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Information and Notices

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(Information)

COMMISSION

Ecu (1)

4 November 1992

(92/C 288/01)

Currency amount for one unit:

Belgian and Luxembourg franc	40,5020	United States dollar	1,26066
Danish krone	7,55768	Canadian dollar	1,56877
German mark	1,96916	Japanese yen	154,620
Greek drachma	255,398	Swiss franc	1,75863
Spanish peseta	140,185	Norwegian krone	8,01278
French franc	6,66450	Swedish krona	7,40892
Irish pound	0,745735	Finnish markka	6,20625
Italian lira	1680,28	Austrian schilling	13,8560
Dutch guilder	2,21511	Icelandic krona	73,5219
Portuguese escudo	175,396	Australian dollar	1,82441
Pound sterling	0,809156	New Zealand dollar	2,40127

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.

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(1) 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).

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

(92/C 288/02)

(Established on 3 November 1992 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
R I	
Heraklion	No quotation
Patras	No quotation
Requena	1,957
Reus	No quotation
Villafranca del Bierzo	No quotation (1)
Bastia	No quotation
Béziers	3,035
Montpellier	3,103
Narbonne	3,116
Nîmes	3,040
Perpignan	No quotation
Asti	No quotation
Florence	No quotation
Lecce	No quotation
Pescara	No quotation
Reggio Emilia	No quotation
Treviso	2,420
Verona (for local wines)	No quotation
Representative price	3,015
R II	
Heraklion	No quotation
Patras	No quotation
Calatayud	No quotation
Falset	No quotation
Jumilla	No quotation
Navalcarnero	1,899
Requena	No quotation
Toro	No quotation (1)
Villena	No quotation (1)
Bastia	No quotation
Brignoles	No quotation
Bari	2,420
Barletta	No quotation
Cagliari	3,575
Lecce	No quotation
Taranto	No quotation
Representative price	2,768
	ECU/hl
R III	
Rheinpfalz-Rheinhessen (Hügelland)	46,725

Type of wine and the various marketing centres	ECU per % vol/hl
A I	
Athens	No quotation (1)
Heraklion	No quotation
Patras	No quotation
Alcázar de San Juan	No quotation (1)
Almendralejo	No quotation
Medina del Campo	No quotation (1)
Ribadavia	No quotation
Villafranca del Penedés	No quotation
Villar del Arzobispo	No quotation (1)
Villarrobledo	No quotation
Bordeaux	No quotation
Nantes	No quotation
Bari	2,365
Cagliari	No quotation
Chieti	No quotation
Ravenna (Lugo, Faenza)	2,200
Trapani (Alcamo)	No quotation
Treviso	2,557
Representative price	2,237
	ECU/hl
A II	
Rheinpfalz (Oberhaardt)	38,230
Rheinhessen (Hügelland)	37,729
The wine-growing region of the Luxembourg Moselle	No quotation (1)
Representative price	37,906
A III	
Mosel-Rheingau	No quotation
The wine-growing region of the Luxembourg Moselle	No quotation (1)
Representative price	No quotation

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

ADMINISTRATIVE COMMISSION OF THE EUROPEAN COMMUNITIES ON SOCIAL SECURITY FOR MIGRANT WORKERS

Rates for conversion of currencies pursuant to Council Regulation (EEC) No 2615/79

(92/C 288/03)

Article 107 (1), (2), (3) and (4) of Regulation (EEC) No 574/72

Reference period: October 1992

Application period: January, February and March 1993

	Brussels (Bfrs)	Copenhagen (Dkr)	Frankfurt (DM)	Athens (Dr)	Madrid (Pta)	Paris (FF)	Dublin (£ Irl)	Milan/Rome (Lit)	Amsterdam (Fl)	Lisbon (Esc)	London (£)
Bfrs 100	100	18,7367	4,85530	629,906	345,703	16,4712	1,84745	4 282,13	5,46526	432,779	1,97944
Dkr 100	533,712	100	25,9133	3 361,88	1 845,06	87,9088	9,86006	22 854,3	29,1688	2 309,80	10,5645
DM 100	2 059,61	385,902	100	12 973,6	7 120,12	339,242	38,0502	88 195,1	112,563	8 913,55	40,7686
Dr 100	15,8754	2,97452	0,770798	100	54,8817	2,61487	0,293290	679,806	0,867632	68,7054	0,314243
Pta 100	28,9266	5,41988	1,40447	182,210	100	4,76455	0,534403	1 238,67	1,58091	125,188	0,572582
FF 100	607,120	113,754	29,4775	3 824,28	2 098,83	100	11,2162	25 997,7	33,1807	2 627,49	12,0176
£ Irl 1	54,1287	10,1419	2,62811	340,960	187,125	8,91565	1	2 317,86	2,95828	234,258	1,07144
Lit 1 000	23,3528	4,37555	1,13385	147,101	80,7315	3,84649	0,431432	1 000	1,27629	101,066	0,462254
Fl 100	1 829,74	342,832	88,8392	11 525,6	6 325,46	301,380	33,8035	78 351,8	100	7 918,72	36,2185
Esc 100	23,1065	4,32939	1,12189	145,549	79,8798	3,80591	0,426880	989,450	1,26283	100	0,457378
£ 1	50,5195	9,46567	2,45287	318,225	174,647	8,32116	0,933321	2 163,31	2,76102	218,638	1

1. Regulation (EEC) No 2615/79 determines that the rate of conversion into a national currency of amounts shown in another national currency shall be the rate calculated by the Commission and based on the monthly average, during the reference period defined in paragraph 2, of the exchange rates of those currencies, which are notified to the Commission for the purposes of the European Monetary System.

2. The reference period shall be:

   — the month of January for rates of conversion applicable from 1 April following,

   — the month of April for rates of conversion applicable from 1 July following,

   — the month of July for rates of conversion applicable from 1 October following,

   — the month of October for rates of conversion applicable from 1 January following.

   The rates for the conversion of currencies shall be published in the second *Official Journal of the European Communities* ('C' series) of the months of February, May, August and November.

Notice of the impending expiry of an anti-dumping measure

(92/C 288/04)

1. The Commission gives notice that, unless a review is initiated in accordance with the following procedure, the anti-dumping measure mentioned below will lapse within the next six months as provided in Article 15 of Council Regulation (EEC) No 2423/88 of 11 July 1988 [1] on protection against dumped imports from countries not members of the European Economic Community.

2. **Procedure**

An interested party may lodge a written request for a review. This request must contain sufficient evidence that the expiry of the measure would lead again to injury or threat of injury. Furthermore, interested parties may make their views known in writing and may apply to be heard orally by the Commission provided that they consider that they are likely to be affected by the result of the proceeding and that there are particular reasons why they should be heard.

3. **Time limit**

Requests for a review by an interested party and any requests for hearings should be sent in writing to reach the Commission of the European Communities, Directorate-General for External Relations (Division I-C-2), rue de la Loi 200, B-1049 Brussels [2] not later than 30 days following the publication of this notice.

If a request for a review is not received in adequate form within the time limit specified above, the Community authorities may disregard the request and the measure concerned will automatically lapse in accordance with Article 15 (1) of the aforementioned Regulation.

4. Where the Commission intends to carry out a review of the measure a notice to that effect will be published in the *Official Journal of the European Communities* prior to the end of the relevant five year period. The measure remains in force pending the outcome of the review.

5. This notice is published in accordance with Article 15 (2) of the abovementioned Regulation.

Product	Country of origin	Measure	Reference
Roller chains for cycles	People's Republic of China	duty	Regulation (EEC) 1198/88 L 115, 3. 5. 1988

[1] OJ No L 209, 2. 8. 1988, p. 1.

[2] Telex COMEU B 21877; telefax (32-2) 235 65 05.

UNIFORM APPLICATION OF THE COMBINED NOMENCLATURE (CN)

(Classification of goods)

(92/C 288/05)

Publication of Explanatory notes made in accordance with Article 10 (1) of Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (1) as last amended by Regulation (EEC) No 1039/92 (2)

The Explanatory notes to the combined nomenclature of the European Communities (3) are amended as follows:

Page 'Chapter 29/10'

The following text is added:

'2939 10 00 Alkaloids of opium and their derivatives; salts thereof

This subheading also covers concentrates of poppy straw with a total alkaloid content of 80 % or more by weight on the dry matter.'

(1) OJ No L 256, 7. 9. 1987.

(2) OJ No L 110, 28. 4. 1992, p. 42.

(3) The publication Explanatory notes to the combined nomenclature of the European Communities is at present available in all language versions, with the exception of Danish and Greek which are in preparation and will be published as soon as possible.

Commission communication pursuant to Article 12 (3) of Council Regulation (EEC) No 3831/90 of 20 December 1990 applying generalized tariff preferences for 1991 in respect of certain industrial products originating in developing countries, extended for 1992 by Regulation (EEC) No 3587/91)

(92/C 288/06)

Pursuant to Article 12 (3) of Council Regulation (EEC) No 3831/90 (1), extended for 1992 by Regulation (EEC) No 3587/91 (2), the Commission gives notice that the following tariff ceilings have been reached:

Order No	Description	Origin	Amount of ceiling (ECU)
10.0250	Lysine and its esters; salts thereof	Mexico	695 000
10.0595	Other whole skins and pieces or cuttings thereof, assembled	China	4 400 000

(1) OJ No L 370, 31. 12. 1990, p. 1.

(2) OJ No L 341, 12. 12. 1991, p. 1.

Commission communication pursuant to the provisions of Council Regulation (EEC) No 3832/90 of 20 December 1990 applying tariff preferences for 1991 in respect of textile products originating in developing countries (extended, for 1992, by Council Regulation (EEC) No 3587/91 of 3 December 1991)

(92/C 288/07)

Pursuant to the provisions of Council Regulation (EEC) No 3832/90 [1] extended for 1992 by Regulation (EEC) No 3587/91 [2], the Commission gives notice that the following quotas have been exhausted after obligatory returns have been made:

Order No	Category	Origin	Quota amount	Date of exhaustion
40.0070 (1. 7.—31. 12. 1992)	7	Indonesia	486 000 pieces	5. 10. 1992

Imports beyond these amounts are liable to payment of the normal duties of the Common Customs Tariff.

[1] OJ No L 370, 31. 12. 1990, p. 39.
[2] OJ No L 341, 12. 12. 1991, p. 1.

Prior notification of a concentration

(Case No IV/M.266 — Rhône Poulenc Chimie/SITA)

(92/C 288/08)

1. On 23 October 1992, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 [1] by which the undertakings Rhône Poulenc Chimie SA, subsidiary of Rhône Poulenc SA, and SITA, subsidiary of the Lyonnaise des Eaux-Dumez, acquire within the meanng of Article 3 (1) (b) of Regulation (EEC) No 4064/89 joint control of a newly creates joint venture.

2. The business activities of the undertakings concerned are:

— for Rhône Poulenc Chimie: organic and mineral intermediate chemicals, and specialy chemicals,

— for SITA: collection, sorting and treatment of non-toxic waste, including household refuse,

— for the joint venture: incineration and detoxification of special industrial waste for third parties.

[1] OJ No L 395, 30. 12. 1989; corrigendum: OJ No L 257, 21. 9. 1990, p. 13.

3. Upon preliminary examination, the Commission finds that the notified concentration could fall within the scope of Council Regulation (EEC) No 4064/89. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (fax No (322) 296 43 01) or by post, under reference number IV/M.266 — Rhône Poulenc Chimie/SITA, to the following address:

Commission of the European Communities,
Directorate-General for Competition (DG IV),
Merger Task Force,
avenue de Cortenberg 150,
B-1049 Brussels.

STATE AID

C 26/92 (755/91)

Italy

(92/C 288/09)

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

Commission notice pursuant to Article 93 (2) of the EEC Treaty to the Member States and other interested parties concerning projected Italian aid for nuts

By the following letter the Commission has informed the Italian Government of its decision to initiate the procedure.

'In line with Article 93 (3) of the Treaty the Permanent Representation of Italy to the European Communities notified the Commission of the abovementioned aid measures by letter of 28 November 1991, recorded as received on 13 December 1991.

Further information was provided by the Italian authorities by letters of 6 March 1992 and 5 June 1992 responding to Commission requests of 3 February and 7 May 1992.

The measure in question is a programme for improving nut production quality at a total cost of Lit 11 billion.

As regards aid for varietal definition, promotion of concentration of supply and establishment of a technico-economic centre, the Commission has no objection to make under the competition rules of the Treaty.

The Commission's position is based on the following considerations:

— aid for advertising campaigns was to be granted in accordance with the Community framework for national aids for the advertising of agricultural products (OJ No C 302, 12. 11. 1987, p. 6),

— the research was to be undertaken in the general interests of the sector and the results circulated throughout it,

— the programme was to last for one year only during which no producers' association recognized under the Community rules would be operating in the sector in Italy.

As regards aid for the technico-economic centre to draw up further action programmes the Commission requests that once these are formulated and approved they be notified pursuant to Article 93 (3) of the Treaty.

As regards aid for technical assistance on market preparation and aid to help cover harvest costs the imprecise information provided would appear to indicate that these aids will not provide any structural improvement and are therefore operational aids running counter to the Commission's constant practice in regard to application of Articles 92 to 94 of the Treaty. Such measures directly and artificially reduce cost prices and improve the production conditions and disposal potential of the producers concerned against those of producers in other Member States not receiving comparable aid.

They therefore distort competition and affect trade between the Member States and meet the criteria of Article 92 (1) without apparently qualifying for derogation pursuant to Article 92 (2) and (3) of the Treaty.

They also infringe Regulation (EEC) No 1035/72 [1] on the common organization of the market in fruit and vegetables and Regulations (EEC) No 789/89 [2] and (EEC) No 2159/89 [3] on specific measures for nuts and locust beans.

These rules are to be considered, where measures other than those normally acceptable to the Commission by reason of, for example, their structural nature are concerned, as a full and exhaustive system completely debarring the Member States from adopting additional measures. For this reason too there is no possibility of qualifying for any of the derogations provided for in Article 92 (3) of the Treaty for the aid for technical assistance for market preparation and the aid to help cover harvesting costs.

The Commission has accordingly decided to initiate the procedure laid down in Article 93 (2) of the Treaty in regard to these measures, and gives notice to the Italian Government to submit its comments within one month of the date of this letter.

The Commission will also give notice to the Member States and other interested parties by a notice in the *Official Journal of the European Communities*, to submit their comments.

Under the terms of Article 93 (3) of the EEC Treaty the measures in question may not be put into effect before the Article 93 (2) procedure has resulted in a final decision.

The Commission also draws the Italian Government's attention to the letter it sent to all Member States on 3 November 1983 on their obligations pursuant to Article 93 (3) of the EEC Treaty and to the communication published in the *Official Journal of the European Communities* No C 318 of 24 November 1983, page 3, pointing out that any aid illegally granted, i.e. before the final decision under the Article 93 (2) procedure, may be the subject of a demand for recovery and/or refusal to charge to the EAGGF budget expenditure on national measures directly affecting Community measures.'

The Commission gives notice to the Member States and other interested parties to submit their comments on the measures within one month of the date of this notice to the following address:

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

These comments will be notified to Italy.

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(1) OJ No L 118, 20. 5. 72, p. 1. Regulation as last amended by Regulation (EEC) No 3920/90 (OJ No L 375, 31. 12. 1990).

(2) OJ No L 85, 30. 3. 1989, p. 3.

(3) OJ No L 207, 19. 7. 1989, p. 19.

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

(First Chamber)

of 1 October 1992

in Case C-201/91 (reference for a preliminary ruling by the Tribunal de Grande Instance, Metz): Bernard Grisvard and Georges Kreitz v. Association pour l'Emploi dans l'Industrie et le Commerce (Assedic) de la Moselle [1]

(Social Security — Frontier-zone workers — Unemployment benefits — Basis of assessment)

(92/C 288/10)

(Language of the case: French)

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

In Case C-201/91: reference to the Court under Article 177 of the EEC Treaty by the Tribunal de Grande Instance, Metz, for a preliminary ruling in the proceedings pending before that court between Bernard Grisvard and Georges Kreitz and Association pour l'Emploi dans l'Industrie et le Commerce (Assedic) de la Moselle with Unedic (national association of Assedic organizations) as voluntary intervener — on the interpretation of Articles 68 (1) and 71 (1) (a) (ii) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and members of their families moving within the Community and of Article 107 (1) of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71, as amended and consolidated by Council Regulation (EEC) No 2001/83 [2] — the Court (First Chamber), composed of R. Joliet, President of the Chamber, G. C. Rodríguez Iglesias and D. A. O. Edward, Judges; C. O. Lenz, Advocate-General; L. F. Hewlett, Administrator, for the Registrar, gave a judgment on 1 October 1992, the operative part of which is as follows:

1. *Articles 68 (1) and 71 (1) (a) (ii) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and members of their families moving within the Community are to be interpreted as meaning that the institution in the State of residence liable for payment of unemployment benefit to frontier workers who are wholly unemployed may not apply ceilings which exist in the State of employment to the remuneration which forms the basis of assessment of that benefit;*

2. *Article 107 of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 is to be interpreted as meaning that, until Council Regulation (EEC) No 1249/92 of 30 April 1992 amending Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 came into force, in order to calculate the unemployment benefit of wholly unemployed frontier workers, the final salary received in the State of employment was to be converted according to the official rate on the date of payment.*

JUDGMENT OF THE COURT

(Second Chamber)

of 8 October 1992

in Case C-143/91 (reference for a preliminary ruling from the Arrondissementsrechtbank te Breda): Criminal proceedings against Leendert Van der Tas [1]

(Agriculture — Substances having a hormonal action — Directives 81/602/EEC, 88/146/EEC and 86/469/EEC)

(92/C 288/11)

(Language of the Case: Dutch)

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

In Case C-143/91: reference to the Court under Article 177 of the EEC Treaty by the Arrondissementsrechtbank [District Court], Breda (Netherlands) for a preliminary ruling in the criminal proceedings pending before that court against Leendert Van der Tas on the interpretation of Council Directive 81/602 EEC of 31 July 1981

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[1] OJ No C 234, 7. 9. 1991.

[2] OJ No L 230, 22. 8. 1983, p. 6.

[1] OJ No C 180, 11. 7. 1991.

concerning the prohibition of certain substances having a hormonal action and of any substances having a thyrostatic action (1), Council Directive 88/146/EEC of 7 March 1988 prohibiting the use in livestock farming of certain substances having a hormonal action (2) and Council Directive 86/469/EEC of 16 September 1986 concerning the examination of animals and fresh meat for the presence of residues (3) the Court (Second Chamber), composed of J. L. Murray, President of the Chamber, G. F. Mancini and F. A. Schockweiler, Judges; C. O. Lenz, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 8 October 1992, the operative part of which is as follows:

Council Directive 81/602/EEC of 31 July 1981 concerning the prohibition of certain substances having a hormonal action and of any substances having a thyrostatic action, Council Directive 88/146/EEC of 7 March 1988 prohibiting the use in livestock farming of certain substances having a hormonal action and Council Directive 86/469/EEC of 16 September 1986 concerning the examination of animals and fresh meat for the presence of residues, must be interpreted as meaning that they do not preclude a Member State's legislation from prohibiting the holding or keeping in stock of animals to which any substance having an oestrogenic, androgenic, gestagenic or thyrostatic action has been administered, provided that such prohibition does not prevent the application of the derogations provided for in those Directives.

(1) OJ No L 222, 7. 8. 1981, p. 32.
(2) OJ No L 70, 16. 3. 1988, p. 16.
(3) OJ No L 275, 26. 9. 1986, p. 36.

Reference for a preliminary ruling from the Raad van Beroep Amsterdam made by order of that Court of 30 June 1992 in the case of R. Diaz Rosas, Bestuur van de Sociale Verzekeringsbank

(Case C-358/92)

(92/C 288/12)

Reference has been made to the Court of Justice of the European Communities by an order of the Raad van Beroep [Social Security Court] of 30 June 1992, which was received at the Court Registry on 9 September 1992, for a preliminary ruling in the case of R. Diaz Rosas, Madroñera (Spain), against the Sociale Verzekeringsbank [Social Insurance Bank], Amsterdam on the following question:

Must Article 78 (2) (b) (ii) of Regulation (EEC) No 1408/71 (1) be interpreted as meaning that a provision of national law such as Article 6 (1) (a) of the AKW, according to which only those persons who reside in the Netherlands are to be insured under that Law, may not be relied upon as against the person who actually maintains the orphan and who, like the orphan, resides in the territory of a Member State other than the Netherlands, when the person concerned is, pursuant to the wording of Article 78, entitled in principle to (supplementary) child benefit in accordance with the Netherlands legislation?

(1) OJ No L 149, 5. 7. 1971, p. 2.

Action brought on 14 September 1992 the Federal Republic of Germany against the Council of the European Communities

(Case C-359/92)

(92/C 288/13)

An action against the Council of the European Communities was brought before the Court of Justice of the European Communities on 14 September 1992 by the Federal Republic of Germany, represented by Claus-Dieter Quassowski, Regierungsdirektor, of the Federal Ministry for Economic Affairs, 76 Villemombler Straße, D-5300 Bonn 1, and Jochim Sedemund, Rechtsanwalt, 14 Heumarkt, D-5000 Cologne 1.

The applicant claims that the Court should:

1. declare Article 9 of Council Directive 92/59/EEC of 29 June 1992 on product safety (1) void in so far as it empowers the Commission, with regard to a product, to adopt a decision requiring Member States to take measures from among those listed in Article 6 (1) (d) to (h);

2. order the defendant to pay the costs.

Pleas in law and main arguments adduced in support:

— Absence of a legal basis: Article 100a of the EEC Treaty, which is relied on as the legal basis, and in particular Article 100a (5), does not, from the point of view of its wording, its position in the system of the Treaty or its meaning and purpose, constitute a legal basis for granting to the Commission powers such as those provided for in Article 9 of the Directive.

(1) OJ No L 228, 11. 8. 1992, p. 24.

According to its literal meaning, the sole function of the control procedure provided for in Article 100a (5) is to determine whether any measures taken by the Member States are permissible; it can therefore result only in a finding — comparable to a reasoned opinion pursuant to Article 169 of the EEC Treaty — but not in instructions being given to a Member State.

The approximation of laws governed by Article 100 *et seq.* of the EEC Treaty concerns exclusively the law-making activity of the Member States. However, Article 9 of the contested Directive seeks to give the Commission powers regarding the application of transposed law to individual cases. Like all administrative activities of the Community, that would have required a specific legal basis.

From the point of view of its meaning and purpose, Article 100a (5) is designed to safeguard rights of the Member States. The Member States' power of action is undermined if Article 100a (5) is re-interpreted as a provision conferring powers on the Commission.

— Infringement of the principle of proportionality: the powers granted to the Commission by the contested provision do not constitute the means which is the least detrimental to the interests of the Member States. The judicial remedy procedure (procedure pursuant to Article 169 of the EEC Treaty, where appropriate application for interim measures) is, in particular, not more time-consuming, bearing in mind that the instructions to the Member States pursuant to Article 11 of the product safety directive are issued according to a procedure which can take up to six weeks altogether.

Appeal brought on 17 September 1992 by the Publishers Association against the judgment delivered on 9 July 1992 by the Second Chamber of the Court of First Instance of the European Communities in case T-66/89 between the Publishers Association and the Commission of the European Communities

(Case C-360/92 P)

(92/C 288/14)

An appeal against the judgment delivered on 9 July 1992 by the Second Chamber of the Court of First Instance of the European Communities in case T-66/89 between the Publishers Association and the Commission of the European Communities, was brought before the Court of Justice of the European Communities on 17 September 1992 by the Publishers Association, represented by Jeremy Lever, QC, of the Bar of England and Wales, Mark Pelling, Barrister of the Bar of England and Wales, and Robin Griffith, Solicitor, of Messrs Clifford Chance, London, with an address for service in Luxembourg at the chambers of Me Marc Loesch, 8 rue Zithe.

By the appeal, the Publishers Association seeks:

(a) an order setting aside the judgment; and

(b) part of the same form of order as that sought by it from the Court of First Instance namely:

(i) annulment of Article 2 of the Decision [1] in so far as it refused an exemption pursuant to Article 85 (3) for the Net Book Agreements and certain related decisions, regulations and other documents referred to in Article 1 of the Decision; and

(ii) a declaration that Articles 2, 3 and 4 of the Decision are each respectively void; and

(c) an order that the Commission pay the Publishers Association's costs of and occasioned by the appeal and by the application and its costs incurred in the proceedings before the Court for the adoption of interim measures.

Contentions and main arguments adduced in support:

The Publishers Association maintains that the Court of First Instance has erred in law in the following respects namely:

— the Court of First Instance wrongly interpreted the Net Book Agreement as a collective system of resale price maintenance,

— the Court of First Instance wrongly rejected the submission of the Publishers Association that Commission Decision 82/123/EEC [2] in Dutch Books was irrelevant to a proper consideration of the Publishers Association's case and/or the Court of

[1] Commission decision of 12 December 1988 relating to a proceeding under Article 85 of the EEC Treaty (IV/27.393 and IV/27.394: Publishers Association Net Book Agreements (OJ No L 22, 26. 1. 1989, p. 12).

[2] OJ No L 54, 25. 2. 1982, p. 36.

First Instance was wrong in concluding that the principle to be derived from the decision of the Commission in Dutch Books was in any way relevant to any of the submissions and arguments put forward by the Publishers Association in support of its application for exemption pursuant to Article 85 (3) of the EEC Treaty. The arrangements in Dutch Books were correctly characterized as a collective system of retail price maintenance because, *inter alia*, those arrangements required the parties to them to apply resale price maintenance to each of their publications and precluded them from disapplying it and restricted the parties as to the persons with whom they were free to deal. By contrast, no such rules are to be found in the Net Book Agreement,

— the Court of First Instance wrongly upheld the position adopted by the Commission that it could properly hold that the Net Book Agreement was not indispensable to the attainment of its objectives while at the same time purporting to take no position as to whether or not the objectives of the Net Book Agreement were in fact attained in practice by it,

— having correctly concluded at paragraph 73 of the judgment that: 'under Article 85 (3) ... an exemption cannot be granted unless, *inter alia*, the Agreement does not have the effect of imposing on the undertakings concerned restrictions which are not indispensable to the attainment of the objectives, referred to in paragraph 3, of promoting technical or economic progress in allowing the resultant benefit to be shared fairly' the Court of First Instance failed to apply that test in considering the Publishers Association's application before it and was wrong to consider the issue of indispensability without considering either adequately or at all:

(i) what the objectives of the Net Book Agreement were;

(ii) whether and if so to what extent the Net Book Agreement achieved its objectives; and

(iii) whether and if so how and to what extent such objectives could be achieved by any other method,

— the Court of First Instance was wrong to hold that it was the Publishers Association's submission, that the finding of the Restrictive Practices Court in the United Kingdom that the Net Book Agreement was indispensable, applied to the international book trade; in fact the Publishers Association made no such submission but on the contrary consistently submitted merely that the material contained in and the conclusions of the Restrictive Practices Court were just as relevant to Ireland as to the United Kingdom. The Court of First Instance therefore failed to consider the submissions which were actually made by the Publishers Association in this connection,

— the Court of First Instance was wrong to conclude, by reference to paragraph 43 of the Decision, that the Commission did not ignore the ruling of the Restrictive Practices Court, when, on the contrary, as the President of the Court said, at paragraph 29 of his Order given on 13 June 1989 in relation to the application by the Publishers Association for interim measures: 'the Commission ... proceeds ... to consider indispensability of the Agreements in question without taking account of the appraisal made by the national court',

— the Court of First Instance was wrong to dismiss the Publishers Association's submissions that the Commission was bound to have due regard to the findings of fact contained in the 1962 judgment of the Restrictive Practices Court by reference to the proposition that national judicial practices cannot prevail in the application of the competition rules set out in the Treaty, since that proposition, whilst correct, was irrelevant to the Publishers Association's submission, namely that the evidence and other material contained in and the conclusions of the judgment of the Restrictive Practices Court was material on which the Publishers Association was entitled to rely as evidence in support of its application that the Net Book Agreement ought to be exempted pursuant to Article 85 (3) of the EEC Treaty;

— the Court of First Instance was wrong to dismiss the Publishers Association's submission that the Commission was bound to have due regard to the findings of fact contained in the 1982 judgment of the Restrictive Practices Court by reference to the finding of the Restrictive Practices Court that the Publishers Association had not in the proceedings before it proved that the abolition of the Net Book

Agreement would lead to a substantial decline in exports, since it was not nor had it ever been any part of the submissions of the Publishers Association either to the Commission or to the Court of First Instance that a decline in exports either to Ireland or elsewhere would lead to the collapse of the Net Book Agreement in the United Kingdom, as the Court of First Instance itself acknowledged in part in paragraph 82 of its judgment,

— the Court of First Instance was wrong to dismiss the Publishers Association's application by dismissing a supposed argument that the Net Book Agreement would collapse if its application was confined to the national market since such an argument was not advanced by the Publishers Association either before the Court of First Instance or to the Commission as the Court of First Instance itself acknowledged at paragraph 82 of the judgment,

— the Court of First Instance was manifestly wrong to hold that because the Publishers Association was an association of publishers established in the United Kingdom, it was not entitled to rely upon any negative effects which might be felt in Ireland,

— the Court of First Instance was wrong to consider each of the four submissions put forward by the Publishers Association to demonstrate the indispensability of the Net Book Agreement separately, when the submission made by the Publishers Association was that the cumulative effect of the problems referred to in each of the four submissions was to render individual resale price maintenance unworkable and therefore the Net Book Agreement was indispensable to achievement of the objectives of the system in both the United Kingdom and Ireland,

— the Court of First Instance wrongly failed to take any proper or sufficient account of (i) the failure of the Commission in the Decision to take account of its declared industrial or commercial policies and/or (ii) the inconsistency of approach between the contents of the Decision and the Commission's assertions of principle contained in official communications to the Council.

Action brought on 21 September 1992 by the French Republic against the Commission of the European Communities

(Case C-367/92)

(92/C 288/15)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 21 September 1992 by the French Republic, represented by Edwige Belliard and Géraud de Bergues, acting as Agents, with an address for service in Luxembourg at the French Embassy, 9, boulevard du Prince Henri.

The applicant claims that the Court should:

— declare null and void Commission decision SG(92) D/9508 of 15 July 1992 concerning capital contributions and research and development aid granted to Bull, a company operating in the information technology sector, inasmuch as the decision equates the public contributions to Bull in 1991 and 1992 with State aid and imposes the requirement of systematic notification to the Commission of future capital provisions to that undertaking,

— order the defendant to pay the costs.

Pleas and main arguments adduced in support:

— Manifest error and inadequate reasoning, inasmuch as the Commission has failed to demonstrate sufficiently in law that the public capital contributions to Bull constitute State aid within the meaning of Article 92 of the EEC Treaty:

  — the Commission committed a manifest error of assessment with regard to the inherent profitability of the restructuring contemplated. In fact, the cost of the restructuring plan submitted in detail to the Commission amounted to FF 4 billion, with a return period of two years. Of the projected improvement of operating margins of FF 4,7 billion, less than 10 % was to come from an increase in sales, thus giving rise to some uncertainty. Moreover, apart from the effect of business activity in 1991 (Bull's main markets went through a severe recession; although world

experts forecast growth of 5,3 % on the world market it was only 1,8 %) the objectives of Bull's restructuring plan were adhered to, and even exceeded during 1991,

— by basing its decision on an extrapolation of the results of the Bull group up to the year 2005 without the French Government being in a position to comment on the results, the Commission infringed the rights of the defence,

— a comparison of the measures taken and operating results achieved by Bull with those of the other large groups in the information technology sector during the period of turbulence which that industry has been going through demonstrates the rational nature of the decision by the French authorities,

— the Commission also failed to take account of the participation in the capital of Bull, during the period in question, of NEC and IBM, and of the participation by NEC in the second recapitalization of the public undertaking. In doing so, it failed to observe the terms of its communication of 1984 on the application of Articles 92 and 93 to public shareholdings. The French Government considers that, whilst the 1984 communication has no overriding effect and that the Commission has the right to derogate from it, the principles of legal certainty and the protection of legitimate expectations, just as much as the doctrine that such instruments must be intended to have useful effect, at the very least require the Commission to state the reasons why it deemed it necessary, in the context of the examination of a given aid proposal to depart from the terms of its communication.

— Lack of competence on the part of the Commission, inasmuch as the contested decision imposes on the French authorities a systematic obligation of prior notification of future capital contributions to Bull which goes beyond the scope of Article 93 (3) of the EEC Treaty: the obligation contained in Article 93 (3) of the EEC Treaty may not be extended to cover all financial interventions proposed by the Member States, especially those which the Member States are fully entitled to believe are not in the nature of State aids since the Commission or the Court have themselves previously so held in similar cases. Whilst Article 94 of the EEC Treaty empowers the Council to determine the categories of aid exempted from the procedure pursuant to Article 93 (3), no Treaty provision entrusts the Commission, which moreover has no competence pursuant to Article 93 to adopt regulations, with the task of supplementing and extending, by way of an individual decision, the precise obligations of Article 93 (3).

Reference for a preliminary ruling by the Diikitiko Efetio, Athens, by judgment of that court of 29 May 1992 in the case of Ministers of Agriculture and Finance v. Ellinika Dimitriaka AE

(Case C-371/92)

(92/C 288/16)

Reference has been made to the Court of Justice of the European Communities by judgment of the Diikitiko Efetio [Administrative Court of Appeal], Athens, of 29 May 1992, which was received at the Court Registry on 23 September 1992, for a preliminary ruling in the case of the Ministers of Agriculture and Finance against Ellinika Dimitriaka AE on the following questions:

1. Is the Commission's telegram of 24 July 1986, according to which the maximum permitted levels of radiation laid down in Regulation (EEC) No 1707/86 for imports of goods into the Community also apply to exports of such goods to non-member countries, valid and binding on the Member States?

2. In the absence of any express provision, does the Commission or the competent organizations of the Member States have the power to interpret Article 15 of Regulation (EEC) No 2730/79 (now Article 13 of Regulation (EEC) No 3665/87), which was applicable at the material time, and to subject exports to similar rules on what constitutes goods which are sound, fair and of marketable quality as apply to imports, or, conversely, with regard to refunds, in order for the national organization to decide that the exporter is not entitled to Community aid pursuant to Article 13 of Regulation (EEC) No 3665/87, must there be a binding Community provision defining precisely the circumstances in which refunds cannot be granted? More specifically, in order for exports of goods contaminated with radiation above the level laid down for imports of the same goods to be refused refunds,

was the adoption of Regulation (EEC) No 3494/88 essential?

3. If it is accepted that an interpretative prohibition on the granting of refunds may be imposed when the goods are not sound according to the criteria laid down for imports of the same goods into the Member States, is the only evidence that can be used to establish the characteristics of the cargo the customs declaration on the date of acceptance by the customs authority, pursuant to Article 3 of Regulation (EEC) No 3665/85, (*sic*) and consequently is the subsequent mixing of the cargo inside the holds of the ship so that the resulting indivisible product being exported does not exceed the maximum permitted levels of radiation immaterial for the payment of Community aid or, on the contrary, does it mean that the export declarations must be changed after they have been accepted by the customs authority?

4. Do the provisions of Article 3 of Regulation (EEC) No 3665/85 (*sic*) relate exclusively to the calculation of the export refunds and thus not affect Article 13 of Regulation (EEC) No 3665/87, according to which the aforementioned Community aid is not granted when the goods being exported are unsound, with the consequence that it is unnecessary to change the relevant declarations?

Reference for a preliminary ruling by the Cour du Travail de Bruxelles by judgment of that Court of 17 September 1992 in the case of Auditeur du Travail de Bruxelles v. Carmelo Scuvera and Institut National d'Assurance Maladie-Invalidité

(Case C-372/92)

(92/C 288/17)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Cour du Travail de Buxelles [Labour Court, Brussels] of 17 September 1992, which was received at the Court Registry on 24 September 1992, for a preliminary ruling in the case of Auditeur du Travail de Bruxelles against Carmelo Scuvera and Institut National d'Assurance Maladie-Invalidité on the following question:

Where the comparative calculation of a benefit made on the basis of national legislation (Article 76 *quater* (2) of the Law of 9 August 1963) and of Article 46 (3) of Regulation (EEC) No 1408/71 [1] produces the same result, must that benefit — after the date on which entitlement to it has been acquired — be adjusted in accordance with Article 51 of Regulation (EEC) No 1408/71 or in accordance with a provision of national law (Article 241a of the Royal Decree of 4 November 1963) which provides for the benefit due under national law to be recalculated on the basis of fluctuations in average exchange rates and economic developments (equalization)?

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[1] OJ English Special Edition 1971 (II) p. 416.

COURT OF FIRST INSTANCE

Action brought on 18 September 1992 by Dimitrios Coussios against the Commission of the European Communities

(Case T-68/92)

(92/C 288/18)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 September 1992 by Dimitrios Coussios, residing in Brussels, represented by Jean-Noël Louis, Thierry Demaseure and Véronique Leclercq, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Fiduciaire Myson, sàrl, 1 rue Glesener.

The applicant claims that the Court of First Instance should:

— annul the decisions adopted by the Commission on 13 February 1992,

— order the Commission to pay the applicant by way of damages and interest a sum which the Court of First Instance should consider fair and reasonable and estimated for the purposes of the proceedings at ECU 100 000,

— order the Commission to pay the costs.

Pleas in law and main arguments adduced in support:

The applicant challenges the decision not to fill the vacancy for a Head of Unit VII.C.3 'air safety — air traffic control — industrial policy' and the decisions not to organize an internal competition and to open an external competition to fill the post. Furthermore he claims compensation for non-material damage suffered by reason of the succession of mistakes made by the defendant.

In support of his action the applicant claims in the first place that there is an infringement of Article 25 of the Staff Regulations in that there is no statement of reasons at all for the contested decisions and the lacuna is not covered either by statements in the decision itself or in a reasoned reply rejecting the complaint.

The applicant maintains furthermore that the contested decisions were adopted in infringement of Articles 26, 43 and 45 of the Staff Regulations. He points out in that respect that in the absence of staff reports for the periods 1987 to 1989 and 1989 to 1991, the Advisory Committee on Appointments (hereinafter referred to as the ACA) was not able to take cognizance, in particular of the merit which he displayed during the two years in which he acted as Head of the VII-C.3 division; the defendant adopted the contested decisions on the basis, in particular, of the ACA's opinion in breach of the guarantees afforded by the Community legislature to the applicant in his capacity as an official due for promotion and a candidate for the vacancy. The applicant considers furthermore that in the absence of a Staff Report for the period subsequent to 30 June 1987, the contested decisions are based on the sole assessment of the Director-General for DG VII of his efficiency, ability and qualifications; in so far as those statements were not contained in a minute which could have been communicated to the applicant and placed in his personal file he considers that the defendant has infringed the provisions in Article 26 of the Staff Regulations and the rights of the defence.

Finally the applicant claims that there is an infringement of Article 29 of the Staff Regulations in that the defendant decided to open an external competition without really examining the possibility of organizing an internal competition.

Action brought on 18 September 1992 by Willy Seghers against the Council of the European Communities

(Case T-69/92)

(92/C 288/19)

An action against the Council of the European Communities was brought before the Court of First Instance of the European Communities on 18 September 1992 by Willy Seghers, residing in Brussels, represented by Georges Vandersanden and Laure Levi, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of A. Schmitt, avenue Guillaume.

The applicant claims that the Court of First Instance should:

— annual the appointing authority's decision of 28 October 1991 withdrawing the applicant from the three shifts in the Council's security department and, in so far as necessary, the appointing authority's decision of 19 June 1992 rejecting the applicant's complaint,

— order the defendant to pay the whole costs as laid down in Articles 90 and 91 of the Rules of Procedure of the Court of First Instance.

Pleas in law and main arguments adduced in support:

The applicant states that the contested decision is based on the ground of his insufficient attendance in the department and formally challenges the assessment by his superior of his days of attendance; he considers that the latter could have arrived at the figure in question only by adopting two methods both open to challenge: first he did not take account of the special way of working in the security department and secondly he held against him the time spent by the applicant in his duties in the Staff Committee. The applicant concludes that the decision in question is vitiated on the grounds of a patent error of assessment and infringes Article 1 of Annex II to the Staff Regulations.

In the second place the applicant states that it is apparent from the decision rejecting his complaint that the defendant considers that he was absent to such an extent that there was no choice but to withdraw him from the three shifts in the interests of the service. He maintains in that respect that his attendance in the department during the period in question was not so inadequate in relation to that of his colleagues and in any event his absence was not at all serious; he is therefore astonished that the defendant considered it necessary to take the contested decision solely against him and not against everyone else

in the same position as himself. The measure in question is therefore clearly, in the applicant's view, based on a patent error of assessment and infringes the prohibition of discrimination.

Finally the applicant alleges a misuse of power and states that far from meeting the requirements of the interest of the service the contested decision appears to flow from personal animosity by his superior with regard to him.

Action brought on 22 September 1992 by Helene Goyens de Heusch against the Commission of the European Communities

(Case T-73/92)

(92/C 288/20)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 22 September 1992 by Helene Goyens de Heusch, residing in Kraainem (Belgium), represented by Luc Misson and Jean-Louis Dupont, of the Liège Bar, with an address of service in Luxembourg at the Chambers of Evelyne Korn, 21 rue de Nassau.

The applicant claims that the Court of First Instance should:

1. declare:

   — that the applicant is entitled to have her career prospects restored retroactively from 10 May 1985 when her name should have been entered on the list of suitable candidates in competition COM/B/2/82,

   — pursuant to that obligation, the applicant is entitled to be reclassified in grade B 3 or at least B 4 since she was successful in the said competition and was appointed by the Commission to a post of administrative assistant in category B;

2. annul the appointing authority's decision of 16 June 1992, notified to the applicant on 22 June 1992, rejecting her complaint No 15/92 of 27 January 1992 against the appointing authority's decision of 11 December 1991 to appoint her to the post of administrative assistant, in grade B 5, step 4, in that the decision does not restore the applicant's career prospects to which she is entitled and denies her right to compensation.

   In the event and to the extent that the applicant's right to reclassification is not recognized by the Court of First Instance:

   — order the defendant to pay the applicant compensation of an amount equivalent to the difference between all the pecuniary benefits, salary, pension and other benefits of any kind to which the applicant is so far entitled and to which she would have been entitled had her name been entered on 10 May 1985 on the list of suitable candidates in competition COM/B/2/82, determined on the basis of the prospects enjoyed by those whose names were entered on the list of suitable candidates on 10 May 1985 and on the basis of the applicant's staff reports,

   — order the defendant to pay the applicant the full interest on that amount from the date on which she should first have been appointed,

   — alternatively, order the defendant to pay the applicant by way of compensation for her material and non-material loss a sum estimated on the flat-rate basis at Bfrs 2 500 000 subject to increase or reduction during the proceedings;

3. order the Commission to pay the costs pursuant to Article 69 (2) or the second paragraph of Article 69 (3) of the Rules of Procedure as well as the expenses necessarily incurred for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of lawyers pursuant to Article 73 (b).

Pleas in law and main arguments adduced in support:

The applicant states that in Case 294/84 Adams and Others v. Commission [1986] ECR, p. 977 the Court of Justice annulled the decision by which the Selection Board for Competition No COM/B/2/82, an internal competition for the constitution of a reserve list of administrative assistants, secretarial assistants and technical assistants, refused to admit her to the tests for the said competition. Following that judgment the Selection Board reopened the competition procedure but decided once again not to admit the applicant to the tests; that decision was also annulled by the judgment in Joined Cases 100, 146 and 153/87 Basch and Others v. Commission [1989], ECR, p. 447. Following that judgment the applicant was finally admitted to the tests

in which she was successful; her name was therefore entered on the list of suitable candidates and she was subsequently appointed to a post of administrative assistant and classified in grade B 5, step 4.

The applicant considers that the defendant's refusal to restore her career prospects retroactively or alternatively to award her compensation for the material and non-material loss which she suffered by not having her name entered on the list of suitable candidates in 1985 constitutes an infringement of Article 174 of the EEC Treaty and the principle of the retroactive effect of judgments of annulment of the Court of Justice; disregards the general principle of European Civil Service Law of career prospects; infringes the principle of equal treatment of officials and Article 5 (3) of the Staff Regulations and finally involves a breach of the obligation of the European institutions to make good damage resulting from a service-related fault committed to the detriment of an official.

III

(Notices)

EUROPEAN PARLIAMENT

COURT OF JUSTICE

Notice of open competition

(92/C 288/21)

The Secretariat of the European Parliament and the Court of Justice of the European Communities are holding the following open competition:

— Competition No EUR/C/28 — Danish-language typists [1]
(career bracket C 5/C 4).

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[1] OJ No C 288 A, 5. 11. 1992 (Danish edition).

COMMISSION

EUROPEAN ECONOMIC INTEREST GROUPING

Notices published pursuant to Council Regulation (EEC) No 2137/85 of 25 July 1985 (1) — Formation

(92/C 288/22)

1. ***Name of grouping:*** The H.P.C. Legal Group - Europäische wirtschaftliche Interessenvereinigung (EWIV), Rechtsanwälte Walter Hildmann, Marie-Armelle Pajot-Marivin Chtis Over und Parter

2. ***Date of registration of grouping:*** 28. 9. 1992

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Member State: D

Place: D-8520 Erlangen, Nürnberger Straße 22 a

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(1) OJ No L 199, 31. 7. 1985, p. 1.