

# Official Journal

## of the European Communities

ISSN 0378-6986

C 282

Volume 36

20 October 1993

English edition

## Information and Notices

<u>Notice No</u>	Contents	Page
	<i>I Information</i>	
	<b>Commission</b>	
93/C 282/01	Ecu .....	1
93/C 282/02	Information procedure — technical regulations .....	2
93/C 282/03	Authorization for State aid pursuant to Articles 92 and 93 of the EEC Treaty — Cases where the Commission raises no objections .....	3
93/C 282/04	State aid — C 6/92 (ex NN 141/91) — Italy .....	5
	<b>Court of Justice</b>	
	COURT OF JUSTICE	
93/C 282/05	Case C-388/93: Action brought on 12 August 1993 by PIA HiFi Vertriebs GmbH against the Commission of the European Communities .....	10
	COURT OF FIRST INSTANCE	
93/C 282/06	Case T-498/93: Action brought on 9 August 1993 by Yvonne Dornonville de la Cour against the Commission of the European Communities .....	10
93/C 282/07	Case T-507/93: Action brought on 7 September 1993 by Paulo Branco against the Court of Auditors of the European Communities .....	11
93/C 282/08	Case T-509/93: Action brought on 10 September 1993 by Richco Commodities Ltd against the Commission of the European Communities .....	12
93/C 282/09	Case T-510/93: Action brought on 14 September 1993 by Dieter Obst against the Commission of the European Communities .....	13

<u>Notice No</u>	Contents (continued)	Page
93/C 282/10	Case T-515/93: Action brought on 16th September 1993 by Mikael Suenson against the Commission of the European Communities .....	13
<hr/>		
	II <i>Preparatory Acts</i>	
	<b>Commission</b>	
93/C 282/11	Proposal for a Council Regulation (EEC) on the part-financing by the Community of remote sensing checks and amending Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes .....	14

## I

*(Information)*

## COMMISSION

Ecu (\*)

19 October 1993

(93/C 282/01)

Currency amount for one unit:

Belgian and Luxembourg franc	41,5363	United States dollar	1,15950
Danish krone	7,72112	Canadian dollar	1,53483
German mark	1,90100	Japanese yen	124,148
Greek drachma	277,353	Swiss franc	1,67664
Spanish peseta	153,263	Norwegian krone	8,33334
French franc	6,71989	Swedish krona	9,20181
Irish pound	0,811521	Finnish markka	6,57785
Italian lira	1853,90	Austrian schilling	13,3760
Dutch guilder	2,13812	Icelandic krona	81,3391
Portuguese escudo	197,289	Australian dollar	1,74178
Pound sterling	0,778450	New Zealand dollar	2,08844

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.

(\*) 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 282/02)

- 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 (*)	Title	End of three-month standstill period (†)
93-0253-F	Order relating to the colouring of plastic materials and articles, including varnishes and coatings intended to come into contact with food and drink products	9. 12. 1993
93-0255-UK	MPT 1346 August 1993 — transmitters and receivers for telemetry and telecommand devices operating at 26.995, 27.045, 27.095, 27.145 and 27.195 MHz	22. 12. 1993
93-0256-UK	MPT 1340 July 1993 — transmitters and receivers for use in telemetry, telecommand and in-building security equipment operating in the frequency band 417.900 MHz to 418.100 MHz and in-vehicle equipment including radio keys in the frequency band 433.720 MHz to 434.120 MHz	22. 12. 1993
93-0257-UK	MPT 1328 July 1993 — transmitters and receivers for use in the VHF band allocated to low power telemetry and telecommand	22. 12. 1993
93-0258-UK	MPT 1330 July 1993 — transmitters and receivers for use in the VHF band allocated to low power wideband telemetry and telecommand	22. 12. 1993
93-0259-UK	MPT 1329 July 1993 — transmitters and receivers for use in the UHF band allocated to low power telemetry and telecommand	22. 12. 1993
93-0260-UK	MPT 1344 July 1993 — transmitters and receivers for use in short range security alarms and in-building security systems operating at a frequency of 173.225 MHz	22. 12. 1993
93-0261-UK	MPT 1360 August 1993 — transmitters and receivers for use in transportable and mobile alarms operating at a frequency of 173.1875 MHz	22. 12. 1993
93-0262-UK	The road vehicles (construction and use) (amendment) (No) Regulations 1993	22. 12. 1993
93-0263-F	Requirements relating to the telephone traffic dispatch of private switching systems	10. 12. 1993
93-0264-F	French standard I-ETS 300 220: radioelectric equipment and systems short-range appliances — technical characteristics and test conditions of radioelectric equipment operating in the frequency range 25-1 000 MHz, with power levels no greater than 500 MW	10. 12. 1993

(\*) Year — registration number — Member State of origin.

(†) Deadline for comments from Commission and Member States.

(‡) The usual information procedure does not apply to 'Pharmacopoeia'.

(§) 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.

**Authorization for State aid pursuant to Articles 92 and 93 of the EEC Treaty**  
**Cases where the Commission raises no objections**

(93/C 282/03)

**Date of adoption:** 27. 8. 1993

**Member State:** Spain (Canary Islands)

**Aid No:** 363/93

**Title:** Aid to promote employment

**Objective:** To promote employment in firms and cooperatives

**Legal basis:** Proyecto de decreto para el fomento del empleo

**Budget:** Pta 1 200,5 million (ECU 8 million)

**Aid intensity:**

- Premium: maximum Pta 610 000 per job
- Interest subsidy: maximum six percentage points over six years (ceiling: Pta 500 000 per member)

**Duration:** One year — 1993

**Date of adoption:** 27. 8. 1993

**Member State:** Spain (Andalusia)

**Aid No:** 368/93

**Title:** Aid to promote employment

**Objective:** To promote employment in firms and cooperatives and in the self-employed sector

**Legal basis:** Orden de 31 de marzo de 1993

**Budget:** Pta 2 396 million (ECU 16 million) plus Pta 813,2 million for the handicapped (ECU 5,5 million)

Of which:

- ESF: ECU 3,2 million
- State: ECU 13,3 million
- Region: ECU 5 million

**Aid intensity:**

- Premium: maximum Pta 500 000 per job created
- Interest subsidy: maximum six percentage points
- Female cooperatives: investment grant maximum 50 %
- ILE (local employment initiative): minimum wage one year (women: 18 months)
- Handicapped persons: investment maximum Pta 2 million per job created, grant for job adaptation

**Duration:** One year

**Date of adoption:** 27. 8. 1993

**Member State:** Spain (Aragon)

**Aid No:** 369/93

**Title:** Aid to promote employment

**Objective:** Recruitment of certain categories of job-seeker or creation of self-employment

**Legal basis:** Proyecto de decreto

**Budget:** Pta 150 million (ECU 1 million)

**Aid intensity:** Maximum Pta 650 000 per job created (ECU 4 340)

**Duration:** Indefinite

**Date of adoption:** 2. 9. 1993

**Member State:** Italy (Basilicata)

**Aid No:** N 134/93

**Title:** Measures to promote the development of rural tourism

**Objective:** Development of rural tourism

**Legal basis:** Norme per lo sviluppo del agriturismo in Basilicata

**Budget:** Lit 3 250 million (ECU 1,8 million) (exchange rate at 1. 7. 1993: ECU 1 = Lit 1 781,9)

**Aid intensity:** 65 % (gross grant equivalent), subject to a ceiling of Lit 100 million

**Duration:** Indefinite

**Date of adoption:** 2. 9. 1993

**Member State:** Spain (Valencia)

**Aid No:** N 401/93

**Title:** Measures to encourage energy conservation, energy diversification and renewable sources of energy

**Objective:** Grants for energy efficiency, energy diversification and renewable energy

**Legal basis:** Decreto del Conseil de la Generalidad Valenciana

**Budget:** 1993 to 1997: ECU 5 million

**Aid intensity:** Up to 30 % gross, maximum ECU 200 000

**Duration:** 1993 to 1997

**Date of adoption:** 9. 9. 1993

**Member State:** Germany (Mecklenburg-Western Pomerania)

**Aid No:** N 467/93

**Title:** Aid for the company Mecklenburger Hochseefischerei GmbH, Rostock

**Objective:** The aid in question is to assist the former German Democratic Republic company in its passage to the market economy

**Legal basis:** Treuhandanstalt

**Budget:** Approximately ECU 10 500 000

**Duration:** Once-off payment with no further aid envisaged

**Conditions:** The company must be viable

**Date of adoption:** 14. 9. 1993

**Member State:** Belgium (Flemish region)

**Aid No:** 223/93

**Title:** Aid to promote economic expansion

**Objective:** Investment aid in support of economic expansion

**Legal basis:** Decreet tot bevordering van de economische expansie in het Vlaamse Gewest

**Budget:** Around Bfrs 1 650 million per year (ECU 41 million)

**Aid intensity:** Maximum levels laid down in the framework for aid to SME's and for environmental aid

**Duration:** Indefinite

**Date of adoption:** 16. 9. 1993

**Member State:** Spain (Rioja)

**Aid No:** 426/93

**Title:** Aid to promote training and recruitment

**Objective:** Practical training and subsequent recruitment

**Legal basis:** Orden

**Budget:** Pta 90 million (ECU 570 000)

**Aid intensity:** Recruitment: Pta 600 000

**Duration:** Indefinite

**Date of adoption:** 16. 9. 1993

**Member State:** Spain (Rioja)

**Aid No:** 427/93

**Title:** Aid to promote employment

**Objective:** Job creation; recruitment, self-employment or cooperatives

**Legal basis:** Orden (three)

**Budget:** Pta 41 million (ECU 260 000)

**Aid intensity:** Maximum of Pta 600 000 per job created

**Duration:** Indefinite

**Date of adoption:** 20. 9. 1993

**Member State:** Germany (The five new *Länder*)

**Aid No:** N 395/93

**Title:** Sale by Treuhandanstalt of real estate in former East Germany to small businesses

**Objective:** Investment aid scheme in the form of low interest rate when purchasing real estate

**Legal basis:** Mittelstandsangebot — Grundstücke und Immobilien

**Aid intensity:** Maximum 6 to 7 %

**Duration:** Indefinite

## STATE AID

C 6/92 (ex NN 141/91)

Italy

(93/C 282/04)

*(Articles 92 to 94 of the Treaty establishing the European Economic Community)***Commission notice pursuant to Article 93 (2) of the EEC Treaty to other Member States and other parties concerned, regarding aid which Italy granted to CMF SUD SpA and CMF SpA**

By means of the letter reproduced below, the Commission informed the Italian Government of its decision to extend the Article 93 (2) procedure.

'Subject:

- new aid elements in favour of CMF SUD SpA and the newly created CMF SpA,
- extension of the Article 93 (2) of the EEC Treaty procedure.

## I

CMF SUD designs, builds and assembles metal construction work for viaducts and bridges, industrial projects and buildings, and power transmission lines. The company's head office and one factory are located at Guasticce (Livorno). A second factory is situated at Pignataro Maggiore (Caserta).

Since its refoundation in 1986 by merger of two former subsidiaries of Italimpianti, CMF SUD recorded very poor financial results. This situation deteriorated after 1989, when it started to record substantial losses.

## II

By decision of 11 March 1992<sup>(1)</sup> the Commission initiated the Article 93 (2) procedure in respect of contributions totalling Lit 32 907 million (ECU 22 million) made by Italimpianti to its wholly owned subsidiary CMF SUD, when this latter company decided in 1991 to write off against equity the substantial losses incurred in 1989 and 1990. The contributions in question were destined to offset the proportion of losses not covered by the company's net worth, and to subsequently restore the company's share capital from zero to its pre-existing level of Lit 15 000 million.

As the observations from the Italian authorities within the framework of the abovementioned procedure revealed further assistance granted in favour of CMF SUD, by decision of 16 September 1992<sup>(2)</sup> the Commission was obliged to extend the inquiry into the

new aid discovered. In particular, the procedure was extended to cover:

- new contributions totalling Lit 45 886 million (ECU 31 million) made by Italimpianti and by Iritecna — new owner of CMF SUD after the reorganization of IRI's engineering activities into a single holding — at the end of 1991, that were destined to offset the proportion of the 1991 substantial losses not covered by the company's net worth in a new operation of reduction of capital to zero, and
- an additional capital issue of Lit 15 000 million (ECU 10 million), of which Lit 14 800 million was still pending of subscription<sup>(3)</sup>, destined to reconstruct the company's initial share capital once more.

It should be noted that the Commission, in its letter of 7 October 1992 informing of the extension of the procedure, recalled the Italian Government that, in view of the suspensory effect of the Article 93 (2) procedure, the mother company of CMF SUD or whatever other State agent should refrain from subscribing and paying up the capital issue still pending of subscription.

Furthermore, taking into consideration the serious financial difficulties experienced by CMF SUD, the Commission also reiterated its request to the Italian Government to notify in advance any potential further capital contribution to CMF SUD that could take place during the extended procedure, since, presumably, those contributions might also constitute State aid.

By letters registered on 6 July 1992 (initial procedure), 14 December 1992, 22 March 1993 and 5 May 1993 (extension), the Italian authorities have submitted their observations.

In their letter of 6 July 1992 the Italian authorities informed the Commission of very vague action lines for

<sup>(1)</sup> OJ No C 122, 14. 5. 1992.

<sup>(2)</sup> OJ No C 279, 28. 10. 1992.

<sup>(3)</sup> The company's share capital was subscribed up to the minimum level of Lit 200 million required by the Italian civil code.

the restructuring of CMF SUD. It should be noted that these initial lines foresaw the preservation of the legal entity of CMF SUD during its restructuring.

In their letters of 14 December 1992, 22 March 1993 and 5 May 1993, the Italian authorities have informed the Commission of more detailed restructuring measures for the activities of CMF SUD which, by contrast with the abovementioned initial approach, foresee the following reorganization actions, which were approved in the shareholders' meeting of CMF SUD that took place on 30 October 1992, without previous notification to the Commission:

- the setting up by Iritecna of a new company, called CMF SpA that will be engaged in activities corresponding to the core business of CMF SUD; to this end, CMF SUD will subsequently sell its core business (composed of the plant in Guasticce, legal relations, intangibles, related assets and certain liabilities) to CMF SpA; the initial capital of CMF will be Lit 5 000 million; for its part, the price initially fixed for the transfer of the core business is Lit 200 million; it should however be noted that the Italian authorities have informed that this valuation is provisional and could be modified following an expert valuation which is currently being carried out by an independent party; on the other hand, the Italian authorities have also informed that Iritecna intends to study ways of consolidating, in the medium term, CMF's asset situation,
- the placing of CMF SUD into voluntary liquidation,
- the undertaking by Iritecna — CMF SUD's sole shareholder — to meet all obligations arising from the losses which had already been ascertained at that date — Lit 43 948 million — or which might emerge in the future, promising full financial support to CMF SUD during its liquidation,
- it should be noted that Article 2362 of the Italian civil code imposes unlimited responsibility on the sole shareholder of a company when it becomes insolvent.

As a result of the abovementioned reorganization, the new CMF will concentrate its activity upon the core business of CMF SUD, that is to say: designing, building and assembling metallic structures for transport infrastructure and industrial buildings, abandoning the sectors of civil engineering and residential building.

For its part, CMF SUD will retain the plant located at Pignataro Maggiore and will be wound up, its business being sold to third parties. According to the Italian authorities, during the liquidation, which is expected to be completed by June 1994, CMF SUD may not undertake any new activity, but simply complete operations already under way.

### III

The information submitted by the Italian authorities on the reorganization of CMF SUD points to the existence of three new State aid elements in favour of CMF SUD and the newly created CMF, that have been decided in breach of the provisions of Article 93 (3) of the EEC Treaty.

These new State aid elements must be incorporated into the inquiry under way, since they form intrinsic and inseparable part of the same State intervention of the Italian authorities intended to rescue and restructure the activities of the original CMF SUD.

The first of the new aid elements concerns the setting-up and the provision of capital to the newly created CMF.

The Commission's position on public authorities' holdings, communicated to the Member States by letter of 17 September 1984, sets out that: "there is State aid where fresh capital is contributed in circumstances that would not be acceptable to a private investor operating under normal market economy conditions; this is the case where the public authorities' holding involves the taking over or the continuation of all or part of the non-viable operations of an ailing company through the formation of a new legal entity" (point 3.3 IV) <sup>(1)</sup>.

Although, in the same letter, the Commission excludes, in principle, from this category "the straightforward take over of the assets of a company which has become insolvent or gone into liquidation", the facts surrounding this case indicate that the provision of capital to CMF does contain State aid. It should be noted that the same letter also indicates (point 3.4) that, in certain circumstances, there are some cases that may not fall within the abovementioned category but where there is a presumption that there is indeed State aid; in particular where "the authorities intervention takes the form of acquisition of a holding combined with other types of intervention which need to be notified pursuant to Article 93 (3)".

This is precisely the situation in this case because the provision of capital to CMF takes place in conjunction with two additional aid elements: namely, the aided transfer to CMF of the core business of CMF SUD, and the global guaranteeing of the total debts of CMF SUD during its voluntary liquidation.

As a general rule, the Commission is not concerned if a State simply rearranges its shareholdings amongst its various bodies as long as these transfers take place at a that does not provide either the transferor or the

<sup>(1)</sup> Bulletin EC 9-1984.



transferee with a benefit that proves to be ultimately linked to an action of provision of assistance by the State.

In connection with the transfer to CMF of the core business of CMF SUD, the Commission firstly notes that, in view that CMF SUD has received a total guaranteeing of debts and full financial support during its liquidation, the transfer may take place at advantaged conditions for the transferee. It should be noted in this respect that the price initially fixed for the core business of Lit 200 million, although subject to revision in the light of an expert valuation currently undertaken, appears to indicate that the transfer will take place at rather symbolic terms that do not presumably represent its intrinsic economic value in the light of its economic prospects; this is notably evidenced when considered that the core business transferred comprises the important contract concerning the construction of the east bridge across the Great Belt in Denmark — the global budget of the three contracts involved in the construction of the fixed link across the Danish Great Belt is estimated at Dkr 14 700 million (ECU 1 865 million).

The Commission secondly notes that the transfer of the core business of CMF SUD to the newly created undertaking CMF intends to confer another crucial advantage: to avoid that the core business activities transferred may be affected by industrial compensations or by a potential recovery order required by the Commission for the aid received by CMF SUD through the recapitalizations in respect of which the Commission had already initiated and extended the Article 93 (2) procedure.

In this respect, it should be noted that the core business of CMF SUD, which together with its remaining activities also benefited from the aids covered by the initial and subsequent extension of the Article 93 (2) procedure, has been transferred to a newly created undertaking. This reorganization might be used by the Italian authorities to claim that the Commission may not require any compensatory justification, nor a recovery order from the newly created company, because CMF is a new undertaking that had not been put on trial in the proceedings.

Consequently, by the new extension of the proceedings the Commission intends both to explicitly bring CMF into the assessment and to cover the new aid elements presumably involved in the reorganization of CMF SUD.

However, the Commission wants to emphasize that, in its opinion, even if this new extension had not taken place it would be entitled to require a compensation for the distortion of competition, or to eventually order the aid recovery, from the undertaking which owns the aided business at the moment of its decision. It should be noted that measures of reorganization in companies whose activities have benefited from aid cannot be opposed to requirements of a compensatory justification or to potential recovery orders from the Commission when it is possible to prove that the activities in question

have benefited from State aid, since it would be a way to circumvent the full application of Articles 92 and 93 of the EEC Treaty which require that incompatible aids be recovered from their beneficiaries to re-establish the conditions of competition distorted by such aids. If this were not the case, there would be a new category of aids which would never be subject to reimbursement, because Member States through mechanism available in national law, premeditatedly utilized, could deprive the rules on State aids established in the EEC Treaty of any effectiveness (see Judgement of the Court of Justice of the European Communities of 21 March 1991 — Case C-303/88 *Eni-Lanerossi*).

In connection with the aided transfer to CMF of CMF SUD's core business, the Commission finally notes that the possibility for the existence of aid in any case results from the fact that the disposal has not taken place as a result of an open, unconditional bidding procedure, but as a result of a decision of the sole shareholder to transfer part of its business to another wholly-owned subsidiary at conditions in principle unilaterally fixed. In these circumstances the new company must be viewed for all the purposes as the successor of the former ailing company.

Concerning the third of the abovementioned new State aid elements, the guaranteeing of the total debts of an undertaking represents an act to which a market economy investor would not and cannot normally be inclined. A shareholder normally benefits from a limited liability in a joint-stock company.

Article 2362 of the Italian civil code imposes unlimited responsibility on the sole shareholder of a company when it becomes insolvent; consequently, it might be argued that the guaranteeing of the totality of CMF SUD liabilities should be considered as the fulfilling of a general obligation required by Italian law.

However, due to this provision, a sole shareholder acting under normal market economy circumstances would try to limit the unlimited responsibility by deciding to let a company go into liquidation from the moment it cannot reasonably expect a restoration of its financial viability, and at a moment where its assets/liabilities position still shows a surplus.

Given the long-standing bad financial performance of CMF SUD since its creation and the acute financial unbalances that took place since 1989, it can be reasonably concluded that a private investor acting under normal market economy circumstances would have earlier become acquainted that non-satisfactory return could be drawn from CMF SUD. In these circumstances, it appears also likely that, in view of the unlimited responsibility applicable to the case at issue, a market economy investor would have avoided such a deterioration and would have put CMF SUD into liquidation as soon as its financial difficulties increased.

Consequently, guaranteeing all obligations and promising full financial support to CMF SUD during its voluntary liquidation cannot be seen as the fulfilment of a general obligation required by the Italian civil code but rather the granting of State aid.

The problem concerning the compatibility with Community law of the principle of the guarantee laid down in Article 2362 of the Italian civil code has been addressed in an agreement between the Commission and the Italian government.

#### IV

The new aid elements to CMF SUD and CMF involved in the terms of the reorganization of the former company constitute aid within the meaning of Article 92 (1) of the EEC Treaty.

The creation of CMF with the corresponding capital contribution, as well as the subsequent sale to it of CMF SUD's core business at an aided value grants the former company a financial advantage for continuing operations that otherwise would have gone bankrupt. On the other hand, the guaranteeing of CMF SUD's total liabilities will save it from an immediate bankruptcy and will allow it to continue operating until completion of its liquidation.

The new aid elements to CMF SUD and CMF were decided by the Italian authorities in breach of Article 93 (3) of the EEC Treaty, in that they were not notified in advance to the Commission at the planning stage and must therefore be deemed to be unlawful.

Like the aids previously covered under the Article 93 (2) inquiry, these new aids distort or threaten to distort competition within the common market to the detriment of competitors, since CMF SUD and CMF carry out engineering projects in Italy and all over the world in direct competition with other undertakings.

Article 92 (2) and (3), foresees certain types of aid that are compatible with the common market.

Article 92 (2) is not applicable to the aid measures in question as they do not have a social character, nor are they granted to individual consumers; nor do the aid measures make good damage caused by natural disasters.

Article 92 (3) (b) of the EEC Treaty is not applicable as the aid elements are not given to promote the execution of an important project of common interest, nor are they to remedy a serious disturbance in the Italian economy. Nor have the Italian authorities invoked this derogation.

Articles 92 (3) (a) and 92 (3) (c) of the EEC Treaty allow for aid to be granted to specific areas where the standard of living is abnormally low or where there is serious underemployment. Also to areas where the granting of the aid, whilst favouring the development of the concerned territory and activities, does not affect trading conditions to an extent contrary to the common interest.

Although CMF SUD's plant at Pignataro Maggiore is located at a region eligible for aid under Article 92 (3) (a), the aid measures in question do not form part of a regional programme nor are they aimed at the creation of either employment or to assist capital investment. Instead, they constitute *ad hoc* interventions enabling CMF SUD's core business and other remaining activities to continue in operation when otherwise they would have likely gone bankrupt.

Turning to the Article 92 (3) (c) derogation in respect of aid to facilitate the development of certain economic activities where such aid does not adversely affect trading condition to an extent contrary to the common interest, the new aid elements to CMF and CMF SUD here under assessment constitute operating assistance, since, as previously mentioned, their granting does not appear to be linked to the realization of any particular investment. The operating character of an aid disqualifies it in principle for the application of this exception to incompatibility.

Furthermore, it should be noted that the distortion of competition created by operating assistance in the construction and engineering sectors appears particularly serious in view of the special characteristics of these markets. The work load of companies operating in these sectors is normally acquired in a limited number of open tenders where the price offered is the key orientative indicator for placing the orders between the companies fulfilling the required specifications. These projects are normally pluri-annual and their budget is generally of substantial worth.

In these circumstances, operating aid granted or offered to inefficient companies in these sectors may provoke irreversible negative effects contrary to the common interest if the beneficiaries utilize the assistance to undercut the prices offered in open tenders by the non-aided competitors, depriving the latter of substantial volumes of workload and, consequently, seriously

endangering the viability of efficient companies. This effect, whose damage cannot be remedied *a posteriori*, is absolutely inadmissible from the Community point of view.

However, the Commission does not oppose that aid of the kind here at issue be granted for the restructuring of firms in difficulties, if it fulfils certain strict conditions.

Aid to firms in difficulties carries the greatest risk of transferring unemployment and industrial problems from one Member State to the other. It acts as a means of preserving the *status quo* by preventing forces at work in the market economy from their normal consequences in terms of disappearance of uncompetitive firms in their process of adaptation to changing competition conditions. For these reasons, the Commission takes a strict approach in assessing its compatibility with the common market.

In particular, the Commission requires that such public interventions be strictly conditional on the implementation by the beneficiaries of a sound restructuring or conversion programme capable of restoring their long-term viability, without having adverse effects on competition conditions from the Community point of view. In the latter respect, the Commission normally expects that the beneficiary closes down unprofitable production lines and/or eliminates idle capacities.

In the case at issue here, the new aid elements form part of the programme of restructuring for the activities of the original CMF SUD. Consequently, the compatibility of these new aid elements to CMF SUD and CMF, as well as of the aids which were covered by the initial opening of the procedure and its subsequent extension, must be assessed all together in the light of the same restructuring programme for the activities of CMF SUD and CMF that the Commission is currently discussing with the Italian authorities.

#### V

Accordingly, the Commission hereby informs the Italian Government that it has decided to extend the procedure C 6/92 to cover the following new State aid elements in favour of CMF SUD SpA and CMF SpA: the provision of capital to the newly created CMF SpA; the aided transfer to CMF SpA of CMF SUD SpA's core business; and the guaranteeing of the total liabilities of CMF SUD SpA during its voluntary liquidation.

As part of the procedure, your authorities are hereby invited to present within one month of being notified of this letter, their comments as well as any other information they might consider relevant for the assessment of the new aid elements in question.

The Commission would point out that, should a negative final decision be taken subsequently on the aid elements covered by the inquiry, the Commission may require any unlawful aid that has been paid in breach of the procedural rules provided for in Article 93 (3) to be repaid<sup>(1)</sup>. The abolition of the aid would involve repayment, in accordance with the procedure and provisions of national law, in particular those relating to interest on arrears on State liabilities, with interest starting to run on the date on which the unlawful aid was granted. This measure is necessary in order to restore the *status quo ante*<sup>(2)</sup> by removing the financial benefits which the firms receiving the unlawful aid have improperly enjoyed since the date on which the aid was paid.

The Commission also requests the Italian Government to inform CMF SUD SpA and CMF SpA without delay of the extension of the procedure and of the fact that they might have to repay any aid improperly received.

Finally the Commission hereby informs the Italian Government that it will publish a copy of this letter in the *Official Journal of the European Communities*, giving the other Member States and third interested parties notice to submit their comments.<sup>3</sup>

The Commission hereby gives the other Member States and other parties concerned, notice to submit their comments on the measures in question within one month of the date of publication of this notice to:

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

*The comments will be communicated to Italy.*

<sup>(1)</sup> See Judgments in Case 70/72 Kohlegesetz, [1973] ECR 813 and Case 310/85 Deufil [1987] ECR 901. See also Commission communication in the OJ No C 318, 24. 11. 1983, p. 3.

<sup>(2)</sup> See Judgment in Case C-142/87 Tubemeuse.

# COURT OF JUSTICE

## COURT OF JUSTICE

**Action brought on 12 August 1993 by PIA HiFi Vertriebs GmbH against the Commission of the European Communities**

**(Case C-388/93)**

(93/C 282/05)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 12 August 1993 by PIA HiFi Vertriebs GmbH, represented by Michael Boemke, of Messrs Bollmann, Kiesselbach & Partner, 42 Neuer Wall, D-20354 Hamburg, with an address for service in Luxembourg at the Chambers of Marc Loesch, 11 rue Goethe.

The applicant claims that the Court should:

declare void the Commission's decision of 9 June 1993 (K(93) 1447) on claims for a refund of anti-dumping duties levied on imports of certain compact discs originating in Japan.

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

The applicant observes that, pursuant to Article 2 (1) of Regulation (EEC) No 2423/88, the fixing of an anti-dumping duty on a product is justifiable only if the product in question is dumped and its release for free

circulation in the Community causes injury. If one of those two conditions is not satisfied, the levying of anti-dumping duties is unlawful. In the applicant's view the defendant is not entitled straightaway to refuse to consider the question whether imports effected by an importer, taken individually, may cause injury to the Community industry if the importer adduces evidence that this is not so. The applicant considers that the fact that the defendant is effectively dispensed from having to examine such cases in detail amounts to levying anti-dumping duties on dumped products on the sole ground that such products are imported, even where is no injury.

The applicant points out further that the refund procedure referred to in Article 16 of Regulation (EEC) No 2423/88 provides solely for comparison between the amount actually received by the importer and the effective dumping margin. According to the applicant, in view of the circumstances of the present case, it should also be considered, during the procedure relating to its application for reimbursement, whether the imports which it has effected could in any event have caused injury to Community manufacturers.

The applicant considers that the imports which it effected could in no way be classed among the factors causing injury to the Community industry listed in Article 4 (2) of Regulation (EEC) No 2423/88.

## COURT OF FIRST INSTANCE

**Action brought on 9 August 1993 by Yvonne Dornonville de la Cour against the Commission of the European Communities**

**(Case T-498/93)**

(93/C 282/06)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 9 August 1993 by Yvonne Dornonville de la Cour, Skodsborg (Denmark), represented by Jesper Rothe, Advokat, Copenhagen, with an address for service in Luxembourg at the Chambers of Alex Schmitt, 62 avenue Guillaume.

The applicant claims that the Court should:

1. annul the defendant's decision of 10 August 1992 whereby the defendant terminated payment of child allowance to the applicant;
2. order the defendant to pay to the applicant the child allowance as referred to in the defendant's letter of 26 October 1989 (notice of amendment No 3) for the period up to 31 August 1992;

3. (a) principally:

order the defendant to acknowledge that with effect from and as of 1 September 1992 the applicant continues to be entitled, on the one hand, to child allowance pursuant to Article 2 (5) of Annex VII to the Staff Regulations for

Officials of the European Communities for so long as the applicant's daughter is prevented by serious illness or invalidity from earning a livelihood, and, on the other, to double child allowance pursuant to Article 67 (3) of the Staff Regulations in so far as medical documents establish that the applicant's daughter is suffering from a mental or physical handicap which involves the applicant in heavy expenditure;

(b) in the alternative:

order the defendant to acknowledge that with effect from and as of 1 September 1992 and for the following 20 months the applicant is entitled to the child allowance referred to in the principal claim set out above but subject to a reduction by 1/20 each month in the amount of that child allowance;

4. order the defendant to pay to the applicant interest corresponding to a rate of 8 % a year reckoned on each separate amount that should have been paid in accordance with claim 2 and claim 3 above, calculated for the period from which each separate amount became due until such payment is made;
5. order the defendant to pay the applicant compensation for non-material damage of Bfrs 200 000;
6. order the defendant to pay the costs.

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

In her first claim, the applicant is contesting the Commission's decision of 10 August 1992 to the effect that the applicant, who had received child allowance from 1 December 1988 and double child allowance from 1 September 1989 for her mentally handicapped daughter, should not receive those allowances after 1 August 1992.

In support of her claim for annulment of that decision, the applicant contends that she does meet the conditions set out in Article 2 (5) of Annex VII to the Staff Regulations for payment of the child allowance irrespective of the child's age and also the conditions in Article 67 (3) of the Staff Regulations for payment of a double child allowance. No other conditions apply than those set out in those provisions. In particular, the scope of Article 2 (5) of Annex VII cannot be confined to cases where the invalidity or the serious illness existed already when the child was 18 or 26, respectively. There is no indication that the allowance should depend on whether the child has been covered by a national insurance scheme for a certain period.

The applicant further claims that the principles of the protection of acquired rights and of the protection of legitimate expectations have been disregarded by the contested decision. The Commission has paid the applicant child allowance for almost four years and it cannot change its past interpretation of Article 2 (5) of Annex VII where the situation and all relevant circumstances have remained unchanged.

In support of her second claim, the applicant contends that by its decision of 26 October 1989 the Commission granted the applicant child allowance up until 31 August 1992. The Commission is bound by its own decision and the principles of the protection of acquired rights and of the protection of legitimate expectations preclude the Commission from abrogating its earlier decision without warning and with retroactive effect.

As regards her third claim, the applicant contends that she is entitled to child allowance and to the double child allowance in so far as the objective criteria in Article 2 (5) of Annex VII and Article 67 (3) of the Staff Regulations are met. The Commission must therefore in the normal way take a decision on whether those criteria are fulfilled. In support of this claim too, the applicant relies on the principles of the protection of acquired rights and the protection of legitimate expectations. In support of her claim in the alternative, the applicant states that since the Commission cannot stop the child allowance without warning, she has a right to appropriate transitional measures.

With regard to her claim for compensation for non-material damage, the applicant states that by stopping payment of child allowance without warning and with retroactive effect from the beginning of the month in which notice was given, the Commission created major problems and caused uncertainty, anxiety and major disruption to the position and circumstances of herself and her daughter.

**Action brought on 7 September 1993 by Paulo Branco against the Court of Auditors of the European Communities**

**(Case T-507/93)**

(93/C 282/07)

An action against the Court of Auditors of the European Communities was brought before the Court of First Instance of the European Communities on 7 September 1993 by Paulo Branco, residing at 15 avenue des Gaulois, BP 17, B-1040 Brussels, represented by Dieter Grozinger de Rosnay, assisted by David Travessa

Mendes, both of the Luxembourg Bar, with an address for service in Luxembourg at their Chambers, 6 avenue du X Septembre.

to be promoted and the absence of staff reports for the period in question.

The applicant claims that the Court should:

- annul the decision of 25 March 1993 excluding him from the list of persons eligible for promotion,
- annul the promotions procedure for 1993 at the Court of Auditors in so far as it concerns the exclusion of the applicant,
- order the procedure, in so far as it concerns the applicant, to be carried out again in accordance with normal practice and the Staff Regulations and that the applicant be included as eligible for promotion,
- order the defendant to pay compensation equivalent to ECU 100 000 for direct and certain non-material damage caused by it and not reparable merely by the applicant's belated inclusion in the procedures for 1992 and 1993,
- order protective measures,
- order the defendant to pay the costs.

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

The applicant, an official in Grade A 7 at the Court of Auditors, challenges the decision not to include him among the candidates promoted in the promotions procedure for 1993.

The present action follows on from Case T-45/93 in which he is also the applicant.

The applicant claims that the contested decision is vitiated by misuse of powers and breach of the principles of non-discrimination and proper administration.

In support, he refers to the attempts at marginalization of which he was the victim, the manipulation of dates enabling officials without the required length of service

**Action brought on 10 September 1993 by Richco Commodities Ltd against the Commission of the European Communities**

(Case T-509/93)

(93/C 282/08)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 10 September 1993 by Richco Commodities Ltd, whose registered office is at Hamilton (Bermuda), represented by P. V. F. Bos and J. G. A. van Zuuren of the Rotterdam Bar, with an address for service in Luxembourg at the Chambers of M. Loesch, 8 rue Zithe.

The applicant claims that the Court should:

- declare the claim admissible,
- annul the Commission's decision, or action, of 12 July 1993 with regard to the State Export-Import Bank of Ukraine, reference SG93D/11703 <sup>(1)</sup>,
- order the Commission to pay the costs.

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

- Breach of Council Decision 91/658/EEC and of Commission Regulation (EEC) No 1897/92. In deciding that the contract price was too high, the Commission ignored the fact that June 1993 prices were substantially higher than those of July 1993, given that delivery was required before July 1993, or at least before 5 July 1993. Moreover, Richco had been the only bidder.
- Inadequate grounds: the Commission's decision stated that the agreed price was well above the world-market level but failed to provide evidence of this.

<sup>(1)</sup> Letter in which Mr Steichen, Member of the Commission, informs the bank that the Commission cannot approve the contract agreed between Richco and Ukrimpex for the delivery of wheat as part of the loan agreement between the Community and the bank.

**Action brought on 14 September 1993 by Dieter Obst  
against the Commission of the European Communities**

(Case T-510/93)

(93/C 282/09)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 14 September 1993 by Dieter Obst of Everberg (Belgium), represented by Heinz-Jörg Moritz, Rechtsanwalt, Bonn, with an address for service in Luxembourg at the latter's address, 25a rue de Schönfels, L-8151 Bridel.

The applicant claims that the Court should:

- annul the implied refusal of his application of 14 July 1992 for the position advertised in the defendant's vacancy notice of 30 June 1992 entitled *Sommaire des avis de vacance — Résumé des tâches — COM/056/92 A 3/A 4/A 5 VI-OICVP.3*,
- order the defendant to notify the applicant, within a time limit to be fixed by the Court, of its reasoned decision regarding the application referred to in the foregoing paragraph,
- order the defendant to pay the costs.

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

The applicant claims that he has never been informed of any decision regarding his application, submitted in due form and within the period stipulated, for the position advertised in the vacancy notice of 30 June 1992 under reference number COM/056/92 A 3/A 4/A 5 VI-OICVP.3, and subsequently re-advertised on 7 January 1993 with the additional wording 'Re-publication', for a 'Chef d'unité, chargé de diriger et coordonner les travaux de l'unité "Inspections et contrôles dans le secteur vétérinaire" au sein de l'Office CEE d'inspections et de contrôles vétérinaire et phytosanitaires', and that he has received no substantive response to his complaint of 12 February 1993. The applicant complains of infringements of the second sentence of Article 90 (1) and of the fourth sentence of Article 90 (2) of the Staff Regulations, that is to say, breach of official duty and infringement of the requirements of proper administration and the rule of law.

**Action brought on 16th September 1993 by Mikael  
Suenson against the Commission of the European  
Communities**

(Case T-515/93)

(93/C 282/10)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 16th September 1993 by Mikael Suenson, represented by Luc Govaert of the Brussels Bar with an address for service in Luxembourg at the office of Lucy Dupong, 14a rue des Bains.

The applicant claims that the Court should:

- declare the present application admissible and founded,
- annul the list of those considered most deserving of promotion to the grade A 4 that was published on 11 September 1993,
- condemn the Commission to pay the applicant compensation in whatever amount the Court considers appropriate,
- condemn the Commission to pay the applicant's costs.

*Contentions and main arguments adduced in support:*

The applicant attacks his non-inclusion in the list of those considered most deserving for promotion to the Grade A 4 that was published in September 1992.

He states that in the reply to his complaint, the Commission admitted implicitly, that one of the officials included in the list, who was not promoted, had a staff report that was inferior to his.

The applicant holds therefore that the Commission has already admitted that, in the light of the Article 45 of the Staff Regulations, his name should have been included in the list of those considered most deserving for promotion to the Grade A 4 in 1992 ahead of that of the other official who was included but was not promoted.

## II

*(Preparatory Acts)*

## COMMISSION

**Proposal for a Council Regulation (EEC) on the part-financing by the Community of remote sensing checks and amending Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes**

(93/C 282/11)

COM(93) 455 final

*(Submitted by the Commission on 30 September 1993)*

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas Article 8 (4) of Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes (1) provides that Member States may use remote sensing to determine the area of agricultural parcels, identify crops and verify their status;

Whereas, on account of its novelty and complexity, remote sensing is giving rise to further major expenditure which should be covered partly out of Community funds in order to enable all Member States who so wish to update their control techniques more rapidly; whereas, however, provision should be made for part-financing which is limited in time;

Whereas the part-financing must be granted only for techniques applied and may not result in the charging to the Community budget of purely administrative expenditure which, under Article 1 (4) of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (2), is chargeable to national budgets;

Whereas provision should be made for the Commission to be consulted on the technical and financial aspects of projects drawn up by the Member States and on the award of contracts in order to ensure satisfactory uniformity between Member States;

Whereas since the funds available are limited, it is essential that provision be made for their fair distribution among the Member States on the basis of a maximum rate of part-financing and a distribution scale;

Whereas experience has shown that negotiations centralized at Community level, for the purchase of the necessary satellite pictures, and the joint management of archive pictures, open up opportunities which are unavailable to individual Member States;

Whereas remote sensing is undergoing constant development; whereas, moreover, the Member States' requirements regarding the control of agricultural areas have not yet all been identified, expressed or met; whereas provision should be made therefore for specific tests related to control requirements to be financed;

Whereas it is essential, for the satisfactory management of the funds, to have currency exchange rates which remain fixed throughout the budget year;

Whereas steps should be taken to eliminate all ambiguity in Article 10 (1) of Regulation (EEC) No 3508/92 between investment expenditure linked with the establishment of the integrated system and the costs of the annual checks carried out by aerial or satellite remote sensing,

(1) OJ No L 355, 5. 12. 1992, p. 1.

(2) OJ No L 94, 28. 4. 1970, p. 13.



HAS ADOPTED THIS REGULATION:

*Article 1*

1. The Community may contribute, towards the costs incurred by the Member States, in response to an annual request to the Commission, for the use of aerial or satellite remote sensing during checks on agricultural areas pursuant to Article 8 (1) of Regulation (EEC) No 729/70.

Without prejudice to Article 1 (4) of that Regulation, for the purposes of this Regulation 'technical costs' means the costs of:

- acquiring satellite pictures or aerial photographs,
- the photo interpretation of the above,
- the processing of documents or the use of techniques for locating parcels shown in applications for assistance for the purpose of surveying the areas under crops and measuring the areas declared.

2. The part-financing referred to in this Article may only be granted by calendar year for a period of five consecutive years as from the date of entry into force of this Regulation. It shall be granted within the limit of the appropriations allocated for this purpose in the Community budget and may not exceed 50 % of the actual expenditure incurred by the Member State concerned in respect of the relevant budget year.

The appropriations available shall be distributed among the Member States in accordance with the scale shown in the Annex, less, where appropriate, the costs and work expenditure referred to in Article 2 of this Regulation. Appropriations for which application has not been made may be used again in accordance with Article 2, or redistributed, without taking into account the distribution scale, among the Member States which satisfy the requirements of this Regulation.

3. The grant of part-financing shall be conditional on:

- the presentation of a declaration of intent from the Member State to be sent before a date to be determined by the Commission, prior to 1 January of the budget year concerned,
- the submission before 15 January of a specification setting out in detail the work for which part-financing is requested. The Commission may request that changes be made to it,
- the consultation of the Commission before 31 March, on the award of the contract, and on a budget estimate. Irrespective of the form given to this

contract by the Member State, the Commission's consent to part-financing must be renewed annually.

In all three cases a negative opinion on the part of the Commission or failure to consult within the prescribed period shall mean that part-financing will be refused. The Commission may itself propose a specification to those Member States that desire it. In which case, it is considered as approved.

4. Community payment shall be made upon submission of supporting documents. These shall comprise at least the principal components of the agreement between the Member State and the supplier or suppliers of services as well as the corresponding proof of payment. In order to be eligible for reimbursement, proof of payment must reach the Commission at the latest on 15 June of the year following the budget year concerned.

5. The Commission may, on receipt of a duly substantiated request from a Member State, advance all or part of the amounts covering the annual payments referred to in the preceding paragraph.

6. The conversion into national currency of the amounts expressed in ecus shall be made by applying the exchange rate in force on the first working day of the calendar year concerned, as published in the C series of the *Official Journal of the European Communities*.

*Article 2*

The Commission may acquire and supply free of charge to the control agencies, or to suppliers of services authorized by those agencies to represent them, the satellite pictures required for the checks, the list of which shall be agreed with the Member State in accordance with the specification referred to in Article 1 (3). The Commission shall continue to own the pictures supplied and shall recover them on completion of the work. It may also see to it that work is carried out on perfecting the technique and working methods for checking agricultural areas by remote sensing.

*Article 3*

The Community part-financing provided for in this Regulation, in the areas referred to in Articles 1 and 2, may not be aggregated with the financial contribution provided for in other Regulations, in particular:

- Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes,

- Council Regulation (EEC) No 307/91 of 4 February 1991 on reinforcing the monitoring of certain expenditure chargeable to the Guarantee Section of the European Agricultural Guidance and Guarantee Fund <sup>(1)</sup>.

*Article 4*

The Commission shall adopt detailed rules for the application of this Regulation in accordance with the procedure laid down in Article 13 of Regulation (EEC) No 729/70.

*Article 5*

In Article 10 (1) of Regulation (EEC) No 3508/92, the words 'and for the acquisition of aerial photographs or

satellite pictures and the analysis thereof' are hereby deleted.

*Article 6*

This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Communities*. It shall apply with effect from 1 January 1994. However, for expenditure incurred by the Member States before the entry into force of this Regulation, the old version of Article 10 of Regulation (EEC) No 3508/92 shall continue to apply.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

---

<sup>(1)</sup> OJ No L 37, 9. 2. 1991, p. 5.