

Official Journal

of the European Communities

ISSN 0378-6986

C 124

Volume 36

6 May 1993

English edition

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I

(Information)

COMMISSION

Ecu (1)

5 May 1993

(93/C 124/01)

Currency amount for one unit:

Belgian and Luxembourg franc	40,1996	United States dollar	1,24188
Danish krone	7,51088	Canadian dollar	1,58402
German mark	1,95509	Japanese yen	136,607
Greek drachma	265,799	Swiss franc	1,75415
Spanish peseta	143,226	Norwegian krone	8,27091
French franc	6,58630	Swedish krona	9,05702
Irish pound	0,802143	Finnish markka	6,69993
Italian lira	1811,70	Austrian schilling	13,7526
Dutch guilder	2,19601	Icelandic krona	77,2821
Portuguese escudo	181,227	Australian dollar	1,77792
Pound sterling	0,790502	New Zealand dollar	2,29340

The Commission has installed a telex with an automatic answering device which gives the conversion rates in a number of currencies. This service is available every day from 3.30 p.m. until 1 p.m. the following day.

Users of the service should do as follows:

- call telex number Brussels 23789;
- give their own telex code;
- type the code 'cccc' which puts the automatic system into operation resulting in the transmission of the conversion rates of the ecu;
- the transmission should not be interrupted until the end of the message, which is marked by the code 'ffff'.

Note: The Commission also has an automatic telex answering service (No 21791) providing daily data on calculation of monetary compensatory amounts for the purposes of the common agricultural policy.

(1) Council Regulation (EEC) No 3180/78 of 18 December 1978 (OJ No L 379, 30. 12. 1978, p. 1), as 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

(93/C 124/02)

(Established on 4 May 1993 for the application of Article 30 (1) of Regulation (EEC) No 822/87)

Type of wine and the various marketing centres	ECU per % vol/hl	Type of wine and the various marketing centres	ECU per % vol/hl
R I		A I	
Heraklion	No quotation	Athens	No quotation
Patras	No quotation	Heraklion	No quotation
Requena	1,655	Patras	No quotation
Reus	No quotation	Alcázar de San Juan	1,341
Villafranca del Bierzo	No quotation (*)	Almendralejo	1,383
Bastia	No quotation	Medina del Campo	No quotation (*)
Béziers	2,927	Ribadavia	No quotation
Montpellier	2,989	Villafranca del Penedés	No quotation
Narbonne	No quotation	Villar del Arzobispo	No quotation (*)
Nîmes	2,976	Villarrobledo	1,466
Perpignan	No quotation	Bordeaux	No quotation
Asti	No quotation	Nantes	No quotation
Florence	1,550	Bari	No quotation
Lecce	No quotation	Cagliari	No quotation
Pescara	No quotation	Chieti	1,993
Reggio Emilia	No quotation (*)	Ravenna (Lugo, Faenze)	1,860
Treviso	No quotation	Trapani (Alcamo)	No quotation
Verona (for local wines)	No quotation	Treviso	No quotation
Representative price	2,807	Representative price	1,706
R II			
Heraklion	No quotation		
Patras	No quotation		
Calatayud	No quotation		
Falset	No quotation		
Jumilla	No quotation (*)		
Navalcarnero	No quotation (*)		
Requena	No quotation		
Toro	No quotation (*)		
Villena	No quotation (*)		
Bastia	No quotation	A II	
Brignoles	No quotation	Rheinfalz (Oberhaardt)	31,149
Bari	No quotation	Rheinhessen (Hügelland)	30,533
Barletta	No quotation	The wine-growing region of the Luxembourg Moselle	No quotation (*)
Cagliari	No quotation	Representative price	30,880
Lecce	No quotation		
Taranto	No quotation		
Representative price	No quotation (*)		
	ECU/hl	A III	
		Mosel-Rheingau	No quotation
R III		The wine-growing region of the Luxembourg Moselle	No quotation
Rheinfalz-Rheinhessen (Hügelland)	No quotation (*)	Representative price	No quotation

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

Commission communication pursuant to Article 4 (1) 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 1993 by Council Regulation (EEC) No 3917/92

(93/C 124/03)

Pursuant to Article 4 (1) of Council Regulation (EEC) No 3831/90 ⁽¹⁾, extended for 1993 by Regulation (EEC) No 3917/92 ⁽²⁾, the Commission gives notice that the following fixed duty-free amounts have been exhausted:

Order No	Description	Origin	Fixed duty-free amount (ECU)	Date of exhaustion
10.0930	Pliers (including cutting pliers) pincers, tweezers and similar tools	China	2 205 000	24. 3. 1993
10.0980 (1. 1. — 30. 6. 1993)	Air or vacuum pumps and air or gas compressors	Brazil	4 267 000	29. 3. 1993
10.1051	Turntables (record-decks), record players, cassette-players, and other sound producing apparatus not incorporating a sound recording device Magnetic tape recorders and other sound recording apparatus whether or not incorporating a sound reproducing device excluding cinematographic sound recorders	South Korea	8 104 000	1. 4. 1993
10.1130	Frames and mountings for spectacles, goggles or the like and parts thereof	South Korea	3 812 000	26. 3. 1993

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. 1.

⁽²⁾ OJ No L 396, 31. 12. 1992, p. 1.

Commission communication pursuant to Article 15 (3) of Council Regulation (EEC) No 3832/90 of 20 December 1990, applying generalized tariff preferences for 1991 in respect of textile products originating in developing countries (extended, for 1993, by Regulation (EEC) No 3917/92 of 21 December 1992)

(93/C 124/04)

Pursuant to Article 15 (3) of Council Regulation (EEC) No 3832/90 of 20 December 1990 ⁽¹⁾, extended for 1993 by Regulation (EEC) No 3917/92 of 21 December 1992 ⁽²⁾, the Commission gives notice that the following tariff ceilings have been reached:

Order No	Category	Origin	Amount of ceiling
40.0010	1	Indonesia	2 261 tonnes
40.0070	7	Brazil	972 000 pieces
40.0140	14	Indonesia	46 000 pieces
40.0200	20	Thailand	232 tonnes
40.0270	27	Thailand	260 000 pieces
40.0290	29	Pakistan	124 000 pieces
40.0290	29	Thailand	124 000 pieces
40.0340	34	Brazil	8 tonnes
40.0385	38B	Philippines	1 tonne
40.0470	47	Bulgaria	8 tonnes
40.0610	61	Pakistan	48 tonnes
40.0660	66	Indonesia	23 tonnes
40.0660	66	India	23 tonnes
40.0680	68	Indonesia	91 tonnes
40.0740	74	Indonesia	67 000 pieces
40.0750	75	Thailand	10 000 pieces
40.0770	77	China	10 tonnes
40.0830	83	Pakistan	60 tonnes
40.0830	83	Indonesia	60 tonnes
40.0850	85	India	1 tonne
40.0910	91	Romania	35 tonnes
40.0910	91	Hong Kong	14 tonnes
40.0970	97	Philippines	22 tonnes
40.1100	110	Hong Kong	14 tonnes
40.1110	111	Thailand	4 tonnes
40.1120	112	Thailand	33 tonnes
40.1120	112	Malaysia	33 tonnes
42.1360	136	India	121 tonnes

⁽¹⁾ OJ No L 370, 31. 12. 1990.

⁽²⁾ OJ No L 396, 31. 12. 1992.

Commission communication pursuant to Article 9 (1) of Council Regulation (EEC) No 3832/90 of 20 December 1990 applying generalized tariff preferences for 1991 in respect of textile products originating in developing countries, extended for 1993 by Regulation (EEC) No 3917/92

(93/C 124/05)

Pursuant to the provisions of Council Regulation (EEC) No 3832/90 ⁽¹⁾, extended for 1993 by Regulation (EEC) No 3917/92 ⁽²⁾, the Commission gives notice that the following fixed duty-free amounts have been exhausted:

Order No	Category	Origin	Fixed duty-free amount	Date of exhaustion
40.0180	18	South Korea	22 T	19. 3. 1993
40.0410	41	Mexico	750 T	17. 3. 1993

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 396, 31. 12. 1992, p. 1.

STATE AID

C 8/90

Italy

(93/C 124/06)

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

Commission communication pursuant to Article 93 (2) of the EEC Treaty to the other Member States and interested parties on measures to assist the blue-fish processing industry in Emilia-Romagna

By means of the letter reproduced below, the Commission informed the Italian Government of its decision to terminate the procedure initiated on 28 March 1990 ⁽¹⁾.

'By letter No SG(90) D/21953 of 14 May 1990 the Italian Government was notified of the Commission's decision to initiate the assessment procedure provided for in Article 92 (2) of the EEC Treaty in respect of the abovementioned aid. By letter of 12 June 1990 the Italian authorities sent their comments to the Commission.

The Commission has examined the aid scheme in question in the light of Articles 92 *et seq.* of the Treaty

and the guidelines for the assessment of State aids in the fisheries sector ⁽²⁾ which require that certain conditions be met in order for such aids to be considered compatible with the common market.

The Commission hereby informs the Italian Government that it has no objections concerning the abovementioned aid measures. The Commission requests the Italian authorities to forward a report on the application of these aid measures. It reserves the right to reconsider its decision if it subsequently observes any incompatibility with Community law.'

⁽¹⁾ OJ No C 147, 16. 6. 1990, p. 5.

⁽²⁾ OJ No C 152, 17. 6. 1992.

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

(Second Chamber)

of 1 April 1993

in Case C-25/91: *Pesqueras Echebstar SA v. Commission of the European Communities* ⁽¹⁾

(Fishing — Community financial grant for the construction of a fishing vessel — Regulation (EEC) No 4028/86)

(93/C 124/07)

(Language of the case: Spanish)

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

In Case C-25/91, *Pesqueras Echebstar SA*, a company incorporated under Spanish law, whose registered office is in Bermeo (Spain), represented by Antonio Ferrer Lopez, of the Vizcaya Bar, with an address for service in Luxembourg at the Chambers of Arendt and Harles, 4, avenue Marie-Thérèse v. Commission of the European Communities (Agent: Francisco José Santaolalla) — application for a declaration that, in breach of the Treaty, the Commission of the European Communities has failed to adopt in respect of the applicant any measure other than a recommendation or an opinion — the Court (Second Chamber), composed of: J. L. Murray, President of the Chamber, G. F. Mancini and F. A. Schockweiler, Judges; C. Gulmann, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 1 April 1993, the operative part of which is as follows:

1. *the application is dismissed;*

2. *the applicant is ordered to pay the costs.*

⁽¹⁾ OJ No C 50, 26. 2. 1991.

JUDGMENT OF THE COURT OF JUSTICE

(First Chamber)

of 1 April 1993

in Joined Cases C-31/91 to C-44/91: (references for a preliminary ruling from the Corte di Cassazione): *Alois Lageder SpA and Others v. Amministrazione delle Finanze dello Stato* ⁽¹⁾

(Wine — Quality wines psr — DOC and DOCG — Provisional list — Monetary compensatory amounts — Mistake by the national authorities — Time-bar — Legitimate expectations)

(93/C 124/08)

(Language of the case: Italian)

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

In Joined Cases C-31/91 to C-44/91: fourteen references to the Court pursuant to Article 177 of the EEC Treaty from the Corte di Cassazione (Court of Cassation) for a preliminary ruling in the proceedings pending before that court between *Alois Lageder SpA*, *Divit Srl* (formerly *Vinexport SpA*), *Josef Nidermayr*, *Schenk SpA*, *Josef Brigl*, *W. Walch Srl*, *Castello Rametz SpA*, *Cooperative Cavit Srl*, *Cantina Vini J. Hofstätter Sas*, *Alton Lindner*, *H. Mumelter eC.*, *Girelli SpA*, *Josef Stimpfl Snc*, *Azienda Vinicola Liberio Todesca* and *Amministrazione delle Finanze dello Stato* — on the interpretation of Article 1 of Commission Regulation (EEC) No 1311/73 of 16 May 1973 relating to a provisional list of quality wines produced in specified regions as well as the identification of these wines in the accompanying document ⁽²⁾, the Court (First Chamber): composed of G. C. Rodríguez Iglesias, President of the Chamber, R. Joliet and D. A. O. Edward, Judges; M. Darmon, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 1 April 1993, the operative part of which is as follows:

1. *Article 1 of Commission Regulation (EEC) No 1311/73 of 16 May 1973 relating to a provisional list of quality wines produced in specified regions as well as the identification of these wines in the accompanying document must be interpreted as meaning that only wines bearing the denominazione di origine controllata (DOC) and the denominazione di origine controllata e*

⁽¹⁾ OJ No C 56, 5. 3. 1991.

⁽²⁾ OJ No L 132, 19. 5. 1973, p. 20.

garantita (DOCG) were entitled in Italy, while Article 1 was in force, namely between 22 May and 31 August 1973, to the denomination 'quality wines produced in specified regions';

2. *in the absence of applicable Community provisions during the material time in the main proceedings, it is for the national court to apply the provisions of national law on the barring, for lapse of time, of export charges wrongly not demanded of the taxpayer owing to a mistake by the national authorities, provided that those provisions apply without discrimination to national claims and Community claims and do not affect the scope or effectiveness of Community law;*
3. *the national authority responsible for issuing the accompanying VA2 forms for wines deserving of the denomination 'quality wine psr' in the common organization of the wine sector is required to observe the principle of the protection of legitimate expectations. Nevertheless, where an accompanying VA2 form was issued by a national authority which was not empowered to do so and, owing to a mistaken interpretation of the applicable Community rules, that authority did not demand payment of the monetary compensatory amounts which those rules required, the parties concerned can have no legitimate expectations, notwithstanding their good faith.*

JUDGMENT OF THE COURT OF JUSTICE

(Third Chamber)

of 1 April 1993

in Case C-136/91: (reference for a preliminary ruling from the Finanzgericht Baden-Württemberg): Findling Wälzlager Handelsgesellschaft mbH v. Hauptzollamt Karlsruhe (1)

(Anti-dumping duty — Interpretation of Article 1 (3) of Regulation (EEC) No 374/87)

(93/C 124/09)

(Language of the case: German)

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

In Case C-136/91: reference to the Court pursuant to Article 177 of the EEC Treaty from the Finanzgericht (Finance Court) Baden-Württemberg, for a preliminary ruling in the proceedings pending before that court between Findling Wälzlager Handelsgesellschaft mbH and Hauptzollamt Karlsruhe — on the interpretation of Article 1 (3) of Council Regulation (EEC) No 374/87 of 5 February 1987 definitively collecting the provisional anti-dumping duty and imposing a definitive anti-

dumping duty on imports of housed bearing units originating in Japan (2), the Court (Third Chamber), composed of R. Joliet, Judge, acting as President of the Chamber, J. C. Moitinho de Almeida and F. Grévisse, Judges; W. Van Gerven, Advocate-General; H. von Holstein, Deputy Registrar, gave a judgment on 1 April 1993, the operative part of which is as follows:

the table set out in Article 1 (3) of Council Regulation (EEC) No 374/87 of 5 February 1987 definitively collecting the provisional anti-dumping duty and imposing a definitive anti-dumping duty on imports of housed bearing units originating in Japan must be interpreted as meaning that it is sufficient, for the purpose of applying the individual rates of anti-dumping duty assigned to the trade marks numbered from one to seven and indicated in column 3, that the housed bearing units can be proved to have been manufactured by or for the corresponding undertaking named in the column headed 'Exporters'.

(1) OJ No L 35, 6. 2. 1987, p. 32.

JUDGMENT OF THE COURT

(Fourth Chamber)

of 1 April 1993

in Case C-256/91: (reference for a preliminary ruling by the Bundesfinanzhof) Emsland-Stärke GmbH v. Oberfinanzdirektion München (1)

(Common Customs Tariff — Combined Nomenclature — Starched product)

(93/C 124/10)

(Language of the case: German)

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

In Case C-256/91 — reference by the Bundesfinanzhof (Federal Finance Court), for a preliminary ruling in the proceedings pending before that court between Emsland-Stärke GmbH and Oberfinanzdirektion München on the interpretation of the Common Customs Tariff in the version contained in Commission Regulation (EEC) No 2587/91 of 26 June 1991, amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (2), the Court (Fourth Chamber) composed of C. N. Kakouris, President of the Chamber, M. Diez de Velasco and P. J. G. Kapteyn, Judges; G. Tesaro, Advocate-General; H. A. Rühl, Principal Administrator, acting for the Registrar, gave a judgment on 1 April 1993, the operative part of which is as follows:

(1) OJ No C 291, 8. 11. 1991.

(2) OJ No L 259, 16. 9. 1991, p. 1.

(1) OJ No C 166, 26. 6. 1991.

the Common Customs Tariff — combined nomenclature — must be interpreted as meaning that a starched product (starch content determined by the Ewers method: 99 % by weight, or by the saccharification method: 81,1 % by weight, with an acetyl content of 0,65 % or 0,67 % by weight) made up of native potato starch, to which an acetaldehyde-free and neutralized potato starch ester is added, which is intended to be used in the paper and textile industries and which, by its nature, is also fit for human consumption, although not authorized as such under the legislation on food products, is to be classified under subheading 1108 13 00.

JUDGMENT OF THE COURT OF JUSTICE

(Fifth Chamber)

of 1 April 1993

in Joined Cases C-260/91 and C-261/91: (reference for a preliminary ruling from the Tribunal Económico-Administrativo Central, Madrid): Diversinte SA and Iberlacta SA v. Administración Principal de Aduanas e Impuestos Especiales de La Junquera ⁽¹⁾

(Validity of the retroactive effect of the charge on certain milk powder coming from Spain)

(93/C 124/11)

(Language of the case: Spanish)

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

In Joined Cases C-260/91 and C-261/91: reference to the Court pursuant to Article 177 of the EEC Treaty from the Tribunal Económico-Administrativo Central (Central Economic Administrative Court), Madrid, for a preliminary ruling in the proceedings pending before that court between Diversinte SA and Iberlacta SA and Administración Principal de Aduanas e Impuestos Especiales de La Junquera — on the validity of the retroactive effect of the last paragraph of Article 3 of Commission Regulation (EEC) No 744/87 of 16 March 1987 amending Regulation (EEC) No 805/86 introducing a charge on denatured skimmed-milk powder coming from Spain and derogating from Regulation (EEC) No 1378/86 as regards the accession compensatory amounts in trade with Spain ⁽²⁾, the Court (Fifth Chamber), composed of: G. C. Rodríguez Iglesias, President of the Chamber, R. Joliet, J. C. Moitinho de Almeida, F. Grévisse and D. A. O. Edward, Judges; C. Gulmann, Advocate-General; L. Hewlett, Administrator, for the Registrar, gave a judgment on 1 April 1993, the operative part of which is as follows:

the last paragraph of Article 3 of Commission Regulation (EEC) No 744/87 of 16 March 1987 amending Regulation (EEC) No 805/86 introducing a charge on denatured

skimmed-milk powder coming from Spain and derogating from Regulation (EEC) No 1378/86 as regards the accession compensatory amounts in trade with Spain is invalid in so far as it declares that the Regulation is applicable with effect from 12 February 1987.

Reference for a preliminary ruling by the Dioikitiko Protodikeio (Administrative Court of First Instance), Athens, by a decision of that court of 28 January 1993 in the case of BP Supergas Anonimos Eteria Geniki Emporiki — Viomichaniki kai Antiprosopeion v. Greek State

(Case C-62/93)

(93/C 124/12)

Reference has been made to the Court of Justice of the European Communities by a decision of the Administrative Court of First Instance, Athens, which was received at the Court Registry on 11 March 1993, for a preliminary ruling in the case of BP Supergas Anonimos Eteria Geniki Emporiki — Viomichaniki kai Antiprosopeion v. Greek State on the following questions:

1. Is the Greek Government entitled, for whatever reason
 - (a) as provided pursuant to the rules contained in Article 37 (1) and (4) of Law 1642/1986, on the one hand to subject the importation of finished petroleum products to value added tax to be calculated on a basic price different from that laid down in Article 11A (1), B (1) and (2) of the sixth Council Directive, and, on the other hand, to exempt companies marketing petroleum products, filling stations and other retail sellers from the obligation to submit related returns, thus depriving them of the right to deduct the tax; and
 - (b) to exempt from the tax, pursuant to Article 37 (6) of Law 1642/1986, services in respect of the transport and storage of petroleum products unconnected with the transport etc. of those products from the first to another named destination?
2. If the reply is in the negative, that is to say, if that possibility was not open to the Greek Government (if it was not so entitled), are Article 11A (1), B (1) and (2) and Article 17 (1) and (2) of the sixth Council Directive unconditional and sufficiently clear, enabling the plaintiff company to rely upon them as superior law before the Administrative Court of First Instance before which the case is pending? Further, if the latter is the case, in application of those

⁽¹⁾ OJ No C 302, 22. 11. 1991.

⁽²⁾ OJ No L 75, 17. 3. 1987, p. 14.

provisions in the Directive, may the taxable person request retrospectively from 1 January 1987 when Law 1642/1986 came into force deduction of the tax on the inputs referred to which was not deducted and a refund of the amount of any tax paid on that basis for 1987 which accordingly was not due?

Action brought on 15 March 1993 by Thomas Keane against the Council of the European Communities

(Case C-67/93)

(93/C 124/13)

An action against the Council of the European Communities was brought before the Court of Justice of the European Communities on 15 March 1993 by Thomas Keane, of Corbally, Gurtymadden, Loughrea, County Galway (Ireland), represented by Anthony Burke, solicitor, of Mason Hayes & Curran, Dublin, with an address for service in Luxembourg at the chambers of Kronshagen, 12, boulevard de la Foire.

The Applicant claims:

1. an order that Regulation (EEC) No 816/92⁽¹⁾ is invalid, null and void;
2. damages in the sum of ECU 280,9 (£ Irl 268,90) or such other sum which the Court of Justice rules is appropriate;
3. interest on such sum at the rate of 8 % per annum from the first day of April 1993 pursuant to the provisions of the Courts Act 1981;
4. costs.

Contentions and main arguments adduced in support:

Regulation (EEC) No 816/92 had a twofold effect, namely to extend the additional levy on milk for a further twelve-month-period and to provide for the continued withdrawal of a proportion of the reference quantities but, on this occasion, without compensation. Furthermore, the Regulation has the effect of causing Article 1 (1) subparagraph 4 of Regulation (EEC) No 775/87⁽²⁾, which provides for the withdrawal of a uniform proportion of reference quantities, to operate on reference quantities other than those having their origin

in Article 5c (1) and (3) of Regulation (EEC) No 804/68⁽³⁾.

The Applicant maintains that Regulation (EEC) No 816/92 is null and void for the following reasons:

Breach of Articles 39 and 40 of the EEC Treaty

It is submitted that the manner and means by which the Council continued the temporary suspension or withdrawal of a proportion of the reference quantities without compensation was a flagrant breach of the objectives contained in Article 39 (1) (b) and (2) of the EEC Treaty.

Breach of Article 190 of the EEC Treaty

Given the fundamental departure from previous practice by the Council in omitting to give compensation for reference quantities temporarily withdrawn for the period 1 April 1992 to 31 March 1993 and having regard to the legislative framework relating to the temporary withdrawal of reference quantities, Regulation (EEC) No 816/92 should have stated the reasons for this omission and it is submitted that, consequently, the Regulation is defective because it does not state the reasons on which it is based and thus fails to meet the requirements of Article 190.

Breach of the principle of the protection of legitimate expectations

A system of temporary withdrawal of a proportion of reference quantities with compensation has been in existence since 1987. The Applicant maintains that the Council, by its unforeseeable actions in failing to provide in Regulation (EEC) No 816/92 for compensation in respect of the milk marketing year 1 April 1992 to 31 March 1993, has manifestly and flagrantly breached a superior principle of Community law. Furthermore, as a direct result of the actions of the Council the Applicant has suffered and continues to suffer loss and damage which was wholly foreseeable. The degree of damage is even greater when reference quantities which do not have their origin in Article 5c (1) and (3) of Regulation (EEC) No 804/68 are affected.

Moreover, the Applicant is in one of the categories of producer granted preferential treatment pursuant to Regulation (EEC) No 857/84⁽⁴⁾ and it is submitted that he has a legitimate expectation that nothing will be done to interfere to an unreasonable extent with this preferential treatment. The fact that compensation is no longer granted totally disregards the objectives of that regulation.

⁽¹⁾ OJ No L 86, 1. 4. 1992, p. 83.

⁽²⁾ OJ No L 78, 20. 3. 1987, p. 5.

⁽³⁾ OJ No L 148, 27. 6. 1968, p. 13.

⁽⁴⁾ OJ No L 90, 1. 4. 1984, p. 13.

Breach of the principles of the right to property and the right to pursue a trade or business

The Applicant has been prohibited from using his holding to the extent of the suspension of a proportion of the reference quantities and, where a portion of the reference quantities withdrawn do not have their origin in Article 5c (1) and (3) of Regulation (EEC) No 804/68, the submission made herein is reinforced. The nature of his business is such that it cannot easily be converted from milk production to other uses without a great deal of expense being incurred.

It is submitted that, given the nature of reference quantities and the penalties imposed by way of the additional levy if they are exceeded, together with the difficulty of putting the holding to which reference quantities are attached to other uses, the effects of restricting the producer further by suspending or withdrawing a proportion of reference quantities without compensation and exposing such a producer to the charge of the penal additional levy at an earlier stage infringes his right to property as guaranteed by Community law.

Associated with the right to property and the principle of legitimate expectations is the principle of the right to carry on a trade or business. Whilst the Applicant accepts that certain limitations may be imposed in the public interest on this fundamental right, it is submitted that the nature of the measure contained in Regulation (EEC) No 816/92 cannot be justified in the public interest.

Breach of the principle of proportionality

It is submitted that there is nothing in the Regulation to justify the omission of compensation for the temporary suspension or withdrawal of a proportion of the reference quantities for the milk marketing year 1 April 1992 to 31 March 1993. This is particularly the case when the Regulation is compared with the provision which existed heretofore. Accordingly, it is submitted that a disproportionate burden has been imposed upon the Applicant by reason of this measure which should be declared invalid as being contrary to the principle of proportionality.

Breach of the principle of non-discrimination

The application of the temporary suspension or withdrawal of a proportion of reference quantities at a uniform rate without compensation has greater effects on producers than suspension or withdrawal with a fixed rate of compensation, those effects being felt even more strongly in the case of a producer, such as the Applicant, who has also suffered the withdrawal of reference quantities which do not come within Article 5c (1) of Regulation (EEC) No 804/68 and which were granted

because of his special category status. It is submitted that, because of the particular situation of Ireland *vis-à-vis* other Member States in so far as it relates to milk or milk products, and the reliance placed on the dairy industry, Irish producers are in a different position from producers in other Member States and that the measure contained in the contested Regulation has different effects upon Irish producers and producers in the other Member States. Accordingly, the effects of the measure on the Applicant are discriminatory and infringe the principle of non-discrimination.

Reference for a preliminary ruling by the Pretura Civile, Rome (Castelnuovo di Porto Division), by order of that court of 16 December 1992, in the case of Punto Casa SpA against the Mayor of the Municipality of Capena and the Municipality of Capena

(Case C-69/93)

(93/C 124/14)

Reference has been made to the Court of Justice of the European Communities by an order of the Pretura Civile, Rome, of 16 December 1992, which was received at the Court Registry on 12 March 1993, for a preliminary ruling in the Case of Punto Casa SpA against Mayor of the Municipality of Capena and the Municipality of Capena, on the following questions:

1. Does a provision of national law which (save for certain products) requires retail shops to close on Sunday, but does not prohibit Sunday employment, and imposes the penalty of forced closure in the event of breach of that requirement, thus significantly reducing the sales of such shops, including sales of goods produced in other Member States of the Community, with a consequent reduction in the volume of imports from such States, constitute:
 - (a) a measure having an effect equivalent to a restriction of imports within the meaning of Article 30 of the EEC Treaty and subsequent Community legislation adopted to implement the principles laid down therein;
 - (b) or a means of arbitrary discrimination or a concealed restriction on trade between Member States;
 - (c) or a measure that is disproportionate and inappropriate in relation to the aim which the national provision purports to pursue;

in view of the fact that:

- large stores in general sell a quantity of products imported from other Community countries which is greater than that sold by small and medium-sized businesses,
 - the sales turnover achieved by large stores on a Sunday cannot be compensated for by purchases in place thereof by customers on other days of the week, they being purchases which are orientated towards a commercial network which, as a whole, obtains its supplies from national producers.
2. If the first question is answered in the affirmative, does the national measure in question fall within the scope of the derogations from Article 30 provided for in Article 36 of the EEC Treaty or other derogations provided for by Community law?

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Action brought on 24 March 1993 by Thomas Cronin against the Council of the European Communities

(Case C-106/93)

(93/C 124/15)

An action against the Council of the European Communities was brought before the Court of Justice of the European Communities on 24 March 1993 by Thomas Cronin, of Ardmore, Waterford (Ireland), represented by Anthony Burke, Solicitor, of Mason Hayes & Curran, Dublin, with an address for service in Luxembourg at the Chambers of Kronshagen, 12, boulevard de la Foire.

The Applicant claims:

1. an order that Regulation (EEC) No 816/92⁽¹⁾ is invalid, null and void;
2. damages in the sum of ECU 535,2 (£ Irl 512,33) or such other sum which the Court of Justice rules is appropriate;
3. interest on such sum at the rate of 8 % per annum from the first day of April 1993 pursuant to the provisions of the Courts Act 1981;
4. costs.

Pleas in law and main arguments adduced in support are similar to those in case C-67/93⁽²⁾.

⁽¹⁾ OJ No L 86, 1. 4. 1992, p. 83.

⁽²⁾ See p. 9 of Official Journal.

Reference for a preliminary ruling by the Tribunal de Relação, Lisbon, by order of that court of 12 March 1993, in the case of SIVA — Sociedade de Importação de Veículos Automóveis SA against Ministério Público

(Case C-127/93)

(93/C 124/16)

Reference has been made to the Court of Justice of the European Communities by an order of the Tribunal de Relação, Lisbon, of 12 March 1993, which was received at the Court registry on 25 March 1993, for a preliminary ruling in the case of SIVA — Sociedade de Importação de Veículos Automóveis SA against Ministério Público, on the following questions:

having regard to Article 85 (3) and Regulation (EEC) No 123/85, a decision is requested as to whether the clause in the new contract at folio 680 of the file on the case, namely Article 4 (2), which states 'the concessionaire shall not undertake any sale of or assistance with other makes or products competing with the Contractual Programme', is valid; and,

as to whether the commercial practice referred to in the circular of June 1988 (at folio 10), between the appellant and the concessionaires, whereby the latter are precluded from purchasing from third parties parts which the appellant is able to supply, is valid.

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Action brought on 30 March 1993 by James Reidy against the Council of the European Communities

(Case C-129/93)

(93/C 124/17)

An action against the Council of the European Communities was brought before the Court of Justice of the European Communities on 30 March 1993 by James Reidy, of Carrowreagh, Cooper, Tubbercurry, County Sligo (Ireland), represented by Anthony Burke, solicitor, of Mason Hayes & Curran, Dublin, with an address for service in Luxembourg at the Chambers of Kronshagen, 12, boulevard de la Foire.

The Applicant claims:

1. an order that Regulation (EEC) No 816/92⁽¹⁾ is invalid, null and void;

⁽¹⁾ OJ No L 86, 1. 4. 1992, p. 83.

2. damages in the sum of ECU 943,8 (£ Irl 903,47) or such other sum which the Court of Justice rules is appropriate;
3. interest on such sum at the rate of 8 % per annum from the first day of April 1993 pursuant to the provisions of the Courts Act 1981;

4. costs.

Contentions and main arguments adduced in support are similar to those in Case C-67/93 ⁽¹⁾.

⁽¹⁾ See p. 9 of this Official Journal.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 1 April 1993

in Case T-65/89, BPB Industries plc and British Gypsum Limited against Commission of the European Communities ⁽¹⁾

(Competition — Abuse of a dominant position — Exclusive purchase contract — Loyalty payments — Effect on trade between Member States — Attributability of the infringement)

(93/C 124/18)

(Language of the case: English)

In Case T-65/89: BPB Industries plc, established at Slough, United Kingdom, and British Gypsum Limited, established at Nottingham, United Kingdom, represented by Michel Waelbroeck, of the Brussels Bar and by Gordon Boyd Buchanan Jeffrey, Solicitor, with an address for service in Luxembourg at the Chambers of Messrs Arendt and Harles, 4 avenue Marie-Thérèse, against Commission of the European Communities, (Agents: initially Norbert Koch and Ida Langermann, and subsequently Julian Currall and Berend Jan Drijber), supported by the Kingdom of Spain, represented by Javier Conde de Saro and Rosario Silva de Lapuerta, with an address for service in Luxembourg at the Spanish Embassy, 4-6 boulevard Emmanuel Servais, and by Iberian Trading (UK) Limited, established in London, represented by John E. Pheasant and Simon W. Polito, Solicitors, with an address for service in Luxembourg at the Chambers of Messrs Loesch and Wolter, 8, rue Zithe — application for the annulment of Decision 89/22/EEC of the Commission of the European Communities of 5 December 1988 relating to a proceeding pursuant to Article 86 of the EEC Treaty (IV/31.900 — BPB Industries plc ⁽²⁾), the Court of First Instance (Second Chamber), composed of J. L. Cruz Vilaça, President of the Chamber, A. Saggio and C. P.

Briët, Judges; Registrar: H. Jung, gave a judgment on 1 April 1993, the operative part of which is as follows:

1. Article 2 of Commission Decision 89/22/EEC of 5 December 1988 relating to a proceeding pursuant to Article 86 of the EEC Treaty (IV/31.900, BPB Industries plc) is annulled in so far as it relates to July 1985;
2. the remainder of the claims made in the application are dismissed;
3. the applicants are ordered to pay all the costs, including those of the intervener, Iberian;
4. the Kingdom of Spain is ordered to bear its own costs.

Action brought on 23 March 1993 by Nedlloyd Lijnen BV against the Commission of the European Communities

(Case T-28/93)

(93/C 124/19)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 23 March 1993 by Nedlloyd Lijnen BV, whose registered office is in Rotterdam, represented by T. R. Ottervanger of the Rotterdam Bar, with an address for service in Luxembourg at the Chambers of C. Zeyen, 4 rue de l'Avenir.

The applicant claims that the Court should:

- (i) declare void or annul in whole or in part the decision (IV/32.450) of 23 December 1992 which is also addressed to the applicant;
- (ii) annul or reduce the fine imposed on the applicant;

⁽¹⁾ OJ No C 81, 1. 4. 1989.

⁽²⁾ OJ No L 10, 13. 1. 1989, p. 50.

(iii) adopt such further measures as the Court may consider appropriate;

(iv) order the Commission to pay the costs.

Pleas in law and main arguments adduced in support:

The pleas in law and main arguments are largely the same as those in Cases T-24/93, T-25/93 and T-26/93.

Removal from the register of Case T-24/92 ⁽¹⁾

(93/C 124/20)

By order of 1 April 1993 the President of the Court of First Instance of the European Communities ordered the removal from the register of Case T-24/92: *Langnese-Iglo GmbH v. Commission of the European Communities*.

⁽¹⁾ OJ No C 121, 13. 5. 1992.

Removal from the register of Case T-28/92 ⁽¹⁾

(93/C 124/21)

By order of 1 April 1993 the President of the Court of First Instance of the European Communities ordered the removal from the register of Case T-28/92: *Schöller Lebensmittel GmbH & Co. KG v. Commission of the European Communities*.

⁽¹⁾ OJ No C 138, 28. 5. 1992.

Removal from the register of Case T-48/92 ⁽¹⁾

(93/C 124/22)

By order of 1 April 1993 the President of the Court of First Instance of the European Communities ordered the removal from the register of Case T-48/92: *Cetin Tarlan v. Comité Économique et Social*.

⁽¹⁾ OJ No C 187, 24. 7. 1992.

II

(Preparatory Acts)

COMMISSION

Amendments to the proposal for a Council Regulation (EEC) introducing a declaration of European interest to facilitate the establishment of trans-European networks in the transport domain ⁽¹⁾

(93/C 124/23)

COM(93) 115 final

(Submitted by the Commission on 16 April 1993)

In response to the opinions delivered by Parliament on 20 November 1992 and by the Economic and Social Committee on 1 July 1992 on the proposal for a Council Regulation introducing a declaration of European interest to facilitate the establishment of trans-European networks in the transport domain, the Commission has, in accordance with Article 149 (3) of the Treaty establishing the European Economic Community, decided to amend that proposal as follows:

— the fifth recital is amended as follows:

‘Whereas a determination by the Community institutions to promote and facilitate the implementation of projects recognized as being of European interest and as being sound in socio-economic terms is likely to facilitate their financing privately;’

— the following recital is inserted between the ninth and tenth recitals:

‘Whereas, at all events, this declaration should nevertheless constitute grounds for considering whether the project can be supported by means of a Community financial instrument or by measures taken by the Member States;’

— the following paragraph is added to Article 2:

‘In the event of such a declaration being granted, the Commission shall consider, within the limits of its powers and in accordance with the provisions governing the corresponding instrument, whether the project in question may receive aid from one of the financial instruments of the Community.’;

— the following Article 3a is added after Article 3:

Article 3a

A project in respect of which a declaration of European interest is sought may be submitted by any Member State concerned, by the regional or local authorities or by one or more project promoters.’;

— the third and fourth paragraphs of Article 4 are amended as follows:

‘If, following this evaluation, the Commission considers that the conditions have been satisfied, it shall invite the Member States concerned to make known their observations within a period of not more than three months.

The Commission shall also publish a description of the project, its main features and a statement as to its eligibility for a declaration of European interest in the *Official Journal of the European Communities*, with a view to allowing other interested parties to express their views. Interested parties shall have two months from the date of publication within which to make known their opinions to the Commission.’;

— the second paragraph of Article 5 is amended as follows:

‘The grant of the declaration of European interest to a project shall be decided by the Commission in accordance with the procedure laid down in Article 6, within six months of the date on which a complete dossier was submitted to the Commission in accordance with the conditions laid down in the Annex. In duly justified circumstances the Commission may extend this period.’;

— the following paragraph is added to Article 7:

Article 7a

The Commission shall inform the European Parliament each year of the projects which have been granted a declaration of European interest and of those which have been rejected, giving the reasons for such rejections.’;

— point 1 of the Annex is amended as follows:

‘1. The project must generate direct positive effects in the Community. A joint project involving one or more Member States of the Community and one or more third countries may also be submitted for consideration for a declaration of European interest.’;

— the following is added to Point 2 of the Annex:

‘2. The project must be clearly described and defined in all its aspects (nature and content of the project, objectives and expected economic and social benefits, participants, future users, populations and local communities concerned, location, timetable for implementation, technical specifications and other relevant information).’

(¹) OJ No C 71, 20. 3. 1992, p. 7.

Amendments to the proposal for a Council Regulation (EEC) introducing a declaration of European interest to facilitate the establishment of trans-European networks in the electricity and natural gas domain⁽¹⁾

(93/C 124/24)

COM(93) 115 final

(Submitted by the Commission on 16 April 1993)

In response to the opinions delivered by Parliament on 20 November 1992 and by the Economic and Social Committee on 1 July 1992 on the proposal for a Council Regulation introducing a declaration of European interest to facilitate the establishment of trans-European networks in the electricity and natural gas domain, the Commission has, in accordance with Article 149 (3) of the Treaty establishing the European Economic Community, decided to amend that proposal as follows:

— the fourth recital is amended as follows:

‘Whereas a determination by the Community institutions to promote and facilitate the implementation of projects recognized as being of European interest and as being sound in socio-economic terms is likely to facilitate their financing privately;’

— the following recital is inserted between the eighth and ninth recitals:

‘Whereas, at all events, this declaration should nevertheless constitute grounds for considering whether the project can be supported by means of a Community financial instrument or by measures taken by the Member States;’

— the following paragraph is added to Article 2:

‘In the event of such a declaration being granted, the Commission shall consider, within the limits of its powers and in accordance with the provisions governing the corresponding instrument, whether the project in question may receive aid from one of the financial instruments of the Community.’;

— the following Article 3a is added after Article 3:

Article 3a

A project in respect of which a declaration of European interest is sought may be submitted by any Member State concerned, by the regional or local authorities or by one or more project promoters.’;

— the third and fourth paragraphs of Article 4 are amended as follows:

‘If, following this evaluation, the Commission considers that the conditions have been satisfied, it shall invite the Member States concerned to make known their observations within a period of not more than three months.

The Commission shall also publish a description of the project, its main features and a statement as to its eligibility for a declaration of European interest in the *Official Journal of the European Communities*, with a view to allowing other interested parties to express their views. Interested parties shall have two months from the date of publication within which to make known their opinions to the Commission.’;

— the second paragraph of Article 5 is amended as follows:

‘The Commission shall grant the declaration of European interest within six months of the date on which a complete dossier was submitted to the Commission in accordance with the conditions laid down in the Annex. In duly justified circumstances the Commission may extend this period.’;

— the following two paragraphs are added to Article 7:

‘The Commission shall inform the European Parliament each year of the projects which have been granted a declaration of European interest and of those which have been rejected, giving the reasons for such rejections.

The Commission shall also take account of the progress made in the area of energy infrastructures in formulating the guidelines for a Community energy policy.’

— point 1 of the Annex is amended as follows:

‘1. The project must generate direct positive effects in the Community. A joint project involving one or more Member States of the Community and one or more third countries may also be submitted for consideration for a declaration of European interest.’;

— the following is added to Point 2 of the Annex:

‘2. The project must be clearly described and defined in all its aspects (nature and content of the project, objectives and expected economic and social benefits, participants, future users, populations and local communities concerned, location, timetable for implementation, technical specifications and other relevant information).’

⁽¹⁾ OJ No C 71, 20. 3. 1992, p. 9.

Amendments to the proposal for a Council Regulation (EEC) introducing a declaration of European interest to facilitate the establishment of trans-European networks in the telecommunications domain ⁽¹⁾

(93/C 124/25)

COM(93) 115 final

(Submitted by the Commission on 16 April 1993)

In response to the opinions delivered by Parliament on 20 November 1992 and by the Economic and Social Committee on 1 July 1992 on the proposal for a Council Regulation introducing a declaration of European interest to facilitate the establishment of trans-European networks in the telecommunications domain, the Commission has, in accordance with Article 149 (3) of the Treaty establishing the European Economic Community, decided to amend that proposal as follows:

— the fourth recital is amended as follows:

‘Whereas a determination by the Community institutions to promote and facilitate the implementation of projects recognized as being of European interest and as being sound in socio-economic terms is likely to facilitate their financing privately;’

— the following recital is inserted between the eight and ninth recitals:

‘Whereas, at all events, this declaration should nevertheless constitute grounds for considering whether the project can be supported by means of a Community financial instrument or by measures taken by the Member States;’

— the following paragraph is added to Article 2:

‘In the event of such a declaration being granted, the Commission shall consider, within the limits of its powers and in accordance with the provisions governing the corresponding instrument, whether the project in question may receive aid from one of the financial instruments of the Community;’

— the following Article 3a is added after Article 3:

Article 3a

A project in respect of which a declaration of European interest is sought may be submitted by any Member State concerned, by the regional or local authorities or by one or more project promoters;’

— the third and fourth paragraphs of Article 4 are amended as follows:

‘If, following this evaluation, the Commission considers that the conditions have been satisfied, it shall invite the Member States to make known their observations within a period of not more than three months.

The Commission shall also publish a description of the project, its main features and a statement as to its eligibility for a declaration of European interest in the *Official Journal of the European Communities*, with a view to allowing other interested parties to express their views. Interested parties shall have two months from the date of publication within which to make known their opinions to the Commission.’;

— the second paragraph of Article 5 is amended as follows:

‘The Commission shall grant the declaration of European interest to a project within six months of the date on which a complete dossier was submitted to the Commission in accordance with the conditions laid down in the Annex. In duly justified circumstances the Commission may extend this period.’;

— the following paragraph is added to Article 7:

Article 7a

The Commission shall inform the European Parliament each year of the projects which have been granted a declaration of European interest and of those which have been rejected, giving the reasons for such rejections.’;

— point 1 of the Annex is amended as follows:

‘1. The project must generate direct positive benefits in the Community. A joint project involving one or more Member States of the Community and one or more third countries may also be submitted for consideration for a declaration of European interest.’;

— the following is added to Point 2 of the Annex:

‘2. The project must be clearly described and defined in all its aspects (nature and content of the project, objectives and expected economic and social benefits, participants, future users, populations and local communities concerned, location, timetable for implementation, technical specifications and other relevant information).’

⁽¹⁾ OJ No C 71, 20. 3. 1992, p. 12.