Information on the Court of Justice of the European Communities

1978 – I

INFORMATION ON THE COURT OF JUSTICE

OF THE

EUROPEAN COMMUNITIES

No. I

1978

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for the judicial year 1977 to 1978

(order of precedence)

H. KUTSCHER, President

M. SØRENSEN, President of Second Chamber

G. REISCHL, First Advocate General

G. BOSCO, President of First Chamber

A. M. DONNER, Judge

J. MERTENS DE WILMARS, Judge

P. PESCATORE, Judge

H. MAYRAS, Advocate General

J.-P. WARNER, Advocate General

LORD MACKENZIE STUART, Judge

A. O'KEEFFE, Judge

F. CAPOTORTI, Advocate General

A. TOUFFAIT, Judge

A. VAN HOUTTE, Registrar

COMPOSITION OF CHAMBERS

First Chamber

President:	G. BOSCO
Judges:	A. M. DONNER
	J. MERTENS DE WILMARS
	A. O'KEEFFE
Advocates General:	H. MAYRAS
	J.-P. WARNER

Second Chamber

President:	M. SØRENSEN
Judges:	P. PESCATORE
	LORD MACKENZIE STUART
	A. TOUFFAIT
Advocates General:	G. REISCHL
	F. CAPOTORTI

J U D G M E N T S

of the

COURT OF JUSTICE

of the

EUROPEAN COMMUNITIES

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

19 January 1978

Caisse Primaire d'Assurance Maladie d'Eure-et-Loir v A. Recq

Case 84/77

1. Social security for migrant workers - National scheme applicable to all residents - Application to a national of another Member State - Community rules - Benefit - Grant - Condition - Status as employed person - Definition with regard to British legislation - Criterion - Payment of social security contributions
(Regulation No. 1408/71, Art. 1 (a) (ii) and Annex V)

2. Social security for migrant workers - Community rules - Employed person - Insurance periods completed under the legislation of another Member State - Acquisition of a right - Accrued rights - Taking into account
(Regulation No. 1408/71, Art. 18)

1. A national of a Member State who, in another Member State, has been subject to a social security scheme which is applicable to all residents can benefit from the provisions of Regulation No. 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community only if he can be identified as an employed person within the meaning of Article 1 (a) (ii) of that regulation.

   As regards the United Kingdom in particular, in the absence of any other criterion, such identification depends by virtue of Annex V to that regulation on whether he was required to pay social security contributions as an employed person.

2. Rights acquired by a person who can be identified as a worker within the meaning of Article 1 (a) (ii) of Regulation No. 1408/71 during his residence in a Member State must be taken into account by any other Member State as if they were periods required for the acquisition of a right under its own legislation.

N o t e

The respondent in the main proceedings, Mrs Tessier, finished her schooling in France in 1973 and resided in Great Britain from 3 October 1973 to 30 April 1974 where she was employed in a family as an au pair girl and where she took evening classes. During this period she was entitled to the cover provided by the National Health Service.

On returning to France Mrs Tessier registered as unemployed and applied for French sickness insurance benefits for treatment given in France. The responsible French sickness fund refused to grant the benefits sought on the grounds that having completed her studies Mrs Tessier was no longer entitled in right of her father nor in her own right since she could not show that she had completed the necessary number of hours of employment or that she could be considered a migrant worker.

The matter was brought before the French Cour de Cassation which referred questions for a preliminary ruling asking:

"1. Whether a national of a Member State who, while residing in the territory of another Member State for the purposes of working there au pair and, at the same time, of following a part-time course of study, receives in that State social security benefits in kind, is a migrant worker within the meaning of Article 1 of Regulation No. 1408/71.

2. Whether the rights acquired by such a national during his stay must be taken into account by any other Member State as being relevant for the purpose of the periods laid down for the acquisition of a right under its own legislation".

According to the wording of Article 2 of Regulation No. 1408/71 the regulation is applicable in particular to workers who are or have been subject to the legislation of one or more Member States and who are nationals of one of the Member States.

Under Article 1 of the regulation "worker" means inter alia any person who is "compulsorily insured for one or more of the contingencies covered by the branches of social security dealt with in this regulation, under a social security scheme for all residents or for the whole working population".

As regards the United Kingdom the Act of Accession lays down that "all persons required to pay contributions as employed workers shall be regarded as workers". Therefore in Great Britain the applicability of Regulation No. 1408/71 to a national of a Member State depends on whether that person can be "identified" as an employed person.

It is for the competent national authorities to establish whether contributions have or have not been paid in a given case.

In reply to the questions referred by the French Cour de Cassation the Court of Justice ruled:

A national of a Member State who, in another Member State, was subject to a social security scheme which is applicable to all residents can benefit from the provisions of Regulation No. 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community only if he can be identified as an employed person within the meaning of Article 1 (a) (ii) of that regulation, it being understood that with regard to the United Kingdom in particular in the absence of any other criterion the identification depends in the terms of Annex V to that regulation on whether he was obliged to pay social security contributions as an employed person.

Rights acquired by a person who can be identified as a worker within the meaning of Article 1 (a) (ii) of Regulation No. 1408/71 during his residence in a Member State must be taken into account by any other Member State as though they were periods required for the acquisition of a right under its own legislation.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

24 January 1978

Openbaar Ministerie of the Kingdom of the Netherlands v

Jacobus Philippus van Tiggele

Case 82/77

1. Quantitative restrictions - Measures having equivalent effect - Prohibition - Criteria
(EEC Treaty, Art. 30)

2. Quantitative restrictions - Measures having equivalent effect - Fixed minimum price - Application without distinction to domestic products and imported products - Lower cost price of imported products - Not to be reflected in the selling price to consumers - Prohibition - Exemption from fixed minimum price and temporary nature of its application - Lack of justification
(EEC Treaty, Art. 30)

3. Aids granted by States - Minimum prices - Fixing by public authorities of minimum retail prices - Cost borne exclusively by consumers - Not State aid
(EEC Treaty, Art. 92)

1. For the purposes of the prohibition of measures having an effect equivalent to a quantitative restriction it is sufficient that such measures are likely to hinder, directly or indirectly, actually or potentially, imports between Member States.

2. A fixed minimum price which, although applicable without distinction to domestic products and imported products, is capable of having an adverse effect on the marketing of the latter must be considered as a measure having an effect equivalent to a quantitative restriction in so far as it prevents their lower cost price from being reflected in the retail selling price. This conclusion must be drawn even though the competent authority is empowered to grant exemptions from the fixed minimum price and though this power is freely applied to imported products, since the requirement that importers and traders must comply with the administrative formalities inherent in such a system may in itself constitute a measure having an effect equivalent to a quantitative restriction. The temporary nature of the application of the fixed minimum prices is not a factor capable of justifying such a measure since it is incompatible on other grounds with Article 30 of the Treaty.

3. Article 92 of the EEC Treaty must be interpreted as meaning that the fixing by a public authority of minimum retail prices for a product at the exclusive expense of consumers does not constitute an aid granted by a State within the meaning of that article.

N o t e

The main action consists in criminal proceedings brought against a wine and spirits merchant who is accused of having sold alcoholic drinks at prices lower than the minimum prices fixed by the Production Board for Spirits (Produktschap voor Gedistilleerde Dranken).

The rules adopted by the Production Board for Spirits had established a system of minimum prices for domestic retail which were fixed differently for each category of spirits.

The first question referred to the Court of Justice by the Gerechtshof, Amsterdam, asks whether Articles 30 to 37 of the EEC Treaty must be interpreted as meaning that the prohibition which they lay down refers to price rules of the type in question. Article 30 prohibits, in trade between Member States, all measures having an effect equivalent to a quantitative restriction. For the purposes of this prohibition, it is sufficient for the measures in question to be capable of hindering directly or indirectly, actually or potentially, imports between Member States.

It is necessary to acknowledge that not all national provisions regulating the selling prices of both national and imported products or all fixing of the profit margin at a specific amount constitute measures having an effect equivalent to a quantitative restriction on imports but this may not be so in certain specific cases.

Where a minimum price fixed at a specific date applies without distinction to both national and imported products that price might handicap the sale of the imported products in so far as it prevents their lower cost price from being reflected in the selling price to the consumer. It is therefore a measure having an effect equivalent to a quantitative restriction.

In reply to the question which was referred to the Court, the Court held that Article 30 of the EEC Treaty must be interpreted as meaning that the fixing by a national authority of a minimum retail price which is fixed at a specific amount and applicable without distinction to both national and imported products constitutes, in conditions such as those laid down by the regulation adopted by the Production Board for Spirits on 17 December 1975, a measure having an effect equivalent to a quantitative restriction on imports which is prohibited by that article.

The second question asks in substance whether Articles 92 to 94 of the EEC Treaty must be interpreted as meaning that price rules like those in question constitute an aid granted by the State within the meaning of those articles.

Any aid granted by a State which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the Common Market. The Court replied to the question which had been submitted by holding that Article 92 of the EEC Treaty must be understood as meaning that the fixing by a public authority of minimum retail prices for a product which are borne exclusively by the consumer does not constitute a State aid within the meaning of that article.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

26 January 1978

Groupement d'Intérêt Economique "Union Malt" and Others v Commission

Joined Cases 44 to 51/77

1. Agriculture - Common organization of the markets - Cereals - Export refund - Advance fixing - Aim
(Commission Regulation No. 413/76)

2. Agriculture - Common organization of the markets - Cereals - Export refunds - Advance payment - Aim
(Regulation No. 441/69 of the Council)

3. Agriculture - Common organization of the markets - Cereals - Export refund - Advance fixing - Advance payment - Established right of the holder of an export licence - Scope and limits
(Commission Regulation No. 413/76; Regulation No. 441/69 of the Council)

1. The aim of the rules relating to the advance fixing of the refunds within the meaning of Regulation No. 413/76 is to enable Community exporters to be certain of the amount of the refund for which they may qualify when the exports under consideration take place, in so far as they are actually carried out before the expiry of the period of validity of the licence.

2. As is shown, in particular, by the second, third and fifth recitals, the system for advance payment of refunds set up by Regulation No. 441/69 seeks to ensure, both as regards Community basic products intended for export to third countries after processing and for Community products intended for export unprocessed, equality of treatment with products originating in third countries and allowed to benefit from the inward processing arrangements and from the bonded warehouse or free zone procedures.

3. The rules governing advance-fixing within the meaning of Regulation No. 413/76 and those covering the advance payment of export refunds within the meaning of Regulation No. 441/69 pursue separate aims and cannot be assimilated to one another. Although the holder of an export licence fixing the refund in advance has an established right to receive the refund fixed in advance when the export is carried out, in so far as it actually takes place under the conditions laid down by the Community rules, he cannot acquire from the issue of that licence a right to have the system for advance payment of the refund applied to him in

accordance with the rules in force on the day of issue of the licence. In particular, the special objectives of the system for advance payment of refunds and the reason for its existence cannot justify its being used as if its principal aim were to overrun the period of validity of the export licences. The period of validity of those licences is fixed in the context of the relevant rules and may only be amended under the conditions provided for therein, without regard for the rules relating to the advance payment of refunds.

N o t e

Eight French malt-producing undertakings have lodged an application under the second paragraph of Article 215 of the EEC Treaty requesting an order that the Commission should pay damages as compensation for the loss which the applicants claim to have suffered on account of Commission Regulation No. 413/76 amending the periods during which cereal products such as malt and barley, which come under the bonded warehouse procedure for unprocessed goods or the bonded warehouse procedure for processing goods under customs control, may remain under customs control. It is established that these products come within a common organization of the agricultural markets and it is necessary to recall certain principles of those markets in order to understand this case.

So far as trade arrangements with third countries are concerned these products are subject to the submission of an export licence which, in the case of malt, remains valid for a period of 11 months from the month following the month of issue; the regulation also provides for the grant of a refund covering the difference between the prices ruling on the Community market and the rates or prices ruling on the world market, so as to enable these products to be exported outside the Community. Provision is also made for the possibility of advance fixing of the refund and the regulation lays down that the refund applicable at the date on which the licence was applied for may be applied to exports to be carried out during the period of validity of the licence. The Community rules provide moreover that in the case of certain products, including malt and barley, the refund thus fixed in advance may be paid to Community exporters before the actual export of the product from the geographical territory of the Community or, in the case of processed products, even before they are processed.

An exporter may also place the product under customs control before the expiry of the export licence. There are two procedures for placing the product under customs control: the procedure for processing goods under customs control for basic products intended for export after processing, limiting the period during which they may remain under customs control to the outstanding period of validity of the export licence, and the bonded warehouse or free zone procedure for products intended for export without processing, in which case the period during which they may remain under customs control is fixed at six months.

The regulation in question, Regulation No. 413/76, reduced these periods and this prompted the applicants to lodge the present application.

They maintain that by reducing the periods without providing for any transitional measures for agreements which have been firmly entered into and are being implemented at the date on which that regulation came into force, the regulation amended retroactively and unforeseeably the financial conditions on the basis of which these undertakings were entered into and thus caused the applicants damage for which compensation is payable. The applicants have inter alia suffered losses on the difference between the refunds and the compensatory amounts.

The applicants conclude that, by the regulation in question, the Commission has violated the principles of the observance of established rights, of the protection of the legitimate expectation of traders and of the principle that legislation should not have retroactive effects, and has thus been in flagrant breach of a superior rule of law for the protection of individuals.

The Court, analysing the objectives of the regulation, held that the rules on advance fixing and pre-financing of the refunds do not form a whole and that the rights established under one system are not applicable to the other system. It follows that it is impossible to accept the allegation put forward by the applicants that these established rights have been infringed.

Moreover, the system established by the regulation in question must be applied so as to prevent, in particular in the case of export licences valid for a long period, the opportunity which this system gives an exporter from resulting in an exorbitant advantage, having regard to the need to provide a balance between Community products and products from third countries, and from leading to serious difficulties in trade with third countries.

For this purpose, the Community rules had already provided that the periods could be reduced and that provision had already been used in the market in milk.

It is an established fact that since the year 1972/1973 the number of export licences fixing the refund in advance which had been printed for malt had considerably increased each year and that this was creating difficulties in international trade in these products.

The economic groups concerned could therefore not have been unaware at the date on which they entered into their undertakings for the year 1975/1976 that the maintenance of the system of pre-financing of the refund, applied in accordance with the periods laid down by the 1969 regulation, involved very serious difficulties in trade with third countries and constituted an increasingly heavy financial burden for the Community.

The reduction in the periods during which the products may remain under customs control does not therefore appear to have been unforeseeable to such an extent that it violated the principle of the protection of the legitimate expectation of the traders concerned.

It does not follow that by adopting Regulation No. 413/76 the Commission was in flagrant breach of a superior rule of law for the protection of individuals such as to make the Community liable to the applicants.

Consequently, the Court dismissed the applications as inadmissible and ordered the applicants to pay the costs.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

31 January 1978

Fratelli Zerbone S.N.C. v

Amministrazione delle Finanze dello Stato

Case 94/77

1. Community law - Direct effect - Obligations of Member States (EEC Treaty, Art. 189)

2. Agriculture - Conjunctural policy - Monetary compensatory amounts - Applicability to contracts concluded before 19 December 1971 - Criteria - Determination - Legislative powers of Member States - None (Regulation (EEC) No. 974/71 of the Council; Regulation (EEC) No. 1013/71 of the Commission, Art. 4 (2); Regulation (EEC) No. 2887/71 of the Commission)

3. Agriculture - Conjunctural policy - Monetary compensatory amounts - Applicability to contracts concluded before 19 December 1971 - Article 4 (2) of Regulation No. 1013/71 - Interpretation - Jurisdiction of national court

4. Agriculture - Conjunctural policy - Monetary compensatory amounts - Applicability to contracts concluded before 19 December 1971 - Article 4 (2) of Regulation No. 1013/71 - Application - Contract providing for payment by opening of irrevocable documentary credit

5. Agriculture - Conjunctural policy - Monetary compensatory amounts - Application - Conditions - Checking - Reference to day of importation or exportation (Regulation (EEC) No. 974/71 of the Council, Art. 1)

1. The direct application of a Community regulation means that its entry into force and its application in favour of or against those subject to it are independent of any measure adopting it into national law. By reason of the obligations imposed on them by the Treaty Member States must not impede the direct effect of regulations or other rules of Community law.

The scrupulous observation of this duty is an indispensable requisite for the simultaneous and uniform application of Community regulations throughout the whole of the Community. Accordingly Member States must not adopt or allow national institutions with a legislative power to adopt a measure by which the Community nature of a legal rule and the consequences which arise from it are concealed from the persons concerned.

Although it is true that in the event of difficulty of interpretation the national administration may be led to adopt detailed rules for the application of a Community regulation and at the same time to clarify any doubts raised, it can do so only in so far as it complies with the provisions of Community law and the national authorities cannot issue binding rules of interpretation.

2. Regulations Nos. 974/71 and 1013/71, as amended by Regulation No. 2887/71, do not permit Member States to adopt provisions laying down specific criteria concerning the applicability or otherwise of compensatory amounts to contracts concluded before 19 December 1971 in order to "allow the contract to be executed under the conditions which would have existed had the monetary measures referred to in Article 1 of Regulation (EEC) No. 974/71 not been taken", as provided for under Article 4 (2) of Regulation No. 1013/71.

3. The provisions of Article 4 (2) of Regulation No. 1013/71 are fully effective in themselves and must therefore be interpreted as leaving it to the courts of the Member State concerned to decide whether the contract was executed under the conditions which would have existed in the absence of the monetary measures referred to in Article 1 of Regulation No. 974/71.

4. As regards the application of Article 4 (2) of Regulation No. 1013/71 the question is whether the contract was executed under the conditions which would have existed in the absence of the monetary measures which led to the introduction of the monetary compensatory amounts. Where the contract provides for payment by the opening of an irrevocable documentary credit the answer must depend on the nature of the arrangements agreed between the importer and the issuing bank and these may in turn depend on the provisions of the local law applicable to them. Where the credit is to be opened for a sum in foreign currency (as, in this case, dollars), the crucial date will be that upon which the rate of exchange determining the amount of the importer's liability to the issuing bank was applicable.

5. For the purpose of determining whether the conditions for applying and determining monetary compensatory amounts are fulfilled reference must be made in respect of each commercial transaction (importation or exportation) to the day of the importation or exportation.

N o t e

The Italian company Fratelli Zerbone, the plaintiff in the main action, imported consignments of frozen beef and veal on the bone from third countries under contracts of sale concluded before 19 December 1971.

For those imports, payment for which was agreed and effected in US dollars by means of a series of irrevocable credits in favour of the exporter-supplier, it was required to pay the sum of Lit 140 771 735 by way of monetary compensatory amounts.

As it considered that request for payment to be unjustified, the Zerbone Company asked the Tribunale di Genova to rule that it was not bound to pay the said sum.

In its application it makes the following submissions:

The claim made by the Italian administration is based on Article 16 of Decree Law No. 661 of 15 November 1972, which incorporated the Community rules on that matter, and on Article 20 of the same Decree Law, which in fact represents an innovation in relation to the Community rules and is therefore incompatible with them;

The imposition of monetary compensatory amounts on imports into Italy from third countries is unjustified having regard to the devaluation of the Italian lira in relation to the other Community currencies.

For its part, the Italian Finance Administration, the defendant in the main action, maintains that the national law is a necessary implementing rule for the application of Article 4 (2) of Regulation No. 1013/71 and is therefore compatible with the latter.

That dispute led the Tribunale di Genova to refer to the Court of Justice a series of questions for a preliminary ruling.

One group of questions concerns the validity of the levying of monetary compensatory amounts on imports into Italy at the period in question. As Italy accepted for its currency a rate of exchange which was higher than the limit of fluctuation authorized by the international rules, that is, by the Bretton Woods Agreement of 1945, it follows that the condition laid down for the application in Italy of the system of monetary compensatory amounts was satisfied in spite of the fact that, in relation to certain other currencies, the Italian lira has been devalued.

The Court ruled that the Commission therefore had jurisdiction to adopt in Regulation No. 2887/71 detailed rules for the application of Regulation No. 974/71 to Italy and to fix the monetary compensatory amounts applicable as regards Italy in Regulation No. 17/72 and the subsequent rules.

In reply to the question concerning the moment to which reference must be made in order to establish for each individual commercial transaction (import or export) whether the conditions for the application of the compensatory amounts and for the fixing of those amounts are satisfied, the Court ruled that for each individual commercial transaction reference must be made to the day on which importation or exportation takes place. The Tribunale di Genova also asked whether the Member States are authorized to promulgate rules having the force of law laying down specific criteria concerning the applicability or otherwise of monetary compensatory amounts to "earlier contracts" (those concluded before 19 December 1971).

After recalling that a regulation is binding in its entirety and directly applicable in all Member States and that the Member States are bound not to create obstacles to its direct effect, the Court ruled that:

1. Regulations Nos. 974/71 and 1013/71, as amended by Regulation No. 2887/71, do not permit the Member States to promulgate rules laying down specific criteria concerning the applicability or otherwise of compensatory amounts to contracts concluded before 19 December 1971 in order, as provided for under Article 4 (2) of Regulation No. 1013/71, to allow the contract to be executed under the conditions which would have existed had the monetary measures referred to in Article 1 of Regulation (EEC) No. 974/71 not been taken;

2. The rule contained in Article 4 (2) of Regulation No. 1013/71 is completely effective in itself and is therefore to be interpreted as having intended to leave it to the judicial authority of the Member State concerned to decide whether the contract was executed under the conditions which would have existed in the absence of the monetary measures referred to in Article 1 of Regulation No. 974/71.

As regards the questions concerning the interpretation of the words "the contract to be executed" contained in the Community provision in question and the effect of the opening of an irrevocable credit in favour of the exporter on the date of execution of the contract, the Court ruled that for the purposes of the application of Article 4 (2) of Regulation No. 1013/71 the essential question is whether in fact the contract was executed under the conditions which would have existed in the absence of the monetary measures which resulted in the introduction of the monetary compensatory amounts. Where the contract stipulates payment by the opening of an irrevocable documentary credit the reply must depend on the nature of the arrangements agreed between the importer and the issuing bank, which may in turn depend on the provisions of the local law which is applicable to them. Where the credit was to be opened for a sum in foreign currency (for example, as in this instance, in dollars) the decisive date will be that on which the rate of exchange was applied which fixed the amount of the importer's liability towards the issuing bank.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

1 February 1978

Miller International Schallplatten GmbH v
Commission of the European Communities

Case 19/77

1. Competition - Agreements - Clause prohibiting exports - Not permitted
(EEC Treaty, Art. 85 (1))

2. Competition - Agreements - Prohibition - Basis
(EEC Treaty, Art. 85)

3. Competition - Community rules - Infringements - Committed intentionally - Concept
(Regulation No. 17 of the Council, Art. 15)

4. Competition - Community rules - Infringement constituted by a prohibition on exports - Gravity - Penalty
(Regulation No. 17 of the Council, Art. 15)

1. By its very nature a clause prohibiting exports constitutes a restriction on competition, whether it is adopted at the instigation of the supplier or of the customer. The fact that resellers prefer to limit their commercial operations to more restricted markets, whether regional or national, cannot justify the formal adoption of clauses prohibiting exports, either in particular contracts or in conditions of sale, any more than the desire of the producer to wall of sections of the Common Market.

2. In prohibiting agreements which may affect trade between Member States and which have as their object or effect the restriction of competition Article 85 (1) of the Treaty does not require proof that such agreements have in fact appreciably affected such trade, which would moreover be difficult in the majority of cases to establish for legal purposes, but merely requires that it be established that such agreements are capable of having that effect.

3. An infringement of the Community rules on competition is considered to have been committed intentionally and in disregard of the provisions of the Treaty if the person concerned is aware that the act in question had as its object the restriction of competition. It is irrelevant to establish whether the person concerned also knew that he was infringing a provision of the Treaty. In this connexion the opinion of a legal adviser who was consulted by the person concerned does not constitute a mitigating factor.

4. The clauses prohibiting exports constitute a form of restriction on competition which by its very nature jeopardizes trade between Member States. Consequently, the Commission was entitled to consider that the infringement entailed a degree of gravity and to take this into account with regard to the provisions of Article 15 of Regulation No. 17.

N o t e

Miller brought an action against the decision of the Commission of 1 December 1976 adopted in the context of a procedure under Article 85 of the EEC Treaty, which found that prohibitions on the export of records, tapes and cassettes introduced by Miller into both an exclusive dealing agreement and its terms and conditions of sale infringed Article 85 (1) and fined that undertaking 70 000 units of account, that is, DM 256 200.

The applicant produces sound storage media (records, cassettes and tapes) which it sells principally on the German market, exporting only a limited amount of its production, partly to the countries of the Community and partly to third countries.

The greater part of its production consists of low-priced sound storage media and more than 40% is made up of records for children and young people.

The conduct of the applicant which has given rise to the contested decision is not disputed as regards the facts but the parties differ over the assessment of its effects and, therefore, of its gravity.

It is established that the applicant entered into an exclusive dealing agreement with the Strasbourg firm Sopholest for the sale of its products under the labels "Europe" and "Somerset" and that that agreement included a clause prohibiting the export of the range of Miller products from Alsace-Lorraine to other countries.

As regards purchasers residing in Germany there is a clause prohibiting the export of all records of that make. It is also established that the prices fixed by Miller for its German purchasers and those fixed for export are markedly different, the export prices being lower than those fixed for the wholesale trade.

The applicant alleges that, having regard to the small part which it plays in the market in sound storage media, to the nature of its production, which is mostly intended for a German-speaking public, and to the nature of its clientele, it is impossible for the said factors to have had any appreciable effect on trade between the Member States. The applicant concludes that it cannot be said to have infringed the provisions of Article 85 (1) of the Treaty.

The Court finds that by its very nature a clause prohibiting exports constitutes a restriction on competition, whether it is drawn up on the initiative of the supplier or on that of the customer and, therefore, even if it is assumed to be correct, the statement by Miller that the introduction of the prohibitions at issue was the result of the wishes of its co-contractors rather than of any unilateral and premeditated strategy on its part cannot exempt its conduct from the effect of the prohibitions contained in Article 85 (1) of the Treaty.

The Court examined, first, the effect on intra-Community trade of the prohibition on exports and concluded that, at the least, the existence of the clauses at issue aided Miller to maintain its policy of lowering export prices and that they were clearly capable of affecting trade between the Member States.

Miller also alleges that the Commission had to demonstrate that the clauses in question had an appreciable effect on intra-Community trade. That argument cannot be accepted since the Commission clearly established by reference to Miller's position in the market, the size of its production and the exports achieved and pricing policy implemented by it, that there was a real danger that trade between the Member States would be appreciably affected.

The Court considered, secondly, the alternative application relating to the fine. The applicant claimed that the fine of 70 000 units of account should be annulled or reduced. On examination of the file the Court found that the actions prohibited by the Treaty were taken deliberately and in disregard of the provisions of the latter. The Court also stated that Miller refused to produce its balance sheet, which prevented verification by the Court of its claims that the fine is an extremely heavy penalty for such an undertaking.

The Court therefore dismissed the action as unfounded and ordered the applicant to pay the costs.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

1 February 1978

Firma Johann Lührs v Hauptzollamt Hamburg-Jonas

Case 78/77

1. Measure adopted by an institution - Adoption foreseeable by a prudent and discriminating trader - Principle of legitimate expectation - Inapplicability

2. Agriculture - Common Agricultural Policy - Potatoes - Supply - Difficulties - Regulations Nos. 348/76 and 890/76 - Validity

3. Agriculture - Common Agricultural Policy - Potatoes - Exports to non-member countries - Tax - Conversion into national currency - Exchange rate applicable
(Regulations (EEC) Nos. 950/68, 475/75 and 348/76 of the Council)

1. If the adoption of a strict Community measure is to be foreseen by a prudent and discriminating trader, he cannot plead legitimate expectation in the event of that measure's being adopted.

2. Regulations Nos. 348/76 and 890/76 are valid.

3. In view of the uncertainties inherent in Council Regulation No. 348/76, for the purpose of converting the tax on exports into national currency, of the two exchange rates specified respectively in Regulation No. 950/68 of the Council and in Regulation No. 475/75 of the Council, the one should be applied which at the material time was the less onerous for the taxpayer concerned.

N o t e

The Finanzgericht (Finance Court) Hamburg referred to the Court certain questions relating to the validity and interpretation of Council Regulation No. 348/76 on measures to be taken owing to the difficulties affecting potato supplies and of Commission Regulation No. 890/76 providing for exemption in certain cases from tax on exports of potatoes.

The main action is between the Hauptzollamt Hamburg-Jonas and a potato dealer who exported 121 000 kilograms of potatoes to Sweden and was required under the regulation at issue to pay a charge of DM 108 258, the imposition of which he disputes.

The Court held that consideration of the question raised disclosed no factor of such a kind as to affect the validity of Regulations Nos. 348/76 and 890/76 and that in the light of the uncertainties inherent in Council Regulation No. 348/76 it is appropriate to apply to the conversion of the export charge into national currency the rate of exchange which, of those referred to by Regulation No. 950/68 of the Council and Council Regulation No. 475/75 respectively, was at the relevant period the least onerous for the trader.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

14 February 1978

United Brands Company and United Brands Continentaal B.V. v

Commission of the European Communities

'Chiquita Bananas'

Case 27/76

1. Competition - Dominant position - The relevant market - Delimitation - Criteria
(EEC Treaty, Art. 86)

2. Competition - Dominant position on the market - Concept
(EEC Treaty, Art. 86)

3. Competition - Dominant position - Factor affording evidence - Market share
(EEC Treaty, Art. 86)

4. Competition - Dominant position - Criteria for determining whether there is a dominant position - Profitability of the undertaking
(EEC Treaty, Art. 86)

5. Competition - Dominant position - Abuse - Distributors forbidden to resell
(EEC Treaty, Art. 86)

6. Competition - Dominant position for the purpose of marketing a product - Refusal to sell - Conditions - Abuse
(EEC Treaty, Arts. 3 (7) and 86)

7. Competition - Dominant position - Abuse - Elimination of a competitor - Whether trade between Member States affected - Trade affected to a negligible extent
(EEC Treaty, Art. 86)

8. Competition - Dominant position - Abuse - Charging discriminatory prices
(EEC Treaty, Art. 86)

9. Competition - Dominant position - Abuse - Unfair selling prices - Concept
(EEC Treaty, Art. 86)

1. The opportunities for competition under Article 86 of the Treaty must be considered having regard to the particular features of the product in question and with reference to a clearly defined geographic area in which it is marketed and where the conditions of competition are sufficiently homogeneous for the effect of the economic power of the undertaking concerned to be able to be evaluated. For the product to be regarded as forming a market which is sufficiently differentiated from other fruit markets it must be possible for it

to be singled out by such special features distinguishing it from other fruits that it is only to a limited extent interchangeable with them and is only exposed to their competition in a way that is hardly perceptible.

2. The dominant position referred to in Article 86 relates to a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers. In general a dominant position derives from a combination of several factors which, taken separately, are not necessarily determinative.

3. A trader can only be in a dominant position on the market for a product if he has succeeded in winning a large part of this market. However an undertaking does not have to have eliminated all opportunity for competition in order to be in a dominant position.

4. An undertaking's economic strength is not measured by its profitability; a reduced profit margin or even losses for a time are not incompatible with a dominant position, just as large profits may be compatible with a situation where there is effective competition. The fact that an undertaking's profitability is for a time moderate or non-existent must be considered in the light of the whole of that undertaking's operations.

5. The fact that an undertaking forbids its duly appointed distributors to resell the product in question in certain circumstances is an abuse of the dominant position since it limits markets to the prejudice of consumers and affects trade between Member States, in particular by partitioning national markets.

6. An undertaking in a dominant position for the purpose of marketing a product - which cashes in on the reputation of a brand name known to and valued by the consumers - cannot stop supplying a long standing customer who abides by regular commercial practice, if the orders placed by that customer are in no way out of the ordinary. Such conduct is inconsistent with the objectives laid down in Article 3 (f) of the Treaty, which are set out in detail in Article 86, especially in paragraphs (b) and (c), since the refusal to sell would limit markets to the prejudice of consumers and would amount to discrimination which might in the end eliminate a trading party from the relevant market.

7. If the occupier of a dominant position, established in the common market, aims at eliminating a competitor who is also established in the common market, it is immaterial whether this behaviour relates to trade between Member States once it has been shown that such elimination will have repercussions on the patterns of competition in the Common Market.

8. The policy of differing prices enabling UBC to apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, is an abuse of a dominant position.

9. Charging a price which is excessive because it has no reasonable relation to the economic value of the product supplied would be an abuse of a dominant position within the meaning of subparagraph (a) of Article 86; this excess could, inter alia, be determined objectively if it were possible for it to be calculated by making a comparison between the selling price of the product in question and its cost of production, which would disclose the amount of the profit margin.

N o t e

The Court of Justice of the European Communities has delivered its judgment in this action brought by the multinational company United Brands Company against the Commission of the European Communities.

The Commission criticized United Brands for having contravened the Community rules of competition while occupying a dominant position on the banana market in a substantial part of the Common Market:

By charging unfair prices;

By charging discriminatory prices, that is, dissimilar prices for equivalent transactions;

By forbidding its distributor/ripeners to resell bananas while still green;

By refusing to sell to a wholesaler.

The Commission imposed a fine of 1 000 000 (one million) units of account in respect of these infringements. United Brands brought an action against this decision before the Court of Justice.

The Court in its judgment (185 pages, amounting to 309 paragraphs in the decision) annulled only the Commission's finding in its decision that UBC had charged unfair prices (Article 1 (c)). It held that the Commission had not in fact adduced adequate legal proof of the facts and evaluations which formed the basis of its finding that United Brands was charging unfair prices. It blamed the Commission for not requiring United Brands to produce particulars of all the constituent elements of its production costs thereby enabling it to make a comparison which would have disclosed inter alia the amount of the profit margin. An excessive price, the Court held, is one which has no reasonable relation to the economic value of the product supplied; this excess can only be determined objectively by comparing the selling price of the product and its production costs and in particular by analysing an undertaking's cost structure; such an analysis was not carried out in this case.

Consequently the Court reduced the fine [from 1 000 000 units of account] to 850 000 (eight hundred and fifty thousand units of account). It ordered each party to bear its own costs.

The Court upheld the other three findings made by the Commission.

In a judgment with the form of which specialists in competition law are familiar the Court first of all lays down the criteria for determining the existence of a dominant position:

The relevant market;

From the standpoint of the product the Court finds that the banana market is a market which is sufficiently distinct from the other fresh fruit markets; "The banana" the Court stated "has certain characteristics, appearance, taste, softness, seedlessness, easy handling, a constant level of production which enables it to satisfy the constant needs of an important section of the population consisting of the very young, the old and the sick".;

From the geographic point of view in the six Member States of the relevant market there are conditions of unrestricted competition and these States form an area which is sufficiently homogeneous to be considered in its entirety.

The Court then considers United Brands' position, structure and situation from the point of view of competition. It comes to the conclusion that the cumulative effect of all the advantages enjoyed by UBC ensures that it has a dominant position on the relevant market. It should be noted that the Court's finding is not based only on the figures for its market share or profitability. In particular on this latter point the Court states in paragraph 126 "An undertaking's economic strength is not measured by its profitability; a reduced profit margin or even losses for a time are not incompatible with a dominant position, just as large profits may be compatible with a situation where there is effective competition."

The Court comes to the conclusion that the three findings remaining after it has annulled the finding of unfair prices are an abuse of a dominant position.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

14 February 1978

IFG-Intercontinentale Fleischhandelsgesellschaft mbH & Co. KG v

Commission of the European Communities

Case 68/77

1. Agriculture - Common organization of the market - Beef and veal - Imports from third countries - Protective measures - Discretionary power of the Commission - Limits
(Regulation No. 805/68 of the Council; Regulation No. 2033/75 of the Commission)

2. Community law - Principle of force majeure - Application - Condition

1. In adopting Regulation No. 2033/75 the Commission did not exceed the limits of its discretionary power under Regulation No. 805/68.

2. The application of the principle of force majeure in the relationship between an individual and the public administration presupposes the non-performance of an obligation upon the individual with respect to the administration. No general legal principle of force majeure is to be discerned in the national legal systems where there is no such obligation.

N o t e

The main claim in the I.F.G. Company's action against the Commission was for a declaration by the Court of Justice that "the defendant is under a duty to guarantee by means of an indemnity" the performance of a contract entered into on 14 May 1975 with the Romanian company Prodexport for the delivery of seasoned beef and veal and also for an order that the Commission should pay it compensation for the loss of profit arising

out of the non-performance of the contract.

Following floods in Romania in June 1975 the supply of certain consignments which were to have been delivered before 1 September 1975 was delayed until after that date being the date of the entry into force of Commission Regulation (EEC) No. 2033/75 which meant that seasoned meats were no longer exempted from the rules laid down in Commission Regulation (EEC) No. 1090/75, and the applicant claims that it has thereby suffered loss.

The principal claim (against which the Commission raised an objection of inadmissibility) as well as the additional claim were both based on the presumed liability of the Community on the ground of an unlawful act or unlawful conduct on the part of the Commission. The Court held that there was no justification for a finding that the Commission had exceeded the limits of its discretion.

The applicant also submitted that the Commission, by failing to provide for a transitional period, was in breach of the principle of the protection of legitimate expectation.

The Court held that, since the import regulations at issue did not require either prior authorization or any firm commitment on the part of the interested party in relation to the authorities responsible for administering the organization of the markets in question that submission could not be accepted either.

Lastly the applicant submitted that the Community was liable because the Commission refused to take into account the force majeure which prevented the performance of the contract before 1 September 1975, the date when Regulation No. 2033/75 entered into force.

With regard to the submission that there is a general legal principle applicable to cases of force majeure the Court held that, although the legal systems of the Member States provide for the possibility in certain circumstances of mitigating the harsh effects of the law, nevertheless, where the relations between an individual and the public administration are such, as they are in this case, that the only effect of going beyond the crucial date is that the imports in question are subject to a less favourable system than the one in force before that date, no such general legal principle with the scope alleged can be inferred from the national legal systems.

Consequently the Commission's conduct cannot be regarded as unlawful and therefore make the Community liable.

The application is dismissed and the applicant is ordered to bear the costs.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

15 February 1978

S.A. Ancienne Maison Marcel Bauche and Others v

Administration Française des Douanes

Case 96/77

1. Agriculture - Common organization of the markets - Sugar - Export to non-Member countries - Assignment of licences - Substitution of product - Deflection of trade - Application of monetary compensatory amounts - Commission Regulation No. 101/77 - Validity

2. Measure adopted by an institution - Amendment of an earlier provision - Situations arising under the latter - Future effects - Application of the amending rule

1. Commission Regulation (EEC) No. 101/77 is valid.

2. A law amending a legislative provision applies, save as otherwise provided, to the future effects of situations which arose under the previous law.

N o t e

The Tribunal d'Instance, Valenciennes, referred to the Court of Justice for a preliminary ruling several questions concerning the validity of Commission Regulation (EEC) No. 101/77 amending Commission Regulation (EEC) No. 572/76 fixing monetary compensatory amounts in the sugar sector.

Apart from the complex mechanism of the sugar market this case shows that the currency margins during the years subsequent to the adoption of Regulation No. 458/73 between those Member States whose currencies appreciated (for instance the Federal Republic of Germany) and those whose currencies depreciated (for instance France) have widened to such an extent that, to give one example, in January 1977, although intervention prices for 100 kg of white sugar expressed in units of account were the same throughout the Community, their value expressed in national currency and converted, for the purposes of comparison, into American dollars were, having regard to the rates of exchange used in the agricultural sector, $49.63 in the Federal Republic of Germany and $37.83 in France.

It follows that Community regulations offer appreciable advantages to a manufacturer established in the Federal Republic of Germany holding sugar in excess of the maximum quota.

Since the Commission took the view that such practices ran counter to the objective pursued by Community rules and operated to the detriment of the Community, it adopted Regulation No. 101/77. The second recital in the preamble to this regulation states that the export of sugar in excess of the maximum quota "may give rise to deflections of trade since it may be replaced in intra-Community trade by sugar which has been produced within the limits of the quota and is thus subject to the application of compensatory amounts" and that "an operator who engages in such deflections benefits therefrom unfairly". For the purpose of avoiding such practices Article 1 of Regulation No. 101/77 provides that "No monetary compensatory amount shall be applied to sugar exported to non-Member countries pursuant to Article 26 of Regulation (EEC) No. 3330/74".

The Court in answer to the questions referred ruled that their examination did not disclose any factor of such a kind as to affect the validity of Commission Regulation (EEC) No. 101/77 of 19 January 1977.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

16 February 1978

Commission v Ireland

Case 61/77

1. Acts adopted by an institution - Regulation - Geographical area of application
(EEC Treaty, Art. 189)

2. Sea fishing - Common policy - Maritime waters coming under the sovereignty or within the jurisdiction of Member States - Limits - Reference to national laws - Significance
(Council Regulation No. 101/76, Art. 2 (3))

3. Sea - Fishing resources - Conservation measures - Power of the EEC - Not exercised - Interim powers of the Member States - Obligation to co-operate
(Accession Treaty, Art. 102; EEC Treaty, Art. 5)

4. Equality of treatment - Discrimination - Prohibition - Criteria for differentiation - Covert discrimination - Prohibition
(EEC Treaty, Art. 7)

5. Sea fishing - Pursuit - National measures - Access to fishing areas - Limitation - Criteria - Discrimination - Prohibition
(EEC Treaty, Art. 7; Regulation No. 101/76, Art. 2)

1. As institutional acts adopted on the basis of the Treaty, regulations apply in principle to the same geographical area as the Treaty itself.

2. Article 2 (3) of Regulation No. 101/76 must be understood as referring to the limits of the field of application of Community law in its entirety, as that field may at any given time be constituted. Consequently the reference in that provision to the "Laws in force" in the various Member States as describing the maritime waters coming under their sovereignty or within their jurisdiction must be interpreted as referring to the laws applicable from time to time during the period of validity of the regulation concerned. Any extension of the maritime zones belonging to the Member States means precisely the same extension of the area to which the regulation applies.

3. The Community has power to take measures for the conservation of the biological resources of the sea, both independently and in the form of contractual commitments with non-Member States or under the auspices of international organizations. In so far as this power has been exercised by the Community, the provisions adopted by it preclude any conflicting

provisions by the Member States. On the other hand, so long as the transitional period laid down in Article 102 of the Act of Accession has not expired and the Community has not yet fully exercised its power in the matter, the Member States are entitled, within their own jurisdiction, to take appropriate conservation measures without prejudice, however, to the obligation to co-operate imposed upon them by the Treaty, in particular Article 5 thereof.

4. The rules regarding equality of treatment enshrined in Community law forbid not only overt discrimination but also covert forms of discrimination by reason of nationality which, by the application of other criteria of differentiation, lead in fact to the same result.

5. National measures are contrary both to Article 7 of the EEC Treaty and to Article 2 (1) of Regulation No. 101/76 if, by selecting a criterion based on the size and engine power of the boats, they have the effect of excluding from the fishing areas coming under the sovereignty or within the jurisdiction of the Member State in question, a part of the fleets of other Member States whereas under the same measures no comparable obligation is imposed on its own nationals.

N o t e

Judgments 61/77 and 88/77, one of which was given on a direct application brought by the Commission against Ireland for a declaration that, by introducing certain restrictive measures in the sea fisheries sector, Ireland had failed to fulfil its obligations under the EEC Treaty, and the second of which was given in answer to a reference for a preliminary ruling by the District Court of Cork (Ireland) following the boarding of certain Netherlands trawlers which were fishing in Irish waters and which are being prosecuted in the main action for infringement of two orders concerning sea fishing made by the Irish Minister for Fisheries. The origin of those two judgments is therefore to be found in the formulation of a common fishing policy.

In Case 61/77 the Court considered the events leading up to the action and, beginning with the meeting of the Council of Ministers of the European Communities at The Hague on 30 October 1976, which had adopted a resolution by which the Member States would extend the limits of their fishing zones to 200 miles off their North Sea and North Atlantic coasts, the Court listed the various discussions and resolutions of the Council and the communications with the Irish State, ending with the contested orders of 16 February 1977. The first, the Sea Fisheries (Conservation and Rational Exploitation) Order 1977, makes it an offence for any sea fishing boat to enter and remain and to fish in a maritime area situated within the exclusive fishery limits of Ireland, and the second, the Sea Fisheries (Conservation and Rational Exploitation) (No. 2) Order 1977, exempts from the foregoing prohibition any sea fishing boat not exceeding 33 metres in registered length or having an engine not exceeding a total of 1 100 brake horse-power.

It is in the light of those two orders, made unilaterally by Ireland, that the Commission brought its action on the basis of Article 169 of the Treaty.

As regards the substance of the action there are four groups of arguments to be considered:

The jurisdiction of Ireland;

The action taken in this instance by the Irish Government;

The question whether the Irish measures can be regarded as genuine conservation measures; and

The question whether, in introducing those measures, Ireland contravened the non-discrimination rule enshrined in Article 7 of the Treaty.

The Court ruled that whilst there can certainly be no doubt that, in the absence of appropriate provisions at Community level, Ireland was entitled to take interim conservation measures as regards the maritime waters coming within its jurisdiction, it must be recognized that, because of the discriminatory character of the measures introduced, Ireland has failed its obligations under the Treaty.

The discriminatory nature of the Irish measures is clear. It derives from the contested measures themselves (limitation on the size and engine-power of the trawlers allowed to fish).

Their effect is to keep out of Irish waters a substantial proportion of the fishing fleets of other Member States which have traditionally fished in those areas whereas under the same measures no comparable obligation is imposed on Ireland's own nationals.

In Case 88/77 (Schonenberg) the District Court of Cork, before which the masters of 10 Netherlands trawlers are at present being prosecuted for infringing the aforementioned Irish orders, referred to the Court of Justice several questions concerning, first, the right of Member States to adopt unilateral conservation measures and, secondly, the compatibility of the Irish orders with Community law.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

16 February 1978

Schonenberg and Others

Case 88/77

1. Sea fishing - Common policy - Resources of the sea - Conservation - Absence of Community measures - Entitlement of the Member States to adopt interim measures - Conditions
(Act of Accession, Art. 102; Council Regulation No. 101/76, Art. 4)

2. Sea fishing - Pursuit - National measures - Access to fishing areas - Limitation - Criteria - Discrimination - Prohibition
(EEC Treaty, Art. 7; Council Regulation No. 101/76, Art. 2)

3. Community law - Effects in national law - National legislative measure contrary to Community law - Conviction - Incompatibility with Community law

1. In the absence of the adoption by the Community of adequate conservation measures under Article 102 of the Act of Accession and Article 4 of Regulation No. 101/76, the Member States were entitled, during the transitional stage for which provision is made in Article 102 of the Act of Accession, to adopt interim measures as regards the maritime waters coming within their jurisdiction, provided that such measures are in accordance with the requirements of Community law.

2. Article 7 of the EEC Treaty, Article 2 of Regulation No. 101/76 and, in so far as they have a bearing on the problem, Articles 100 and 101 of the Treaty of Accession, preclude a Member State from adopting measures which, by selecting a criterion based on the size and engine power of the boats, have the effect of keeping out of the fishing areas coming under its sovereignty or within its jurisdiction a part of the fleets of other Member States when by those same measures no comparable obligation is imposed on its own nationals.

3. Where criminal proceedings are brought by virtue of a national measure which is held to be contrary to Community law a conviction in those proceedings is also incompatible with that law.

N o t e

In this case, the District Court of Cork, before which the masters of 10 Netherlands trawlers are at present being prosecuted for infringing the aforementioned Irish orders, referred to the Court of Justice several questions concerning, first, the right of Member States to adopt unilateral conservation measures and, secondly, the compatibility of the Irish orders with Community law.

The Court ruled that:

In the absence of the adoption by the Community of adequate conservation measures under Article 102 of the Act of Accession and Article 4 of Regulation No. 101/76, the Member States were, at the period in question, entitled to adopt interim measures as regards the maritime waters coming within their jurisdiction, provided that such measures were in accordance with the requirements of Community law;

Article 7 of the EEC Treaty, Article 2 of Regulation No. 101/76 and, in so far as they have a bearing on the problem, Articles 100 and 101 of the Act of Accession, preclude a Member State from adopting measures such as are set out in the Sea Fisheries (Conservation and Rational Exploitation) (No. 2) Order 1977;

Where criminal proceedings are brought by virtue of a national legislative measure which is held to be contrary to Community law a conviction in those proceedings is also incompatible with that law.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

23 February 1978

An Bord Bainne Co-operative Limited (The Irish Dairy Board) v

The Minister for Agriculture

Case 92/77

1. Agriculture - Butter - Buying-in price expressed in Irish pounds - Increase - Brought about by Regulation No. 2517/74

2. Agriculture - Butter - Private storage - Aid - Payment - Right thereto - Acquisition - Conditions
(Regulation No. 985/68 of the Council, Art. 9;
Regulation No. 685/69 of the Commission)

3. Agriculture - Butter - Private storage - Aid - Regulation No. 2517/74 - Application - Ambit - Date

4. Measure adopted by an institution - Legislative nature - Reasons on which based

5. Agriculture - Butter - Private storage - Aid - Regulation No. 2517/74 - Validity

1. Regulation No. 2498/74 of the Council of 2 October 1974 brought about an increase in the buying-in price for butter expressed in Irish pounds, by virtue of the provisions of Article 29 of Regulation No. 685/69 of the Commission of 14 April 1969, as supplemented by Regulation No. 2517/74 of the Commission of 3 October 1974.

2. The mere fact of entering into private storage contracts as referred to in Article 9 of Regulation No. 985/68 of the Council, and the placing of goods in private storage did not in themselves suffice to confer any right to payment of a specific amount of aid; the person concerned acquires such a right only if the quantities of butter covered by the storage contracts have remained in storage for a specified minimum period, in accordance with the detailed rules laid down by Regulation No. 685/69, and if they have been taken out of store in accordance with any conditions laid down in those contracts.

3. Regulation No. 2517/74 of the Commission applies to storage contracts entered into before the entry into force of Regulation No. 2498/74 of the Council, in respect of quantities of butter not yet removed in the proper manner from storage on that date, namely 7 October 1974.

4. The reasons on which a piece of legislation is based may appear not only from its own wording, but also from the whole body of the legal rules governing the field under consideration.

5. Regulation No. 2517/74 is valid.

N o t e

The High Court of Ireland has referred to the Court of Justice a series of questions concerning the interpretation of Regulation No. 685/69 of the Commission on detailed rules of application for intervention on the market in butter and cream, and on the validity of Regulation No. 2517/74 of the Commission amending that regulation as regards the adjustment of private storage aid for butter to take account of changes in the buying-in price.

The dispute in the main action is between an Irish co-operative society carrying on the business of marketing milk products and the Minister for Agriculture and Fisheries, who is the intervention agency in Ireland for the purposes of the Common Agricultural Policy, and it concerns the amount of aid which should have been paid for certain quantities of butter and cream which the plaintiff co-operative society had stored privately and which had not yet been removed from storage on 7 October 1974.

The co-operative society claims that although the amount of the aid has been reduced owing to the new buying-in price for butter expressed in units of account, that does not mean that the said amount has been affected by the alteration of the representative exchange rate for the Irish "green" pound enacted also as from 7 October 1974.

On the other hand, the intervention agency contends that the buying-in price for butter in Ireland, as applied before 7 October 1974, has undergone a double increase, as its level has been raised both in units of account and in Irish national currency, through the combined effect of the two relevant Council regulations.

It contends that, owing to that increase and in accordance with Regulations Nos. 685/69 and 2517/74 of the Commission which are in issue, no aid is due to the plaintiff co-operative society in respect of the quantities of butter and cream still in storage on the aforementioned date.

The High Court asks whether Regulation No. 2498/74 of the Council, which altered the exchange rate between the Irish pound and the unit of account, had the effect of increasing the "buying-in price for butter", and whether such increase took place independently of or by virtue of the provisions of Regulation No. 2517/74 of the Commission.

In answer to the first two questions the Court has ruled that Regulation No. 2498/74 of the Council of 2 October 1974 brought about an increase in the buying-in price for butter expressed in Irish pounds, by virtue of the provisions of Article 29 of Regulation No. 685/69 of the Commission of 14 April 1969, as supplemented by Regulation No. 2517/74 of the Commission of 3 October 1974.

Other questions are concerned with whether Regulation No. 2517/74 of the Commission is to be regarded as valid and binding in relation to private storage contracts entered into before its entry into force.

In answer, the Court has ruled that consideration of the third question raised has disclosed no factor of such a kind as to affect the validity of Regulation No. 2517/74 of the Commission, and that that regulation applies to storage contracts entered into before the entry into force of Regulation No. 2498/74 of the Council, in respect of quantities of butter not yet removed in the proper manner from storage on that date, namely 7 October 1974.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

28 February 1978

Società Santa Anna Azienda Avicola v
Istituto Nazionale della Previdenza Sociale (I.N.P.S.) and
Servizio Contributi Agricoli Unificati (S.C.A.U.)

Case 85/77

Agriculture - Agricultural holding - Concept - Uniform Community definition - Absence - Obligations of the Community institutions

It is impossible to find in the provisions of the Treaty or in the rules of secondary Community law any general uniform Community definition of "agricultural holding" universally applicable in all the provisions laid down by law and regulation relating to agricultural production. It is for the Community institutions to work out, where appropriate, for the purposes of the rules deriving from the Treaty such a definition of agricultural holding.

N o t e

The company which is the plaintiff in the main action carries on in Italy the business of rearing poultry and laying-hens. It brought proceedings before the Tribunale Civile, Rome, against the Istituto Nazionale della Previdenza Sociale (I.N.P.S.) for a declaration that it was entitled to be classified as an undertaking engaged in agriculture and not as an industrial undertaking, and that consequently it could pay social security contributions exclusively to the Servizio dei Contributi Agricoli Unificati (S.C.A.U.) at the rates applicable to agricultural undertakings, which apparently are lower than the rates applicable to industrial undertakings.

That case prompted the national court to ask the Court of Justice whether in Community law there is a Community concept of an agricultural undertaking for the purposes of identifying undertakings of this nature, and if so, whether the Member States are accordingly obliged to employ the concepts provided in the Treaty and the regulations referred to in order to identify the agricultural undertakings to which must then be applied the principles laid down at Community level and those evolved by the various national legal systems with regard to social security. The Court has examined the wording of Articles 38 and 39 of the Treaty of Rome, and has arrived at the conclusion that the Treaty contains no precise definition of agriculture and still less of an agricultural undertaking, and that it is for the Community institutions to formulate such a definition of an agricultural undertaking for the purposes of legislation derived from the Treaty should it be necessary.

The Court has analysed different regulations on agriculture, and has found that the definitions of an agricultural undertaking contained in Community instruments vary from one text to another. The Court, in answer to the questions referred to it, has ruled that it is impossible to find in the provisions of the Treaty or in the rules of secondary Community law any general, uniform Community definition of an agricultural undertaking which is universally applicable in all the provisions laid down by law or regulation relating to agricultural production.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

2 March 1978

Debayser S.A. and Others v Commission of the European Communities

Joined Cases 12, 18 and 21/77

1. Agriculture - Conjunctural policy - Monetary compensatory amounts - Exemption from the charge - Discretionary measure - Discretionary power of the Member States
(Regulation No. 1608/74 of the Commission)

2. Application for damages - Action directed against national measures taken in implementation of Community law - Inadmissibility
(EEC Treaty, Arts. 178 and 215, second para.)

1. It follows from Regulation No. 1608/74 taken as a whole that the latter has given the Member States a margin of discretion which permits them to judge the application to each individual case of the discretionary measure, including the circumstances such as to justify the grant or the refusal of the exemption from the compensatory amounts.

2. Where the action is in substance directed against measures taken by the national authorities pursuant to provisions of Community law, the conditions for instituting proceedings before the Court of Justice under Article 178 and the second paragraph of Article 215 of the Treaty are not fulfilled.

N o t e

In these actions brought under Article 178 and the second paragraph of Article 215 of the EEC Treaty, the applicants seek compensation from the Community for damage allegedly caused by the Commission's failure to ensure that the transactions in which the applicants were engaged could be carried out under the conditions prevailing at the time when they entered into their contracts or at all events at the time of the result of the Community award of contracts, with the appropriate refunds, for the export of sugar to non-Member countries for which the applicants had tendered.

The regulations of which the applicants complain are those which were adopted by the Commission under Article 3 of Regulation No. 974/71 of the Council altering the monetary compensatory amounts, after 23 July and up to 27 December 1976, that is to say after the conclusion of the contracts entered into by the applicants.

The damage specified concerns the supplement to the monetary compensatory amounts which the applicants had to pay to the national authorities owing to the fact that Regulation No. 1608/74 of the Commission of 26 June 1974, known as the "discretionary relief regulation", was not applied to their exports.

Following the French Government's decision of 15 March 1976 to let the franc float, the Commission reintroduced monetary compensatory amounts for France as from 25 March 1976 in certain agricultural sectors, including sugar.

Between July and December 1976, there were several increases owing to the French monetary situation. Then, on the basis of Regulation No. 1608/74, the applicants applied to the Fonds d'Intervention et de Réorganisation du Marché du Sucre (FIRS) for exemption from the increases in monetary compensatory amounts which had occurred after 23 July 1976, in respect of the contracts concluded after 15 March 1976 and not yet performed on 23 July 1976.

FIRS refused that exemption on the grounds that alteration of the rate of compensatory amounts does not in itself constitute a monetary measure within the meaning of Regulation No. 1608/74.

A Commission official replied by letter to the Syndicat du Commerce du Sucre that it is "impossible to say in law that each variation in an exchange rate is a monetary occurrence justifying application of the regulation".

Following that refusal and that correspondence, the applicants commenced proceedings, specifying that they were not directed against the aforementioned letter but against the wrongful conduct of the Commission - as exemplified by that letter - in failing to adapt Regulation No. 1608/74 to meet its purpose.

The Court has held that it emerges from these rules as a whole that they confer upon the Member States a margin of discretion which enables them to decide upon the application of the discretionary relief to each particular case and upon any circumstances justifying the grant or the refusal of the exemption referred to in Article 1 of the regulation.

The powers conferred on the Commission are essentially intended to ensure co-ordinated application of the management by the Member States of the system established by Regulation No. 1608/74, and empower the Commission to intervene in that management only in so far as is necessary to ensure that the achievement of that objective should not be jeopardized.

Since the proceedings were in substance directed against measures adopted by national authorities under provisions of Community law, the requirements for bringing a case before the Court under Article 178 and the second paragraph of Article 215 of the Treaty have not been fulfilled. The Court has dismissed the applications as inadmissible and ordered the applicants to bear the costs.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

9 March 1978

Amministrazione delle Finanze dello Stato v Simmenthal S.p.A.

Case 106/77

1. Preliminary rulings - Reference to the Court - Conditions for withdrawal
(EEC Treaty, Art. 177)

2. Community law - Direct applicability - Concept - Consequences for national courts
(EEC Treaty, Art. 189)

3. Community law - Precedence - Conflicting national law - Automatic inapplicability of existing national provisions - Preclusion of valid adoption of legislative measures incompatible with Community law

4. Community law - Directly applicable provisions - Conflict between Community law and a subsequent national law - Powers and duties of national court having jurisdiction - Non-application of national provision even if adopted subsequently - Incompatibility with the Treaty of any constitutional practice reserving the solution of the dispute to any authority other than the court having jurisdiction

1. The Court of Justice considers a reference for a preliminary ruling, pursuant to Article 177 of the Treaty, as having been validly brought before it so long as the reference has not been withdrawn by the court from which it emanates or has not been quashed on appeal by a superior court.

2. The direct applicability of Community law means that its rules must be fully and uniformly applied in all the Member States from the date of their entry into force and for so long as they continue in force. Directly applicable provisions are a direct source of rights and duties for all those affected thereby, whether Member States or individuals; this consequence also concerns any national court whose task it is as an organ of a Member State to protect the rights conferred upon individuals by Community law.

3. In accordance with the principle of the precedence of Community law, the relationship between provisions of the Treaty and directly applicable measures of the institutions on the one hand and the national law of the Member States on the other is such that those provisions and measures not only by their entry into force render automatically inapplicable any conflicting provision of current national law but - in so far as they are an integral part of, and take precedence in, the legal order applicable in the territory of each of the Member States - also preclude the valid adoption of new national legislative measures to the extent to which they would be incompatible with Community provisions.

Any recognition that national legislative measures which encroach upon the field within which the Community exercises its legislative power or which are otherwise incompatible with the provisions of Community law had any legal effect would amount to a corresponding denial of the effectiveness of obligations undertaken unconditionally and irrevocably by Member States pursuant to the Treaty and would thus imperil the very foundations of the Community.

4. A national court which is called upon, within the limits of its jurisdiction, to apply provisions of Community law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for the court to request or await the prior setting aside of such provisions by legislative or other constitutional means.

N o t e

In 1973 Simmenthal S.p.A., which has its head office in Monza, Italy, imported from France a consignment of beef and veal intended for human consumption. A charge in respect of veterinary and public health inspections, provided for under Italian law and established by Law No. 1239/70 of 30 December 1970, was imposed in relation to this importation. Since Simmenthal considered that the veterinary and public health inspections effected when the goods crossed the frontier and the charges imposed therefor constitute impediments to the free movement of goods it instituted proceedings in March 1976 before the Pretore di Susa for the recovery of the sums which it considered it had been improperly required to pay.

In response to a request for a preliminary ruling (Case 35/76) the Court of Justice delivered on 15 December 1976 a judgment in which it ruled that veterinary and public health inspections at the frontier, whether carried out systematically or not, on the occasion of the importation of animals or meat intended for human consumption constitute measures having an effect equivalent to quantitative restrictions within the meaning of Article 30 of the Treaty, and pecuniary charges imposed by reason of veterinary or public health inspections of products on the occasion of their crossing the frontier are to be regarded as charges having an effect equivalent to customs duties.

As a result of this judgment the Pretore di Susa required the Amministrazione delle Finanze dello Stato to reimburse the charges improperly collected, with interest.

The Amministrazione delle Finanze dello Stato lodged objections to the injunction and the Pretore di Susa, having heard the arguments advanced by the Amministrazione, found that the proceedings involved a conflict between certain provisions of Community law and subsequent national legislation, in this case Law No. 1239/70.

The Pretore recalled that in accordance with the recent decisions of the Italian Corte Costituzionale such points must be brought before the Corte Costituzionale itself to establish whether the law in question is not constitutionally invalid as being incompatible with Article 11 of the Constitution.

However, the Pretore had regard, on the one hand, to the clearly-established case-law of the Court of Justice concerning the validity of Community law in the legal systems of the Member States and, on the other, to the difficulties which could arise if a court, instead of automatically considering inapplicable a law standing in the way of the direct effect of Community law, was thus required to raise a point of constitutional law, and accordingly submitted two questions to the Court of Justice.

The first question is in fact intended to obtain a clarification of the consequences of the direct applicability of a provision of Community law if it is incompatible with a subsequent legislative provision of a Member State.

The Court recalls the meaning of "direct applicability": the full and uniform application of provisions of Community law in all the Member States from the time when such provisions enter into force and throughout the period of their validity.

Such provisions give rise to direct duties for all persons concerned, including any court before which proceedings are instituted.

Furthermore, in accordance with the principle of the precedence of Community law, it follows from the provisions of the Treaty and of directly applicable measures of the institutions that, in relation to the domestic law of the Member States, such provisions, by the very fact of their entry into force, not only render automatically inapplicable any conflicting provision of existing domestic legislation but also, since such provisions form an integral part of and take precedence in the national legal system of each of the Member States, prevent the valid enactment of new domestic legislation to the extent to which such legislation is incompatible with Community provisions.

Indeed the recognition of any legal effect whatever in relation to national legislation encroaching upon the legislative power of the Community or otherwise incompatible with provisions of Community law would thereby negate the effectiveness of the obligations unconditionally and irrevocably undertaken by the Member States pursuant to the Treaty and would accordingly jeopardize the whole basis of the Community.

The effectiveness of the provision in Article 177 of the Treaty, which governs requests for preliminary rulings, would be diminished if the courts were prevented from giving immediate effect to Community law in accordance with a particular decision or the case-law of the Court of Justice. In accordance with the foregoing all national courts, proceeding within the limits of their jurisdiction, are under a duty to give unqualified effect to Community law and to uphold the ri hts which Community law confers upon individuals and to refuse to give effect to any conflicting provision of national law, be it prior or subsequent to the Community provisions.

Accordingly any provision of a national legal system or any legislative, administrative or judicial practice is incompatible with the requirements inherent in the very nature of Community law if it reduces the effectiveness of Community law by denying the court having jurisdiction to apply that law the power to do at the time of such application all that is necessary to annul provisions in national legislation which may constitute an obstacle to the full effectiveness of the Community provisions. The Court accordingly replied to the first question to the effect that the national court which is required to apply the provisions of Community law within the framework of its jurisdiction is under a duty to give unqualified effect to those provisions, if need be by refraining of its own motion from applying any conflicting provision in national legislation, even subsequently enacted, without having to request or wait for the prior annulment of such provisions through legislation or any other constitutional procedure.

In the second question it was asked, in case it was conceded that the protection of rights conferred under Community provisions might be deferred until any conflicting national measures were actually repealed by the competent national authorities, whether such annulment in all cases has a wholly retroactive effect so as to avoid any adverse effects on the rights in question. In view of the reply given to the first question the second question is irrelevant.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

14 March 1978

Bestuur van de Sociale Verzekeringsbank v Mrs Boerboom-Kersjes, a widow

Case 105/77

Social security for migrant workers - Benefits - Overlapping - Entitlement under national legislation alone - Provisions for reduction or suspension - Applicability - Position under Community rules more favourable - Preference (Regulation No. 1408/71 of the Council, Arts. 12 (2) and 46)

So long as a worker is receiving a pension by virtue of national legislation alone, the provisions of Regulation No. 1408/71 do not prevent the application to him of national legislation in its entirety, including the national provisions against overlapping, it being understood that if the application of that legislation proves to be less favourable than that of the system laid down by Article 46 of Regulation No. 1408/71 the provisions of that article must be applied.

N o t e

The main action in this case concerns the calculation by the competent Dutch institution of the survivor's pension of a Dutch national, the defendant in the main action, whose husband had completed insurance periods in the Netherlands and in the Federal Republic of Germany.

At the time of his death the husband had fulfilled in the Netherlands all the conditions laid down by the national law for entitlement to old-age pension but the Dutch institution reduced the benefit due under this law to the extent of the benefit paid under the German law.

This led the Centrale Raad van Beroep to make a reference for a preliminary ruling to the Court of Justice. In reply to the question referred to it the Court ruled that in so far as a worker receives a pension under national legislation alone, the provisions of Regulation No. 1408/71 do not prevent the national legislation from being fully applied to him including the national anti-duplication provisions, it being understood that if the application of this legislation is found to be less favourable than that of the system of Article 46 of Regulation No. 1408/71, the provisions of that article must apply.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

14 March 1978

Max Schaap v Bestuur van de Bedrijfsvereniging voor Bank- en Verzekeringswezen, Groothandel en Vrije Beroepen

Case 98/77

1. Social security for migrant workers - Benefits - Overlapping - Benefits corresponding to an insurance period bought in voluntarily by the person concerned - Application of Article 46 (2) of Regulation No. 574/72 of the Council

2. Social security for migrant workers - Benefits - Overlapping - Entitlement under national legislation alone - Provisions for reduction or suspension of benefit - Applicability - Position under Community rules more favourable - Preference
(Regulation No. 1408/71 of the Council, Arts. 12 (2) and 46)

1. The benefits corresponding to an insurance period which has been bought in pursuant to the provisions of national legislation which grants a worker this right are to be regarded as falling within Article 46 (2) of Regulation No. 574/72 of the Council.

2. So long as a worker is receiving a pension by virtue of national legislation alone, the provisions of Regulation No. 1408/71 do not prevent the application to him of national legislation in its entirety, including the national provisions against overlapping, it being understood that if the application of that legislation proves to be less favourable than that of the system laid down by Article 46 of Regulation No. 1408/71, the provisions of that article must be applied.

N o t e

The main action concerns the calculation by the competent Dutch institution of the invalidity pension of a Dutch national, the plaintiff in the main action, who had worked in Germany from 1929 to 1933 and then in the Netherlands.

Taking advantage of the possibility offered by German legislation to the victims of Nazi persecution the plaintiff had voluntarily made back payments of insurance and pension (including invalidity) contributions in respect of the period 1934 to 1945 in order to be able to claim an increased German pension.

Having regard to this German invalidity pension the Dutch institution, applying the anti-duplication law, reduced the amount of the benefit due to the plaintiff under the Dutch legislation on insurance and pension. The plaintiff contested this decision on the ground that the larger part of the German pension was payable on the basis of voluntary cover.

Since the provisions of Regulation No. 1408/71 were cited the Centrale Raad van Beroep, Utrecht, was moved to refer the following question to the Court of Justice: where a worker has been subject to the legislation of two or more Member States to what extent do Article 12 (2) and Article 46 of Regulation (EEC) No. 1408/71 exclude the application of national rules against the overlapping of benefits such as those applicable by virtue of the Dutch law if the right to benefits has been acquired in application of the national legislation alone without the need to apply the regulation ?

The Court reiterating the interpretation it previously gave in the judgment in Case 24/75, Petroni [1975] ECR 1149, declared that in so far as a worker receives a pension under national legislation alone, the provisions of Regulation No. 1408/71 do not prevent the national legislation from being fully applied to him including the national anti-duplication provisions, it being understood that if the application of this legislation is found to be less favourable than that of the system of Article 46 of Regulation No. 1408/71, the provisions of that article must apply.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

14 March 1978

Giovanni Naselli v

Caisse Auxiliaire d'Assurance Maladie-Invalidité

Case 83/77

1. Social security for migrant workers - Invalidity - Pension - Articles 27 and 28 of Regulation No. 3 - Application by analogy - Benefits - Apportionment - Condition - Aggregation of insurance periods completed under different legislations
(Regulation No. 3 of the Council, Arts. 26 (1), 27 and 28)

2. Social security for migrant workers - Benefits - Overlapping - National legislations - Provisions for the reduction or suspension of benefit - Inapplicability - Conditions
(Regulation No. 3 of the Council, Art. 11 (2))

3. Social security for migrant workers - Benefits - Overlapping - National legislations - Application of a provision for the reduction or suspension of benefit - Calculation of benefits - Article 9 (2) of Regulation No. 4 - Conditions for its application
(Regulation No. 4 of the Council, Art. 9 (2))

1. The application by analogy of Articles 27 and 28 of Regulation No. 3 to the cases referred to in Article 26 (1) implies that benefits may only be apportioned if it has been necessary, in order to give rise to entitlement, to aggregate beforehand the periods completed under different legislations.

2. Article 11 (2) of Regulation No. 3 is the counterweight to the advantages which Regulations Nos. 3 and 4 procure for workers by enabling them to claim the simultaneous application of the social security laws of several Member States and its purpose is to prevent them from deriving from that application advantages which the national legislation considers excessive. Therefore the restrictions referred to in Article 11 (2) only apply to insured persons in so far as the benefits acquired by applying those regulations are concerned.

On the other hand Regulation No. 3 does not preclude the application to benefits acquired by virtue of national legislation alone of national rules against the overlapping of benefits.

3. Article 9 (2) of Regulation No. 4 applies only when the benefit in question has been awarded through the application of the processes of aggregation and apportionment.

N o t e

The main action concerns the calculation by a Belgian institution of the pension of an Italian national, the plaintiff in the main action, who worked in Italy and Belgium. After falling ill he was granted a pro rata invalidity pension in Italy as from 1 October 1958 apparently as a result of the provisions of an agreement between Italy and Belgium.

After working again in Belgium in 1964 and 1965 he fell ill and received from the Belgian insurance sickness benefit which was subsequently converted into invalidity pension. In Belgium he fulfilled the conditions required by the national law for entitlement to an invalidity pension without needing to rely on the provisions of Regulation No. 3.

Basing itself on the rules of the national law against overlapping the Belgian institution reduced retroactively the amount of the pension which it had already paid to the plaintiff and demanded refund of the overpayment.

This case led the Tribunal du travail, Brussels, to refer two questions to the Court of Justice.

First it is asked whether Article 11 (2) of Regulation No. 3 must be interpreted as meaning that the plaintiff, having regard to the provisions of Article 70 (2) of the Law of 9 August 1963, could not draw Belgian allowances concurrently with an Italian pension, although the Belgian benefits were acquired without applying regulations laid down by the European Economic Community. that is in other words. whether the Belgian institution was authorized or not to apply the national provisions prohibiting duplication of benefits in conjunction with Article 11 (2) of Regulation No. 3 for the purpose of reducing the allowances paid under Belgian legislation alone.

The Court in reply gave a ruling that a consideration of the provisions of Regulation No. 3 discloses nothing therein to prevent the application of national rules against duplication to benefits acquired under national legislation alone.

The second question asks whether Article 9 (2) of Regulation No. 4 refers solely to a situation in which a benefit, which must be reduced because it overlaps with another benefit or other income, is granted by aggregation of the insurance periods, that is in other words, whether the Belgian institution had to take into account a fraction and not the whole of the Italian pension for the purpose of reducing the Belgian benefit although that benefit was acquired without having to apply regulations laid down by the European Economic Community.

The Court ruled in reply to this question that Article 9 (2) of Regulation No. 4 applies only when the benefit in question has been granted as a result of aggregation and apportionment.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

16 March 1978

Bestuur van het Algemeen Ziekenfonds v Mrs G. Pierik

Case 117/77

1. Reference for a preliminary ruling - Jurisdiction of the Court - Limits (EEC Treaty, Art. 177)

2. Social security for migrant workers - Sickness insurance - Benefits in kind provided in another Member State - Conditions for grant - Art. 22 of Regulation No. 1408/71 - Interpretation (Regulation No. 1408/71 of the Council, Art. 22 (1) and (2); Regulation No. 574/72 of the Council, Annex 3)

3. Social security for migrant workers - Sickness insurance - Benefits in kind provided in another Member State - Reimbursement of cost between institutions (Regulation No. 1408/71 of the Council, Arts. 22 and 36)

1. Article 177 of the Treaty, which is based on a clear separation of functions between national courts and the Court of Justice, does not permit the latter to pass judgment on the relevance of the questions submitted. Accordingly the question whether the provisions or concepts of Community law whose interpretation is requested are in fact applicable to the case in question lies outside the jurisdiction of the Court of Justice and falls within the jurisdiction of the national court.

2. The words "who satisfies the conditions of the legislation of the competent State for entitlement to benefits" at the beginning of Article 22 (1) determine the persons who in principle are entitled to benefits in pursuance of the relevant national legislation.

The words "the treatment in question" in the second subparagraph of Article 22 (2) refer to any appropriate treatment of the sickness or disease from which the person concerned suffers.

The words "benefits in kind provided on behalf of the competent institution by the institution of the place of stay or residence" do not refer solely to benefits in kind due in the Member State of residence but also to benefits which the competent institution is empowered to provide.

The duty laid down in the second subparagraph of Article 22 (2) to grant the authorization required under Article 22 (1) (c) covers both cases where the treatment provided in another Member State is more effective than that which the person concerned can receive in the Member State where he resides and those in which the treatment in question cannot be provided on the territory of the latter State.

The words "institution of the place of stay or residence" in Article 22 (1) (c) (i) of Regulation No. 1408/71 mean the institution empowered to provide the benefits in the State of residence or stay as listed in Annex 3 to Regulation No. 574/72 of the Council, as amended by Regulation No. 878/73 of the Council.

3. The costs relating to benefits in kind provided on behalf of the competent institution by the institution of the place of stay or residence are to be fully refunded.

N o t e

The reference for a preliminary ruling here made by the Centrale Raad van Beroep concerns the interpretation of certain provisions of Regulation No. 1408/71 of the Council on the rights of workers to receive appropriate treatment in the territory of another Member State.

The recovery of expenses incurred for thermal cures taken in the Federal Republic of Germany by Mrs Pierik have led to a number of questions on the interpretation of the words "who satisfies the conditions of the legislation of the competent State for entitlement to benefits", the meaning and scope of the words "the treatment in question", whether "benefits in kind provided on behalf of the competent institution by the institution of the place of stay or residence" means those "to which a right exists in the Member State of the place of stay" or such as the competent institution can provide.

To all these questions the Court has ruled:

1. The words "who satisfies the conditions of the legislation of the competent State for entitlement to benefits" at the beginning of Article 22 (1) of Regulation No. 1408/71 designate the persons who in principle are entitled to benefits in pursuance of the relevant national legislation.

2. The words "the treatment in question" in the second subparagraph of Article 22 (2) refer to any appropriate treatment of the disease or illness from which the person concerned suffers.

3. The words "benefits in kind provided on behalf of the competent institution by the institution of the place of stay or residence" do not refer solely to benefits in kind provided in the Member State where the person concerned resides but also to benefits which may be provided by the competent institution.

4. The duty referred to in the second subparagraph of Article 22 (2) to grant the authorization required under Article 11 (1) (c) covers both cases in which the treatment provided in another Member State is more effective than that which the person concerned can obtain in the Member State where he resides and those in which the treatment in question cannot be provided on the territory of the latter State.

5. The costs relating to benefits in kind which are provided on behalf of the competent institution by the institution of the place of stay or residence are to be reimbursed in full.

6. The words "the institution of the place of stay or residence" in Article 22 (1) (c) (i) of Regulation No. 1408/71 refer to the institution competent to provide the benefits in the State of stay or residence as listed in Annex 3 to Regulation No. 574/72 of the Council, as amended by Regulation No. 878/73 of the Council.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

16 March 1978

Maria Frangiamore v Office National de L'Emploi

Case 126/77

Social security for migrant workers - Unemployment - Acquisition of right to benefits - Aggregation of periods of insurance or employment - Possibility of counting period of employment as period of insurance - Conditions
(Regulation No. 1408/71 of the Council, Art. 1 (r) and Art. 67 (1))

It is clear from Article 1 (r) of Regulation No. 1408/71 that, in order to ascertain whether a period of employment may be assimilated to a period of insurance for the purposes of the application of the rule concerning aggregation set out in Article 67 (1), reference must be made to the legislation under which such period was completed. Thus a period of employment completed under the legislation of a Member State other than that in which the competent institution is established, and defined or recognized as an insurance period under that legislation, is not subject to the condition laid down in Article 67 (1) *in fine* of Regulation No. 1408/71.

N o t e

The Belgian Cour de Cassation referred a question to the Court of Justice on the interpretation of Article 67 (1) of Regulation No. 1408/71 which is concerned with the aggregation of periods for entitlement to unemployment benefit.

This provision states "the competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits subject to the completion of insurance periods shall take into account, to the extent necessary, periods of insurance or employment completed under the legislation of any other Member State, as though they were periods completed under the legislation which it administers, provided, however, that the periods of employment would have been counted as insurance periods had they been completed under that legislation."

The question asks whether the condition laid down in Article 67 (1) *in fine* applies even where the period of employment in question is regarded by the law of the Member State where it has been completed as an insurance period.

In answer the Court ruled that a period of employment completed under the law of a Member State other than that in which the competent institution is situated and defined or recognized as an insurance period by such law is not subject to the condition laid down in Article 67 (1) *in fine* of Regulation No. 1408/71.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

16 March 1978

Gert Laumann and Anja Laumann v

Landesversicherungsanstalt Rheinprovinz

Case 115/77

1. Social security for migrant workers - Community rules - Application to survivors of a worker - Conditions - Movement within the Community
(Regulation No. 1408/71 of the Council, Art. 2)

2. Social security for migrant workers - Family allowances - Nature - Recipient
(Regulation No. 1408/71 of the Council, Art. 1 (u) (ii))

3. Social security for migrant workers - Survivors' benefits - Orphans' pension - Nature - Recipient
(Regulation No. 1408/71 of the Council, Art. 78)

4. Social security for migrant workers - Orphans' benefits - Overlapping - Community rules - Provision for suspension - Conditions for application - Overlapping of benefits of same kind
(Regulation No. 1408/71 of the Council, Art. 79 (3))

1. The application of Regulation No. 1408/71 is not limited to workers or their survivors who have been employed in several Member States or who are, or have been, employed in one State whilst residing in another. The regulation also applies even when the residence in another Member State was not that of the worker himself but of a survivor of his.

2. In the system established by Regulation No. 1408/71 family allowances originate in the actual pursuit of a professional or trade activity (even though the worker is no longer pursuing such activity) and the direct and sole recipient is the worker himself.

3. The direct and sole recipient of the orphans' pension is the orphan himself and the pension, like other survivors' benefits, constitutes the projection in time of a prior professional or trade activity, pursuit of which ceased on the death of the worker.

4. The right to the benefits referred to in Article 79 (3) of Regulation No. 1408/71 is suspended, pursuant to the provisions of that paragraph, in order to prevent duplication of benefits only in so far as that right overlaps rights to benefits of the same kind acquired by virtue of the pursuit of a professional or trade activity.

N o t e

This case is also concerned with anti-duplication rules, but in respect of orphans' pensions.

The facts are as follows: their parents having divorced in Germany, the plaintiffs in the main action, minors of German nationality, live at present in Belgium at the home of their mother who has remarried with a Belgian national.

After the death of their father in Germany the plaintiffs had their orphans' pension stopped on the ground that their step-father received a family allowance in respect of them under the Belgian system.

The competent German institution based this decision on the provisions of Article 79 of Regulation No. 1408/71 which provides that the right to benefits for orphans due under the provisions of Article 78 shall be suspended "if the children become entitled to family benefits or family allowances under the legislation of a Member State by virtue of the pursuit of a professional or trade activity. In such a case, the persons concerned shall be considered as members of the family of a worker."

This led the national court to ask whether to avoid duplication of benefits Article 79 must be understood as meaning that Articles 77, 78 and 79 (2) are suspended only if benefits of the same kind are granted in another Member country.

The Commission also raised a question of the scope of Regulation No. 1408/71: neither father, mother nor step-father of the claimants had moved from one country to another for purposes of work.

The Court, observing that the title of the regulation refers not only to employed persons but also their families moving within the Community, infers from the general nature of these words that the regulation also applies when the residence in another Member State is the act not of the worker himself but of his survivor.

In answer the Court ruled that to avoid duplication of benefits the right to benefits referred to in Article 79 (3) of Regulation No. 1408/71 is suspended under the provisions of the same article only in so far as there would be duplication of benefits of the same kind arising as the result of the exercise of employment.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

16 March 1978

Unione Nazionale Importatori e Commercianti Motoveicoli Esteri (UNICME) and Others v Council of the European Communities

Case 123/77

Application for annulment - Natural or legal persons - Measures of individual concern to them - Criteria
(EEC Treaty, second para. of Art. 173)

The possibility of determining more or less precisely the number or even the identity of the persons to whom a measure applies by no means implies that it must be regarded as being of individual concern to them.

In the present case the fact that all the applicants might possibly be refused an import authorization pursuant to Regulation No. 1692/77 does not provide a sufficient basis for regarding the regulation as being of individual concern to them in the same way as if a decision had been addressed to them.

N o t e

The applicants brought an action before the Court for the annulment of Regulation No. 1692/77 of the Council of 25 July 1977 concerning protective measures on imports of certain motor cycles originating in Japan.

Article 1 of the contested regulation provides that imports into Italy of motor cycles having a cylinder capacity of 380 cc or more, falling within heading ex 87.09 of the Common Customs Tariff, originating in Japan, are hereby made subject to the production of an import authorization issued by the Italian authorities.

The total quantity of the products for which import authorizations shall be issued for the period 1 January to 31 December 1977 shall not exceed 18 000 items.

The applicants claim that this regulation infringed vested rights under the previous Italian import system and was of direct and individual concern to them.

The defendant Council alleged inadmissibility on the ground that the contested regulation was not of direct and individual concern to the applicants so that their action did not satisfy the conditions laid down in Article 173 (2) of the Treaty.

The Court ruled that the system established by the regulation does not adversely affect importers save where the necessary authorization is refused them and accordingly it is not of direct and individual concern to them save where they are refused an authorization.

The condition laid down in Article 173 is accordingly not satisfied and the Court ruled that the action should be dismissed as inadmissible and that the applicants should be ordered to bear the costs.

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GENERAL INFORMATION ON THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

Complete list of publications giving information on the Court:

I - Information on current cases (for general use)

1. Hearings of the Court

The calendar of public hearings is drawn up each week. It is sometimes necessary to alter it subsequently; it is therefore only a guide. This calendar may be obtained free of charge on request from the Court Registry. In French.

2. Judgments and opinions of the Advocates General

Offset copies of these documents may be ordered from the Internal Services Division of the Court of Justice, P.O. Box 1406, Luxembourg, subject to availability and at a standard price of Bfrs 100 per document. They will not be available after publication of that part of the Reports of Cases before the Court which contains the judgment or Advocate General's opinion requested. Interested persons who have a subscription to the Reports of Cases before the Court can take out a subscription to the offset texts in one or more Community languages. The price of that subscription for 1978 will be the same as the price of the Reports, Bfrs 1 500 per language. For subscriptions in subsequent years, the price will be altered according to changes in costs.

Since 1972 the London Times has carried articles under the heading "European Law Reports" covering the more important cases in which the Court has given judgment.

II - Technical information and documentation

A - Publications of the Court of Justice of the European Communities

1. Reports of Cases Before the Court

The Reports of Cases Before the Court are the only authentic source for citations of judgments of the Court of Justice.

The volumes for the years 1954 to 1972 have been published in Dutch, French, German and Italian; the volumes for 1973 onwards have also been published in English and in Danish. An English edition of the volumes for the years 1954 to 1972 will be completed by the end of 1978. The Danish edition of the volumes for the years 1954 to 1972 is being completed.

2. Legal publications on European integration (Bibliography)

New edition in 1966 and five supplements, the last of which appeared in December 1974; has been stopped.

3. Bibliography of European Judicial Decisions

Concerning judicial decisions relating to the Treaties establishing the European Communities. 1965 edition with supplements. Replaced by a publication entitled "Bulletin Bibliographique de Jurisprudence Communautaire" (no English title).

4. Selected instruments relating to the organization, jurisdiction and procedure of the Court

1975 edition.

These publications are on sale at, and may be ordered from:

OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES,
Rue du Commerce, Case Postale 1003, Luxembourg.

and from the following addresses:

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B - Publications issued by the Information Office of the Court of Justice

1. Proceedings of the Court of Justice of the European Communities

Weekly summary of the proceedings of the Court published in the six official languages of the Community. Free of charge. Available from the Information Office; please indicate language required.

2. Information on the Court of Justice

Quarterly bulletin containing the heading and a short summary of the more important cases brought before the Court of Justice and before national courts.

3. Annual synopsis of the work of the Court of Justice

Annual booklet containing a summary of the work of the Court of Justice covering both cases decided and associated work (seminars for judges, visits, study groups, etc.)

4. General booklet of information on the Court of Justice

These four documents are published in the six official languages of the Community while the general booklet is also published in Spanish and Irish. They may be ordered from the information offices of the European Communities at the addresses given below. They may also be obtained from the Information Office of the Court of Justice, P.O. Box 1406, Luxembourg.

C - Compendium of case-law relating to the Treaties establishing the European Communities

Répertoire de la jurisprudence relative aux traités instituant les Communautés européennes

Europäische Rechtsprechung

Extracts from cases relating to the Treaties establishing the European Communities published in German and French. Extracts from national judgments are also published in the original language.

The German and French editions are available from:

Carl Heymann's Verlag
Gereonstrasse 18-32,
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Federal Republic of Germany.

As from 1973 an English edition has been added to the complete French and German editions The first two volumes of the English series are on sale from:

ELSEVIER - North Holland -
Excerpta Medica,
P.O. Box 211,
AMSTERDAM,
Netherlands.

III - Court diary; visits

Sessions of the Court are held on Tuesdays, Wednesdays and Thursdays every week, except during the Court's vacations - that is, from 20 December to 6 January, the week preceding and the week following Easter, and from 15 July to 15 September. Please consult the full list of public holidays in Luxembourg set out below.

Visitors may attend public hearings of the Court or of the Chambers to the extent permitted by the seating capacity. No visitor may be present at cases heard in camera or during proceedings for the adoption of interim measures.

Half an hour before the beginning of public hearings a summary of the case or cases to be dealt with is available to visitors who have indicated their intention of attending the hearing.

* * *

Public holidays in Luxembourg

In addition to the Court's vacations mentioned above the Court of Justice is closed on the following days:

New Year's Day	1 January
Carnival Monday	variable
Easter Monday	variable
Ascension Day	variable
Whit Monday	variable
May Day	1 May
Luxembourg National Holiday	23 June
Assumption	15 August
"Schobermesse" Monday	Last Monday of August or first Monday of September
All Hallows' Day	1 November
All Souls' Day	2 November
Christmas Eve	24 December
Christmas Day	25 December
Boxing Day	26 December
New Year's Eve	31 December

* * *

IV - Summary of types of procedure before the Court of Justice

It will be remembered that under the Treaties a case may be brought before the Court of Justice either by a national court or tribunal with a view to determining the validity or interpretation of a provision of Community law, or directly by the Community institutions, Member States or private parties under the conditions laid down by the Treaties.

A - References for preliminary rulings

The national court or tribunal submits to the Court of Justice questions relating to the validity or interpretation of a provision of Community law by means of a formal judicial document (decision, judgment

or order) containing the wording of the question(s) which it wishes to refer to the Court of Justice. This document is sent by the Registry of the national court to the Registry of the Court of Justice, accompanied in appropriate cases by a file intended to inform the Court of Justice of the background and scope of the questions referred.

During a period of two months the Commission, the Member States and the parties to the national proceedings may submit observations or statements of case to the Court of Justice, after which they are summoned to a hearing at which they may submit oral observations, through their Agents in the case of the Commission and the Member States or through lawyers who are entitled to practise before a court of a Member State.

After the Advocate General has delivered his opinion, the judgment is given by the Court of Justice and transmitted to the national court through the Registries.

B - Direct actions

Actions are brought before the Court by an application addressed by a lawyer to the Registrar (P.O. Box 1406, Luxembourg), by registered post.

Any lawyer who is entitled to practise before a court of a Member State or a professor occupying a chair of law in a university of a Member State, where the law of such State authorizes him to plead before its own courts, is qualified to appear before the Court of Justice.

The application must contain:

The name and permanent residence of the applicant;
The name of the party against whom the application is made;
The subject-matter of the dispute and the grounds on which the application is based;
The form of order sought by the applicant;
The nature of any evidence offered;
An address for service in the place where the Court of Justice has its seat, with an indication of the name of a person who is authorized and has expressed willingness to accept service.

The application should also be accompanied by the following documents:

The decision the annulment of which is sought, or, in the case of proceedings against an implied decision, by documentary evidence of the date on which the request to the institution in question was lodged;

A certificate that the lawyer is entitled to practise before a court of a Member State;

Where an applicant is a legal person governed by private law, the instrument or instruments constituting and regulating it, and proof that the authority granted to the applicant's lawyer has been properly conferred on him by someone authorized for the purpose.

The parties must choose an address for service in Luxembourg. In the case of the Governments of Member States, the address for service is normally that of their diplomatic representative accredited to the Government of the Grand Duchy. In the case of private parties (natural or legal persons) the address for service - which in fact is merely a "letter box" - may be that of a Luxembourg lawyer or any person enjoying their confidence.

The application is notified to the defendant by the Registry of the Court of Justice. It requires the submission of a statement of defence; these documents may be supplemented by a reply on the part of the applicant and finally a rejoinder on the part of the defendant.

The written procedure thus completed is followed by an oral hearing, at which the parties are represented by lawyers or agents (in the case of Community institutions or Member States).

After hearing the opinion of the Advocate General, the Court gives judgment. This is served on the parties by the Registry.

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Published by North Holland Publishing Company,
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Subscription Hfl 1 050

Just published

THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

by L. Neville Brown
and Francis G. Jacobs

Published by Sweet and Maxwell,
11 New Fetter Lane,
LONDON

£3.25


OFFICE FOR OFFICIAL PUBLICATIONS
OF THE EUROPEAN COMMUNITIES

Boîte postale 1003 – Luxembourg

Catalogue number: DY-AA-78-001-EN-C