Information on the Court of Justice of the European Communities

1978 – III

I N F O R M A T I O N

on

THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

III

1978

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COMPOSITION OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

for the judicial year 1978 to 1979

(as from 7 October 1978)

Order of precedence

H. KUTSCHER, President
J. MERTENS DE WILMARS, President of the First Chamber
LORD A. J. MACKENZIE STUART, President of the Second Chamber
F. CAPOTORTI, First Advocate General
A. M. DONNER, Judge
P. PESCATORE, Judge
H. MAYRAS, Advocate General
M. SØRENSEN, Judge
J.-P. WARNER, Advocate General
G. REISCHL, Advocate General
A. O'KEEFFE, Judge
G. BOSCO, Judge
A. TOUFFAIT, Judge
A. VAN HOUTTE, Registrar

Composition of the First Chamber

J. MERTENS DE WILMARS, President
A. M. DONNER, Judge
A. O'KEEFFE, Judge
G. BOSCO, Judge
H. MAYRAS, Advocate General
J.-P. WARNER, Advocate General

Composition of the Second Chamber

LORD A. J. MACKENZIE STUART, President
P. PESCATORE, Judge
M. SØRENSEN, Judge
A. TOUFFAIT, Judge
F. CAPOTORTI, Advocate General
G. REISCHL, Advocate General

J U D G M E N T S

of the

COURT OF JUSTICE

of the

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

11 July 1978

Union Française des Céréales v Hauptzollamt Hamburg-Jonas

Case 6/78

1. Agriculture - Trade between new Member States and the original Community - "Accession" compensatory amounts - Purpose - Community preference
(Act of Accession, Art. 55)

2. Agriculture - Goods exported from one of the original Member States to a new Member State - Destruction in transit - Force majeure - "Accession" compensatory amounts - Grant - Exporter's entitlement - Analogy with the rule on export refunds
(Regulation No. 269/73 of the Commission, Art. 5 (2);
Regulation No. 192/75 of the Commission, Art. 6 (1))

1. The temporary system of "accession" compensatory amounts was intended inter alia to ensure that the principle of Community preference was observed in trade between the Community as originally constituted and the new Member States before the full and complete integration of the latter into the common organization of agricultural products.

2. By analogy with Article 6 (1) of Regulation No. 192/75, Article 5 (2) of Regulation No. 269/73 of the Commission is to be interpreted as meaning that where goods exported from one of the original Member States of the Community to a new Member State have perished in transit as a result of force majeure, the exporter is entitled to the same compensatory amounts as would have been due to him if the goods had reached their destination and if import formalities had been completed there.

NOTE

The Finanzgericht (Finance Court) Hamburg submitted to the Court of Justice two questions on the interpretation of Article 5 (2) of Regulation No. 269/73 of the Commission laying down detailed rules for the application of the system of "accession" compensatory amounts.

Those questions were submitted in the context of a dispute between an undertaking which exported a cargo of corn from the Federal Republic of Germany to the United Kingdom, which failed to arrive at its destination because of shipwreck, and the German customs authorities.

When the exporting undertaking applied for the "accession" compensatory amounts the customs authorities refused the claim on the grounds that the undertaking had failed to provide the proof prescribed in Article 5 (2) of Regulation No. 269/73 that the import formalities had been completed in the Member State of destination.

Since no provision was made in that regulation for force majeure with regard to the system of "accession" compensatory amouts in the questions submitted to the Court of Justice it was asked whether, and if so how, such amounts might be granted through the application by analogy of Article 6 of Regulation No. 192/75 of the Commission laying down detailed rules for the application of export refunds in respect of agricultural products, which exempts the persons concerned from providing proof of importation into the third country where the product has perished in transit as a result of force majeure.

The temporary "accession" arrangements were intended to ease the transition, in respect of the Community system of export restrictions, of the new Member States from their former status of third countries to the new one of Member States. The arrangements were particularly concerned to ensure the observance of the principle of Community preference in trade between the original Community and the new Member States pending the full and complete integration of the latter into the common organization of the markets in agricultural products.

It is common ground that if the exporter were refused the grant of the "accession" compensatory amounts after the destruction of goods in circumstances of force majeure, as in the present case, he would suffer an actual loss. If it were conceded that he must bear that loss he would be at a competitive disadvantage compared with a seller from a third country, an outcome which would be incompatible with the principle of Community preference which the accession Treaty was intended to emphasize. There has accordingly been an omission from Regulation No. 269/73 in that no provision was made for the grant of "accession" compensatory amounts.

The Court replied with a ruling that:

"Article 5 (2) of Regulation No. 269/73 of the Commission of 31 January 1973 must be interpreted to mean that, where the goods exported from an original Member State to a new Member State perish in transit as a result of force majeure the exporter is entitled to the same compensatory amounts as would have been payable to him if the goods had arrived at their destination and as if the customs import formalities had been completed".

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

12 July 1978

Milac GmbH, Gross- und Aussenhandel v Hauptzollamt Freiburg

Case 8/78

1. Agriculture - Common organization of the market - Principle of non-discrimination between producers or consumers
(EEC Treaty, Art. 40 (3))

2. Agriculture - Common organization of the market - Milk powder - Monetary compensatory amounts - Alterations - Regulation No. 725/74 of the Commission - Validity

1. The principle of non-discrimination laid down in Article 40 (3) of the Treaty does not prohibit different treatment of products which are not identical, unless it results in discrimination between producers or between consumers within the Community.

2. Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Regulation No. 725/74.

NOTE The Finanzgericht (Finance Court) Baden-Württemberg referred to the Court of Justice three preliminary questions concerning the validity of Regulation (EEC) No. 725/74 of the Commission altering the monetary compensatory amounts and the interpretation of the second subparagraph of Article 40 (3) of the EEC Treaty.

Those questions were submitted in the context of a case concerning the calculation of monetary compensatory amounts and of the corrective amount applicable to importations of unsweetened full cream milk powder having a fat content by weight of between 9.6% and 24.5% which the plaintiff in the main case effected from France to the Federal Republic of Germany.

The competent customs office, the defendant in the main action, classified the said product under tariff subheading 04.02 A II b 2 of the Common Customs Tariff and, pursuant to the regulation in dispute, charged compensatory amounts at the rate of DM 25.74 basic amount plus DM 0.91 supplementary amount for each additional per cent of fat content per 100 kg net weight.

In the context of that main action the Court of Justice has already delivered a judgment on 23 November 1976 (Case 28/76 - [1976] ECR 1639).

The national court considered it necessary in order to settle the case before it also to establish whether the provisions of Regulation No. 725/74, which the Court of Justice in its judgment in Case 28/76 had held to be valid, were not contrary to the principle of non-discrimination embodied in Article 40 of the Treaty.

The following questions were referred:

1. Did the judgment of the Court of Justice of the European Communities of 23 November 1976 in Case 28/76 determine authoritatively the validity of Regulation (EEC) No. 725/74 for the purposes of the further conduct of the main action so that it may no longer be questioned whether that regulation infringes the prohibition on discrimination contained in the second subparagraph of Article 40 (3) of the EEC Treaty?

   If the first question is answered in the negative:

2. Does the second subparagraph of Article 40 (3) of the EEC Treaty create individual rights which the national courts must respect?

   If the first question is answered in the negative and the second in the affirmative:

3. May the national court determine the discriminatory effect and reduce the amount of the charge accordingly?

Since the particular situation in certain Member States precluded the application of a uniform intervention price for skimmed milk powder a corrective amount was applied in certain Member States.

In accordance with the provisions of Article 40 (3) of the Treaty the common price policy shall be based on common criteria and uniform methods of calculation.

In Regulation No. 725/74 the Commission fixed new rates for compensatory amounts to be applied inter alia to the market in milk and milk products. That regulation did not make provision for any specific reduction of monetary compensatory amounts to be applied in Germany to powdered milk having a fat content in excess of 3%.

The plaintiff in the main action claims that the failure to apply a corrective amount for whole milk powder entails distortion of competition on the milk market and that the market in whole milk powder does not differ appreciably from the market in skimmed milk powder. On the other hand, the Commission considers that consumers of whole milk powder differ from consumers of skimmed milk powder, basing its argument on the survey which it has made of the uses of those products in the foodstuffs industry (ice-cream - chocolate - pastry). The Court states that the principle of non-discrimination embodied in Article 40 does not preclude different treatment for products which are not identical, provided that such treatment does not result in discrimination between producers or consumers within the Community. The applicant has failed to establish details of the alleged discrimination arising from the provisions in dispute, either with regard to producers or to consumers within the Community.

The Court ruled that consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Regulation No. 725/74 with regard to the provisions of Article 40 (3) of the EEC Treaty.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

3 October 1978

Amministrazione delle Finanze dello Stato (Italian State Finance Administration) v the Rasham undertaking

Case 27/78

1. Customs union - Elimination of quantitative restrictions - "Acceleration decision" - Effect on the length of the transitional period - None

(EEC Treaty, Art. 8; Council Decision No. 66/532)

2. Commercial policy - Transitional period - Protective measures taken by Member States - Duty to notify - Effect
(EEC Treaty, second para. of Art. 115)

1. Council Decision No. 66/532 of 26 July 1966 concerning the abolition of customs duties, the prohibition of quantitative restrictions as between Member States and the application of the Common Customs Tariff duties for products other than those set out in Annex II to the Treaty did not bring forward the date of expiry of the transitional period within the meaning of Article 8 of the Treaty.

2. Although the notification prescribed by the second paragraph of Article 115 of the Treaty is compulsory, it is not a condition precedent of the entry into force of the protective measures adopted by the Member States.

NOTE The main action is between the Italian Amministrazione delle Finanze dello Stato (State Finance Administration) and the Rasham undertaking, which on 9 July 1968 imported into Italy 5 000 tape-recorders of Japanese origin coming from Belgium.

The customs authorities instructed the importing undertaking to pay a sum of approximately Lit 600 000 by way of customs duties and related charges which had not been paid at the time of clearance through customs, stating that on 1 June 1968 the Ministero delle Finanze (Ministry of Finance) had excluded products of the type in question from free circulation treatment, in application of the provisions regarding protective measures referred to in the second paragraph of Article 115 of the Treaty.

Taking the view that the transitional period during which protective measures were allowed by Article 115 of the Treaty had expired on 1 July 1968 by virtue of the Council decision of 26 July 1966, the Rasham undertaking claimed repayment of the sum charged.

The first question of the Corte Suprema di Cassazione (Supreme Court of Cassation) asked whether the Council decision of 26 July 1966 must be interpreted as meaning that it brought forward the date of expiry of the transitional period referred to in Article 8 of the Treaty.

Examination of that decision shows that it is based on the concept of a selective acceleration of actions which as a whole were to be completed by the end of the transitional period at the latest, and that it applies only to measures to which it specifically refers.

The Court of Justice has answered by ruling that Council Decision No. 66/532/EEC of 26 July 1966 concerning the abolition of customs duties, the prohibition of quantitative restrictions as between Member States and the application of the Common Customs Tariff duties for products other than those set out in Annex II to the Treaty did not bring forward the date of expiry of the transitional period within the meaning of Article 8 of the Treaty.

Another question asks whether the stipulation in the second paragraph of Article 115 of the Treaty, to the effect that the Member States are to notify to the other Member States and to the Commission protective measures which they have adopted unilaterally, must be interpreted as meaning that it makes such notification a condition precedent for the validity or applicability of the provision which introduces the measures in question.

The Court has answered this question by ruling that although the duty to notify protective measures which is laid down in the second paragraph of Article 115 of the Treaty is absolute, compliance therewith cannot be a condition precedent of the entry into force of the protective measures adopted.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

5 October 1978

Institut National d'Assurance Maladie-Invalidité and Union Nationale des Fédérations Mutualistes Neutres v Antonio Viola

Case 26/78

Social security for migrant workers - Benefits - Overlapping - National legislation - Rules against overlapping - Application - Conditions (Regulation No. 3 of the Council, Art. 11 (2))

1. The restrictions referred to in Article 11 (2) of Regulation No. 3 apply to insured persons only as regards benefits acquired by applying Regulations Nos. 3 and 4.

2. If the application of the relevant national legislation is less favourable than that of the system of aggregation and apportionment, the latter system must be applied.

NOTE

The respondent in the main action is an Italian national who has worked in Italy and in Belgium. The action concerns the calculation of his invalidity pension by the competent Belgian institution. In Belgium the worker satisfied all the conditions stipulated by the national legislation in order to give rise to entitlement to an invalidity pension under the system of compulsory sickness and invalidity insurance, without having to rely upon any periods completed in another Member State.

On the other hand, in order to become entitled to benefit in Italy he had to rely upon the provisions of Regulation No. 3, and for the purpose of calculating that benefit the periods actually completed in both Member States were aggregated and the Italian benefit was apportioned.

Having been informed of the grant of the apportioned Italian benefit, the Belgian institution raised the problem of the overlapping of benefits, taking into account the rules against the overlapping of benefits contained in the Belgian Law of 9 August 1963 introducing and organizing a system of compulsory sickness and invalidity insurance.

This led the Cour du Travail (Labour Court), Mons, to refer the following questions for a preliminary ruling:

1. Does the supplementary allowance for a dependent spouse which is granted by the Italian legislation in force between 1 May 1969 and 30 April 1971 form an integral part of the Italian invalidity pension for the purpose of applying the rules against the overlapping of benefits laid down in Articles 11 of Regulation No. 3 and 9 of Regulation No. 4?

2. Must the payment of a "13th month" to the respondent by the I.N.P.S., in 1969 and 1970, under the Italian legislation of 4 April 1952, be treated as being part of the pension for the purpose of applying the rules against the overlapping of benefits laid down in European Regulations No. 3 and No. 4?

Referring to its earlier case-law (the Mancuso case [1973] ECR 1449), the Court ruled that:

1. In applying national rules against the overlapping of benefits national courts must treat the supplementary allowance for a dependent spouse and the 13th month in accordance with the national legislation applicable according to the rules on the conflict of laws, Community provisions not being relevant.

2. However, if the application of the relevant national legislation proves to be less favourable than the application of the rules on aggregation and apportionment, the latter must be applied.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

10 October 1978

Centrafarm B.V. v American Home Products Corporation

Case 3/78

1. Free movement of goods - Industrial and commercial property - Rights - Protection - Scope
(EEC Treaty, Art. 36)

2. Free movement of goods - Industrial and commercial property - Trade-mark - Different marks for the same product in two different Member States - Single proprietor - Placing the product on the market in a Member State - Importation into another Member State - Affixing by a third party of the mark registered in the latter State - Prevention by the proprietor - Admissibility - Conditions
(EEC Treaty, Art. 36)

1. It is clear from Article 36 of the EEC Treaty, in particular its second sentence, as well as from the context, that whilst the Treaty does not affect the existence of rights recognized by the laws of a Member State in matters of industrial and commercial property, the exercise of those rights may nevertheless, depending on the circumstances, be restricted by the prohibitions contained in the Treaty.

Inasmuch as it contains an exception to one of the fundamental principles of the Common Market, Article 36 in fact admits of exceptions to the rules on the free movement of goods only to the extent to which such exceptions are justified for the purpose of safe-guarding the rights which constitute the specific subject-matter of that property.

2. The proprietor of a trade-mark which is protected in one Member State is justified pursuant to the first sentence of Article 36 in preventing a product from being marketed by a third party even if previously that product has been lawfully marketed in another Member State under another mark held in the latter State by the same proprietor.

Nevertheless such prevention may constitute a disguised restriction on trade between Member States within the meaning of the second sentence of Article 36 of the Treaty if it is established that the proprietor of different marks has followed the practice of using such marks for the purpose of artificially partitioning the markets.

NOTE American Home Products Corporation (hereinafter referred to as "AHPC"), the defendant in the main action, is the proprietor of the Seresta mark which is registered in its name in the Benelux register of trade-marks. In the United Kingdom AHPC is proprietor of the Serenid D mark for the same type of product. The therapeutic effect of the Seresta and Serenid tablets is identical but their constituents are not entirely similar.

Centrafarm, the plaintiff in the main action, sold tablets under the Seresta mark and used that mark in its price-lists and catalogues. It claims that it bought the said tablets in the United Kingdom where they were placed on the market by AHPC without the Serenid mark and that it subsequently placed them on the market in the Netherlands in new packaging.

It is clear from the questions submitted by the Netherlands court that under the trade-mark law of the importing State the proprietor of the mark is entitled to prevent the marketing by other persons of goods to which the mark held by him in that State has been applied.

In the first question it is asked whether, in the given circumstances, the rules contained in the EEC Treaty, in particular in Article 36, prevent the proprietor of the trade-mark from exercising the right which he enjoys under national law.

The Court recalls that, under Article 30 of the Treaty, quantitative restrictions on imports and all measures having equivalent effect are prohibited in trade between Member States and that under Article 36 those provisions do not preclude prohibitions or restrictions on imports justified on grounds of the protection of industrial and commercial property.

Inasmuch as it constitutes an exception to one of the fundamental principles of the common market, Article 36 admits of derogations from the free movement of goods only to the extent to which such exceptions are justified for the purpose of safeguarding the rights which constitute the specific subject-matter of that property.

The specific subject-matter of the trade-mark includes in particular the guarantee that the owner of the trade-mark has the exclusive right to use that trade-mark for the purpose of putting products protected by the trade-mark into circulation for the first time, and is therefore intended to protect him against competitors wishing to take advantage of the status and reputation of the trade-mark by selling products illegally bearing that trade-mark.

Regard must be had for the basic function of the trade-mark which is to guarantee to ultimate consumers or users the identity of the origin of the product bearing the mark.

The guarantee of the origin of goods would be placed in doubt if it were permissible for a third party to apply the mark to the product, even to an original product. The ruling of the Court on that question is that the proprietor of a trade-mark which is protected in a Member State is justified pursuant to the first sentence of Article 36 of the Treaty in preventing a product from being put on the market by a third party in that Member State under the mark in question even if such product has already been lawfully marketed in another Member State under another mark held in that State by the same proprietor.

It must also be considered whether the exercise of such a right can constitute a "disguised restriction on trade between Member States" within the meaning of the second sentence of Article 36.

The Court ruled that such prevention may constitute a disguised restriction on trade between Member States within the meaning of the second sentence of Article 36 of the Treaty where it is established that the proprietor adopted the practice of using different marks for such a product in order artificially to partition the market. The appraisal of specific occurrences of this phenomenon falls within the jurisdiction of the court dealing with the substance of the case.

In the second question it is asked whether it is relevant to the answer to be given to the first question that legislative or administrative provisions concerning pharmaceutical products are in force in the importing Member State permitting the importation of medicinal products from another Member State under a mark other than that under which it is registered in that State.

The ruling of the Court on this question is that the provisions concerning names under which proprietary medicinal products are placed on the market are irrelevant to the above answer.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

10 October 1978

Hansen v Hauptzollamt Flensburg

Case 148/77

1. EEC Treaty - Geographical area of application - French overseas departments - Tax provisions - Prohibition of discrimination - Applicability
(EEC Treaty, Art. 95 and Art. 227 (1) and (2))

2. Tax provisions - Internal taxation - Preferential treatment of certain types of spirits or certain classes of producers - Products coming from other Member States - Extension of tax advantages - Criteria
(EEC Treaty, first and second paragraphs of Art. 95)

3. Tax provisions - Internal taxation - Products imported from non-member countries - Prohibition of discrimination - Absence of any provision in the EEC Treaty - Possible basis in other treaties

1. Article 227 (2) of the EEC Treaty, interpreted in the light of Article 227 (1), must be taken to mean that the tax provisions of the Treaty, in particular the prohibition of discrimination laid down in Article 95, apply to goods coming from the French overseas departments.

2. Where national tax legislation favours certain classes of producers or the production of certain types of spirits by means of tax exemptions or the grant of reduced rates of taxation, even if such advantages benefit only a small proportion of domestic production or are granted for special social reasons, those advantages must be extended to imported Community spirits which fulfil the same conditions, taking into account the criteria which underlie the first and second paragraphs of Article 95 of the EEC Treaty.

3. The EEC Treaty does not include any rule prohibiting discrimination in the application of internal taxation to products imported from non-member countries, subject however to any treaty provisions which may be in force between the Community and the country of origin of a given product.

NOTE The Finanzgericht (Finance Court) Hamburg submitted five preliminary questions to the Court of Justice concerning the interpretation of provisions of the Treaty with regard to the system of charges on certain imported spirits.

The plaintiff in the main action, the undertaking Hansen, marketed in 1974 spirits of varied origin, either unprocessed, or, in addition to home-produced spirits, products coming from Guadeloupe, Surinam, Jamaica and Indonesia. The dispute in the main case arose between the plaintiff and the tax authorities over the rate of charge applicable to the various spirits, since the authorities had charged the ordinary rate on the spirits whilst the plaintiff claimed that the imported spirits should qualify for the minimum rate of duty reserved under German law for certain types of product, in particular spirits made from fruit, and for certain categories of distillery.

Since the plaintiff in the main action considered that it was entitled to the same tax advantages in respect of the spirits which it had imported it instituted proceedings before the Finanzgericht Hamburg, which submitted a series of preliminary questions to the Court of Justice.

The first question concerns the application of the tax provisions of the Treaty to the French overseas departments. Since certain of the spirits in question were imported from Guadeloupe, a French overseas department, the Finanzgericht asked whether the tax provisions of the Treaty, in particular the provisions against discrimination contained in Article 95, were applicable to such products.

The doubt arises from the fact that Article 227 (2) of the Treaty states that certain groups of provisions, which are specifically indicated, shall apply to the French overseas departments, but tax provisions are not included in this list.

The plaintiff claims that the prohibition against discrimination in Article 95 applies to the French overseas departments. The opinions expressed on this point by the Commission and by the Government of the French Republic are at variance with one another.

It is clear from Article 227 (1) that the status of the French overseas departments within the Community is defined in terms of the French Constitution, according to which those departments form an integral part of the Republic. In order to take account of the special geographic, economic and social position of such departments Article 227 provided that the Treaty should be applied to them gradually and specified certain chapters and articles which were to be applied as soon as the Treaty entered into force whilst providing a period of grace of two years within which the Council was to lay down the conditions under which other groups of provisions of the Treaty were to apply. At the end of that period the provisions of the Treaty and of secondary law are thus automatically applicable to the French overseas departments.

The Court, with regard to the first question which was submitted, ruled that Article 227 (2) of the EEC Treaty, interpreted in the light of Article 227 (1), must be taken to mean that the tax provisions of the Treaty, in particular the rule of non-discrimination laid down in Article 95, apply to goods coming from French overseas departments.

In the second and third questions the Finanzgericht is concerned to obtain both an interpretation of Article 37, concerning national monopolies of a commercial nature, of Articles 92 to 94 concerning systems of aid, and of Article 95, concerning the application without discrimination of domestic provisions, in order to appraise the compatibility in terms of the Treaty of provisions of domestic law conferring advantageous treatment on certain types of spirits or on certain categories of producers, and to establish on the basis of such appraisal the consequences for the taxation of imported spirits of Community origin.

The Court, having found that tax advantages may be granted and may further lawful economic or social aims, rules that where national tax legislation favours certain classes of producers or the production of certain types of spirits by means of tax exemptions or the grant of reduced rates of taxation, even if such advantages benefit only a small proportion of domestic production or are granted for special social reasons, those advantages must be extended to imported Community spirits which fulfil the same conditions taking into account the criteria which underlie the first and second paragraphs of Article 95 of the EEC Treaty.

The fourth and fifth questions concern the system of charges on spirits coming from third countries and are concerned to establish whether, in trade with non-member countries, there exists a prohibition against tax discrimination analogous to that in Article 95 of the Treaty.

The Court rules that the EEC Treaty does not include any provision prohibiting discrimination in the application of internal taxes to products imported from non-member countries, subject however to the provisions of any agreements which may be in force between the Community and the country of origin of a given product.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

12 October 1978

Tayeb Belbouab v Bundesknappschaft

Case 10/78

1. Social security for migrant workers - Community rules - Persons covered - Nationals of one of the Member States - Date on which the criterion of nationality must be satisfied (Regulation No. 1408/71 of the Council, Art. 2 (1))

2. Social security for migrant workers - Community rules - Entry into force - Insurance periods completed previously - Taking into consideration - Criterion of nationality of one of the Member States (Regulation No. 1408/71 of the Council, Arts. 2 (1) and 94 (2))

1. The criterion of nationality of one of the Member States laid down by Article 2 (1) of Regulation No. 1408/71 must be examined in direct relationship to the periods during which the worker carried on his work and not to the time when he submitted his application for benefits.

2. Article 2 (1) and Article 94 (2) of Regulation No. 1408/71, read in conjunction with one another, are to be interpreted as guaranteeing that all insurance periods and all periods of employment or residence completed under the legislation of a Member State before the entry into force of that regulation shall be taken into consideration for the purpose of determining entitlement to benefits in accordance with its provisions, subject to the condition that the migrant worker was a national of one of the Member States when the periods were completed.

NOTE The Sozialgericht (Social Court) Gelsenkirchen submitted to the Court of Justice a series of preliminary questions concerning the interpretation of the rules on social security for employed persons with regard to the concept of legal rights acquired by a migrant worker, who was a national of one of the Community States for part of his working life and who subsequently became a foreign worker when his nationality was changed as a result of the creation of a State.

Those questions were raised in the context of a dispute between the Bundesknappschaft (Federal Mineworkers' Association) Saarbrücken and a pit-worker, born in Algeria in 1924, a French citizen by birth who worked in France for 155 months and, after 26 May 1961, in Germany, who lost his French nationality on 1 July 1962 when Algeria became independent.

When he reached 50 years of age the plaintiff claimed the grant of the miner's pension in accordance with German law which requires the completion by the person concerned of an insurance period of 300 months, during which the person concerned is continuously employed as a face worker or in employment treated as such.

This claim was rejected on the ground that, since the claimant was no longer a national of a Member State of the Community, Regulation No. 1408/71 no longer applied to him, so that his pension rights could only be assessed on the basis of German law.

Nevertheless, on the basis of his employment and of the insurance periods he had completed in France, the plaintiff had attained a legal position corresponding to rights under public law, similar to those of a property right in German constitutional law, protected by Article 14 of the Grundgesetz (Basic Law) and which must be compensated in the event of loss.

The reasoning of the court making the reference is based on the fact that the criterion of a personal nature constituted by the nationality of the plaintiff to be taken into consideration for the purposes of Regulation No. 1408/71 is that existing at the time when the application for the grant of the pension is made and that Regulations Nos. 1408/71 and 574/72 do not contain any provision protecting acquired rights.

The Court has held that it is clear from its consideration of the provisions on social security for migrant workers that the criterion of nationality prescribed by Article 2 (1) of Regulation No. 1408/71 must be assessed in direct connexion with the periods during which the worker has pursued his occupation.

The Court has ruled that Articles 2 (2) and 94 (2) of Regulation No. 1408/71 must be interpreted to mean that they guarantee that all insurance periods, periods of employment or of residence completed under the legislation of a Member State before the date of entry into force of the said regulation will be taken into consideration in order to determine the rights acquired in accordance with the provisions thereof, provided that the migrant worker was a national of one of the Member States at the time when such periods were completed.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

12 October 1978

Commission of the European Communities v Kingdom of Belgium

Case 156/77

1. Transport - Aid to transport - General system of aid - Application (EEC Treaty, Art. 77 and Arts. 92 to 94)

2. Procedure - Objection of illegality - Measures with regard to which an objection of illegality may be put forward (EEC Treaty, Art. 184)

3. Member States - Failure to fulfil an obligation under the Treaty - Applications under Articles 93 and 169 of the Treaty - Purpose thereof (EEC Treaty, Art. 93 (2), second subparagraph and Arts. 169 and 170)

1. The effect of the application of Article 177 of the Treaty, which acknowledges that aid to transport is compatible with the Treaty only in well-defined cases which do not jeopardize the general interests of the Community, cannot be to exempt aid to transport from the general system of the Treaty concerning aid granted by the States and from the controls and procedures laid down therein.

2. The objection of illegality provided for in Article 184 of the Treaty is limited under that provision to proceedings "in which a regulation of the Council or of the Commission is in issue" and can in no case be invoked by a Member State to which an individual decision has been addressed.

3. It follows from the wording of the second subparagraph of Article 93 (2) of the Treaty, in particular from the words "in derogation from the provisions of Articles 169 and 170", that the purpose of the application referred to therein may only be a declaration that the Member State concerned has failed to comply with a Commission decision compelling it to abolish or alter an aid within a specific period, whereas in the case of Articles 169 and 170 the application is directed against any failure of a Member State to fulfil one of its obligations under the Treaty.

NOTE

In an application lodged on 21 December 1977 the Commission requested the Court to find that "since the Kingdom of Belgium has failed to comply with the decision of the Commission of 4 May 1976 on aid from the Belgian Government to the Société Nationale des Chemins de Fer Belges(SNCB) for through international railway tariffs for coal and steel within the time-limit prescribed by the Commission it has failed to fulfil an obligation incumbent on it under the Treaty".

In that decision the Commission stipulated that the Kingdom of Belgium must terminate the aid in question within three months or modify the legal basis of that aid. Since the Kingdom of Belgium failed to comply with that decision the Commission referred the matter to the Court of Justice pursuant to the provisions of the Treaty concerning aids granted by States (Articles 92 and 93).

The Kingdom of Belgium claims that the Commission is all the less justified in instituting proceedings against the aid in question on the basis of Article 93 of the Treaty in the present case in that it has failed to establish that such aid fulfils the criteria of incompatibility /with the common market/ set out in Article 92 (1).

Belgium claims that the application is not well founded and calls in question the lawfulness of the decision of 4 May 1976 whereby the Commission found that the aid in question was incompatible with the common market. The Commission maintains that since the Belgian Government failed to lodge an application for the annulment of the said decision within the period of two months prescribed in the third paragraph of Article 173 of the Treaty it is barred in future from disputing its lawfulness within the context of the present proceedings. The Court ruled that to permit a Member State to whom a decision adopted pursuant to the first sentence of Article 93 (2) is addressed to question the validity of that decision in the course of an application as referred to in the second subparagraph of that article, despite the expiry of the time-limit prescribed in the third paragraph of Article 173 of the Treaty, would be contrary to the principles governing the right of action laid down by the Treaty and would jeopardize the stability of that system, as well as the principle of legal certainty upon which it is based.

The Court has ruled that since the Kingdom of Belgium has failed to comply with the decision of the Commission of 4 May 1976 on aid from the Belgian Government to the Société Nationale des Chemins de Fer Belges (SNCB) for through international railway tariffs for coal and steel within the period prescribed therein, it has failed to fulfil an obligation incumbent upon it under the Treaty.

The Kingdom of Belgium was ordered to pay the costs of the proceedings.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

12 October 1978

Joh. Eggers Sohn & Co. v Freie Hansestadt Bremen

Case 13/78

1. Preliminary questions – Jurisdiction of the Court – Limits (EEC Treaty, Art. 177)

2. Quantitative restrictions – Measures having equivalent effect – Prohibition – Scope (EEC Treaty, Art. 30)

3. Quantitative restrictions – Measures having equivalent effect – Designation of quality indicative neither of origin nor of source – Designation linked to the completion of the production process on national territory – Prohibition – Exception within the meaning of Article 36 of the Treaty – Not applicable (EEC Treaty, Arts. 30 and 36; Commission Directive No. 70/50, Art. 2 (3) (s))

1. Although the Court has no jurisdiction within the framework of the application of Article 177 of the Treaty to decide upon the compatibility of a national provision with Community law, it may nevertheless extract from the wording of the question formulated by the national court, having regard to the facts stated by the latter, those elements which come within the interpretation of Community law.

2. For the purposes of the prohibition of measures having an effect equivalent to quantitative restrictions, it is sufficient that the measures in question are likely to hinder, directly or indirectly, actually or potentially, imports between Member States.

3. Measures adopted by a Member State which make the use in connexion with a home-produced product of a designation of quality – even where such designation is optional – which is indicative neither of origin nor of source within the meaning of Article 2 (3) (s) of Commission Directive No. 70/50/EEC of 22 December 1969 subject to the requirement that one or more stages of the production process prior to the preparation of the finished product have been carried out on national territory are measures having an effect equivalent to a quantitative restriction which are prohibited by Article 30 of the Treaty and not justified by Article 36 thereof.

NOTE The main action consists in proceedings between the competent administration of the Free Hanseatic City of Bremen and a German producer of distilled spirits concerning the latter's right to use for spirits manufactured from distillates of wine imported from another Member State the names "Qualitätsbranntwein" (high quality spirits made from wine) and "Weinbrand" (brandy).

On the basis of the replies to the questions submitted the national court must decide whether Article 40 of the Federal Weingesetz (Law on Wines) of 14 July 1971, which covers wines, liqueurs, sparkling wines, beverages made from wine and spirits distilled from wine, is compatible, wholly or in part, with Community law.

The plaintiff in the main action maintains that Articles 40 and 44 of the Weingesetz constitute a measure having an effect equivalent to a quantitative restriction on the importation into the Federal Republic of Germany of prepared wines. Such restriction consists in the fact that Qualitätsbranntwein produced in Germany must necessarily be produced from wine, wine fortified for distillation or Rohbrand which, as regards at least 85% (by alcoholic strength) of the distillate used, were distilled on the territory of the Federal Republic of Germany, or at any rate subjected to a final distillation processing them into a "fertiges Destillat" (prepared wine) which must be stored for at least six months in oaken casks in the German undertaking which carried out that distillation.

That provision, to which, with regard to Qualitätsbranntwein from other Member States, Article 44 of the Weingesetz corresponds, prevents German producers of spirits from purchasing distillate in the other Member States in order to use them directly, that is to say without further distillation on German territory, in order to manufacture Qualitätsbranntwein, whilst such distillates, in particular those coming from France and Italy, have the alcoholic strength required by the Weingesetz and meet the same requirements with regard to public health and quality as the prepared distillate produced in Germany.

The applicant maintains that that provision thus constitutes a restriction on trade prohibited by Article 30 of the Treaty, which does not come under Article 36 thereof since its real purpose is to protect German distillers by reserving, for spirits produced in Germany the names "Qualitätsbranntwein aus Wein" and "Weinbrand" for those whose final distillation, at least, was carried out in the Federal Republic of Germany.

The German Government maintains that the provision in question does not in any way constitute a measure having an effect equivalent to a quantitative restriction. The requirement in the Weingesetz, in which it is prescribed that at least the last distillation and six months' storage in oaken casks shall be carried out in the same undertaking, is intended to maintain the quality of the spirits in question, justifying the names which are reserved to them on the basis of such quality. That guarantee of quality can only be ensured by the maintenance of a "sole responsibility" to ensure "the quality and individual nature of the product".

In the first question it is asked whether Articles 30 and 31 of the Treaty as well as the prohibition on discrimination under Community law are to be interpreted as meaning that the rules laid down in the provisions of the Weingesetz, according to which home-produced spirits from wine can only be described as "Qualitätsbranntwein aus Wein" or "Weinbrand" if:

at least 85% of the alcoholic content is derived from wine distillate home-produced by distillation;

the whole of the wine distillate used has been kept for at least six months in oaken casks at the undertaking where the home-produced wine distillate was extracted by distillation,

are incompatible with the prohibition of measures having an effect equivalent to a quantitative restriction and also with the prohibition on discrimination.

The first question amounts in substance to asking whether the prohibition on measures having an effect equivalent to a quantitative restriction (Article 30 of the Treaty) and the general prohibition on discrimination cover measures enacted by a Member State subordinating the use of a name indicative of quality for a national finished product, and in particular for spirits manufactured from raw materials which may equally well come from the State in question or from other Member States, to the condition that all or part of the production process prior to the final stage thereof should take place in the Member State in which the final stage of production takes place and from which the product is accordingly considered as originating.

In case an affirmative answer is given to the first question it is then asked whether a measure of this nature is justified under Article 36.

The Court adopted the wording of the sixth recital of Commission Directive No. 70/50/EEC of 22 December 1969, which classifies as measures having an effect equivalent to quantitative restrictions "... those which, at any marketing stage, grant to domestic products a preference, other than an aid, to which conditions may or may not be attached, and where such measures totally or partially preclude the disposal of imported products".

In Article 2 of that directive the view is rightly taken that measures having an effect equivalent to quantitative restrictions, and as such prohibited, include those which "confine names which are not indicative of origin or source to domestic products only".

In a market which must display so far as possible the characteristics of a single market the right to a name indicative of quality for a product cannot, saving the rules applicable with regard to indications of origin or source, depend on other than objective, intrinsic characteristics which show the quality of the product in relation to a similar product of poorer quality and not on the geographic locality where a specific stage of production took place. Whilst a Member State's policy of promoting quality is indeed desirable, it can be put into effect on the territory of the Community only by means which are in accordance with the provisions of the Treaty.

The Court has ruled that measures taken by a Member State which subordinate, with regard to a national product, the use of a name indicative of quality, although such name may be optional, not constituting an indication of origin or source within the meaning of Article 2 (3) (s) of Commission Directive No. 70/50/EEC of 22 December 1969, to the condition that one or more stages of manufacture prior to the final stage of production of the product are carried out on the national territory constitute measures having an effect equivalent to a quantitative restriction, are prohibited by Article 30 of the Treaty and are not justified by Article 36 thereof.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

24 October 1978

Société Générale Alsacienne de Banque S.A. v Walter Koestler

Case 23/78

1. Freedom to provide services - Services - Concept - Stock exchange transactions - Establishment of the person providing services in a Member State other than that of the person for whom the services are intended
(EEC Treaty, Arts. 59, first para. and 60, first para.)

2. Freedom to provide services - Restrictions - Stock exchange time-bargains - National law - Plea that a contract was an agreement to pay differences - Community law - Compatibility - Condition
(EEC Treaty, Arts. 59 and 60)

1. Services which consist in a bank having orders carried out on a stock exchange and in current account transactions in conjunction with the opening of a credit constitute services within the meaning of the first paragraph of Article 60 of the Treaty.

Such services meet the requirement of the first paragraph of Article 59 that liberalization measures must benefit all persons providing services "who are established in a State of the Community other than that of the person for whom the services are intended", since the person in receipt of the services, before the termination of the contractual relations between the parties, has taken up residence in another Member State.

2. Articles 59 and 60 of the EEC Treaty do not affect the application of legislative provisions whereby a Member State bars the recovery by legal action of certain debts, such as debts arising out of a wagering contract and similar debts, provided always that such provisions are not applied in a discriminatory manner, either in law or in fact, compared with the way in which similar debts contracted within the territory of the Member State in question are treated.

NOTE While he was resident in France, Mr Koestler, the defendant in the main action, instructed the Société Générale Alsacienne de Banque to carry out stock exchange time-bargains, chiefly in foreign shares. These time-bargains consisted in accounting for the differences between the agreed share prices and the actual share prices on settling day. The gains or losses arising out of these speculations were entered in a current account which the bank kept for Mr Koestler and on which it granted an overdraft. When the defendant transferred his residence back to the Federal Republic of Germany, there remained as a result of losses incurred by him a considerable overdraft at the bank which the defendant refused to

settle. An action for recovery was brought by the Société Générale Alsacienne de Banque before the Landgericht (Regional Court) Bonn, the court which had jurisdiction by virtue of the debtor's residence.

The Landgericht held that, under the Börsengesetz (Law relating to stock exchanges and commodity markets) and the Bürgerliches Gesetzbuch (Civil Code), the obligations entered into by the defendant were to be treated as wagering debts and as such were not actionable.

On appeal, the Oberlandesgericht Köln (Higher Regional Court, Cologne) considered the question whether that conclusion, based on the provisions of German law, might be subject to modification by the provisions of Community law concerning freedom to provide services. In order to clarify this point, that court referred the following question for a preliminary ruling:

Properly interpreted, do Articles 59 and 60 of the EEC Treaty exclude the objection under German law that a contract is an agreement to pay differences in a case where a French bank is claiming, from a customer of German nationality, the repayment on the basis of French law of credit for time-bargains (agreements to pay differences) carried out on the Paris stock exchange in accordance with an agreement?

It is necessary first to make clear the scope of the provisions of the Treaty relating to freedom to provide services (Articles 59 and 60) with regard to the problem raised by the national court.

According to the principle underlying the third paragraph of Article 60, the State of residence of the person for whom a service is intended is obliged to ensure that the person who provides the service and is established in another Member State shall receive the same treatment as is reserved by that State for its own nationals.

The "General Programme for the abolition of restrictions on freedom to provide services", adopted by the Council in 1961, provides that, "any requirements imposed, pursuant to any provision laid down by law, regulation or administrative action or in consequence of any administrative practice, in respect of the provision of services are also to be regarded as restrictions where, although applicable irrespective of nationality, their effect is exclusively or principally to hinder the provision of services by foreign nationals".

Making wagering debts unactionable cannot be regarded as discriminatory treatment in relation to a person who provides a service and is established in another Member State, if the same limitation applies to all persons who provide services and are established within the territory of that State when they seek to enforce a debt of the same nature. A Member State's refusal, for reasons of a social nature, to allow actions to be brought on a debt of this kind, even if the debt arose validly in another Member State, cannot be regarded as being contrary to Community law.

In answer to the question referred to it, the Court ruled that Articles 59 and 60 of the EEC Treaty do not have the effect of modifying the application of legislative provisions whereby a Member State prevents certain debts, such as wagering debts and debts treated as such, from being recovered by legal action, always provided that application of such provisions is made without discrimination in fact or in law in relation to the treatment applied to similar debts contracted within the territory of the Member State concerned.

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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 1 800 per language. For subscriptions in subsequent years, the price will be altered according to changes in costs.

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 1962 to 1972 is available; the volumes for the years 1954 to 1961 will be available at the end of 1978. The Danish edition of the volumes for the years 1954 to 1972 is being completed. It includes a selection of judgments, opinions and summaries from the most important cases; the volume for the years 1954 to 1964, the volume for the years 1965 to 1968 and the volumes for the years 1969, 1970 and 1971 are already available.

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.

4. Synopsis of case-law on the EEC Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters - two parts have appeared.

5. 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 of the European Communities

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 of the European Communities

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 of the European Communities

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.

5. European Law Report

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

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,
D 5000 KÖLN 1,
Federal Republic of Germany.

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

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

III - 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. The Information Office of the Court of Justice must be informed of each group visit.

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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