internal promotion;
- (b) The decision adopted on 30 June 1987 reserving the post at issue for a Spanish national;

(c) The decision adopted on 17 November 1987 proposing that the Council of the European Communities should appoint Francisco Vallejo de Olavarria to the post at issue;

and also the annulment of:

(d) The decision of the Bureau notified in its letter of 26 November 1987 not to accept the applicant's candidature for that post;

(e) The decision of the Chairman of the Economic and Social Committee of 15 December 1987 transferring the applicant to the Section for the Protection of the Environment, Public Health and Consumer Affairs in Directorate A;

(f) The express decision rejecting his complaint notified to him by memorandum of 4 February 1988,

— the Court (Third Chamber), composed of M. Zuleeg, President of the Chamber, J. C. Moitinho de Almeida and F. Grévisse, Judges; F. Jacobs, Advocate-General; J.-G. Giraud, Registrar, gave a judgment on 7 February 1990, the operative part of which is as follows:

1. *The application is rejected.*
2. *The parties are to bear their own costs.*

**JUDGMENT OF THE COURT**  
(Second Chamber)

of 7 February 1990

in Case C-324/88 (reference for a preliminary ruling made by the Cour du Travail, Mons): **Rosaria Vella v. Alliance Nationale des Mutualités Chrétiennes** (1)

**(Social security for migrant workers — Assimilation to a period of insurance of a period of incapacity in respect of which an allowance was received)**

(90/C 71/06)

*(Language of the case: French)*

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

In Case C-324/88: reference to the Court under Article 177 of the EEC Treaty by the Cour du Travail [Labour Court], Mons for a preliminary ruling in the proceedings pending before that court between Rosaria Vella, the widow of Salvatore Scaduto, and others and Alliance Nationale des Mutualités Chrétiennes — on the interpretation of Articles 1 and 27 of Council Regulation No 3

(1) OJ No C 111, 28. 4. 1988.

(1) OJ No C 323, 16. 12. 1988.

of 25 September 1958 concerning social security for migrant workers<sup>(2)</sup>, Article 28 of Council Regulation No 4 of 3 December 1958 on implementing procedures and supplementary provisions in respect of Regulation No 3<sup>(3)</sup>, and Articles 1, 45 and 48 of Council Regulation (EEC) No 1408/71 of 14 June 1971, on the application of social security schemes to employed persons, to self-employed persons and members of their family moving within the Community<sup>(4)</sup>, the Court (Second Chamber), composed of F. A. Schockweiler, President of the Chamber, G. F. Mancini and T. F. O'Higgins, Judges; C. O. Lenz, Advocate-General; H. Rühl, Principal Administrator, gave a judgment on 7 February 1990, the operative part of which is as follows:

*Article 1 (r) of Regulation No 3 and Article 1 (r) of Regulation (EEC) No 1408/71 must be interpreted as meaning that the periods which may be assimilated to a period of insurance must be determined solely by reference to the criteria laid down by the national legislation under which those periods were completed.*

<sup>(2)</sup> OJ No 30, 16. 12. 1958, p. 561/58.

<sup>(3)</sup> OJ No 30, 16. 12. 1958, p. 597/58.

<sup>(4)</sup> OJ English Special Edition, 1971 (II), p. 416.

## JUDGMENT OF THE COURT

(Fifth Chamber)

of 8 February 1990

in Case C-279/87: **Tipp-Ex GmbH & Co KG v. Commission of the European Communities**<sup>(1)</sup>

*(Article 85 of the EEC Treaty — Exclusive distributorship — Prohibition of parallel imports)*

(90/C 71/07)

*(Language of the case: German)*

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

In Case C-279/87: Tipp-Ex GmbH & Co. KG, Liederbach, represented by Ulrich Dörr, Rechtsanwalt, Frankfurt-am-Main, with an address for service in Luxembourg at the Chambers of Jean Wagener, Avocat, 10a Boulevard de la Foire, against the Commission of the European Communities (Agents: Norbert Koch and Alexander Böhlke) — application for a declaration that Commission Decision 87/406/EEC of 10 July 1987 relating to a proceeding under Article 85 of the EEC Treaty (IV/31.192 — Tipp-Ex and IV/31.507 — Tipp-Ex (standard form contract)) is void — the Court (Fifth Chamber), composed of Sir Gordon Slynn, President of the Chamber, M. Zuleeg, R. Joliet, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Judges; W. Van Gerven, Advocate-General;

<sup>(1)</sup> OJ No C 294, 5. 11. 1987.

J. A. Pompe, Deputy Registrar, gave a judgment on 8 February 1990, the operative part of which is as follows:

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

## JUDGMENT OF THE COURT

(Fifth Chamber)

of 8 February 1990

in Case C-233/88 (reference for a preliminary ruling made by the **Tariefcommissie, Amsterdam**): **Gijs van de Kolk-Douane Expeditie BV v. Inspecteur der Invoerrechten en Accijnzen, Amersfoort**<sup>(1)</sup>

*(Tariff classification — Nomenclature — Seasoned meat)*

(90/C 71/08)

*(Language of the case: Dutch)*

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

In Case C-233/88: reference to the Court under Article 177 of the EEC Treaty by the Tariefcommissie [administrative court of last instance in revenue matters], Amsterdam, for a preliminary ruling in the proceedings pending before that court between Gijs van der Kolk-Douane Expeditie BV and Inspecteur der Invoerrechten en Accijnzen [Inspector of Customs and Excise], Amersfoort — on the validity of Additional Note 6 (a), inserted in Chapter 2 of Section 1 of Part II of the Common Customs Tariff by Council Regulation (EEC) No 3400/84 of 27 November 1984 amending Regulation (EEC) No 950/68 on the Common Customs Tariff<sup>(2)</sup>, the Court (Fifth Chamber), composed of Sir Gordon Slynn, President of the Chamber, M. Zuleeg, R. Joliet, M. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Judges; M. G. Tesauro, Advocate-General; H. A. Rühl, Principal Administrator, acting as Registrar, gave a judgment on 8 February 1990, the operative part of which is as follows:

*Consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Additional Note 6 (a) to Chapter 2 of Section I of Part II of the Common Customs Tariff as it appears in Council Regulation (EEC) No 3400/84 of 27 November 1984.*

<sup>(1)</sup> OJ No L 320, 10. 12. 1984, p. 1.

## JUDGMENT OF THE COURT

(Sixth Chamber)

of 8 February 1990

in Case C-320/88 (reference for a preliminary ruling made by the Hoge Raad der Nederlanden): Staatssecretaris van Financiën v. Shipping and Forwarding Enterprise Safe BV <sup>(1)</sup>

*(Interpretation of Article 5 (1) of the Sixth Directive — Supply of immovable property — Transfer of economic ownership of property)*

(90/C 71/09)

*(Language of the case: Dutch)*

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

In Case C-320/88: reference to the Court under Article 177 of the EEC Treaty by the Hoge Raad der Nederlanden [Supreme Court of the Netherlands] for a preliminary ruling in the proceedings pending before that court between Staatssecretaris van Financiën [Finance Secretary] and Shipping and Forwarding Enterprise Safe BV (SAFE Rekencentrum BV), a taxable entity whose registered office is at Hillegom — on the interpretation of Article 5 (1) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment <sup>(2)</sup>, the Court (Sixth Chamber), composed of C. N. Kakouris, President of the Chamber, T. Koopmans, G. F. Mancini, T. F. O'Higgins and M. Díez de Velasco, Judges; W. Van Gerven, Advocate-General; D. Louterman, Principal Administrator, acting as Registrar, gave a judgment on 8 February 1990, the operative part of which is as follows:

1. *'Supply of goods' in Article 5 (1) of the Sixth Directive must be interpreted as meaning the transfer of the right to dispose of tangible property as owner, even if there is no transfer of legal ownership of the goods.*
2. *It is for the national court to determine in each individual case, on the basis of the facts of the case, whether there is a transfer of the right to dispose of the goods as owner within the meaning of Article 5 (1) of the Sixth Directive.*

<sup>(1)</sup> OJ No C 311, 6. 12. 1988.

<sup>(2)</sup> OJ No L 145, 13. 6. 1977, p. 1.

## JUDGMENT OF THE COURT

(Second Chamber)

of 14 February 1990

in Case C-137/88: Marijke Schneemann and Others v. Commission of the European Communities <sup>(1)</sup>

*(Officials — Pension rights acquired before entering the service of the Communities — Transfer to the Community scheme — Duty to provide assistance under Article 24 of the Staff Regulations)*

(90/C 71/10)

*(Language of the Case: French)*

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

In Case C-137/88: Marijke Schneemann and 408 officials of the Commission of the European Communities, represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Yvette Hamilius, 10 Boulevard Royal, against the Commission of the European Communities (Agent: Sean Van Raepenbusch) — application for the annulment of the Commission's decision to refuse the applicants its financial and practical assistance in the dispute between them and the Belgian State concerning the transfer of pension rights acquired under a Belgian pension scheme — the Court (Second Chamber), composed of O. Due, President, acting as President of the Chamber, F. A. Schockweiler, President of Chamber, and G. F. Mancini, Judge; G. Tesauro, Advocate-General; J.-G. Giraud, Registrar, gave a judgment on 14 February 1990, the operative part of which is as follows:

1. *The Commission's decision of 13 July 1987 rejecting the applicant's request for assistance from the Commission under Article 24 of the Staff Regulations is annulled.*
2. *The Commission is ordered to pay the costs.*

<sup>(1)</sup> OJ No C 153, 11. 6. 1988.



## JUDGMENT OF THE COURT

(Second Chamber)

of 14 February 1990

in Case C-350/88: *Société Française des Biscuits Delacre and Others v. Commission of the European Communities* <sup>(1)</sup>

*(Aid for butter for use in the manufacture of pastry products — Invitation to tender — Decision by the Commission to reduce the level of aid — Proceedings for annulment)*

(90/C 71/11)

*(Language of the case: French)*

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

In Case C-350/88: *Société Française des Biscuits Delacre*, a public limited liability company with its registered office at Nieppe RC Hazebrouck (France), *Société Etablissement J. Le Scao*, a public limited liability company with its registered office at Briec de l'Odet (France), *Société Bicuiterie de l'Abbaye*, a private limited liability company with its registered place of business at Lonlay-L'Abbaye (France), all represented by Patrick Dibout, Avocat in Paris, with an address for service in Luxembourg at the Chambers of Tom Loesch, Avocat, 8 Rue Zithe, against Commission of the European Communities (Agents: D. G. Lawrence and Patrick Hetsch) — application for the annulment of the decision adopted by the Commission on 30 September 1988 in connection with tender No 8 <sup>(2)</sup>, pursuant to the standing invitation to tender procedure under 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 <sup>(3)</sup>, the Court (Second Chamber), composed of F. A. Schockweiler, President of the Chamber, G. F. Mancini and T. F. O'Higgins, Judges; C. O. Lenz, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 14 February 1990, the operative part of which is as follows:

1. *The application is rejected.*
2. *The applicant undertakings shall be jointly and severally liable for the costs.*

<sup>(1)</sup> OJ No C 2, 4. 1. 1989.

<sup>(2)</sup> OJ No C 259, 6. 10. 1988, p. 9.

<sup>(3)</sup> OJ No L 55, 1. 3. 1988, p. 31.

## ORDER OF THE PRESIDENT OF THE COURT

of 14 February 1990

in Case C-358/89 R: *Extramet Industrie SA v. Council of the European Communities* <sup>(1)</sup>

*(Dumping — Definitive duty — Calcium metal)*

(90/C 71/12)

*(Language of the case: French)*

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

In Case C-358/89 R: *Extramet Industrie SA*, a company governed by French law, whose registered office is at Annemasse, France, represented by Chantal Momège, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand Rue, against the Council of the European Communities (Agents: Y. Crétien and E. Stein), supported by the Commission of the European Communities (Agents: E. L. White and R. Wagner) — application primarily for an order that the application of Council Regulation (EEC) No 2808/89 of 18 September 1989 imposing a definitive anti-dumping duty on imports of calcium metal originating in the People's Republic of China and the Soviet Union and definitively collecting the provisional anti-dumping duty imposed on such imports be suspended — the President of the Court made an order on 14 February 1990, the operative part of which is as follows:

1. *The application for an interim order is dismissed.*
2. *The costs, including those of the intervener, are reserved.*

<sup>(1)</sup> OJ No C 16, 23. 1. 1990.

Reference for a preliminary ruling by the Polimeles Protodikio Athinon by judgment of that court of 2 October 1989 in the case of *Sindesmos Melon tis Eleftheras Evangelikis Ekklisias and Others v. Greek State and Others*

(Case C-381/89)

(90/C 71/13)

Reference has been made to the Court of Justice of the European Communities by judgment of the Polimeles-Protodikio Athinon (Court of First Instance, Athens) of 2 October 1989, which was received at the Court Registry on 18 December 1989, for a preliminary ruling in the case of the *Sindesmos Melon tis Eleftheras Evan-*

gelikis Ekklisias (Association of Members of the Free Evangelical Church) and six other plaintiffs against the Greek State, in the person of the Minister for Economic Affairs, and the Organismos Anasinkrotisis Epikhiriseon ('OAE', Organization for the Restructuring of Undertakings) and five other defendants, on the following questions:

1. Has the second Community directive on company law (Directive 77/91/EEC) of 13 December 1976, in particular the provisions relating to the maintenance or alteration of the capital of public limited liability companies (Articles 25 *et seq.* and 29), been directly applicable in the territory of Greece since 1 January 1981 in the sense that the Greek courts are required to apply its provisions in disputes before them?
2. Do the abovementioned provisions take precedence over conflicting provisions of Law 1386/1983, which differ from the other provisions of Greek national law governing such matters in regard to public limited liability companies inasmuch as the law in question, which set up the second defendant, the Organismos Anasinkrotisis Epikhiriseon, which operates in the public interest under the supervision of the State, was brought into force on 8 August 1983 principally for the purpose of restructuring companies?

**Action brought on 31 January 1990 by the Commission of the European Communities against Italy**

(Case C-32/90)

(90/C 71/14)

An action against Italy was brought before the Court of Justice of the European Communities on 31 January 1990 by the Commission of the European Communities, represented by Sergio Fabro, of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremliis, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

Declare that, by requiring manufacturers of extruded pasta products to state on the label the date of manufacture as well as the place of origin or provenance of the product, the Italian Government has failed to fulfil its obligations under Articles 5 and 189 of the EEC Treaty, and Article 3 (1) (4) and (7) of Council Directive 79/112/EEC (1);

(1) Council Directive 79/112/EEC of 18 December 1988 on the approximation of the laws of the member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (OJ No L 33, 8. 2. 1979, p. 1).

Order the Italian Government to pay the costs.

*Contentions and main arguments adduced in support:*

The matters required to be stated by the Italian Law of 11 June 1986 are at variance with the requirements laid down by Article 3 of Directive 79/112/EEC.

**Action brought on 5 February 1990 by the Commission of the European Communities against the Kingdom of Denmark**

(Case C 36/90)

(90/C 71/15)

An action against the Kingdom of Denmark was brought before the Court of Justice on 5 February 1990 by the Commission of the European Communities, represented by its Legal Adviser, Hans Peter Hartvig, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremliis, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

- (a) Declare that by failing to implement within the period prescribed the set-aside incentive scheme for arable land referred to in Regulation (EEC) No 797/85 (1) the Kingdom of Denmark has failed to fulfil its obligations under the EEC Treaty;
- (b) Order the Kingdom of Denmark to pay the costs.

*Contentions and main arguments adduced in support:*

Council Regulation (EEC) No 797/85, as amended by Regulation (EEC) No 1094/88 (2), contains a clear and unambiguous obligation for the Member States to implement the measures necessary to put into effect the set-aside incentive scheme for arable land. The period prescribed for implementation of the national measures expired, pursuant to Article 32 (1), in combination with the entry into force of Commission Regulation (EEC) No 1272/88 (3), on 15 July 1988. It is quite clear from Article 189 of the EEC Treaty that a Member State may not rely on internal difficulties to avoid obligations flowing from Community law.

(1) OJ No L 93, 30. 3. 1985, p. 1.

(2) OJ No L 106, 27. 4. 1988, p. 28.

(3) OJ No L 121, 11. 5. 1988, p. 36.

**Action brought on 6 February 1990 by Otto Heinemann, a farmer, against the Council and Commission of the European Communities**

(Case C-37/90)

(90/C 71/16)

An action against the Council and Commission of the European Communities was brought before the Court of Justice of the European Communities on 6 February 1990 by Otto Heinemann, a farmer, of 24 Stöckendrebber, D-3057 Neustadt 2, represented by Bernd Meisterererst, Mechtild Düsing and Dietrich Manstetten, Rechtsanwälte, of Geistraße 2, D-4400 Münster, with an address for service in Luxembourg at the Chambers of Messrs Lambert, Dupong and Konsbrück, 14a Rue des Bains, L-1212.

The applicant claims that the Court should:

Declare the defendants to be jointly and severally liable to pay the applicant the sum of DM 52 652 as compensation under the second paragraph of Article 215 of the EEC Treaty, together with interest at 7 % running from the date of the application.

*Contentions and main arguments adduced in support:*

The applicant seeks compensation for the damage which he has suffered through having been unable since 20 November 1989 to resume milk production on his farm on an economic basis. For the five years up to that date he had for five years claimed premiums for the non-marketing of milk, pursuant to Council Regulation (EEC) No 1078/77 and Commission Regulation (EEC) No 1391/78. Thereafter he found himself barred from producing milk by the fact that no delivery reference quantity could be fixed for him in accordance with Council Regulation (EEC) No 857/84 and Commission Regulation (EEC) No 1371/84.

By judgment of 28 April 1988 <sup>(1)</sup> the Court of Justice declared the last-mentioned Regulations invalid in so far as they made no provision for the allocation of a reference quantity for producers who had undertaken not to market milk in accordance with Regulation (EEC) No 1078/77. The provisions declared void exceeded, manifestly and seriously, the discretion accorded to the Community institutions in determining the common agricultural policy; the legitimate interests of producers who had previously undertaken not to market milk were not even taken into consideration by the Community institutions.

The applicant further requests the Court to declare incidentally that Article 3 a (2), inserted into Regulation (EEC) No 857/84 by Regulation (EEC) No 764/89, also

constitutes an infringement of the principle of the protection of legitimate expectation and the principle of equality in so far as producers who had previously undertaken not to market milk or to convert from milk production were allocated only 60 % of the quantity of milk which they had delivered during the 12 calendar months prior to the month in which they had lodged applications for the grant of those premiums. The applicant reserves the right to claim appropriate compensation.

**Reference for a preliminary ruling made by the Crown Court, Maidstone, by order of that Court of 20 December 1989 in the case of Regina against Thomas Edward Lomas**

(Case C-38/90)

(90/C 71/17)

The Court of Justice of the European Communities has received a reference for a preliminary ruling made by an order of the Crown Court, Maidstone, of 20 December 1989 in the proceedings between Regina and Thomas Edward Lomas which was lodged at the Court Registry on 12 February 1990 on the following questions:

1. Are paragraphs 1 and 2 of Article 4 of Regulation (EEC) No 1633/84 invalid in that they are *ultra vires* the power conferred on the Commission by Article 9 of Regulation (EEC) No 1837/80, as amended by Regulation (EEC) No 871/84?
2. If the answer to question 1 is 'yes', what are the definitive or temporal effects of the invalid parts of the regulation?
3. If the answer to question 1 is 'yes', can the United Kingdom be said to be authorised or required under Community law:
  - to require the production of documentation in relation to export transactions subjected to charges under the abovementioned Article 4 of Regulation (EEC) No 1633/84?
  - to prosecute for false statements in such documentation in a case such as the one in issue in the national proceedings in which the national enactment under which the prosecution is brought depends upon the existence of Community rights or obligations?

<sup>(1)</sup> Case 170/86, OJ No C 142, 31. 5. 1988, p. 4.

**Reference for a preliminary ruling by the Verwaltungsgerichtshof Baden-Württemberg by judgment of that court of 16 January 1990 in the case of Denkavit Futtermittel GmbH v. Land Baden-Württemberg**

(Case C-39/90)

(90/C 71/18)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tenth Senate of the Verwaltungsgerichtshof Baden-Württemberg [Higher Administrative Court of Baden-Württemberg] of 16 January 1990, which was received at the Court Registry on 12 February 1990, for a preliminary ruling in the case of Denkavit Futtermittel GmbH v. Land Baden-Württemberg, appearing through the Ministerium für ländlichen Raum, Ernährung, Landwirtschaft und Forsten Baden-Württemberg [Baden-Württemberg Ministry for the Countryside, Food, Agriculture and Forestry] on the following questions:

1. Is Article 5 (4) (b) of Council Directive 79/373/EEC of 2 April 1979<sup>(1)</sup> on the marketing of compound feedingstuffs, read together with Article 5 (7) thereof, to be interpreted as meaning:

that the Member States are entitled to introduce an obligation, which did not exist under national law at the time that the directive entered into force, requiring the ingredients contained in compound feedingstuffs to be listed in descending order of their proportion in the compound feedingstuff ('semi-open declaration'), or

that the Member States are merely entitled to retain such an obligation if it already existed in national law at the time of the entry into force of the Directive?

2. If Directive 79/373/EEC permits the Member States not merely to retain but also to introduce an obligation of that kind in regard to labelling:
  - (a) Would that be a 'measure having equivalent effect' to a quantitative restriction on imports within the meaning of Article 30 of the EEC Treaty?
  - (b) If it is such a measure, can the contested markings be regarded as necessary in the interest of consumer protection?
  - (c) If the contested markings are to be regarded as necessary in the interest of consumer protection, are they the method which results in the least hindrance to the free movement of goods?

3. If any hindrance to the free movement of goods caused by the contested markings cannot be justified under Article 30 of the EEC Treaty, can the restrictions on trade be justified as an exception under Article 36 on grounds of the protection of human and animal health?

**Reference for a preliminary ruling by the Oberlandesgericht München by order of that court of 31 January 1990 in the case of Dr Klaus Höfner and Fritz Elser v. Macrotron Gesellschaft für Datenerfassungssysteme mit beschränkter Haftung**

(Case C-41/90)

(90/C 71/19)

Reference has been made to the Court of Justice of the European Communities by order of the 15th Civil Senate of the Oberlandesgericht München [Higher Regional Court, Munich] of 31 January 1990, which was received at the Court Registry on 14 February 1990, for a preliminary ruling in the case of Dr Klaus Höfner and Fritz Elser v. Macrotron Gesellschaft für Datenerfassungssysteme mit beschränkter Haftung on the following questions:

1. Does the provision of business executives by personnel consultants constitute a service within the meaning of the first paragraph of Article 60 of the EEC Treaty and is the provision of executives bound up with the exercise of official authority within the meaning of Articles 66 and 55 of the EEC Treaty?
2. Does the absolute prohibition on the provision of business executives by German personnel consultants, laid down by Paragraphs 4 and 13 of the Arbeitsförderungsgesetz, constitute a professional rule justified by the public interest or a monopoly justified on grounds of public policy and public security (Articles 66, and 56 (1) of the EEC Treaty)?
3. Can a German personnel consultant rely on Articles 7 and 59 of the EEC Treaty in connection with the provision of German nationals to German undertakings?
4. In connection with the provision of business executives is the Bundesanstalt für Arbeit [Federal Employment Office] subject to the provisions of the EEC Treaty, and in particular Article 59 thereof, in the light of Article 90 (2) of the EEC Treaty, and does the establishment of a monopoly over the provision of business executives constitute an abuse of a dominant position on the market within the meaning of Article 86 of the EEC Treaty?

<sup>(1)</sup> OJ No L 86, 6. 4. 1979, p. 30.

**Reference for a preliminary ruling by the Tribunal de Grande Instance de Marseille by judgment of that court of 20 November 1987 in the case of Public Prosecutor v. Jean-Claude Bellon**

(Case C-42/90)

(90/C 71/20)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunal de Grande Instance [Regional Court], Marseille, of 20 November 1987, which was received at the Court Registry on 15 February 1990, for a preliminary ruling in the case of Public Prosecutor v. Jean-Claude Bellon on the following question:

Is it lawful under Community law to refuse entry into France to an item of food legally produced and marketed by a Member State on the ground that it contains sorbic acid, a preservative which is permitted under Directive 64/54/EEC <sup>(1)</sup> of 5 November 1963, as supplemented and amended by Directive 67/427/EEC of 27 June 1967 <sup>(2)</sup>, by Directive 71/160/EEC of 30 March 1971 and by Directive 74/62/EEC of 17 December 1973 <sup>(3)</sup>, but which, under French law, may be used only in a limited number of stipulated foodstuffs, although there is no over-riding reason for that?

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<sup>(1)</sup> Official Journal, English Special Edition 1964, p. 99.

<sup>(2)</sup> Official Journal, English Special Edition 1967, p. 169.

<sup>(3)</sup> OJ No L 38, 11. 2. 1974, p. 29.

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Published in: ES, DA, DE, GR, EN, FR, IT, NL, PT.

Catalogue number: SY-50-87-291-EN-C      ISBN: 92-825-7804-6

Price (excluding VAT) in Luxembourg:

ECU 4,60      IRL 3,60      UKL 3,20      USD 5,20      BFR 200



OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES  
L-2985 Luxembourg

