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I

(Information)

COMMISSION

ECU (1)

4 January 1985

(85/C 3/01)

Currency amount for one unit:

Belgian and Luxembourg franc con.	44,6730	United States dollar	0,705624
Belgian and Luxembourg franc fin.	44,8248	Swiss franc	1,85064
German mark	2,23048	Spanish peseta	123,096
Dutch guilder	2,51872	Swedish krona	6,37002
Pound sterling	0,612255	Norwegian krone	6,44235
Danish krone	7,96649	Canadian dollar	0,931282
French franc	6,82691	Portuguese escudo	120,309
Italian lira	1369,97	Austrian schilling	15,6648
Irish pound	0,714556	Finnish markka	4,65571
Greek drachma	90,8138	Japanese yen	178,114
		Australian dollar	0,865796
		New Zealand dollar	1,49086

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

Users of the service should do as follows:

— call telex number Brussels 23789;

— give their own telex code;

— type the code 'cccc' which puts the automatic system into operation resulting in the transmission of the conversion rates of the ECU;

— the transmission should not be interrupted until the end of the message, which is marked by the code 'ffff'.

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

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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 amended by Regulation (EEC) No 2626/84 (OJ No L 247, 16. 9. 1984, p. 1).
Council Decision 80/1184/EEC of 18 December 1980 (Convention of Lomé) (OJ No L 349, 23. 12. 1980, p. 34).
Commission Decision No 3334/80/ECSC of 19 December 1980 (OJ No L 349, 23. 12. 1980, p. 27).
Financial Regulation of 16 December 1980 concerning the general budget of the European Communities (OJ No L 345, 20. 12. 1980, p. 23).
Council Regulation (EEC) No 3308/80 of 16 December 1980 (OJ No L 345, 20. 12. 1980, p. 1).
Decision of the Council of Governors of the European Investment Bank of 13 May 1981 (OJ No L 311, 30. 10. 1981, p. 1).

Communication of decisions under sundry tendering procedures in agriculture

(See notice in OJ No L 360, 21. 12. 1982, p. 43)

(85/C 3/02)

Standing invitation to tender	Weekly invitation to tender	
	Date of Commission Decision	Maximum refund
Commission Regulation (EEC) No 1446/84 of 25 May 1984 opening an invitation to tender for the refund for the export of common wheat to countries of zone IV c) and d) (OJ No L 140, 26. 5. 1984, p. 9)	—	No tender received
Commission Regulation (EEC) No 1447/84 of 25 May 1984 opening an invitation to tender for the export of common wheat to countries of zones I, II a), III, IV a) and b), V, VI, VII, the German Democratic Republic and the Iberian Peninsula (OJ No L 140, 26. 5. 1984, p. 12)	3. 1. 1985	15,00 ECU/tonne
Commission Regulation (EEC) No 1604/84 of 6 June 1984 opening an invitation to tender for the refund for the export of barley to countries of zones I, II a), III, IV, V, VI, VII a), VII c), the German Democratic Republic and the Iberian Peninsula (OJ No L 152, 8. 6. 1984, p. 36)	3. 1. 1985	38,98 ECU/tonne
Commission Regulation (EEC) No 3402/84 of 3 December 1984 on an invitation to tender for the refund on export of wholly milled long grain rice to certain third countries (OJ No L 314, 4. 12. 1984, p. 17)	3. 1. 1985	Tenders rejected

Commission communication on the cumulation of aids for different purposes

(85/C 3/03)

In its communication of 21 December 1978 on regional aid schemes, the Commission announced its intention of examining with experts from the Member States the question of the cumulation of regional aids with other aids.

Having completed its examination, the Commission has reached the conclusion that significant cases of cumulation of aids should be notified to it to enable it to control the cumulative intensity of the aids and assess their effect on competition and trade between Member States. It therefore proposes to the Member States, under Article 93 (1) of the EEC Treaty, that they henceforth notify significant cases of cumulation of aids in accordance with the rules set out below.

I. Notification of significant cases of cumulation of aids

1. The Member States notify in advance to the Commission significant cases of cumulation of aids, which are defined as those projects where the investment exceeds 12 million ECU or where the cumulative intensity of the aids exceeds 25 % net grant equivalent.

2. Cumulation of aids is defined as the application of more than one aid scheme to a given investment project.

   An investment programme undertaken by a firm is defined as all investments in fixed assets (whether or not in the same place) necessary to carry out the project.

II. Derogations

The following cases will be exempt from notification:

1. cases where the investment does not exceed 3 million ECU, whatever the cumulative intensity of the aid;

2. cases where the cumulative intensity of the aid does not exceed 10 % net grant equivalent, whatever the scale of the investment;

3. cases where the intensity of all the aids to be granted for the investment project remains below the ceiling for any one of the aid schemes under which aid is being awarded to the project, which ceiling has been laid down or approved by the Commission either in a Community framework or by individual decision.

   This exemption is without prejudice to the obligation of Member States to remain within the ceiling for each individual scheme.

   The Commission will send each Member State a particular list of the schemes concerned and the relevant ceilings.

4. The Commission may withdraw these exemptions in cases where it finds evidence of distortions of competition.

III. **Legal basis**

Notification is made on the basis of Article 93 (3) of the EEC Treaty. The Commission is therefore informed in sufficient time to enable it to submit its comments before the proposed aids are put into effect.

The Commission will make a determination on cases notified to it within a maximum of 30 working days.

IV. **Aids concerned**

1. The aids to be taken into account for the purposes of the notification thresholds laid down in sections I and II are all aids towards expenditure on fixed assets, whatever form (for example, capital grants, interest subsidies, tax concessions, relief of social security contributions) the aids may take. The main types of aid schemes concerned are:
   - — general aids,
   - — regional aids,
   - — sectoral aids,
   - — aids for small and medium-sized firms,
   - — aids for research, development and innovation,
   - — aids for energy conservation and environmental protection.

2. Where investment aid is supplemented by aid for staff training and the latter is prompted by and thus directly linked to the investment, the two types of aid cannot be divorced in considering the intensity of the aid. Such training aid is therefore also taken into account for the purposes of the notification thresholds laid down in sections I and II.

3. So that the Commission is aware of the full circumstances surrounding notified cases of cumulation of aids, it is also informed of any aid granted to rescue a firm in difficulties or for creating jobs or for marketing — although these aids do not count towards the notification thresholds — and of any other financial intervention by the State or other public authorities where the intervention can be regarded as aid or there is a presumption that it is aid.

   The Commission is also informed of aids granted of the types listed in sub-section IV.1 above where they are not directly linked to the notified investment project.

V. **Technical guidelines**

To facilitate the administrative work involved and ensure consistency in the calculation methods used, the Commission will send the Member States technical guidelines explaining, among other things, how the intensity of the various aids is to be calculated.

VI. **Entry into force and special rules**

The notification rules come into force on 1 March 1985. They do not apply to the products listed in Annex II to the EEC Treaty. They are also without prejudice to the rule contained in point 12 of the Principles of Coordination of regional aid schemes [1] and to the Member States' obligations under existing or future provisions laid down by the Commission in decisions on particular general, regional or sectoral aid schemes to notify individual cases [2].

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[1] This rule concerns cases where several different regional aids are awarded for a given investment project.

[2] For example, all awards of aids to the steel industry (ECSC) are already notified to the Commission.

COURT OF JUSTICE

JUDGMENT OF THE COURT

(Fifth Chamber)

of 11 December 1984

in Case 134/83 (reference for a preliminary ruling made by the Arrondissementsrechtbank, Arnhem): Criminal proceedings against J. G. Abbink (1)

(Temporary importation of motor-vehicles — Exemption from import duty)

(85/C 3/04)

(Language of the Case: Dutch)

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

In Case 134/83: reference to the Court under Article 177 of the EEC Treaty by the Arrondissementsrechtbank (District Court), Arnhem, for a preliminary ruling in the criminal proceedings pending before that court against J. G. Abbink, Rijnsburg, Netherlands — on the interpretation of the provisions of the EEC Treaty relating to the free movement of goods with regard to national legislation making it an offence for residents of a Member State to use motor-vehicles admitted under rules on temporary importation and consequently imported free of import duty even if such temporary use is made without any intention of evading that tax — the Court (Fifth Chamber), composed of O. Due, President of Chamber, C. Kakouris, U. Everling, Y. Galmot and R. Joliet, Judges; P. VerLoren van Themaat, Advocate General; H. A. Rühl, Principal Administrator, acting for the Registrar, gave a judgment on 11 December 1984, the operative part of which is as follows:

The provisions of the EEC Treaty on the free movement of goods do not preclude national legislation from making it an offence for persons resident within the territory of a Member State to use motor vehicles to which a temporary-importation procedure has been applied and which are therefore exempt from payment of value-added tax, even if that legislation makes no exception for cases where such use is made without any intention of evading that tax.

(1) OJ No C 210, 6. 8. 1983.

Action brought on 28 November 1984 by Metalgoi SpA against the Commission of the European Communities

(Case 282/84)

(85/C 3/05)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 28 November 1984 by Metalgoi SpA, whose registered office is at 184 Viale S. Eufemia, Brescia, in the person of the Chairman of its Board of Directors, Vincenzo Goi, represented by Mario Siragusa and Laura Maria Odorisio of the Rome Bar, with an address for service in Luxembourg at the Chambers of Jean Hoss, 15, Côte d'Eich.

The applicant claims that the Court should:

— Declare void Decision No SG/(84)D/13683 of the Commission of the European Communities dated 22 October 1984.

— Refer the matter back to the Commission of the European Communities in order to

  — increase the production quotas and the part of those quotas to be delivered within the common market fixed for Metalgoi SpA to such extent as may be just.

— The applicant also asks for costs and damages.

Contentions and main arguments adduced in support:

The contested decision, according to which the applicant undertaking does not satisfy the conditions laid down in Article 10 (2) of Decision No 234/84/ECSC (1) and which consequently confirms the quotas fixed for the second quarter of 1984, is vitiated for the following reasons:

— infringement of essential procedural requirement (lack of or inadequate statement of the reasons on which it is based);

— misuse of powers;

— manifest disregard of Articles 15 and 18 of the ECSC Treaty and of Article 10 (2) of Decision No 234/84/ECSC: the Commission wrongly failed to take into account Metalgoi's 'special'

(1) Commission Decision No 234/84/ECSC of 31 January 1984 on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry (OJ No L 29, 1. 2. 1984, p. 1).

products; it did not consider it possible that a producer could, with reference to particular circumstances, be regarded as a consumer and the owner of rolls; it did not consider the possibility of the consumer's obtaining supplies from other undertakings as a real possibility, but rather as a theoretical possibility; it did not relate the percentage of 50 % to the general concept of special products but linked it with the various conditions laid down in the second paragraph of the abovementioned Article 10 (2), although without allowing those conditions to be applied together in a case where the special products of the same undertaking meet more than one of those conditions.

Reference for a preliminary ruling by the Cour d'Appel de Douai (Deuxième Chambre Civile) by judgment of that court of 29 November 1984 in the case of SA Rousseau Wilmot, in receivership v. Organic

(Case 295/84)

(85/C 3/06)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Cour d'Appel, Deuxième Chambre Civile (Second Civil Division of the Court of Appeal), Douai of 29 November 1984, which was received at the Court Registry on 10 December 1984, for a preliminary ruling in the case of SA Rousseau Wilmot, in receivership v. Organic in the following question:

Must Article 33 of the Sixth Council Directive (77/388/EEC) (1), which provides that 'the provisions of this Directive shall not prevent a Member State from maintaining or introducing taxes on insurance contracts, taxes on betting and gambling, excise duties, stamp duties and, more generally, any taxes, duties or charges which cannot be characterized as turnover taxes', be interpreted as making inapplicable legislation of a Member State introducing a solidarity levy on undertakings in the private and public sectors, calculated on the basis of their total annual turnover before tax, the proceeds of which are used in financing the sickness and maternity benefit scheme for self-employed persons in sectors other than agriculture and the old-age pension scheme for business and self-employed tradesmen?

(1) OJ No L 145, 13. 7. 1977, p. 1.

Reference for a preliminary ruling by the Cour du Travail, Mons, by judgment of that court of 5 December 1984 in the case of Antonio Sinatra v. Fonds National de Retraite des Ouvriers Mineurs

(Case 296/84)

(85/C 3/07)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Cour du Travail [Labour Court], Mons, of 5 December 1984, which was received at the Court Registry on 10 December 1984, for a preliminary ruling in the case of Antonino Sinatra v. Fonds National de Retraite des Ouvriers Mineurs [Mine-Workers' National Pension Fund] on the following question:

'Where the legislation of a Member State of the Community makes payment of invalidity benefit under a special scheme for mine-workers conditional upon the completion of a specified minimum period of insurance, although the amount of such benefit is not determined by the total length of the periods of insurance (there being no recourse to aggregation), and contains a rule against overlapping with benefits acquired under foreign legislation, must Regulation (EEC) No 1408/71, particularly Articles 12, 45 and 46 be interpreted as meaning that the competent institution of that Member State must, in the case of a worker who is covered by that legislation but also receives an apportioned pension by virtue of a general scheme provided for by the legislation of another Member State, compare the Community benefit, obtained on the basis of Article 46 (1) without application of the national rules against overlapping and on Article 46 (3) which fixes as a ceiling the highest theoretical amount of pension, with the benefit obtained exclusively by application of the national legislation, including the rule against overlapping with benefits acquired under foreign legislation, in order to discover which system is more favourable to the migrant worker (yielding the highest pension)?'

Reference for a preliminary ruling by the Pretura di Latina by judgment of that court of 3 December 1984 in the case of Paolo Iorio v. Azienda Autonoma delle Ferrovie dello Stato

(Case 298/84)

(85/C 3/08)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Pretura di Latina [Magistrate's Court, Latina] of 3 December 1984, which was received at the Court Registry on 12 December 1984, for a preliminary ruling in the case of Paolo Iorio, residing at Pomezia, Rome, and Azienda Autonoma delle Ferrovie dello Stato [State Railways], having its registered office in Rome, on the following questions:

1. Are the provisions of Decree No 753/80 of the President of the Republic and Article 3 (2) of the Conditions and Tariffs of the State Railways contrary to Article 48 (3) (b) of the Treaty of Rome?

2. Does the principle of freedom of movement contained in the aforesaid article of the EEC Treaty also apply within each Member State of the European Community?

3. Does that principle preclude the administrative authority, in this instance the Minister for Transport or the Regional Director of the State Railways, from restricting the freedom of movement of workers within the country by creating train services admitting only passengers with a ticket for a journey of more than a certain minimum number of kilometres?

4. Is the situation under consideration contrary to any other provision of the Treaties establishing the European Communities or to regulations or other acts having the force of law within the Italian Republic?

Removal from the Registrar of Case 218/84 (1)

(85/C 3/09)

By order of 28 November 1984 the Court of Justice of the European Communities ordered the removal from the Register of Case 218/84: Badische Stahlwerke AG v. Commission of the European Communities.

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(1) OJ No C 242, 12. 9. 1984.

II

(Preparatory Acts)

COMMISSION

Draft Commission recommendation on the establishment of preferential treatment for debts in respect of the levies referred to in Articles 49 and 50 of the Treaty

COM(84) 652 final

(Submitted by the Commission to the Council on 5 December 1984)

(85/C 3/10)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 49 and 50 thereof,

Having regard to the opinion of the Council,

Having regard to the opinion of the European Parliament,

Whereas the power to impose levies on the production of coal and steel and to determine the mode of assessment and collection, conferred on the High Authority by Articles 49 and 50 of the Treaty, involves the power to take all necessary steps to ensure collection of the levies, *inter alia* in cases where the person liable is insolvent;

Whereas the Court of Justice of the European Communities, in its judgment of 17 May 1983 in Case 168/82 (1), affirmed the importance of the fiscal power thus conferred on the High Authority to enable it to perform as effectively as possible the task entrusted to it by the Treaty;

Whereas in all the Member States, with the exception of Denmark, tax debts due to the State enjoy preferential treatment in enforcement proceedings involving competition between creditors; whereas to ensure the effective recovery of levies, which are the principal source of revenue of the ECSC, on a basis of parity with Member States' tax debts, debts due in respect of levies should be given the same preferential treatment;

Whereas the existence, in some Member States, of several ranks of tax preference means that it is necessary to choose, from among the various national taxes, that with which ECSC levies are to be equated; whereas a reference to a tax common to all the Member States is desirable in order that such reference may have the same meaning in all national laws; whereas value added tax satisfies this condition;

Whereas it appears necessary that the preferential treatment of ECSC levies should be of sufficient duration and uniformity throughout the Community to enable the Commission to exercise its preferential right with equal effectiveness in all Member States;

Whereas the surcharges for delay provided for in Article 50 (3) of the Treaty form an integral part of the tax debt due to the ECSC;

Whereas the Commission must be able to exercise its preferential right in proceedings involving competition between creditors still in progress at the date of implementation of this recommendation, in order to ensure the most extensive possible recovery of debts arising from the application of levies in the years preceding the adoption of the recommendation, without prejudice to the rights of other creditors of the person liable which are considered vested under national law;

Whereas by virtue of Article 50 (2) of the Treaty, the mode of assessment and collection of the levies is to be determined by a general decision of the High Authority taken after consulting the Council; whereas under the last paragraph of Article 14, where the High Authority is empowered to take a decision, it may confine itself to making a recommendation; whereas that legal instrument appears the most appropriate to the method chosen, which consists in extending to ECSC levies the treatment applied in each Member State's legal system to its own tax debts,

(1) [1983] ECR 1681.

HAS ADOPTED THIS RECOMMENDATION:

Article 1

Those Member States which confer on tax debts due to the State preferential treatment in respect of all or part of the debtor's assets shall, in all cases of competition between creditors provided for by their national laws, confer the same preferential treatment on debts arising from the application of the levies referred to in Articles 49 and 50 of the Treaty.

Article 2

Those Member States in which tax debts due to the State enjoy general or special preference of a different rank depending on the tax involved shall confer on debts arising from the application of ECSC levies general or special preference of the same rank as that conferred by the law of each of those States on debts in respect of value added tax.

Article 3

The preferential treatment referred to in Articles 1 and 2 shall continue until the debts in respect of levies are time-barred.

The preferential treatment shall extend to the amount of the principal of the levy plus the surcharges for delay provided for in Article 50 (3) of the ECSC Treaty and Article 6 of High Authority Decision No 3/52 of 23 December 1952 [1].

Article 4

The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this recommendation not later than ..... [2]. They shall forthwith inform the Commission thereof.

The Member States shall provide that Articles 1, 2 and 3 are to be applied to recovery proceedings in progress on the date of implementation of this recommendation.

Article 5

This recommendation is addressed to the Member States.

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[1] OJ of the ECSC No 1, 30. 12. 1952, p. 4.

[2] Date to be inserted, being one year after the date of adoption of the recommendation.

NOTICE

The indexes of the *Official Journal of the European Communities* have been produced since 1 January 1984 on the basis of the *Eurovoc Thesaurus*. The *Eurovoc Thesaurus* contains a list of standardized terms covering the various fields of Community language in a controlled vocabulary.

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