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Information and Notices

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(Continued overleaf)

(Continued on inside back cover)

I

(Information)

COMMISSION

Ecu [1]

27 July 1993

(93/C 204/01)

Currency amount for one unit:

Belgian and Luxembourg franc	40,3238	United States dollar	1,13023
Danish krone	7,56069	Canadian dollar	1,45009
German mark	1,94615	Japanese yen	120,562
Greek drachma	267,888	Swiss franc	1,71682
Spanish peseta	156,164	Norwegian krone	8,30325
French franc	6,64520	Swedish krona	9,09780
Irish pound	0,805984	Finnish markka	6,58303
Italian lira	1814,99	Austrian schilling	13,6961
Dutch guilder	2,18802	Icelandic krona	81,4558
Portuguese escudo	194,908	Australian dollar	1,66775
Pound sterling	0,755402	New Zealand dollar	2,04456

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) and an automatic fax answering service (No 296 10 97) providing daily data concerning calculation of the conversion rates applicable for the purposes of the common agricultural policy.

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

Council Decision 80/1184/EEC of 18 December 1980 (Convention of Lomé) (OJ No L 349, 23. 12. 1980, p. 34).

Commission Decision No 3334/80/ECSC of 19 December 1980 (OJ No L 349, 23. 12. 1980, p. 27).

Financial Regulation of 16 December 1980 concerning the general budget of the European Communities (OJ No L 345, 20. 12. 1980, p. 23).

Council Regulation (EEC) No 3308/80 of 16 December 1980 (OJ No L 345, 20. 12. 1980, p. 1).

Decision of the Council of Governors of the European Investment Bank of 13 May 1981 (OJ No L 311, 30. 10. 1981, p. 1).

Information procedure — technical regulations

(93/C 204/02)

— Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations.
(OJ No L 109, 26. 4. 1983, p. 8).

— Directive 88/182/EEC of 22 March 1988 amending Directive 83/189/EEC.
(OJ No L 81, 26. 3. 1988, p. 75).

Notifications of draft national technical regulations received by the Commission.

Reference (1)	Title	End of three-month standstill period (2)
93-0177-NL	Draft Regulation governing health regulations in the fish retail trade	4. 10. 1993
93-0179-D	Tenth decree for the execution of the German Federal emission protection law (Decree regarding the nature and the marking of the qualities of motor fuels — 10th BIMSCHV)	27. 9. 1993
93-0182-NL	Amendment XIX to the PVS quality regulations order governing flower bulbs	8. 10. 1993
93-0183-UK	Draft advice note on narrow lane and tidal flow operations at road works on trunk motorways and all-purpose dual carriageway trunk roads with full width hard shoulders	6. 10. 1993

(1) Year — registration number — Member State of origin.
(2) Deadline for comments from Commission and Member States.
(3) The usual information procedure does not apply to *'Pharmacopoeia'*.
(4) No standstill period as the Commission has accepted the grounds for urgent adoption.

The Commission would point out that, under the terms of its communication of 1 October 1986 (OJ No C 245, 1. 10. 1986, p. 4), it considers that if a Member State adopts a technical regulation which comes under the provisions of Directive 83/189/EEC without communicating the draft to the Commission or respecting the standstill obligation, that regulation cannot be enforced against third parties under the terms of the legal system of the Member State in question. The Commission therefore considers that litigants have a right to expect national courts to refuse to implement national technical regulations that have not been notified as required by Community law.

Information on these notifications can be obtained from the national administrations, a list of which was published in *Official Journal of the European Communities* No C 67 of 17 March 1989.

Commission communication pursuant to Article 9 (9) of Council Regulation (EEC) No 3420/83 of 14 November 1983

(93/C 204/03)

By virtue of Article 9 (4) of Council Regulation (EEC) No 3420/83 of 14 November 1983 on import arrangements for products originating in State-trading countries, not liberalized at Community level [1], the Commission adopted the following change to the import arrangements applied in Spain with regard to the People's Republic of China on 30 June 1993.

Exceptional opening of import facilities for the following products:

— Tableware and household or toilet articles of porcelain and other ceramic materials (CN codes 6911 and 6912) ECU 1 429 000

[1] OJ No L 346, 8. 12. 1983, p. 6.

Standing invitation to tender pursuant to Commission Regulation (EEC) No 570/88 of 16 February 1988 on the sale of butter at reduced prices and the granting of aid for butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs

(93/C 204/04)

(See notice in Official Journal of the European Communities *No L 55 of 1 March 1988, page 31)*

Tender No: 118

Date of Commission Decision: 19 July 1993

(ECU/100 kg)

Formula			A/C—D		B	
Incorporation procedure			With tracers	Without tracers	With tracers	Without tracers
Minimum price	Butter ≥ 82 %	Unaltered	117	121	—	121
		Concentrated	105	110	105	110
Processing security		Unaltered	194		194	
		Concentrated	206		206	
Maximum aid amount	Butter ≥ 82 %		134	131	134	131
	Butter < 82 %		—	127	—	127
	Concentrated butter		173	170	173	170
	Cream		—	—	57	—
Processing security	Butter		148	—	148	—
	Concentrated butter		191	—	191	—
	Cream		—	—	63	—

Communication of Decisions under sundry tendering procedures in agriculture (milk and milk products)

(93/C 204/05)

(See notice in Official Journal of the European Communities *No L 360 of 21 December 1982, page 43)*

(ECU/100 kg)

Standing invitation to tender	Tender No	Date of Commission Decision	Maximum buying-in price
Commission Regulation (EEC) No 1589/87 of 5 June 1987 on the sale by tender of butter to intervention agencies (OJ No L 146, 6. 6. 1987, p. 27)	139	19. 7. 1993	252,30

(ECU/100 kg)

Standing invitation to tender	Tender No	Date of Commission Decision	Maximum aid	End-use security
Commission Regulation (EEC) No 429/90 of 20 February 1990 on the granting by invitation to tender of an aid for concentrated butter intended for direct consumption in the Community (OJ No L 45, 21. 2. 1990, p. 8)	78	19. 7. 1993	195	227

(ECU/100 kg)

Standing invitation to tender	Tender No	Date of Commission Decision	Use to which the butter is to be put	Minimum selling price	End-use security
Commission Regulation (EEC) No 3378/91 of 20 November 1991 laying down detailed rules for the sale of butter from intervention stocks for export and amending Regulation (EEC) No 569/88 (OJ No L 319, 21. 11. 1991, p. 40)	37	20. 7. 1993	— Butter exported after processing into concentrated butter	Tenders rejected	—

Non-opposition to a notified concentration

(Case No IV/M.334 — Costa Crociere/Chargeurs/Accor)

(93/C 204/06)

On 19 July 1993 the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6 (1) (b) of Council Regulation (EEC) No 4064/89 [1]. Third parties showing a sufficient interest can obtain a copy of the decision by making a written request to:

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

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

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

(week: 20 to 24 July 1993)

(93/C 204/07)

Invitation to tender No	Number and date of 'S' Journal	Country	Subject	Final date for submission of bids
3650	S 138, 20. 7. 1993	Benin	BJ-Cotonou: medical equipment	12. 10. 1993
3712	S 138, 20. 7. 1993	Mauritania	MR-Nouakchott: prequalification of firms	14. 9. 1993
3724	S 138, 20. 7. 1993	Fiji	FJ-Suva: prequalification for tenderers	22. 9. 1993
3692	S 138, 20. 7. 1993	Belize	BZ-Belmopan: hospital equipment and furniture *(additional information)*	18. 8. 1993
3728	S 140, 22. 7. 1993	Algeria	DZ-Algiers: vehicles and miscellaneous tools	28. 9. 1993
3623	S 140, 22. 7. 1993	Israel	IL-Jerusalem: various supplies *(additional information)*	10. 8. 1993
3727	S 140, 22. 7. 1993	Kenya	KE-Nairobi: telephone equipment	28. 9. 1993

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

(Fifth Chamber)

of 1 July 1993

in Case C-207/91 (reference for a preliminary ruling by the Verwaltungsgericht, Berlin): Eurim-Pharm GmbH v. Bundesgesundheitsamt (1)

(Free-trade agreement — Parallel imports of pharmaceutical products — Quantitative restriction on imports — Measure having an equivalent effect)

(93/C 204/08)

(Language of the case: German)

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

In Case C-207/91: reference to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht (Administrative Court), Berlin, for a preliminary ruling in the proceedings pending before that Court between Eurim-Pharm GmbH and the Bundesgesundheitsamt (Federal Health Office) — on the interpretation of Articles 13 and 20 of the Agreement between the European Economic Community and the Republic of Austria, concluded and approved on behalf of the Community by Council Regulation (EEC) No 2836/72 of 19 December 1972 (2) — the Court (Fifth Chamber), composed of: G. C. Rodríguez Iglesias, President of the Chamber, M. Zuleeg, R. Joliet, J. C. Moitinho de Almeida and F. Grévisse, Judges; G. Tesauro, Advocate-General; L. Hewlett, Administrator, for the Registrar, gave a judgment on 1 July 1993, the operative part of which is as follows:

Articles 13 and 20 of the Agreement between the European Economic Community and the Republic of Austria, concluded and approved on behalf of the Community by Council Regulation (EEC) No 2836/72 of 19 December 1972, must be interpreted as precluding the health authority of a Member State from making the marketing authorization for a pharmaceutical product originating in Austria, identical in all respects to a pharmaceutical product already authorized by that health authority, subject to the condition that the parallel importer submit documents already made available to that authority by the manufacturer of the pharmaceutical product at the time of the first request for a marketing authorization.

(1) OJ No C 236, 11. 9. 1991.
(2) OJ No L 300, 31. 12. 1972.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 1 July 1993

in Case C-312/91 (reference for a preliminary ruling from the judge responsible for preliminary inquiries of the Tribunale di Milano (Italy)) in the interlocutory proceedings concerning the seizure of goods belonging to Metalsa Srl. in criminal proceedings against Gaetano Lo Presti (1)

(Free trade agreement between the European Community and Austria — Non-discrimination in tax matters)

(93/C 204/09)

(Language of the case: Italian)

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

In Case C-312/91: reference to the Court under Article 177 of the EEC Treaty from the judge responsible for preliminary inquiries of the Tribunale di Milano (Milan District Court) for a preliminary ruling in the interlocutory proceedings pending before that Court concerning the seizure of goods belonging to Metalsa Srl. in criminal proceedings against Gaetano Lo Presti — on the interpretation of the first paragraph of Article 18 of the Agreement between the European Economic Community and the Republic of Austria, signed in Brussels on 22 July 1972, concluded and approved, in the name of the Community, by Council Regulation (EEC) No 2836/72 of 19 December 1972 (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; F. Jacobs, Advocate-General; L. Hewlett, Administrator, for the Registrar, gave a judgment on 1 July 1993, the operative part of which is as follows:

the first paragraph of Article 18 of the Agreement between the European Economic Community and the Republic of Austria, signed in Brusssels on 22 July 1972, concluded and approved, in the name of the Community, by Council Regulation (EEC) No 2836/72 of 19 December 1972 must be interpreted, unlike Article 95 of the EEC Treaty, as meaning that national rules punishing offences concerning VAT on importation more severely than those concerning VAT on domestic sales of goods are not incompatible with

(1) OJ No C 24, 31. 1. 1992.
(2) OJ No L 300, 31. 12. 1972.

that provision of the agreement, even if that difference is disproportionate to the dissimilarity between the two categories of offence.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 1 July 1993

in Case C-154/92 (reference for a preliminary ruling from the Arbeidsrechtbank Antwerpen (Belgium)): Remi van Cant v. Rijksdienst voor pensioenen [1]

(Equal treatment — Old-age pension — Method of calculation — Pensionable age)

(93/C 204/10)

(Language of the case: Dutch)

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

In Case C-154/92: reference to the Court under Article 177 of the EEC Treaty from the Arbeidsrechtbank Antwerpen (Antwerp Labour Court) for a preliminary ruling in the proceedings pending before that Court between Remi Van Cant and Rijksdienst voor pensioenen — on the interpretation of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security [2] — the Court (Sixth Chamber), composed of: C. N. Kakouris, President of the Chamber, G. F. Mancini, F. A. Schockweiler, M. Díez de Velasco and P. J. G. Kapteyn, Judges; M. Darmon, Advocate-General; L. Hewlett, Administrator for the Registrar, gave a judgment on 1 July 1993, the operative part of which is as follows:

1. *Articles 4 (1) and 7 (1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security preclude national legislation which permits male and female workers to retire at identical ages from maintaining in the method for calculating the pension a difference depending on sex, such difference being linked to the difference in retirement age which existed under the previous legislation;*

2. *Article 4 (1) of Directive 79/7/EEC may be relied on as from 23 December 1984 by individuals before national courts in order to preclude the application of any national provision inconsistent with that Article;*

3. *where there has been an infringement of Article 4 (1) of Directive 79/7/EEC, the disadvantaged group is entitled to have the same rules applied to it as are applied to the advantaged group in the same situation, since failing correct implementation of the Directive those rules remain the only valid point of reference.*

Appeal brought on 8 June 1993 by BPB Industries plc and British Gypsum Limited against the judgment delivered on 1 April 1993 by the Second Chamber of the Court of First Instance of the European Communities in Case T-65/89 between BPB Industries plc and British Gypsum Limited and the Commission of the European Communities, supported by the Kingdom of Spain and Iberian Trading (UK) Limited

(Case C-310/93 P)

(93/C 204/11)

An appeal against the judgment delivered on 1 April 1993 by the Second Chamber of the Court of First Instance of the European Communities in Case T-65/89 between BPB Industries plc and British Gypsum Limited and the Commission of the European Communities, supported by the Kingdom of Spain and Iberian Trading (UK) Limited, was brought before the Court of Justice of the European Communities on 8 June 1993 by BPB Industries plc and British Gypsum Limited, represented by Michel Waelbroeck and Denis Waelbroeck, of Liedekerke Wolters Waelbroeck & Kirkpatrick, advocates of the Brussels Bar, and by Gordon Boyd Buchanan Jeffrey, of Lace Mawer, solicitor, with an address for service in Luxembourg at the office of Maître Ernest Arendt, 4, avenue Marie-Thérèse, BP 39.

The appellants request the Court:

— to quash, in whole or at least in part, the decision of the Court of First Instance of 1 April 1993 in Case T-65/89,

— to annul Commission Decision 89/22/EEC of the European Communities of 5 December 1988 relating to a proceeding under Article 86 of the EEC Treaty (IV/31.900 — BPB Industries plc) [1],

— alternatively to cancel or at least to reduce the amount of the fines imposed on the applicants,

— in any event, to condemn the Commission to pay the costs of the applicants in proceedings both before the Court of First Instance and before the Court of Justice.

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(1) OJ No C 152, 17. 6. 1992.
(2) OJ No L 6, 10. 1. 1979.

(1) OJ No L 10, 7. 1. 1989; rectified in OJ No L 52, 24. 2. 1989.

Pleas in law and main arguments adduced in support:

— The position of the first applicant

The first applicant disputes that the practices carried out in Ireland and Northern Ireland can to any extent be attributed to it. While it is true that some subsidiaries take all their decisions on instructions from their parent company, British Gypsum (hereinafter 'BG') in fact enjoys a large degree of autonomy. BPB Industries' role is essentially limited to agreeing a certain number of financial objectives to be met by BG every year. Contrary to the assertion of the Court of First Instance, it must therefore be concluded that the fact that BG is wholly owned by BPB and that BPB therefore profited from BG's practices in Northern Ireland, as well as the fact that BPB was informed *a posteriori* of such practices, is insufficient to allow the Commission to attribute the infringements to BPB and to impose a fine upon it, notwithstanding the commercial independence of BG.

— The position of the second applicant

— Exclusive supply agreements and promotional payments

The second applicant disputes that it has abused a dominant position as set out in the Commission's decision or at all. By referring simply to the abuse as an 'objective concept', without deeming it necessary to assess the objective business justifications advanced by BG, and in particular by refusing to consider the fact that BG's conduct was a response to the growing market power of merchants, that it had been requested by them, and that BG never had the intention to discourage or weaken its competitors through such a scheme, as well as all other justifications put forward by BG, the Court of First Instance has not satisfied the conditions of Article 86. It has in particular not shown that the alleged abuse was a result of the dominant position held by BG.

In its application before the Court of First Instance, BG had submitted that the promotional agreements with merchants in any event fulfilled the requirement for exemption under Article 85 (3) of the EEC Treaty. The Court of First Instance rejected this argument for the reason that:

— the decision is concerned with the application not of Article 85 of the EEG Treaty but of Article 86, and that

— in any event, an exemption under Article 85 (3) of the EEC Treaty does not prevent the application of Article 86 as allegedly stated in the Tetra Pak I judgment.

None of these reasons is valid. As to the first reason, it is clear from the Hoffmann-La Roche judgment that even an exclusive purchasing agreement made by a dominant firm can be exempted under Article 85 (3). As to the reference to the Tetra Pak judgment, it should be recalled that this judgment only referred to the applicability of Article 86 to conduct falling within a group exemption regulation and does not therefore justify the above conclusion.

— Priority deliveries of plaster

If a firm does not have a dominant position on the market where the alleged abusive behaviour takes place (in the present case the plaster market), it cannot be found to infringe Article 86 only because the exercise of its power on that market produces effects on another market where it is said to be dominant. Furthermore, even assuming that BG were dominant on the plaster market, BG does not agree that giving a one-day preference to its loyal customers in case of shortage was in any way improper or contrary to the objectives of competition policy. No customer, whether or not an exclusive supplier of BG plasterboard, suffered any delay of more than one day. The Court of First Instance was wrong to reject BG's argument that priority deliveries of plaster were not contrary to Article 86 of the EEC Treaty; a trivial case, in which the abuse lasts only for a short period, does not justify the application of Article 86 at all.

— Violation of the rights of defence — non-disclosure of documents

The non-disclosure of relevant documents has infringed the applicant's right of defence and in these circumstances, the judgment of the Court of First Instance should be quashed and the Commission's decision should be declared null and void. Alternatively, the Court of First Instance has not given reasons for considering that all documents mentioned in paragraph 33 of its judgment were 'necessarily' of a confidential nature and that its judgment should at least for that reason be quashed.

Reference for a preliminary ruling by the Bundesgerichtshof by order of that Court of 25 May 1993 in the Case of Wolfgang Brenner and Peter Noller v. Dean Witter Reynolds Incorporation

(Case C-318/93)

(93/C 204/12)

Reference has been made to the Court of Justice of the European Communities by an order of the Eleventh Civil Senate of the Bundesgerichtshof (Federal Court of Justice) of 25 May 1993, which was received at the Court Registry on 16 June 1993, for a preliminary ruling in the case of Wolfgang Brenner and Peter Noller v. Dean Witter Reynolds Incorporation on the following questions:

1. Is it a condition for the recognition of the international jurisdiction of the State in which the consumer is domiciled under the second alternative in Article 14 (1) of the Brussels Convention that the other party to the contract is domiciled in a contracting State to the Brussels Convention or is deemed under Article 13 (2) of the Brussels Convention to be so domiciled?

2. Does subparagraph 3 of Article 13 (1) of the Brussels Convention cover contracts on a commission basis for the purpose of carrying out commodity futures transactions?

3. Is subparagraph 3 (a) of Article 13 (1) of the Brussels Convention applicable whenever the party with whom the consumer enters into a contract has advertised in the State in which the consumer is domiciled prior to conclusion of the contract, or does that provision require there to be a connection between the advertisement and the conclusion of the contract?

4. (a) Does the term 'proceedings concerning a contract' in Article 13 (1) of the Brussels Convention cover, in addition to the pursuit of claims for damages for breach of contractual obligations, also the pursuit of claims based on breach of precontractual obligations *(culpa in contrahendo)* and unjust enrichment in connection with the reversal of contractual performance?

   (b) In the case of proceedings in which damages are claimed for the breach of contractual and precontractual obligations, claims are put forward on the basis of unjust enrichment and damages are sought for a tortious act, does Article 13 (1) of the Brussels Convention create, by virtue of the factual connection, ancillary jurisdiction which extends also to the non-contractual claims?

Reference for a preliminary ruling by the Gerechtshof, Leeuwarden, by judgment of that Court of 12 May 1993 in the Case of Hendrik Evert Dijkstra v. Friesland (Frico Domo) Coöperatie BA as the successor in title to CZI 'De Torenmeter' WA

(Case C-319/93)

(93/C 204/13)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Gerechtshof (Regional Court of Appeal), Leeuwarden, dated 12 May 1993 which was received at the Court Registry on 18 June 1993, for a preliminary ruling in the Case of Hendrik Evert Dijkstra, Oldeboorn, v. Friesland (Frico Domo) Coöperatie BA, Oranjewoud, as the successor in title to CZI 'De Torenmeter' WA, Oldeboorn, on the following questions:

1. Does the second sentence of Article 2 (1) of Regulation No 26 [1] applying certain rules of competition in the agricultural sector, which relates to agreements, decisions and practices of farmers, farmers' associations or associations of such associations belonging to a single Member State, have an independent meaning, so that national courts must presume that such agreements, decisions and practices are valid so long as the Commission has not found that they exclude competition or jeopardize the aims of Article 39 of the EEC Treaty?

2. If the answer is yes, is it a requirement for a Commission finding to that effect that the Commission has set out its opinion in a decision issued pursuant to Article 2 (2)?

3. If the answer is no, must national courts, when it is claimed in proceedings before them that an agreement concluded or decision taken by an agricultural cooperative is void because it conflicts with Article 85 of the EEC Treaty, and the cooperative relies on the second sentence of Article 2 (1) of Regulation No 26, submit the matter to the Commission for its assessment?

[1] OJ No 30, 20. 4. 1962, p. 993/62.

Appeal brought on 22 June 1993 by Automobiles Peugeot SA and Peugeot SA against the judgment delivered on 22 April 1993 by the Second Chamber of the Court of First Instance of the European Communities in Case T-9/92 between (1) Automobiles Peugeot SA and (2) Peugeot SA and the Commission of the European Communities, supported by Ecosystem SA and the European Bureau of Consumers' Unions (BEUC)

(Case C-322/93 P)

(93/C 204/14)

An appeal against the judgment delivered on 22 April 1993 by the Second Chamber of the Court of First Instance of the European Communities in Case T-9/92 between (1) Automobiles Peugeot SA and (2) Peugeot SA and the Commission of the European Communities, supported by Ecosystem SA and the European Bureau of Consumers' Unions (BEUC), was brought before the Court of Justice of the European Communities on 22 June 1993 by Automobiles Peugeot SA and Peugeot SA, represented by Xavier de Roux, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Guy Loesch, 8, rue Zithe.

The appellants claim that the Court should:

— set aside the judgment of the Court of First Instance of the European Communities of 22 April 1993 (1),

— declare that the circular of 9 May 1989, addressed by Peugeot to its France, Belgium and Luxembourg network is in accordance with the combined provisions of Regulation (EEC) No 123/85 (2) and the notice of 12 December 1984.

Pleas in law and main arguments adduced in support:

— Commission notice 85/C 17/03 of 12 December 1984 must be taken into consideration in implementing Commission Regulation (EEC) No 123/85. Legal uncertainty would result from a failure to do so.

The notice in question is one of the implementing measures of the Regulation in so far as it gives a definition of intermediaries. The Court of First Instance wrongly described the dispute since the question is not whether it is permissible for the notice to interpret or to amend the Regulation, but to establish the reasons preventing an economic operator from implementing Article 3 (11) of the Regulation in the light of the notice.

— The Court read the Regulation and the notice together and on that basis concluded that the economic concept of intermediary existed, but it failed to draw the inferences applicable to the facts of the present case.

(1) In Case T-92/92, OJ No C 140, 19. 5. 1993, p. 5.

(2) Commission Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85 (3) of the EEC Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ No L 15, 18. 1. 1985, p. 16).

Removal from the register of Case C-362/92 (1)

(93/C 204/15)

By order of 10 June 1993 the President of the Court of Justice of the European Communities ordered the removal from the register of Case C-362/92: Commission of the European Communities v. Italian Republic.

(1) OJ No C 278, 27. 10. 1992.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 30 June 1993

in Case T-46/90: Antonio Devillez and Others v. European Parliament (1)

(Official — Shiftwork allowance — Those entitled — Conditions for granting (Article 56 of the Staff Regulations))

(93/C 204/16)

(Language of the case: French)

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

In Case T-46/90: Antonio Devillez, Henk Bunnik, Jerry Cadogan and Emile Kill, officials of the European Parliament, represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Fiduciaire Myson Sàrl, 1, rue Glesener, v. European Parliament (Agents: Jorge Campinos, Manfred Peter and Jannis Pantalis) — application for annulment of the decision of the Parliament refusing to grant the applicants for working a two-shift service the flat-rate allowance provided for in Article 1 of Council Regulation (ECSC, EEC, Euratom) No 300/76 of 9 February 1976 — the Court of First Instance (Fourth Chamber), composed of: C. W. Bellamy, President of the Chamber, A. Saggio and C. P. Briët, Judges; J. Palacio González, Administrator, for the Registrar, gave a judgment on 30 June 1993, the operative part of which is as follows:

1. *the application is dismissed;*

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

(1) OJ No C 292, 22. 11. 1990.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 29 June 1993

in Case T-7/92: Asia Motor France SA v. Commission of the European Communities (1)

(Competition — Duties in relation to the investigation of complaints — Lawfulness of grounds for rejecting a complaint — Manifest mistake in assessment — Mistake of law)

(93/C 204/17)

(Language of the case: French)

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

In Case T-7/92: Asia Motor France SA, whose registered office is in Livange (Grand Duchy of Luxembourg), Jean-Michel Cesbron, trader, residing in Livange, Monin Automobiles SA, whose registered office is in Bourg-de-Péage (France), Europe Auto Service (EAS) SA, whose registered office is in Livange, and Somaco SA, whose registered office is in Fort-de-France (France), represented by Jean-Claude Fourgoux, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Pierrot Schiltz, 4, rue Béatrix de Bourbon, v. Commission of the European Communities (Agents: Berend Jan Drijber and Virginia Melgar) — application for annulment of the decision of the Commission of the European Communities of 5 December 1991 rejecting the complaints lodged by the applicants in relation to practices under agreements alleged to be contrary to Article 85 of the EEC Treaty — the Court of First Instance (Second Chamber), composed of: J. L. Cruz Vilaça, President of the Chamber, D. Barrington, J. Biancarelli, A. Saggio and A. Kalogeropoulos, Judges; H. Jung, Registrar, gave a judgment on 29 June 1993, the operative part of which is as follows:

1. *the Commission's decision of 5 December 1991 is annulled in so far as it concerns Article 85 of the EEC Treaty;*

2. *the parties are ordered to bear their own costs.*

(1) OJ No C 56, 3. 3. 1992.

II

(Preparatory Acts)

COMMISSION

Amended proposal for a Council Directive aiming at the limitation of CO_2 emissions by improving energy efficiency (presented in the framework of the SAVE programme)

(93/C 204/18)

COM(93) 279 final

(Submitted by the Commission pursuant to Article 149 (3) of the EEC Treaty on 6 July 1993)

A. Amendment accepted

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDMENTS MADE BY THE EUROPEAN PARLIAMENT
	(Amendment No 2)
	Recital 10
Whereas new buildings will have an impact on long-term energy consumption; whereas they should therefore be fitted with efficient thermal insulation tailored to the local climate;	Whereas new buildings will have an impact on long-term energy consumption; whereas they should therefore be fitted with efficient thermal insulation tailored to the local climate; whereas this applies equally to public-authority buildings, where the public authorities should set an example in taking environmental considerations into account;
	(Amendment No 3)
	Recital 12a
	(new)
	Whereas improving energy efficiency in all regions of the Community will strengthen economic and social cohesion in the Community, as provided for in Article 130a of the EEC Treaty;
	(Amendment No 6)
	Article 2, first paragraph
Energy certification of buildings shall consist of a description of their energy characteristics which must provide information for prospective buyers.	Energy certification of buildings shall consist of a description of their energy characteristics which must provide information for prospective buyers concerning a building's energy efficiency in relation to publicly available and comparable reference factors. Significant changes, improvements or deteriorations in the energy characteristics of a building must result in a change to the energy certificate.
	(Amendment No 7)
	Article 2, fourth paragraph, introductory phrase
Member States shall take the appropriate measures in order progressively to bring into effect:	Member States shall take the appropriate measures in order to bring into effect:

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDMENTS MADE BY THE EUROPEAN PARLIAMENT
(Amendment No 9)	
Article 3	
Member States shall take the measures necessary to ensure the billing of heating, air-conditioning and hot-water costs on the basis of actual consumption in order that the cost of these services can be apportioned between the occupiers of all or part of a building on the basis of the specific quantities of heat, cold and hot water consumed by each occupier. This shall apply to buildings or parts of buildings supplied by a collective heating, air-conditioning or hot-water installation. These measures shall be taken save where technically impossible or where the costs exceed the savings expected.	Member States shall take the measures necessary to ensure the billing of heating, air-conditioning and hot-water costs on the basis of actual consumption in order that the cost of these services can be apportioned between the occupiers of all or part of a building on the basis of the specific quantities of heat, cold and hot water consumed by each occupier. This shall apply to buildings or parts of buildings supplied by a collective heating, air-conditioning or hot-water installation. Occupants of such buildings must be able to regulate their own consumption of heat, cold and hot water. These measures shall be taken save where technically impossible or where the costs exceed the savings expected.
(Amendment No 12)	
Article 8, second paragraph	
To this end, Member States shall determine the categories of industrial establishments for which such energy audits are to be gradually introduced, on the basis of their contribution to carbon dioxide emissions, wherever these are high.	To this end, Member States shall determine the categories of industrial establishments for which such energy audits are to be introduced, on the basis of their contribution to carbon dioxide emissions.

B. Amendments accepted on the basis of new formulation

(Amendment No 1)	
Title	
Proposal for a Council Directive to limit carbon dioxide emissions by improving energy efficiency (SAVE programme)	**Proposal for a Council Directive fixing a framework to limit carbon dioxide emissions by improving energy efficiency (SAVE programme)** (This amendment to apply throughout the text)
(Amendment No 13)	
Article 9	
Member States shall report to the Commission every two years on the results of the measures taken to implement this Directive.	For the first five years after adoption, Member States shall report to the Commission every year, and after this period every two years, on the results of the measures taken to implement this framework Directive. In so doing, they shall inform the Commission of the choices they have made in their package of measures.

TEXT PROPOSED BY THE COMMISSION OF THE EUROPEAN COMMUNITIES	AMENDMENTS MADE BY THE EUROPEAN PARLIAMENT
	(Amendment No 14)
	Article 9a
	(new)
	In the third year the Commission shall evaluate the operation of this framework Directive and, where necessary, submit more detailed proposals.
	(Amendment No 16)
	Article 11 (1), first subparagraph
1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this framework Directive not later than 1 January 1994. Member States may comply with these requirements by taking any actions having an equivalent effect and which can be objectively assessed.

III

(Notices)

COMMISSION

EUROPEAN ECONOMIC INTEREST GROUPING

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

(93/C 204/19)

1. ***Name of grouping:*** Van Leer Steel Industrial Containers Europe North EESV

2. ***Date of registration of grouping:*** 5. 7. 1993

3. ***Place of registration of grouping:***

   (a) ***Member State:*** NL

   (b) ***Place:*** Postbus 48, NL-3500 AA Utrecht

4. ***Registration number of grouping:*** 114044

5. ***Publication(s):***

   (a) ***Full title of publication:*** Nederlandse Staatscourant

   (b) ***Name and address of publisher:*** NV SDU, Postbus 20014, NL-2500 GA 's-Gravenhage

   (c) ***Date of publication:*** 13. 7. 1993

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