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## I

(Information)

## COMMISSION

Ecu (<sup>1</sup>)

11 March 1993

(93/C 70/01)

Currency amount for one unit:

Belgian and Luxembourg franc	39,9650	United States dollar	1,16237
Danish krone	7,44495	Canadian dollar	1,44924
German mark	1,94103	Japanese yen	136,717
Greek drachma	262,078	Swiss franc	1,78295
Spanish peseta	138,217	Norwegian krone	8,25105
French franc	6,58712	Swedish krona	9,01589
Irish pound	0,797397	Finnish markka	7,04974
Italian lira	1873,29	Austrian schilling	13,6578
Dutch guilder	2,18106	Icelandic krona	78,1981
Portuguese escudo	179,446	Australian dollar	1,64618
Pound sterling	0,811764	New Zealand dollar	2,20772

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).

**Communication from the Commission of the European Communities to companies in the ECSC**

(93/C 70/02)

*(Article 48 of the ECSC Treaty)*

In a letter to the Chairman of the Consultative Committee of the ECSC, the Commission asked the Committee to undertake the consultation laid down in Article 55 (2) (c) of the ECSC Treaty concerning the desirability of allocating the following aid aimed at facilitating technical research.

Pursuant to Article 48 of the Treaty, associations of companies in the ECSC are entitled to submit to the Commission, before the final decision to support these projects is taken, any observations made by the members concerning undermentioned subjects of consultation.

Any observation should be received by the Commission before 31 March 1993.

**RESEARCH PROJECTS**

	<i>Aid in ECU</i>
1 Further developments in blast furnace injection technology	1 803 664
2 Effects of hearth liquid level upon blast furnace operation	1 579 650
3 Partial recycling of sintering waste gas	584 700
4 Production of NPK fertilizers from steel manufacturing by-products and improved fertilization through computerized simulation techniques	327 964
5 Ecological and economical electric arc furnace steelmaking	2 275 521
6 Optimization of environment and related energy utilization in scrap-based steel making	514 500
7 Process modelling, process measurements and control to optimize secondary steelmaking in the production of super clean steel	2 089 276
8 Expert system for the optimization of an EAF secondary steel making-CCO route for the production of special steels	784 800
9 Determination of the most suitable continuous casting conditions for producing thin, stainless steel slabs	540 900
10 Surface quality and micro-structural characteristics of stainless steel and Fe-Si strip manufactured by strip casting	360 600
11 Crack prevention in continuous casting	602 934
12 Low superheat continuous casting of slabs	432 300
13 Use of finite element modelling techniques, measurement and instrumentation to achieve improved section roller straightening performance	1 352 822
14 Non-contacting annealing systems for quality improvement of steel strip	832 800
15 Avoiding surface damage when bright annealing high-grade steel strip	529 500
16 New developments in thermo-mechanical controlled rolling of NbTi steels. Optimization and modelling	458 773

	<i>Aid in ECU</i>
17 Mechanical study of the phenomena of heat buckling and modelling of the thermal deformation of rolls in continuous annealing lines	413 400
18 Influence of specimen geometry and lubricants on the homogeneity of the deformation using deformation dilatometer	271 500
19 Properties of near-net-shape cast hot and cold rolled, deep-drawable and cold-deformable steels	789 900
20 Oxidation and decarburization of high carbon steels	134 021
21 The analysis of rolling oil components and their effects on the surface cleanliness of post anneal strip steel	473 851
22 Cold work embrittlement of IF steel	457 791
23 Improvements in zinc and zinc alloy coating measurement and control (Phase I)	943 642
24 Hot and cold rolled flat products defect recognition and classification through neural network architecture	400 200
25 On-line characteristics of work roll states by optical back-scattering	157 500
26 Surface roughness measurement on steel strip in rolling mill	291 300
27 Automatic recognition and analysis of surface defects in flat steel products — Phase 2	113 035
28 Evaluation and improvement of the rapid multielemental determination of trace amounts of pollutants in the media and materials in iron and steel industry by means of ECP-M spectrometry	1 606 800
29 In-situ study of protective layers and corrosion of steels by Raman spectrometry	294 900
30 Specification of ductility requirements and local strain under flexural loading	243 000
31 Study of passivation breakdown and repassivation of stainless steels due to corrosion-abrasion	376 200
32 Promotion and validation of foodstuffs and sanitary uses of stainless steels through the control of their interactions with micro-organisms	494 967
33 Applicability of stainless steels to the storage and transport of chemicals and foodstuffs. Improvement of service and reliability	440 400
34 Development of a new corrosion protection technique for steel surfaces by means of corona discharge	281 400
35 Organosilane pretreatments for use with radiation cured organic coatings on steel and galvanized steel coated strip	740 700
36 Effect of forming on the corrosion resistance of stretched polymer films — Phase 2	186 300
37 Development of new machinability test/machining models for improved free cutting steels	1 166 048
38 Optimizing the structure of high carbon steel wire	770 100
39 Fatigue performance of TIG and plasma welds in thin sections	350 100
40 Lightweight automotive construction with steel	2 219 400
41 Behaviour of different types of thin sheet assemblies under multiaxial loading	400 800

	<i>Aid in ECU</i>
42 Development of extra deep drawing IF steels with good enamel performance	465 288
43 Optimizing the application-related properties of galvanized sheet with additional cover coatings	489 300
44 The ultra rapid heat treatment of low carbon strip	481 481
45 Joining of steel to different sheet materials and product performance evaluation	719 400
46 FEM modelling of the tailor blank sensitivity to material and welded zones properties	309 900
47 Investigation into variations in the chemical composition on weldability of offshore steel, Grade 450	200 000
48 Properties of multipass welding joints	1 404 209
49 Acceptance criteria and levels of safety for high strength steel weldments	900 000
50 Fatigue behaviour of welded high-strength steel components under combined multi-axial variable amplitude loading	202 500
51 Development of new steels for future offshore application	797 690
52 Buckling curves in case of fire, M-N interaction (Part III)	36 000
53 Development of design rules for steel structures subjected to realistic fires in large compartments	349 500
54 Development of design rules for unprotected steel structures subjected to realistic fires in enclosed car parks	419 100
55 Improved classification of steel and composite cross-sections — New rules for local buckling in Eurocodes 3 and 4	309 600
56 Practical design of semi-continuous frames subjected to static and seismic loading	208 200
57 Promotion of plastic design for steel and composite cross sections: new required conditions in Eurocodes 3 and 4, practical tools for designers	342 900

#### PILOT/DEMONSTRATION PROJECTS

	<i>Aid in ECU</i>
1 Treatment of blast furnace sludges and other steelmaking waste materials	879 400
2 Demonstration plant for sintering with reduced volume of flue gases	1 985 153
3 Demonstration of blast furnace tuyere injection of iron ore fines with coal and oxygen	3 528 413
4 Process for recycling grease-laden sludges from rolling mill operations using oxygen steel convertors	768 400
5 Continuous scrap smelting process	454 600
6 High-rate coal injection and cold oxygen-rich blast in blast furnaces (Part I)	900 000
7 Horizontal continuous casting of narrow, thin slabs	229 400

	<i>Aid in ECU</i>
8 Pilot and demonstration plant for sprayforming of round steel products	966 750
9 The influence of roll entry conditions on surface quality, solidification structure and dimensional control of direct cast strip produced from a twin roll casting machine	344 800
10 Steel in housing	83 600
11 Test installation for guide and wrinkle control on a continuous annealing line	829 000
12 Filmless X-ray testing of welded seams in pipes	764 000
13 On-line measurement of cold-rolled strip properties	342 600
14 On-line eddy current system for the surface inspection of hot bar	693 000
15 Continuous measurement and analysis of liquid steel	856 000
16 Development of an advanced process control system for a rolling mill (Phase 2)	358 600

#### 1992 PROJECTS CARRIED OVER

	<i>Aid in ECU</i>
1 Investigation of skinpass rolling of metallic-coated steel strip	275 100
2 High temperature and acid corrosion of stainless steel	500 400
3 Organic coatings for corrosion protection of coated sheet	310 200
4 Simplified version of Eurocode 4 for current composite building design	192 000
5 Reduction of fine ore and steel plant dusts in a circulating fluidized bed (Part 2)	2 281 000
6 The cyclone converter furnace (Part 2)	1 120 250

#### RESERVE LIST

	<i>Aid in ECU</i>
1 Examination of the coke push effect by subsequent ferrous charges under simulated on-blast conditions	655 675
2 Intelligent monitoring and diagnostic systems for process control	976 200
3 Width control in hot finishing mills	467 400
4 Improvements in zinc and zinc alloy coating measurement and control (Phase II)	676 923
5 Detection of longitudinal flaws on hot wire using rotating field eddy current sensor	419 400
6 Steel intensive systems for shallow floor construction incorporating long span composite slabs with deep steel decking	696 600
7 High-rate coal injection and cold oxygen-rich blast in blast furnaces (Part II)	953 947



# COURT OF JUSTICE

## COURT OF JUSTICE

### JUDGMENT OF THE COURT

(Fifth Chamber)

of 11 February 1993

in Case C-142/91: Cebag BV v. Commission of the European Communities <sup>(1)</sup>

*(Commission Regulation (EEC) No 2200/87 — Withholding of payments in relation to food aid)*

(93/C 70/03)

*(Language of the case: Dutch)*

*(Provisional translation; the definitive translation will be published in the European Court Reports)*

In Case C-142/91, Cebag BV, a company incorporated under Netherlands law, having its registered office in Zwolle (Netherlands), represented by J. M. E. Feije and H. J. Bronkhorst, of the Hague Bar, with an address for service in Luxembourg at the Chambers of J. Loesch, 8 Rue Zithe, v. the Commission of the European Communities (Agent: Robert Caspar Fischer) — application under Article 181 of the EEC Treaty and Article 23 of Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid <sup>(2)</sup> for an order requiring payment of the amounts withheld by the Commission on payment for certain deliveries of food aid and the annulment of a telex of 27 March 1991 in relation to it — the Court (Fifth Chamber), composed of: (G. C. Rodríguez Iglesias, President of the Chamber, M. Zuleeg, R. Joliet, J. C. Moitinho de Almeida and D. A. O. Edward, Judges; F. G. Jacobs, Advocate General; L. Hewlett, Administrator, for the Registrar, gave a Judgment on 11 February 1993, the operative part of which is as follows:

1. *the Commission is ordered to pay to Cebag BV, whose registered office is in Zwolle, the sum of ECU 65 093,10 together with default interest at the rate applied by the Commission, for the period from the expiry of the three-month time limit following the presentation of the various requests for payment.*
2. *the Commission is ordered to pay the costs.*

<sup>(1)</sup> OJ No C 178, 9. 7. 1991.

<sup>(2)</sup> OJ No L 204, 25. 7. 1987, p. 1.

### JUDGMENT OF THE COURT

(First Chamber)

of 11 February 1993

in Case C-291/91 (reference for a preliminary ruling from the Finanzgericht München): Textilveredlungsunion GmbH & Co., KG v. Hauptzollamt Nürnberg-Fürth <sup>(1)</sup>

*(Customs union — Inward processing relief)*

(93/C 70/04)

*(Language of the case: German)*

*(Provisional translation; the definitive translation will be published in the European Court Reports)*

In Case C-291/91: reference to the Court under Article 177 of the EEC Treaty by the Finanzgericht München (Finance Court, Munich) for a preliminary ruling in the proceedings pending before that court between Textilveredlungsunion GmbH & Co., KG and Hauptzollamt Nürnberg-Fürth — on the interpretation of Council Regulation (EEC) No 1999/85 of 16 July 1985 on inward processing relief arrangements <sup>(2)</sup>, and of Council Regulation (EEC) No 3677/86 of 24 November 1986 laying down provisions for the implementation of Regulation (EEC) No 1999/85 <sup>(3)</sup> — the Court (First Chamber), composed of: G. C. Rodríguez Iglesias, President of the Chamber, and R. Joliet and D. A. O. Edward, Judges; W. Van Gerven, Advocate General; H. A. Rühl, Principal Administrator, for the Registrar, gave a Judgment on 11 February 1993, the operative part of which is as follows:

*Article 3 (2) of Council Regulation (EEC) No 1999/85 of 16 July 1985 on inward processing relief arrangements in conjunction with Article 3 (7) of Council Regulation (EEC) No 3677/86 of 24 November 1986 laying down provisions for the implementation of Regulation (EEC) No 1999/85 must be interpreted as meaning that where, in the context of a job processing contract between a principal and an operator, both of whom are established within the Community, for the processing of non-Community goods, the operator submits the application for authorization to the competent customs authorities, that application must be submitted on behalf of the principal.*

<sup>(1)</sup> OJ No C 331, 20. 12. 1991.

<sup>(2)</sup> OJ No L 188, 20. 7. 1985, p. 1.

<sup>(3)</sup> OJ No L 351, 12. 12. 1986, p. 1.

## JUDGMENT OF THE COURT

of 16 February 1993

in Case C-107/91: ENU — Empresa Nacional de Urânio SA v. Commission of the European Communities <sup>(1)</sup>

*(EAEC — Actions against Community institutions for failure to act — Supply agency — Sale of uranium stock)*

(93/C 70/05)

*(Language of the case: Portuguese)*

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

In Case C-107/91: ENU — Empresa Nacional de Urânio SA, a company incorporated under Portuguese law and based in Urgeirica, commune of Nelas, represented by José Mota Coimbra de Matos, of the Lisbon Bar, with an address for service in Luxembourg at the Chambers of Joaquín Calvo Basarán, 34 Boulevard Ernest Feltgen, against the Commission of the European Communities (Agents: Herculano Lima and Jürgen Grünwald) — application for a declaration that the Commission failed to adopt and address to the applicant the decision that the latter had requested it to give pursuant to Article 53 of the EAEC Treaty — the Court, composed of G. C. Rodríguez Iglesias, President of the First and Fifth Chambers, acting as President, M. Zuleeg and J. L. Murray (Presidents of Chambers), G. F. Mancini, R. Joliet, F. A. Schockweiler, J. C. Moitinho de Almeida, F. Grévisse and D. A. O. Edward, Judges; C. G. Gulmann, Advocate General; D. Louterman-Hubeau, Principal Administrator, gave a Judgment of 16 February 1993, the operative part of which is as follows:

1. *the Commission has failed, contrary to the second paragraph of Article 53 of the EAEC Treaty, to give a decision in respect of the request submitted to it by the applicant under that provision.*
2. *the Commission is ordered to pay the costs.*

<sup>(1)</sup> OJ No C 125, 15. 5. 1991.

## JUDGMENT OF THE COURT

of 17 February 1993

in Joined Cases C-159/91 and C-160/91 (references for a preliminary ruling from the Tribunal des Affaires de Sécurité Sociale de l'Hérault): Christian Poucet v. Assurances Générales de France (AGF) and Caisse Mutuelle Régionale du Languedoc-Roussillon (Camulrac) and Daniel Pistre v. Caisse Autonome Nationale de Compensation de l'Assurance Vieillesse des Artisans (Cancava) <sup>(1)</sup>

*(Interpretation of Articles 85 and 86 of the EEC Treaty — Concept of 'undertaking' — Body entrusted with the management of a special social security scheme — National legislation conferring a dominant position on such a body)*

(93/C 70/06)

*(Language of the case: French)*

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

In Joined Cases C-159/91 and C-160/91: references to the Court under Article 177 of the EEC Treaty by the Tribunal des Affaires de Sécurité Sociale de l'Hérault (Social Security Court, Hérault) for a preliminary ruling in the proceedings pending before that court between Christian Poucet and Assurances Générales de France (AGF) and Caisse Mutuelle Régionale du Languedoc-Roussillon (Camulrac) and between Daniel Pistre and Caisse Autonome Nationale de Compensation de l'Assurance Vieillesse des Artisans (Cancava) — on the interpretation of Articles 85 and 86 of the EEC Treaty, the Court, composed of O. Due, President, G. C. Rodríguez Iglesias, M. Zuleeg and J. L. Murray (Presidents of Chambers), G. F. Mancini, F. A. Schockweiler, J. C. Moitinho de Almeida, F. Grévisse and D. A. O. Edward, Judges; G. Tesaro, Advocate General; D. Louterman-Hubeau, Principal Administrator, for the Registrar, gave a Judgment on 17 February 1993, the operative part of which is as follows:

*the concept of 'undertaking', within the meaning of Articles 85 and 86 of the Treaty, does not cover the bodies entrusted with the management of social security schemes, such as those described in the orders for reference.*

<sup>(1)</sup> OJ No C 194, 25. 7. 1991.

## JUDGMENT OF THE COURT

of 17 February 1993

in Case C-173/91: Commission of the European Communities v. Kingdom of Belgium <sup>(1)</sup>*(Failure of a Member State to fulfil its obligations — Equal pay for men and women — Additional redundancy payments)*

(93/C 70/07)

*(Language of the case: French)**(Provisional translation: the definitive translation will be published in the European Court Reports)*

In Case C-173/91: Commission of the European Communities (Agents: Marie Wolfcarius and Théophile Margellos) v. Kingdom of Belgium (Agents: Robert Hoebaer and Christian Deneve) — application for a declaration that by retaining legislation which excludes female workers over the age of 60 from the benefit of additional redundancy payments provided for by Collective Agreement No 17, rendered compulsory by Arrêté Royal [Royal Decree] of 16 January 1975, the Kingdom of Belgium has failed to fulfil its obligations under Article 119 of the Treaty or, in the alternative, under Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions <sup>(2)</sup> — the Court, composed of: O. Due, President, G. C. Rodríguez Iglesias and J. L. Murray (Presidents of Chambers), G. F. Mancini, R. Joliet, F. A. Schockweiler, M. Díez de Velasco, P. J. G. Kapteyn and D. A. O. Edward, Judges; F. G. Jacobs; Advocate General; H. von Holstein, Deputy Registrar, gave a Judgment on 17 February 1993, the operative part of which is as follows:

1. *by retaining legislation which excludes female workers over the age of 60 from the benefit of additional redundancy payments provided for by Collective Agreement No 17, rendered compulsory by Royal Decree of 16 January 1975, the Kingdom of Belgium has failed to fulfil its obligations under Article 119 of the EEC Treaty.*
2. *the Kingdom of Belgium is ordered to pay the costs.*

<sup>(1)</sup> OJ No C 201, 31. 7. 1991.<sup>(2)</sup> OJ No L 39, 14. 2. 1976, p. 40.

## JUDGMENT OF THE COURT

(Second Chamber)

of 18 February 1993

in Case C-218/91 (reference for a preliminary ruling from the Bayerisches Landessozialgericht): Miriam Gobbis v. Landesversicherungsanstalt Schwaben <sup>(1)</sup>*(Social security for migrant workers — Orphans' benefits)*

(93/C 70/08)

*(Language of the case: German)**(Provisional translation; the definitive translation will be published in the European Court Reports)*

In Case C-218/91: reference to the Court under Article 177 of the EEC Treaty by the Bayerisches Landessozialgericht (Bavarian Higher Social Court) for a preliminary ruling in the proceedings pending before that court between Miriam Gobbis and Landesversicherungsanstalt Schwaben — on the interpretation of Article 78 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 to members of their families moving within the Community, as consolidated by Council Regulation (EEC) No 2001/83 of 2 June 1983 <sup>(2)</sup>, the Court (Second Chamber), composed of: J. L. Murray, President of the Chamber, G. F. Mancini and F. A. Schockweiler, Judges; W. Van Gerven, Advocate General; L. Hewlett, Administrator, for the Registrar, gave a Judgment on 18 February 1993, the operative part of which is as follows:

*Article 78 (2) (b) (i) 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 to members of their families moving within the Community, as consolidated by Council Regulation (EEC) No 2001/83 of 2 June 1983, must be interpreted as meaning that, for the purposes of calculating supplementary benefits payable under that provision, the competent institution must take into account the family supplement and the fraction of the survivor's pension paid to the migrant worker's surviving spouse which, under the legislation of the Member State in which the orphan is resident, is intended for the orphan's maintenance. In contrast, the increase provided for by the legislation of the Member State of residence in order to bring the survivor's pension up to the level of the statutory minimum pension applicable in that State is not to be taken into consideration by the competent institution for the purposes of that calculation in so far as the migrant worker's surviving spouse is entitled to that increase irrespective as to whether she has dependent children, whether or not they are orphans.*

<sup>(1)</sup> OJ No C 251, 26. 9. 1991.<sup>(2)</sup> OJ No L 230, 22. 8. 1983, p. 6.

## ORDER OF THE COURT

of 1 February 1993

in Case C-318/92 P: Andrew Macrae Moat v.  
Commission of the European Communities <sup>(1)</sup>*(Appeal clearly unfounded and inadmissible)*

(93/C 70/09)

*(Language of the case: English)*

In Case C-318/92 P: Andrew Macrae Moat, an official of the Commission of the European Communities, residing in Brussels, represented initially by Eric Moons, then by Luc Govaert, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Lucy Dupong, 14A rue des Bains, v. Commission of the European Communities (Agent: Thomas F. Cusack) — appeal against the order made on 22 May 1992 by the Court of First Instance (Fourth Chamber) in Case T-72/91: Andrew Macrae Moat v. Commission — the Court, composed of O. Due, President, C. N. Kakouris, G. C. Rodríguez Iglesias, M. Zuleeg and J. L. Murray, Presidents of Chambers, G. F. Mancini, R. Joliet, F. A. Schockweiler, J. C. Moitinho de Almeida, F. Grévisse, M. Díez de Velasco, P. J. G. Kapteyn and D. A. O. Edward, Judges; M. G. Tesauro, Advocate General; J.-G. Giraud, Registrar, made an order on 1 February 1993, the operative part of which is as follows:

1. *The appeal is dismissed.*
2. *Mr Moat is ordered to pay the costs of these proceedings.*

<sup>(1)</sup> OJ No C 219, 26. 8. 1992.

Reference for a preliminary ruling by the Kantonrechter, The Hague, by judgment of that court of 12 January 1993 in the case of M. N. G. van den Akker and Others v. Stichting Shell Pensioenfond

(Case C-28/93)

(93/C 70/10)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Kantonrechter (Cantonal Court), the Hague, of 12 January 1993, which was received at the Court Registry on 1 February 1993, for a preliminary ruling in the case of M. N. G. van den Akker and Others v. Stichting Shell

Pensioenfond (Shell Pension Fund) on the following questions:

- A. In a pension scheme adopted in the framework of a labour agreement in which, after 1 January 1985, the pensionable age for both male and female members has been set at 60 years, is it contrary to Article 119 of the EEC Treaty for the pensionable age for a restricted group of female members to remain fixed at 55 years after 17 May 1990, where:
  - (a) that results from transitional provisions adopted with effect from 1 January 1985 (when as a result of an amendment to the rules the pensionable age previously fixed for men at 60 years and for women at 55 years was changed to a uniform pensionable age of 60 years, and
  - (b) the transitional provisions are solely applicable to female members (or contingent members) who on both 31 December 1984 and 1 January 1985 were employed by an employer affiliated to the defendant, and
  - (c) the transitional provisions also provided that the persons affected could elect for a pensionable age of either 55 or 60 years, which election had to be made during a period which had already expired at the latest by 31 December 1986?
- B. Does it make any difference to the answer to question A whether the transitional provisions state that in cases where no express election was made within the time allowed the original pensionable age of 55 years is then applicable, or else that the general pensionable age of 60 years is applicable?

Action brought on 5 February 1993 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-37/93)

(93/C 70/11)

An action against the Kingdom of Belgium was brought before the Court of Justice on 5 February 1993 by the Commission of the European Communities, represented by Dimitrios Gouloussis, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Roberto Hayder, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

- declare that by allowing to remain in Belgian legislation provisions under which certain seamen's jobs, other than those of master and second master, are reserved to Belgian nationals, the Kingdom of Belgium has failed to fulfil its obligations pursuant to Article 48 of the EEC Treaty and Articles 1 and 4 of Council Regulation (EEC) No 1612/68 of 15 October 1968,
- order the Kingdom of Belgium to pay the costs.

*Pleas in law and main arguments adduced in support:*

The action is brought against the maintenance of provisions of the Law of 25 February 1964 organizing a pool of merchant navy seamen, as amended by the Law of 8 July 1975. As far as the need formally to abolish the provisions which are considered to be contrary to Community law, it refers to the Court's judgment in Case 167/73 *Commission v. French Republic* <sup>(1)</sup>.

<sup>(1)</sup> [1974] ECR 359.

**Appeal brought on 8 February 1993 by the Syndicat Français de l'Express International (SFEI) and Others against the order made on 30 November 1992 by the Second Chamber of the Court of First Instance of the European Communities in Case T-36/92 between Syndicat Français de l'Express International and Others and the Commission of the European Commission**

(Case C-39/93 P)

(93/C 70/12)

An appeal against the order made on 30 November 1992 by the Second Chamber of the Court of First Instance of the European Communities in Case T-36/92 between Syndicat Français de l'Express International (SFEI), DHL International, Service Crie and May Courier and the Commission of the European Communities was brought before the Court of Justice on 8 February 1993 by Syndicat Français de l'Express International (SFEI), DHL International, Service Crie and May Courier, represented by Eric Morgan de Rivery, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Alex Schmitt, 62 Avenue Guillaume.

The appellants claim that the Court should:

- Set aside the Order in case T-36/92 made on 30 November 1992 by the Court of First Instance <sup>(1)</sup>;
- Take all the legal steps necessary as a result of the setting aside of that order and in particular refer the

case and the parties back to the Court of First Instance for examination of the substance of the case and to this end invite the Commission to make submissions on the substance;

- Reserve costs in *a contrario* application of Article 122 of the Rules of Procedure.

*Pleas in law and main arguments adduced in support:*

- Misinterpretation of the legal concept of 'grievance': formal requirement not provided for in the Treaty or in secondary legislation;
- Infringement of the concept of the act against which an action lies;
- Infringement of the principles of good faith and legal certainty.

**Action brought on 9 February 1993 by the Commission of the European Communities against the Italian Republic**

(Case C-40/93)

(93/C 70/13)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 9 February 1993 by the Commission of the European Communities, represented by Enrico Traversa, a member of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Roberto Hayder, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

- (a) declare that, by extending by Law No 471 of 31 October 1988 until the 1984/85 academic year, for graduates in medicine, the time limit laid down in Article 19 of Council Directive 78/686/EEC of 25 July 1978 concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of practitioners of dentistry, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services, the Italian Republic has failed to fulfil its obligations under Article 19 of that Directive and under Article 1 of Council Directive 78/687/EEC of 25 July 1978 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of the activities of dental practitioners;

- (b) order the Italian Republic to bear the costs.

*Pleas in law and main arguments adduced in support:*

the fact that under the third paragraph of Article 189 of the EEC Treaty directives are binding means that they

<sup>(1)</sup> OJ No C 1, 5. 1. 1993, p. 10.

must be implemented in a uniform manner throughout the Community. A Member State may not rely on rules or practices existing in its domestic legal system or on circumstances of fact obtaining at the national level in order to justify a failure to fulfil obligations and to comply with the time limits laid down in Community directives.

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**Action brought on 9 February 1993 by the French Republic against the Commission of the European Communities**

(Case C-41/93)

(93/C 70/14)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 9 February 1993 by the French Republic, represented by Edwige Belliard and Catherine de Salins, 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 No C(92) 776 Final of 2 December 1992 <sup>(1)</sup>, confirming the German regulation of 12 December 1989,
- order the defendant to pay the costs.

*Pleas in law and main arguments adduced in support:*

The French Government considers that the contested decision accepted that the explanations put forward by the German Government were well founded and authorized the maintenance in force of the legislation as notified, and claims that it is incompatible with Community law on the following grounds:

- infringement of Article 100a (4) of the EEC Treaty: Council Directive 91/173/EEC on PCP permits maximum harmonization which will noticeably affect the marketing of PCP, substances derived therefrom and products treated by them. The German derogations are extremely rigorous; they have the effect of banning any product treated with such substances from the German market. Since the Commission did not have information on:
  - the extent to which Directive 91/173/EEC affords insufficient protection with regard to the dangers which PCP poses or as regards the specific characteristics of the German market,

- the products used to replace PCP, and their less harmful effect on the environment and health, and

- the origin of the abovementioned substitutes,

the Commission can only have carried out a cursory examination which does not correspond to the thorough verification required by Article 100a (4),

- infringement of Article 190 of the EEC Treaty.
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**Action brought on 11 February 1993 by the Kingdom of Spain against the Commission of the European Communities**

(Case C-42/93)

(93/C 70/15)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 11 February 1993 by the Kingdom of Spain, represented by Alberto Navarro González, Director General for Community Legal and Institutional Coordination, and by Gloria Calvo Díaz, Abogado del Estado, of the State Legal Department for proceedings before the Court of Justice, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard Emmanuel Servais.

The applicant claims that the Court should:

- annul Commission Decision C(92) 2654 final of 4 November 1992 relating to aid granted by the Spanish Government to the company Merco (agri-foodstuffs sector), notified on 15 December 1992, which declares the increase of Merco's capital by Pta 5 900 million in 1990 to be unlawful and requires its repayment, and
- order the defendant institution to pay the costs.

*Pleas in law and main arguments adduced in support:*

- Infringement of Article 92 (1) of the EEC Treaty — no State aid contrary to Community law — Normal behaviour of a private investor: the increase of Merco's capital should not be analysed from the point of view that the company should maintain all its activity. Rather, the purpose of winding up in the

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<sup>(1)</sup> Concerning the prohibition of pentachlorophenol (PCP) notified by Germany (OJ No C 334, 18. 12. 1992, p. 8).

least onerous manner one division, that of oil, which represented nearly 50 % of the company's total activity, requires the application of the private investor criterion to the assumptions on and conditions under which it may be decided to close down an operation. The increase of capital which is the subject of the disputed decision allowed both recovery of assets of the company, which would not have been possible at all in any other way, and payment of a very large debt to creditors, most of whom are small farmers, whose livelihood would otherwise have been at risk if their credit had not been repaid. There is no question of aid for maintenance of the undertaking if its purpose was the definitive disappearance of one part of that undertaking's activity, which, as a result of obligations stemming from measures adopted before accession to the Community, had been producing an enormous imbalance in the undertaking as a whole.

- Infringement of Article 92 (1) of the EEC Treaty — no effect on intra-Community trade: in no way can the increase of capital be considered to have an effect on intra-Community trade, inasmuch as its direct and

immediate effect was not the strengthening of Merco's finances as a whole, but precisely to wind up the sphere of activity which was causing the most serious problems that the company suffered.

- In the alternative, Article 92 (3) (a) and (c) of the EEC Treaty applies.

#### Removal from the Register of Case C-291/90 <sup>(1)</sup>

(93/C 70/16)

By order of 3 February 1993 the President of the Court of Justice of the European Communities ordered the removal from the Register of Case C-291/90: Portuguese Republic v. Council of the European Communities, supported by the United Kingdom of Great Britain and Northern Ireland and by the Commission of the European Communities.

<sup>(1)</sup> OJ No C 267, 23. 10. 1990.

### COURT OF FIRST INSTANCE

#### ORDER OF THE COURT OF FIRST INSTANCE

(Fourth Chamber)

of 8 February 1993

in Case T-101/92: Dimitrios Stagakis v. European Parliament <sup>(1)</sup>

(Official — Formal inadmissibility of the application — Legal aid)

(93/C 70/17)

(Language of the case: Greek)

(Provisional translation: the definitive translation will be published in the European Court Reports)

In Case T-101/92: Dimitrios Stagakis, residing at Rethymnon (Greece), against the European Parliament — application for the annulment of the reserve list in Competition EP/149/LA for the recruitment of Greek-language translators by reason of irregularities in the conduct of the tests — the Court of First Instance (Fourth Chamber), composed of: C. W. Bellamy, President of the Chamber, H. Kirschner and A. Saggio, Judges, H. Jung, Registrar, made an order on 8 February 1993, the operative part of which is as follows:

1. *the application is inadmissible;*
2. *the applicant is ordered to pay his own costs;*
3. *the application for legal aid is rejected.*

Action brought on 3 February 1993 by the Comité Central d'Entreprise de la SA Vittel, the Comité d'Établissement de Pierval and the Fédération Générale Argoalimentaire against the Commission of the European Communities

(Case T-12/93)

(93/C 70/18)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 3 February 1993 by the Comité Central d'Entreprise de la SA Vittel and the Comité d'Établissement de Pierval, whose registered offices are at Vittel (France), and the Fédération Générale Agroalimentaire, whose registered office is in Paris, represented by François Nativi, Hélène Rousseau and Françoise Bienaymé-Galaz, of the Paris Bar, and by Aloyse May, of the Luxembourg Bar, with an address for service at the Chambers of Aloyse May, 31 Grand-Rue.

<sup>(1)</sup> OJ No C 17, 22. 1. 1993.

The applicants claim that the Court should:

- order the Commission to produce all the documents on which Decision IV/M.190 Nestlé/Perrier was based,
- annul Decision IV/M.190 Nestlé/Perrier with all the legal consequences that such annulment entails.

*Pleas in law and main arguments adduced in support:*

The applicants claim that the Commission infringed Regulation (EEC) No 4064/89 by applying Articles 2 and 3 of that Regulation to a market described as being under oligopolistic control. Those articles may be applied only where a dominant position has been created or strengthened, but in an oligopoly economic operators, even those based in a concentration, cannot act in a manner which is noticeably independent of that of its competitors, its customers or its consumers. Furthermore, if the Community legislature intended to take into account, in that Regulation, the dominant position of 'one or more undertakings', as stated in Article 86 of the Treaty, it should have said so clearly, but it did not do so.

The Commission also made an error in law by basing its decision on the need not to maintain existing competition, but to seek the means of ensuring the development of competition, whereas a reading of

Recital 13 in conjunction with Recital 14 of the Regulation in question shows that the intention of the Community legislature was to restrict the Commission's power of intervention to maintaining competition, by granting it the power solely to penalize restrictive practices. Since the Commission may not assume the right to intervene without an express power to do so, there has been an extremely serious misuse of powers.

Moreover, the disputed decision is vitiated by an error of fact inasmuch as several cumulative conditions which must be satisfied before the Commission may authorize the concentration are impossible to fulfil. The Commission's decision envisages the transfer of certain trade marks and springs, in particular Thonon and Vichy, which do not form part of the assets of Perrier and consequently of Nestlé.

Furthermore, the contested decision contains several manifest errors of appraisal in relation to the analysis of parts of the market, the rôle of local water producers and distributors in the relevant market, and the appraisal of the existence competition between operators in the same market.

Finally, the Commission misuses its powers by reserving to itself the power to revoke its decision and thus declare the concentration in question compatible with the common market, issuing to its advantage a purely potestative condition based on an unfulfillable condition.

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## III

(Notices)

## COMMISSION

## Impact

## Legal guide for Community-wide electronic information service providers and users

(93/C 70/19)

## 1. Introduction

Legal issues, including divergencies in national laws and legal practices as well as uncertainties caused by certain NIT applications, have been identified as being one of the barriers to the creation of a Community-wide electronic information services market, in the context of the IMPACT and IMPACT 2 programmes (Council decisions of 26. 7. 1988 O.J. L 288/39 — 21. 10. 1988 and 12. 12. 1991 O.J. L 377/41 — 31. 12. 1991, respectively).

A number of specific issues have been identified as requiring particular attention: legal protection of databases and computer programmes; legal conditions for setting up information services; personal data protection; authentication, proof and liability issues; computer misuse issues; etc.

The Commission has already taken a number of legislative initiatives (notably in the fields of computer programmes, databases and personal data protection). It has launched in-depth studies of certain other issues (notably liability and proof) and has encouraged the information industry to undertake self-regulatory initiatives (in the areas of audiotex and videotex services).

In the process of consultation with market actors, in order to identify issues requiring Community attention, it became clear to the Commission that, owing to lack of information, there was often very little awareness or even confusion regarding the legal issues concerned. In some cases this caused uncertainty towards opening up services at Community level.

The Commission therefore considers that a legal guide for electronic information services providers and users may strongly contribute to increasing awareness of and

reducing the confusion on the legal issues concerned and thus constitute a useful tool for overcoming market barriers and promoting European-wide use of electronic information services.

In this respect the Commission is prepared to cofinance the publication of such a guide according to the details given below.

## 2. Objectives

The objective sought by the Commission is the publication of a guide to be used by electronic information service providers and users helping to overcome legal problems and thus facilitating European-wide access to and use of such services.

For this purpose it is important that the guide should be in layman's language, thus understandable to non-lawyers, without, of course, being legally imprecise or misleading.

It should not aim at being exhaustive, thus excessively lengthy, but should focus on the most important issues or points, giving sufficient information for those who want to investigate the issues further (including legislation references and names and addresses of competent national or Community authorities).

The legal situation in each Member State and (where appropriate) the Community should be described for each of the issues concerned, notably those mentioned under 1 above and further issues to be identified by the Commission or the selected contractor.

Given the changing nature of NITs and related laws, the possibility of regular updates should be envisaged.

### 3. Invitation for proposals

The Commission invites proposals for publishing a legal guide for Community-wide electronic information service providers and users. Such proposals must include a publication plan.

### 4. Selection criteria

Proposers are expected to demonstrate the following:

- sufficient resources and legal publishing expertise available to the proposer for undertaking the intended publication;
- sufficient practical experience of the legal problems faced by electronic information service providers and users;
- ability to handle/publish in several Community languages.

### 5. Financial support

The Commission considers that there is an important market, therefore commercial viability, for such a project. In view of its expected role in promoting the information services market, the Commission is prepared to grant, subject to budget availability, financial assistance to the selected project amounting to up to 50 % of the cost (in conformity with Article 3(4) of the Council Decision of 12.12.1991 referred to above), subject to a ceiling of 30 000 ecu.

### 6. Confidentiality

All proposals will be treated as confidential in order to protect the rights and commercial interests of the proposers.

### 7. How to apply

Proposals may be submitted by any natural or legal person, public or private body, institution or group established in the territory of a Member State.

Interested persons and undertakings are invited to submit proposals to the:

- Commission of the European Communities, DG XIII E-1, Office B4-013, Mr George Papapavlou, L-2920 Luxembourg, tel. (352) 430 13 43 18, facsimile (352) 430 13 28 47.

Proposals may be written in any official Community language. They must be sent, by registered post and duly signed by the applicant(s), in three copies to the address given above within 35 calendar days after publication of the present call.

### 8. Handling of proposals

The Commission will evaluate the proposals against the objectives and criteria stated in this communication. It will be the sole judge of the action to be taken on the proposals.

The Commission would expect to notify proposers within two months of the above closing date as to whether or not their proposal has been selected for negotiations of the technical specifications of the project. Contracts will be concluded after successful negotiation of the specifications and timetable and thereafter payments of the agreed amount of support will be made in instalments according to the progress made in the project.

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**Call for expressions of interest in a study contract on transport demand forecasting****Expedited restricted procedure**

(93/C 70/20)

1. **Awarding authority:** Commission of the European Communities, Directorate-General for Transport (DG VII), rue de la Loi 200, B-1049 Brussels.
  2. a) **Award procedure:** Call for expressions of interest.  
b) **Grounds for recourse to expedited procedure:** The implementation of the 'White paper on transport policy' and the priority accorded by both Community and national authorities to the problems of growing transport demand.
  3. **Description of the services to be provided:** medium- and long-term forecasting of demand for goods and passenger transport in the Community, including links with the Scandinavian countries, Austria, Switzerland and the countries of Central Europe.
  4. **Completion date:** December 1993.
  5. a) **Closing date for applications:** 26. 3. 1993.  
Date of postmark, or receipt if handed in.
  - b) **Address to which applications should be sent:** As in point 1, for the attention of Mr R. Rohart, bâtiment 'Beaulieu 33'- 4/22, tel. 296 84 07, facsimile 296 83 52.
  6. a) **Final date for the dispatch of invitations to tender:** 2. 4. 1993.  
Detailed specifications will be sent to applicants by this date at the latest.  
b) **Deadline for receipt of tenders:** 23. 4. 1993.  
c) **Period for which tenders are binding:** 6 months following the date indicated at point 6 (b).
  7. **Minimum requirements:** applications must be accompanied by proof of extensive experience in the field of macroeconomic forecasting in general and national and international transport forecasting in particular (all modes).
  8. **Date of dispatch of the notice:** 8. 3. 1993.
  9. **Date of receipt of the notice:** 8. 3. 1993.
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