of last instance in matters of trade and industry] of 16 September 1988, which was received at the Court Registry on 12 December 1988, for a preliminary ruling in the case of Kühne en Heitz BV, Rotterdam v. Produktschap voor Vee en Vlees [Cattle and Meat Board], Rijswijk, on the following questions:

1. Is the first subparagraph of Article 2 (2) of Regulation (EEC) No 3602/82 (1) valid?

2. If so, what criteria should be used to determine the natural proportion of muscle tissue and bone in the entire cuts, referred to in the provision cited in question 1?

(1) OJ No L 376, 31. 12. 1982, p. 23.

Action brought on 14 December 1988 by Società Finanziaria Siderurgica Finsider SpA against the Commission of the European Communities and Italsider SpA (both in liquidation)

(Case 363/88)

(89/C 25/08)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 14 December 1988 by Società Finanziaria Siderurgica Finsider SpA, in liquidation, whose registered office is in Rome, and by Italsider SpA, in liquidation, whose registered office is in Genoa, both represented by Cesare Grassetti and Guido Greco, Advocates at the Corte di Cassazione, Rome, with an address for service in Luxembourg at the Chambers of Nico Schäffer, 12 avenue de la Porte Neuve.

The applicants claim that the Court should:

1. Declare the Commission, on behalf of the European Communities, to be liable for the damage incurred by the applicants on account of the reduced deliveries of products in categories Ia, Ib and II on the national market in the years 1984, 1985 and 1986;

2. Order the Commission, on behalf of the European Communities, to pay compensation for the damage in the amounts shown in the calculations set out in the application (1), or to pay such greater or lesser sum as the Court shall consider appropriate;

3. Order the Commission, on behalf of the European Communities, to pay interest on those amounts running from the date of the judgment establishing liability;

4. Order the defendant to bear the costs.

Contentions and main arguments adduced in support:

The application seeks compensation for the damage caused by the conduct of the Commission, which, by its acts and omissions, allowed quantities exceeding the traditional patterns to be delivered on the Italian market, governed by Article 15 B of Commission Decision No 234/84/ECSC (2). The Commission's conduct was illegal because it manifestly, systematically and deliberately evaded the provisions of Article 15 B, thereby infringing in particular the obligation in the second sentence of Article 15 B (4) (namely the obligation to request the undertakings in question to correct imbalances found to have arisen) throughout the period during which the provision was in force (the three years from 1984 to 1988). In so far as it is relevant, the Commission's conduct with regard to the measure referred to in Article 15 B (5) is also unlawful; the Commission's failure to avail itself of that provision constitutes a misuse of powers and a breach of the principle of legitimate expectation. The Commission also acted illegally in the exercise of its discretion under Article 10 (1) of the various general decisions on production quotas, which brought about a situation in which quantities considerably exceeded the traditional patterns in the subcategory for small welded tubes (ex category Ia). The damage to Italian undertakings corresponds to the margin by which the delivered quantities of products in categories Ia, Ib and II, originating from within the Community, exceeded the traditional patterns. The damage was sustained exclusively by the undertakings in the Finsider group and by Falck SpA since they are the only Italian manufacturers of products in categories Ia, Ib and II.

(1) The total damage incurred by the applicants is made up of the following totals:

Category	1984	1985
Ia + II:	Lit 53 992 620 000	Lit 68 725 260 000
Ib:	Lit 21 387 600 000	Lit 14 278 680 000

Category	1986
Ia + II:	Lit 104 299 920 000
Ib:	Lit 14 167 620 000

(2) OJ No L 29, 1. 2. 1984, p. 1.

Action brought on 14 December 1988 by the Acciaierie e Ferriere Lombarde Falck SpA against the Commission of the European Communities

(Case 364/88)

(89/C 25/09)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 14 December 1988 by

Acciaierie e Ferriere Lombarde Falck SpA, whose registered office is in Milan, represented by Cesare Grassetti and Guido Greco, Advocates at the Corte di Cassazione, Rome, with an address for service in Luxembourg at the Chambers of Nico Schäffer, 12 avenue de la Porte Neuve.

The applicant claims that the Court should:

1. Declare the Commission, on behalf of the European Communities, to be liable for the damage incurred by the applicant on account of the reduced deliveries of products in categories Ia, Ib and II on the national market in the years 1984, 1985 and 1986;

2. Order the Commission, on behalf of the European Communities, to pay compensation for the damage, in the amounts shown in the calculations set out in the application (1), or to pay such greater or lesser sums as the Court shall consider appropriate;

3. Order the Commission, on behalf of the European Communities, to pay interest on those amounts, running from the date of the judgment establishing liability;

4. Order the defendant to bear the costs.

Contentions and main arguments adduced in support:

The contentions and main arguments are similar to those in Case 363/88.

(1) The total damage incurred by the applicant is made up of the following totals:

Category	1984	1985
Ia + II:	Lit 4 468 860 000	Lit 5 100 240 000
Ib:	Lit 1 669 200 000	Lit 868 920 000
Category	1986	
Ia + II:	Lit 15 454 020 000	
Ib:	Lit 1 649 200 000	

Reference for a preliminary ruling by the Examining Magistrate of the Tribunal de Grande Instance [Regional Court], Nice, by an order of 12 December 1988 in the criminal proceedings brought against Jean-Marie Delattre

(Case 369/88)

(89/C 25/10)

Reference has been made to the Court of Justice of the European Communities by an order of the Examining Magistrate of the Tribunal de Grande Instance, Nice, of 12 December 1988, which was received at the Court Registry on 20 December 1988, for a preliminary ruling in the criminal proceedings against Jean-Marie Delattre on the following questions:

Question No 1

(i) Should the word 'maladie' [disease/illness] as used in the Directives mentioned below be interpreted uniformly in accordance with a Community definition, or is each Member State at liberty to implement the Directives mentioned below by giving its own definition of the word?

(ii) If the word 'maladie' has a Community meaning, can product 'A', which is designated as a food product in one Member State and whose advertisements refer to natural physiological functions (digestion, elimination of bile), be designated as a medicinal product in another Member State although a Community Directive harmonizing the rules applicable to product 'B' (natural mineral waters, Directive 80/777/EEC (1) states expressly that those natural physiological functions must not be regarded as illnesses?

(iii) If the word 'maladie' has a Community definition, can references to sensations or states such as hunger, heaviness in the legs, tiredness and/or itching ('a sensation felt on the skin giving rise to an urge to scratch') be regarded as references to 'maladies'?

(iv) If, however, each Member State is at liberty to determine its own definition of 'maladie', may a Member State freely block the sale of a food product which is lawfully controlled and freely sold in another Member State on the ground that the said product is for a 'maladie humaine' [human illness or disease] (according to the meaning given to that concept by the Member State), without first having requested the opinion of the committees set up to ensure that national provisions do not conflict among themselves or with Community law, in particular the opinion of the Committee for Proprietary Medicinal Products (established by Directive 75/319/EEC), the Standing Committee for Foodstuffs (Decision 69/414/EEC), the Committee for Cosmetic Products (Directive 76/768/EEC) and/or the Standing Committee on Technical Standards and Regulations (Directives 83/189/EEC and 88/182/EEC)?

Question No 2

(i) Given the judgment in Case 227/82, *van Bennekom*, [1983] ECR 3883, in particular paragraph 19 thereof, may a Member State restrict the free importation and marketing of a food product extracted from a plant in common consumption (garlic), lawfully manufactured, controlled and sold in another Member State, on the ground that the external form of the product (pill, capsule, tablet) is medicinal although that same external form is

(1) OJ No L 229, 1985, p. 1.