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Information and Notices

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I

(Information)

COMMISSION

Ecu (1)

29 June 1993

(93/C 178/01)

Currency amount for one unit:

Belgian and Luxembourg franc	40,2818	United States dollar	1,15445
Danish krone	7,53223	Canadian dollar	1,47909
German mark	1,95968	Japanese yen	124,104
Greek drachma	266,910	Swiss franc	1,74149
Spanish peseta	149,871	Norwegian krone	8,28032
French franc	6,60174	Swedish krona	9,01155
Irish pound	0,803433	Finnish markka	6,59539
Italian lira	1781,90	Austrian schilling	13,7923
Dutch guilder	2,19773	Icelandic krona	82,0585
Portuguese escudo	186,433	Australian dollar	1,72564
Pound sterling	0,772882	New Zealand dollar	2,14982

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

Users of the service should do as follows:

— call telex number Brussels 23789;

— give their own telex code;

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

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

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

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(1) Council Regulation (EEC) No 3180/78 of 18 December 1978 (OJ No L 379, 30. 12. 1978, p. 1), as last amended by Regulation (EEC) No 1971/89 (OJ No L 189, 4. 7. 1989, p. 1).

Council Decision 80/1184/EEC of 18 December 1980 (Convention of Lomé) (OJ No L 349, 23. 12. 1980, p. 34).

Commission Decision No 3334/80/ECSC of 19 December 1980 (OJ No L 349, 23. 12. 1980, p. 27).

Financial Regulation of 16 December 1980 concerning the general budget of the European Communities (OJ No L 345, 20. 12. 1980, p. 23).

Council Regulation (EEC) No 3308/80 of 16 December 1980 (OJ No L 345, 20. 12. 1980, p. 1).

Decision of the Council of Governors of the European Investment Bank of 13 May 1981 (OJ No L 311, 30. 10. 1981, p. 1).

STATE AIDS

C 7/93 (N 327/92)

Portugal

(93/C 178/02)

(Articles 92 to 94 of the Treaty establishing the European Economic Community)

Commission communication pursuant to Article 93 (2) of the EEC Treaty to the other Member States and other interested parties on the future method of compensation of TAP's deficit related to the Atlantic autonomous regions of the Azores and Madeira

By the letter reprinted below, the Commission informed the Portuguese Government of the decision to initiate the procedure.

'By letter of 10 April 1992, registered on 13 April 1992, the Portuguese Government informed the Commission of its intention to settle an alleged accumulated debt of Esc 35 140 964 000 owed to Transportes Aéreos Portugueses SA (hereinafter TAP).

By letter of 25 June 1992, registered on 26 June 1992, in response to a letter from the Commission of 28 May 1992, the Portuguese authorities provided information on the abovementioned operation and listed the criteria which should apply for compensating TAP's losses on the routes to the Atlantic autonomous regions of the Azores and Madeira from 1992 onwards.

The Commission requested further information by letters of 4 August 1992 and 16 December 1992, which the Portuguese Government answered by letters of 28 October 1992 and 15 January 1993, registered on 30 October 1992 and 25 January 1993 respectively.

On 11 January 1993 officials of the Commission's Directorate-General for Transport responsible for State aids held a meeting in Brussels with representatives of the Portuguese Civil Aviation Administration, TAP and the Portuguese Permanent Representation.

According to the information from the Portuguese Government, Article 231 of the Portuguese Constitutional Code provides that social protection of the residents of the autonomous regions is an imperative commitment for the Portuguese government, which must smooth out the inequalities stemming from the islands' geographical position.

The Portuguese authorities have imposed public service obligations on the routes between the autonomous regions of Madeira and the Azores (hereinafter the autonomous regions) and the mainland, and has entrusted TAP with the task of operating such routes. For this purpose the government has fixed on a yearly basis the air tariffs for the residents of the autonomous regions at levels considerable lower than those an airline would fix taking into account its costs. Consequently TAP has suffered considerable losses in fulfilling the public service obligation requirements imposed by the Portuguese Government.

In the 1978 to 1991 period the Portuguese Government, because of serious financial problems, has only compensated in part the deficit sustained by TAP (the last compensation was paid in 1989). Thus in 1991 the total outstanding amount of TAP's non-compensated deficit relating to the autonomous regions was Esc 18 328 074 000. This amount is calculated by aggregating the unpaid portions of the deficit incurred by TAP on the routes to the autonomous regions in the 1978 to 1991 period. The deficits are at their historical value without taking into account the effects of inflation. The Portuguese government intends to pay TAP the total outstanding amount of the deficits corresponding to the autonomous regions, after revaluing it in line with the inflation rates during the 1978 to 1991 period. This amount is equal to Esc 35 140 964 000. A loan from the State to TAP, which with the relevant contractual interests up to 31 March 1992 was equal to Esc 3 140 964 000, must be deducted from this amount. This amount was incorporated into TAP's capital through a capital increase. The net outstanding amount of Esc 32 billion should be paid by deleting the overall amount of the airline's accumulated losses and cancelling the corresponding amount of TAP's loans, and making them the State's responsibility.

As regards the criteria for the calculation of TAP's yearly deficits, the Portuguese government has used the operating results for the autonomous regions aggregating the operating deficits for passengers and cargo. This method of calculation of the airline's deficit is acceptable because it takes into account the actual revenues and costs incurred by TAP on these routes (this method is also consistent with the criterion established by Article 4 (1) (h) of Regulation (EEC) No 2408/92 for compensation for fulfilling public service obligation requirements).

The Portuguese authorities have alleged that the direct flights to the autonomous regions carry only around 90 % of the island traffic, since the remaining 10 % of the passengers use international flights which serve the islands. If all the traffic used only direct flights, TAP would have to increase the number of such flights by the same proportion as the increase in traffic, since the load factor is already very high (75,8 % in 1990). These additional local flights would make the same deficit as

the direct flights, having the same load factor and the same deficit per passenger carried. For the Portuguese authorities this means that the deficit caused by passengers travelling only on the domestic leg (to and from the islands) of an international flight (e.g. Funchal—Lisbon—Rome) should also be taken into account in calculating the total deficit incurred by TAP.

On the basis of this assumption the Portuguese government has calculated this additional deficit by multiplying the number of passengers travelling on the national leg of these flights by the deficit for each passenger on the direct flight for the same route.

As regards the future, the Portuguese government intends to continue compensating the deficit made by TAP on the Atlantic regions. From 1992 onwards the Portuguese government will apply the following criteria to compensation for TAP:

(a) TAP will receive an annual subsidy in respect of the regular air links between the mainland and the autonomous regions, between the autonomous regions and between Funchal and Porto Santo. The subsidy will be worked out by the Inspectorate-General for Finance and made available in monthly instalments, equivalent to the number of residents, students and people accompanying the autonomous regions' sporting teams (hereinafter the special categories of passengers) effectively carried to the mainland, multiplied by the difference between the normal tariff which TAP applies to other passengers and the tariffs which were set for the abovementioned passengers on those routes according to Portuguese law (Article 2 of Decree-Law 311/91 of 17 August 1991).

(b) Moreover, the State may compensate TAP each year for the loss which the Inspectorate-General for Finance recognizes the company as having actually suffered on the routes served for non-commercial reasons (i.e. routes served for political reasons which an airline would not operate if it only took into account its commercial interest) determined by the Government. However, the Portuguese authorities have confirmed to the Commission that no such routes have been designated, other than the routes to the autonomous regions of the Azores and Madeira.

Article 92 (1) provides that any aid granted by a Member State or through State resources which distorts or threatens to distort competition within the common market shall in so far as it affects trade between Member States be incompatible with the common market.

The compensation of the losses from 1978 to 1991 and the compensation of the deficits from 1992 onwards will, in the following be considered separately.

(a) The Portuguese government has notified the Commission of its intention to compensate TAP's accumulated deficit of some Esc 35 billion. The operation should be carried out by cancelling Esc 32 billion of the airline's debts, and increasing the airline's capital by some Esc 3 billion, through a conversion of debts into equity. Such increase in capital has already been carried out.

Article 93 (3) of the Treaty provides that the Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 92, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put the proposed measure into effect until this procedure has resulted in a final decision.

The Portuguese government, by having carried out the increase in capital without waiting for a final decision from the Commission, has failed to fulfil its obligations pursuant to Article 93 (3).

As regards the substantive aspects of the case, the concept of public service involves an obligation imposed on a transport undertaking, which the undertaking would not assume if it considered its commercial interests only (1).

In the guidelines set out in Memorandum No 2, the Commission has considered that in general terms Member States should terminate public service obligations and if this is not feasible provide compensation. Before the entry into force on 1 January 1993 of the Market Access Regulation (EEC) No 2408/92, no criteria had been fixed at Community level for the calculation of the reimbursement.

In the present case, TAP has carried out public services on behalf of the State on the routes to the Azores. The Portuguese government has imposed on TAP tariff obligations for the residents of the Atlantic islands. TAP has thus carried out public services on behalf of the State which do not accord with its commercial interests (i.e. without taking into account its costs).

According to Memorandum No 2 compensation for public service obligation represents an aid pursuant to Article 92 of the EEC Treaty.

Given the strong competition within the common aviation market such aid distorts competition

(1) See Memorandum No 2 of 1984 on the development of a common aviation policy, COM(84) 72 final, Annex IV, p. 37.

between Community air carriers. TAP's position will be strengthened in consequence of the aid with regard to other Community air carriers which carry out onerous public service obligations without receiving any compensation. Furthermore, the aid affects intra-Community trade because TAP is an air carrier which has free access to the common market and serves several Community routes in competition with other air carriers. The aid could in fact lead to a cross-subsidization of such routes which is unacceptable in the light of the State aid provisions of the EEC Treaty.

The aid to TAP cannot be considered compatible with the common market pursuant to Article 92 (2) (a) of the EEC Treaty. Article 92 (2) (A), which has not been invoked by the Portuguese authorities, provides that aids of a social character granted to individual consumers are compatible with the common market, in so far as they are granted without discrimination related to the origin of the products. Such provision is not applicable to the present case. A compensation for the deficit incurred by restricting the access to the routes to the autonomous regions to TAP appears to be an aid measure on behalf of the carrier.

The aid under scrutiny is not an aid to promote the execution of an important project of common interest or to remedy a serious disturbance in the economy of a Member State pursuant to Article 92 (3) (b).

The compensation of TAP's operating deficit does not represent a sectoral aid falling within Article 92 (3) (c) because it is not aimed at assisting the air transport sector or overcoming any handicaps of the Portuguese airline.

Article 92 (3) (a) and (c) provides for exception in respect of aid to promote or facilitate the development of certain regions. Article 92 (3) (c) also provides an exemption for sectoral aids, namely aids to promote the development of certain activities.

Article 92 (3) (a) provides an exemption for aid for the benefit of regions suffering from problems of serious underdevelopment.

In its communication of 12 August 1988 [1], as amended by communication No 90/C 163/05 [2], the Commission explained the method of application of Article 92 (3) (a) and (c) to regional aid. In applying Article 92 (3) (a) the Commission assesses the relative level of development of different zones compared with the Community average. For the purposes of Article 92 (3) (a), the socio-economic situation is assessed by reference to per capita GDP (gross domestic product)/PPS (purchasing power standard) using the Community index for the region. In a second stage the relative level of regional development is compared with the Community average. Therefore, regions to be classified as Article 92 (3) (a) regions are the level II regions (on the basis of NUTS) which have a GDP/PPS threshold of 75 % or lower thus indicating an abnormally low standard of living and serious underemployment. By applying these indicators the whole Portuguese territory (Atlantic islands included) is deemed a region falling within Article 92 (3) (a). On the basis of the available data none of the Portuguese regions has a GDP/PPS higher than 75 % (the Portuguese GDP/PPS in the 1986 to 1990 period was 54 % of the Community average).

The compensation of TAP's accumulated deficit 1978 to 1991 related to the Atlantic islands may benefit from the exemption laid down in Article 93 (3) (a). The Commission has in fact expressly envisaged the possibility of granting an exemption pursuant to Article 92 (3) (a) to compensation for public service obligations, as promoting regional development [3]. Given the degree of access to the market, the compensation of TAP's deficit is the only way to maintain life-line connections with the Atlantic islands.

The Commission is aware that part of the compensation refers to deficits incurred before Portugal's accession to the Community (July 1985). This circumstance is, however, irrelevant. The aid in fact is not aimed at facilitating TAP's adaptation to an environment of fair competition, after Portugal's accession to the Commission. As explained above, the Commission does not consider the compensation of TAP's deficit as aid aimed at restructuring TAP's financial standing and operating efficiency.

The compensation of TAP's deficit is an operating aid of regional character, being designed to overcome a permanent and structural disadvantage caused by the remote location of the autonomous regions.

In view of this situation it appears that, as long as the access to such routes is not entirely liberalized, the only way for the Portuguese government to face the serious economic and social problems linked to the remoteness of the islands is to impose a public service obligation in resepct of the autonomous regions, and compensate the deficit incurred by TAP on these routes.

[1] OJ No C 212, 12. 8. 1988, p. 2.
[2] OJ No C 163, 4. 7. 1990, p. 6.
[3] Memorandum No 2, 1984.

In the present case the State has imposed on TAP tariff obligations in respect to the autonomous regions, and has not been able to compensate regulary the deficit made by TAP on the island routes. However the State was legally bound to compensate this deficit. Article 20 (2) of Decree-Law No 260/76 provides that "the State must grant subsidies to public undertaking for compensating the special duties imposed on them". Therefore, TAP has acquired year by year credits towards the Portuguese government. Once it has been determined that the compensation may benefit from the exemption provided for pursuant to Article 92 (3) (a), it is irrelevant that the State only decided in 1992 to compensate the whole outstanding deficit for the 1978 to 1991 period. Furthermore it must be recognized that the Portuguese government is in the position to update the outstanding deficit on the basis of the inflation rates in the 1978 to 1991 period. Firstly, because it is apparent that the only means to fully indemnify TAP for the losses incurred on the routes to the Atlantic islands is the revaluation of the sums due to TAP. It would be unfair to allow the repayment of the nominal amounts only, without taking into account the effects of inflation. Secondly, because the Portuguese law expressly provides that pecuniary obligations produce interest. The Portuguese government, as shown above, was obliged under Portuguese law to pay an amount of money to TAP for compensating its losses to the islands. This obligation is a pencuniary one. According to Article 804 of the Portuguese civil code a delay in payment obliges the debtor to pay damages suffered by him. Payment by the debtor is deemed delayed when, for reason imputable to him, the obligation is not carried out in due time.

As regards pecuniary obligations, Article 806 of the Portuguese civil code provides that interests accrue from the date payment was due. The interest rate is provided for by law, unless the parties have stipulated otherwise. There is also the possibility of the debtor having to pay any further damages caused to the creditor by the delay in the payment.

As regards the rate of interest set by law, according to Article 559 of the Portuguese civil code, this is set by the joint legislation of the Ministry of Justice and the Ministry of Finance and Planning. However the parties may negotiate a lower interest rate than the legal one. This happened in the present case where the parties have decided that the Portuguese Government pay interest at a rate equal to the inflation rate instead of legal interests rate. The Portuguese government has shown the Commision that in the 1978 to 1991 period the legal interest rate was higher than the inflation rate.

As regards the fact that the Portuguese government also reimburses the calculated deficit for domestic passengers on international flights to the Azores, the Portuguese government's calculation method does not appear, for the period in question, unjustified. As explained above, the Memorandum No 2 of 1984 which generally accepts the reimbursement for public service obligations, does not give any specification about the calculation method to be used. For the period 1978 to 1991 the Portuguese government's reasoning, namely that the domestic passengers on international flights have increased TAP's deficit because of their cheap tickets which should be reimbursed (see above), cannot be contested.

(b) As regards the compensation for the deficit incurred since 1992, the Portuguese government has stated that this will be paid in monthly instalments and worked out on the basis of the difference between the tariffs imposed on TAP and the tariffs that TAP would apply if it were free to set the tariffs for the autonomous regions.

The same legal considerations set out above for the compensation of the previous deficit apply to the new compensation. Such compensation is in fact aimed at ensuring life line connections between the islands and the mainland and therefore may benefit from the exemption provided for in Article 92 (3) (a) for the above reasons.

However, the method of calculating the compensation for the future deficit is different from that used for the past deficit. This method is not based on the revenues and costs of the airline on the routes to the islands, but is based on the difference between the promotional and the "normal" tariffs. Given the very high load factors on the flights to the islands (75,8 % in 1990), compensation based on the difference between the tariffs could have the effect of transforming the unprofitable routes to the islands into very profitable routes. This new method could in fact bring about an overcompensation of the airline's deficit. In fact, the higher TAP would set the "normal" tariff, the more profit it would make, given the fact that most of the island traffic is for the special category of passengers benefiting from the promotional tariff. This method is not transparent because it does not take account of the losses actually sustained by the airline and leads to a situation which is not consistent with the rationale of the exemption laid down in Article 92 (3) (a).

It should also be mentioned that (even though Article 4 of Regulation (EEC) No 2408/92 is at present not applicable to the island traffic to the Azores and Madeira [1]) this method is not

[1] Article 1 (4) of Regulation (EEC) No 2408/92 exempts the autonomous region of the Azores from the application of the Regulation. As regards Madeira, which does not form part of the archipalagos of the Azores, the access to the market is limited by the exclusive concession of unlimited duration granted to TAP pursuant to Article 3 (4) of its articles of association adopted by Decree-Law No 471-A/76 of 14 June 1976, and confirmed by Decree-Law No 343/89 of 25 July 1989.

compatible with the rationale for reimbursements of public service obligations applied elsewhere in the Community according to Article 4 of the Market Access Regulation (EEC) No 2408/92. Article 4 (1) (h) of this Regulation stipulates that "such reimbursement shall take into account the costs and revenues generated by the service", that is the deficit of the route in question. The proposed Portuguese scheme would be, as of 1 January 1993, different from the reimbursement schemes used elsewhere in the Community.

Memorandum No 2 of 1984, which as explained above envisages the possibility for Member States to provide compensation for public service obligations, does not provide for the criteria for calculating such compensation. However, the Commission must control and ensure that the reimbursement for public service obligations does not involve an overcompensation of the airlines' deficit. The Portuguese government has not provided information on the actual (monthly) deficits incurred since beginning 1992 by TAP on the routes to the Atlantic islands and on the corresponding compensations calculated on the basis of the new method. The Commission is thus not in a position to assess whether the Portuguese government from 1992 onwards may overcompensate TAP's deficits and to calculate the amount of such possible overcompensation.

In the present case TAP might incur a deficit which is lower than the amount of the subsidy granted by the State, or even make an additional profit, and therefore receive an operating aid which cannot be justified as regional aid pursuant to Article 92 (3) (a). The method is, therefore, not compatible with Article 92.

On the basis of the foregoing the Commission:

(a) considers that the compensation of TAP's deficit incurred on the routes to the autonomous regions in the 1978 to 1991 period is an aid compatible with the common market pursuant to Article 92 (3) (a);

(b) has serious doubts as to the compatibility with the common market of the future method of calculation of the compensation of TAP's deficit. On the basis of the available information the Commission doubts that any of the derogations of Article 92 may apply to this method of calculation.

Therefore, with the present letter, the Commission informs the Portuguese government that it has decided:

(a) not to raise any objection to the compensation of TAP's deficit of Esc 35 140 964 000 (32 billion writing off of TAP's debts, and 3 140 964 000 incorporated in TAP's capital) on the grounds that the aid benefits from the exemption of Article 92 (39 (a);

(b) to open the procedure pursuant to Article 93 (2) with regard to the future method of compensation of TAP's deficit related to the autonomous regions.

Within this procedure, the Commission invites the Portuguese government to submit, within thirty days from the receipt of this letter, its comments. The Portuguese government is also requested to provide a breakdown of the monthly deficits incurred by TAP since beginning 1992 and the corresponding compensations calculated on the basis of the difference between the tariffs, and all information necessary for the appraisal of the case. The Commission informs the Portuguese government that the other Member States and interested parties will be asked to submit their comment by means of a communication published in the *Official Journal of the European Communities.*

The Commission reminds your government that according to the provisions of Article 93 (3) of the EEC Treaty no aid measure can be put into effect before the procedure pursuant to Article 93 (2) of the EEC Treaty has resulted in a final decision of the Commission.

The Commission draws the attention of your government to its letter of 3 November 1983 sent to all Member States regarding their obligations as they arise from the provisions of Article 93 (3) of the EEC Treaty and to the communication published in the *Official Journal of the European Communities* No C 318 of 24 November 1983, on the basis of which any aid provided illegaly, that is without waiting for the Commission's final decision resulting from the Article 93 (2) procedure, could be subject to a recovery order.'

The Commission hereby gives formal notice to the other Member States and other interested parties to submit their comments on the measures in question to it within one month from the date of this publication. The address is as follows:

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

These comments will be communicated to Portugal.

Information procedure — technical regulations

(93/C 178/03)

— Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations.
(OJ No L 109, 26. 4. 1983, p. 8).

— Directive 88/182/EEC of 22 March 1988 amending Directive 83/189/EEC.
(OJ No L 81, 26. 3. 1988, p. 75).

Notifications of draft national technical regulations received by the Commission.

Reference (1)	Title	End of three-month standstill period (2)
93-0134-DK	Danish corrections and additions to ETS 300 001, August 1992	10. 9. 1993
93-0144-D	BAPT 223 ZV II — authorization order for pre-series video-phones	27. 8. 1993
93-0145-D	BAPT 223 ZV 6 — licensing regulation for ISDN terminal equipment for connection to ISDN basic and primary multiplex connections of the national ISDN of DBP telekom, layer 2 and layer 3 aspects	27. 8. 1993
93-0146-D	BAPT 224 ZV 1 — conformance regulations for ISDN terminal equipment on the ISDN base terminal (batch 1)	27. 8. 1993
93-0147-D	BAPT 223 ZV 10 — acceptance regulation for terminals on the 3,1 kHz telephone service for connection to the national ISDN network	27. 8. 1993
93-0148-D	Draft order regarding the hygienic requirements for treating and marketing chicken eggs and foodstuffs containing raw eggs (chicken egg order) of ... 1993	urgent
93-0149-B	Royal Decree concerning the use of compressed natural gas (NGV) in the propulsion of motor vehicles	19. 8. 1993
93-0150-NL	Specification of conformity for equipment intended for connection to the Dutch telephone network regarding: T 18-01 digital European cordless telecommunications (DECT)	25. 8. 1993
93-0151-E	Ministerial order amending Annex 13 and paragraph 16.6 of the Annex to the ministerial order of 21 November 1984 which approved the quality standards for tinned vegetables	6. 9. 1993
93-0152-E	Proposed amendment to the ministerial order of 3 October 1983, approving the general quality standard for pasteurised milk intended for the internal market	6. 9. 1993
93-0153-E	Proposed amendment to the ministerial order of 1 July 1987 approving the general quality standard for yoghurt or yoghurt intended for the internal market	6. 9. 1993
93-0154-UK	The wireless telegraphy (network users) (exemption) regulations	25. 8. 1993
93-0156-F	Draft order concerning the characteristics and conditions of use for tyres of motor vehicles and their trailers	8. 9. 1993
93-0157-NL	Commodity act regulation on novel foods	30. 8. 1993
93-0158-F	Draft order amending the order of 16 July 1954 relating to lighting and signalling equipment on vehicles	Closure
93-0159-F	Draft order concerning the approval of a third brake light	Closure
93-0160-D	Approval regulation for digital terminal equipment with interface in accordance with CCITT recommendation X.21	8. 9. 1993

Reference (1)	Title	End of three-month standstill period (2)
93-0161-UK	The road vehicles (construction and use (amendment) (No) regulations 1993	8. 9. 1993
93-0162-E	Proposed amendment to the ministerial order of 20 October 1983 approving the general quality standard for concentrated milk destined for the domestic market	6. 9. 1993

(1) Year — registration number — Member State of origin.
(2) Deadline for comments from Commission and Member States.
(3) The usual information procedure does not apply to *'Pharmacopoeia'*.
(4) No standstill period as the Commission has accepted the grounds for urgent adoption.

The Commission would point out that, under the terms of its communication of 1 October 1986 (OJ No C 245, 1. 10. 1986, p. 4), it considers that if a Member State adopts a technical regulation which comes under the provisions of Directive 83/189/EEC without communicating the draft to the Commission or respecting the standstill obligation, that regulation cannot be enforced against third parties under the terms of the legal system of the Member State in question. The Commission therefore considers that litigants have a right to expect national courts to refuse to implement national technical regulations that have not been notified as required by Community law.

Information on these notifications can be obtained from the national administrations, a list of which was published in *Official Journal of the European Communities* No C 67 of 17 March 1989.

Changes to the lists of members appointed to the agricultural advisory committees

(Official Journal of the European Communities No C 96 of 5 April 1993)

(93/C 178/04)

Page No of OJ	Member (column 3)	Replaced by
3	J. Lindner (D)	D. Van Evercooren (B)
4	C. Colleluori (I)	L. Camilli (I)
5	J. Skrumsager Skau (DK)	L. Hvidtfeldt Nielsen (DK)
	L. A. Soares Ferreira (P)	D. Rodrigo Ribeiro de Aguiar Pinto (P)
7	B. Hosking (UK)	M. Burtt (UK)
	C. Colleluori (I)	P. Abballe (I)
9	B. A. Jones (UK)	R. Campbell (UK)
20	M. Raspini (I)	R. Battaglia (I)
26	J. Roach (UK)	I. Mathieson (UK)
	R. M. Chater (UK)	J. Malcolm (UK)
29	A. Beyers (B)	O. Wullepit (B)
31	W. Koops (NL)	W. G. van der Fliert (NL)
35	M. Morelli (I)	O. Polito (I)
47	J. Santos (P)	J. David (P)

Recapitulation of current tenders, published in the *Supplement to the Official Journal of the European Communities*, financed by the European Economic Community under the European Development Fund (EDF) or the European Communities budget

(week: 22 to 26 June 1993)

(93/C 178/05)

Invitation to tender No	Number and date of 'S' Journal	Country	Subject	Final date for submission of bids
3672	S 119, 22. 6. 1993	Mauritania	MR-Nouakchott: port installations	14. 9. 1993
3677	S 119, 22. 6. 1993	Bangladesh	BD-Dhaka: condoms	8. 7. 1993
3705	S 119, 22. 6. 1993	Tanzania	TZ-Dar es Salaam: track maintenance equipment	21. 9. 1993
3673	S 121, 25. 6. 1993	Guinea-Bissau	GW-Bissau: road bridge	19. 10. 1993
3674	S 121, 25. 6. 1993	Guinea-Bissau	GW-Bissau: secondary road	19. 10. 1993
3647	S 121, 25. 6. 1993	Algeria	DZ-Algiers: agricultural and laboratory equipment	11. 9. 1993
3694	S 121, 25. 6. 1993	Anguilla	KN-The Valley: water-storage tank	16. 9. 1993
3683	S 122, 26. 6. 1993	Sierra Leone	SL-Freetown: petroleum products	5. 7. 1993
3707	S 122, 26. 6. 1993	Burundi	BI-Bujumbura: vehicles, computer and reproductive equipment	8. 9. 1993
3708	S 122, 26. 6. 1993	Senegal	SN-Dakar: road rehabilitation	30. 9. 1993

COURT OF JUSTICE

COURT OF JUSTICE

ORDER OF THE COURT

of 26 April 1993

in Case C-386/92 (reference for a preliminary ruling from the Juge-Commissaire appointed to wind up Monin Automobiles — Maison du Deux Roues in the Tribunal de Commerce, Romans): Monin Automobiles — Maison du Deux Roues (1)

(Inadmissibility)

(93/C 178/06)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-386/92, reference to the Court pursuant to Article 177 of the EEC Treaty by the Juge-Commissaire (Judge in Insolvency Proceedings) appointed to wind up Monin Automobiles — Maison du Deux Roues (hereinafter referred to as 'Monin') in the Tribunal de Commerce (Commercial Court), Romans, for a preliminary ruling on the interpretation of Articles 30 and 85 of the EEC Treaty, the Court, composed of: O. Due, President, C. N. Kakouris, G. C. Rodríguez Iglesias, M. Zuleeg and J. L. Murray (Presidents of Chambers), G. F. Mancini, R. Joliet, F. A. Schockweiler and J. C. Moitinho de Almeida, F. Grévisse and M. Díez de Velasco, P. J. G. Kapteyn and D. A. O. Edward, Judges; C. O. Lenz, Advocate-General; J.-G. Giraud, Registrar, made an order on 26 April 1993, the operative part of which is as follows:

having regard to the questions submitted to the Court by order dated 14 October 1992 of the Juge-Commissaire appointed to wind up Monin, the request for a preliminary ruling is inadmissible.

(1) OJ No C 310, 27. 11. 1992.

Reference for a preliminary ruling by the Arbeitsgericht Bremen by order of that court of 5 May 1993 in the case of Edith Freers and Hannelore Speckmann v. Deutsche Bundespost

(Case C-278/93)

(93/C 178/07)

Reference has been made to the Court of Justice of the European Communities by order of the Arbeitsgericht (Labour Court) Bremen (Seventh Chamber) of 5 May 1993, which was received at the Court Registry on 14 May 1993, for a preliminary ruling in the case of Edith Freers and Hannelore Speckmann v. Deutsche Bundespost (German postal authority) on the following questions:

1. Does the economic compensation accorded to a male or female employee in respect of work on a statutorily established employee representation body constitute pay within the meaning of the European provisions on equal pay for men and women (Article 119 of the EEC Treaty and Council Directive 75/117/EEC of 10 February 1975) (1)?

2. If the answer to question 1 is yes:

   Does the fact that under national law work on an employee representation body is unpaid, being governed essentially by the loss-of-pay principle (Lohnausfallprinzip), constitute an objective ground for unequal treatment which is in no way connected with discrimination against women?

3. If the answer to question 2 is no:

   Is it an objective ground for unequal treatment of this kind that whereas part-time employees continue to receive pay in respect of their attendance at an all-day training course only in accordance with their part-time working hours, employees who normally work overtime are paid for that overtime even if the duration of the training course corresponds to that of the normal working day?

(1) OJ No L 45, 19. 2. 1975, p. 19.

Reference for a preliminary ruling by the Oberlandesgericht, Frankfurt am Main, by order of that court of 10 June 1992 in the case of Norbert Lieber v. Willi S. Göbel and Siegrid Göbel

(Case C-292/93)

(93/C 178/08)

Reference has been made to the Court of Justice of the European Communities by an order of the 19th Civil

Senate of the Oberlandesgericht (Higher Regional Court), Frankfurt am Main, of 10 June 1992, which was received at the Court Registry on 19 May 1993, for a preliminary ruling in the case of Norbert Lieber v. Willi S. Göbel and Siegrid Göbel on the following question:

Do the matters governed by Article 16 (1) of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters also cover questions of compensation for use made of a dwelling after a failed property transfer?

Reference for a preliminary ruling by the Gerechtshof, The Hague, by a judgment of that court of 19 May 1993 in the case of Etienne Debouche v. Inspecteur der Invoerrechten en Accijnzen, Rijswijk

(Case C-302/93)

(93/C 178/09)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Gerechtshof (Regional Court of Appeal), The Hague, of 19 May 1993, which was received at the Court Registry on 1 June 1993, for a preliminary ruling in the case of E. Debouche, of Dour, Belgium, v. Inspecteur der Invoerrechten en Accijnzen (Inspector of Import and Excise Duties), on the following question:

How must the provisions of the Sixth Directive in conjunction with those of the Eighth Directive (1) (mentioned specifically at . . .) be interpreted in order to assess the claim for the refund of turnover tax (2) more particularly described . . .?

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(1) Article 3 (a) and the first paragraph of Article 5 of the Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes — arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ No L 331, 27. 12. 1979, p. 11), in conjunction with Article 17 (2) (a) and (3) (a) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — common system of value added tax: uniform basis of assessment (OJ No L 145, 13. 6. 1977, p. 1).

(2) Claim lodged by an advocate established in Belgium, whose activities in Belgium are exempt from turnover tax, for the refund of Netherlands turnover tax paid in the present case in respect of a car leased in the Netherlands which he used exclusively in Belgium in connection with his activities as an advocate.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 8 June 1993

in Case T-50/92: Gilberto Fiorani v. European Parliament (1)

(Official — Transfer/reassignment — Departmental organization measure — Covert disciplinary sanction — Act adversely affecting an official)

(93/C 178/10)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case T-50/92: Gilberto Fiorani, an official of the European Parliament, residing in Munsbach (Luxembourg), represented by Jean-Noël Louis of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Fiduciaire Myson, 1 rue Glesener v. European Parliament (Agents: Jorg Campinos and Jannis Pantalis), — application for annulment of the memorandum of 15 October 1991 by which the applicant was 'transferred' from the 'mail sorting' department to the 'messengers' department and in so far as is necessary the decision of 24 March 1992 rejecting the applicant's complaint as well as damages for the non-material harm allegedly suffered by the applicant — the Court of First Instance (Fourth Chamber), composed of C. W. Bellamy, President of the Chamber, H. Kirschner and A. Saggio, Judges; H. Jung, Registrar, gave a judgment on 8 June 1993, the operative part of which is as follows:

1. *The application is dismissed as inadmissible;*

2. *The parties are ordered to bear their own costs.*

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(1) OJ No C 189, 28. 7. 1992.

Action brought on 1 June 1993 by Girish Ojha against the Commission of the European Communities

(Case T-36/93)

(93/C 178/11)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 1 June 1993 by Girish Ojha, residing at Korbeek-Lo (Belgium), represented by Jean-Noël Louis, Thierry Demaseure and Véronique Leclercq, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson, 1 rue Glesener.

The applicant claims that the Court should:

— annul the Commission's decision of 20 October 1992 to transfer the applicant, with effect from 1 November 1992, to the Directorate-General for Employment, Industrial Relations and Social Affairs in Brussels,

— annul, in so far as is necessary, F. de Koster and J. Prat's decision of 9 October 1992, calling on the applicant to take the necessary steps to return to Brussels as from 1 November 1992,

— order the defendant to pay the applicant Bfr 500 000 by way of compensation for the non-material damage sustained by the applicant,

— take formal note of the applicant's decision to bring a separate action for compensation for his material loss,

— order the defendant to pay the costs.

Pleas in law and main arguments adduced in support:

The pleas in law and main arguments are the same as those in Case T-95/92 (1).

With regard to the claim for compensation, the applicant considers that the Commission itself, in its reply in Case T-95/92 R, recognized that the contested decision had caused him to sustain damage which could only be 'partially' compensated by payment of the allowances provided for in Annex VII of the Staff Regulations.

Furthermore, several defamatory accusations were levelled against him without the Commission's having conducted any inquiries before taking the decision to transfer him. That is a fault for which compensation must be paid.

Furthermore, compensation should be paid in respect of the losses relating to his occupation, his finances and his property stemming from the unacceptable uncertainty in which the relations between the applicant and the Commission have been conducted.

(1) OJ No C 326, 11. 12. 1992.

Action brought on 3 June 1993 by Axel Michael Stahlschmidt against the European Parliament

(Case T-38/93)

(93/C 178/12)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 3 June 1993 by Axel Michael Stahlschmidt, resident in Bourglinster (Luxembourg), represented by Georges Vandersanden, of the Brussels Bar, with an address for service in Luxembourg at the office of Fiduciaire Myson, 1 rue Glesener.

The applicant claims that the Court of First Instance should:

— annul the decision of 9 October 1992 ordering the applicant to reimburse sums unduly paid in respect of expatriation allowance from 1 October 1987 to 1 July 1992;

— order the defendant to pay all the costs.

Pleas in law and main arguments adduced in support:

The applicant challenges the decision of the European Parliament to recover sums unduly paid in respect of expatriation allowance from 1 October 1987, the date on which he acquired the nationality of the Member State where the institution in which he is employed has its seat.

In this connexion he considers that according to Article 85 of the Staff Regulation it is not possible to proceed to recover a sum unduly paid unless the recipient was aware that there was no due reason for the payment or the fact of the overpayment was patently such that he could not have been unaware of it.

With regard to the first condition, the applicant claims that as soon as he changed his nationality he informed the defendant of his own accord without receiving any reaction to that information until 25 June 1992. On the contrary, over that entire period the expatriation allowance continued to be paid to him. In answer to the defendant's argument that a personal data card of 12 June 1989 was sent to him on which it was stated that his expatriation allowance was suspended from 1 October 1987, the applicant strongly denies ever receiving such a card. Moreover, even had he known of the data card, it does not show clearly that the allowance was suspended.

With regard to the condition concerning patent overpayment, the applicant points out that that second case is generally considered only when lack of awareness was intentional or negligent. However, he had immediately informed the administration of the European Parliament of his change of nationality.

Moreover, the applicant, who is not a lawyer, could reasonably believe, on reading Article 4 (1) of Annex VII to the Staff Regulations, that regardless of the fact that he had acquired, in the course of his career, the nationality of the State where he was employed, whereas previously he did not have that nationality, he could validly continue to benefit from that allowance which he had been granted in the past; that belief was, moreover, confirmed by the absence of a contrary reaction on the part of the administration, which in fact took five years and eight months to react after the relevant information was supplied to it by the applicant himself.

Removal from the register of Case T-41/92 [1]

(93/C 178/13)

By order of 14 May 1993 the Third Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-41/92: Fernando Gouveia v. Court of Justice of the European Communities.

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[1] OJ No C 173, 9. 7. 1992.

II

(Preparatory Acts)

COMMISSION

Amended proposal for a Council Directive on deposit-guarantee schemes (1)

(93/C 178/14)

COM(93) 253 final — SYN 415

(Submitted by the Commission pursuant to Article 149 (3) of the EEC Treaty on 7 June 1993)

(1) OJ No C 163, 30. 6. 1992, p. 6.

INITIAL PROPOSAL	AMENDED PROPOSAL
THE COUNCIL OF THE EUROPEAN COMMUNITIES,	Unchanged
Having regard to the Treaty establishing the European Economic Community, and in particular the first and third sentences of Article 57 (2) thereof,	
Having regard to the proposal from the Commission,	
In cooperation with the European Parliament,	
Having regard to the opinion of the Economic and Social Committee,	

First to tenth recital unchanged

Tenth recital	Tenth recital
Whereas, however, the harmonized guarantee level must not be too low in order not to leave too great a number of deposits outside the minimum protection threshold; whereas in the absence of statistics on the amount and distribution of deposits in Community credit institutions, it seemed reasonable to take as a basis the median guarantee offered by the national systems; whereas that amount is ECU 15 000;	Whereas, however, the harmonized guarantee level must not be too low in order not to leave too great a number of depositors outside the minimum protection threshold; whereas it seems reasonable to take as a basis an amount of ECU 20 000 as the harmonized guarantee level;
Eleventh recital	Eleventh recital
Whereas in the six Member States which are above that median level, the guarantee schemes offer depositors a coverage of their deposits which is higher; whereas it does not seem appropriate to require that these schemes, certain of which have been introduced only recently pursuant to Recommendation 87/63/EEC, be amended on this point;	Whereas some Member States offer depositors a coverage of their deposits which is higher; whereas it does not seem appropriate to require that these schemes, certain of which have been introduced only recently pursuant to Recommendation 87/63/EEC, be amended on this point;

INITIAL PROPOSAL	AMENDED PROPOSAL
	Recital 14a (new) Whereas harmonization of deposit-guarantee schemes in the Community must under no circumstances jeopardize schemes based on the protection of institutions, particularly as they have demonstrated their efficiency; whereas some Member States may accept that institutions participating in such schemes, which pursue a slightly different protection goal, satisfy the Directive's objectives;
The other recitals are unchanged	
HAS ADOPTED THIS DIRECTIVE:	Unchanged
Article 1	*Article 1*
1. For the purpose of this Directive, the following definitions shall apply:	1. For the purpose of this Directive the following definitions shall apply:
	Credit institution: an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account.
	Branch: a place of business which forms a legally dependent part of a credit institution and which conducts directly all or some of the operations inherent in the business of credit institutions; any number of branches set up in the same Member State by a credit institution having its head office in another Member State shall be regarded as a single branch;
Deposit: credit balances which result from funds left in accounts or from temporary situations deriving from normal banking transactions and which the credit institution must repay under the legal and contractual conditions applicable, and claims for which negotiable certificates have been issued by a credit institution;	*Deposit:* credit balances which result from funds left in accounts or from temporary situations deriving from normal banking transactions and which the credit institution must repay under the legal and contractual conditions applicable, and claims for which negotiable certificates have been issued by a credit institution, with the exception of bonds which satisfy the conditions of Article 22 (4) of Directive 88/220/EEC concerning undertakings for collective investment in transferable securities (UCITS);
The other definitions are unchanged	
2. The following shall be excluded from any repayment by the guarantee schemes:	2. The following shall be excluded from any repayment by the guarantee schemes;
— the obligations towards other credit institutions,	— subject to the provisions of Article 5 (3), the obligations towards other credit institutions,
— subordinated loans in respect of which there exist binding agreements whereby such loans are not to be repaid until after settlement of all other debts in the event of the bankruptcy or liquidation of the credit institution.	— subordinated loans in respect of which there exist binding agreements whereby such loans are not to be repaid until after settlement of all other debts in the event of the bankruptcy or liquidation of the credit institution.

INITIAL PROPOSAL	AMENDED PROPOSAL
Article 2	*Article 2*
1. Each Member State shall ensure that on its territory one or more deposit-guarantee schemes are introduced in which all credit institutions authorized in that Member State under Article 3 of Directive 77/780/EEC must take part. The schemes shall cover the depositors of branches set up by such institutions in other Member States.	1. Each Member State shall ensure that on its territory one or more deposit-guarantee schemes are introduced. With the exception of the cases referred to in the following subparagraph, no institution authorized in that Member State under Article 3 of Directive 77/780/EEC may accept deposits unless it is a member of one of these schemes. The schemes shall cover the depositors of branches set up by such institutions in other Member States.
	Nevertheless, Member States may exempt a credit institution from taking part in a deposit-guarantee scheme if that institution belongs to a scheme which protects the credit institution itself and in particular guarantees its liquid assets and its solvency, provided that: — such protection is recognized as equivalent to that provided by the authorized scheme or schemes, and — the protection concerned is not that granted to a public credit institution by Member States themselves or by their local authorities.
Paragraph 2 is unchanged	
3. If one of the credit institutions required by paragraph 1 to take part in the scheme or one of the branches granted voluntary membership under paragraph 2 does not comply with the obligations incumbent on it as a member of the deposit-guarantee scheme, the supervisory authority which issued the authorization shall be notified.	3. If one of the credit institutions required by the first subparagraph of paragraph 1 to take part in the scheme or one of the branches granted voluntary membership under paragraph 2 does not comply with the obligations incumbent on it as a member of the deposit-guarantee scheme, the supervisory authority which issued the authorization shall be notified and, in cooperation with the managers of the guarantee scheme, shall take all appropriate measures, including the imposition of penalties, to secure compliance by the credit institution with its obligations.
After taking all the measures necessary to secure compliance by the credit institution, or branch thereof, with its obligations and after noting the decisions taken by the supervisory authority (for example reorganization or withdrawal of the authorization), the guarantee scheme may exclude the credit institution or branch.	If, as a result of these measures compliance by the credit institution, or branch thereof, with their obligations is not secured, the managers of the guarantee scheme may exclude the credit institution or branch, where national law authorizes such exclusion and with the explicit consent of the supervisory authority.
In that case, the guarantee covering the institution's depositors shall be maintained for 12 months.	In that case, the guarantee covering the deposits with that institution, or branch thereof, which were placed no later than one month after the date of exclusion, shall be maintained for 12 months from the date of exclusion.

INITIAL PROPOSAL	AMENDED PROPOSAL
Article 3	*Article 3*
1. Subject to Article 9 (1) of Directive 77/780/EEC, Member States may stipulate that the branches established by credit institutions with their head office outside the Community must join a deposit-guarantee scheme in operation on their territory.	1. Subject to Article 9 (1) of Directive 77/780/EEC, Member States shall ensure that the branches established by credit institutions with their head office outside the Community receive coverage equivalent to that applicable in the Member State concerned under the terms of a guarantee scheme to which their parent institution belongs. Failing this, Member States may stipulate that the branches established by credit institutions with their head office outside the Community must join a deposit-guarantee scheme in operation on their territory.
Paragraphs 2 and 3 are unchanged	
Article 4	*Article 4*
1. The deposit-guarantee schemes shall stipulate that the aggregate deposits of a given depositor must be covered up to ECU 15 000 in the event of a financial crisis in a credit institution rendering deposits unavailable.	1. The deposit-guarantee schemes shall stipulate that the aggregate deposits of a given depositor must be covered up to ECU 20 000 in the event of a financial crisis in a credit institution rendering deposits unavailable.
Paragraph 2 is unchanged	
3. This Article shall not preclude the retention or adoption of provisions which offer a higher guarantee ceiling.	3. This Article shall not preclude the retention or adoption of provisions which offer more comprehensive cover for depositors, in particular by extending the categories of investors protected by the guarantee or raising the maximum level of compensation, nor shall it preclude the adoption of provisions stipulating that certain deposits of vital importance such as pension funds must be guaranteed in their entirety.
4. Member States may limit the guarantee provided for in paragraph 1 or that referred to in paragraph 3 to a specified percentage of the deposits. However, the percentage guaranteed must equal or exceed 90 % of the aggregate deposits until the amount to be paid under the guarantee reaches ECU 15 000.	4. Member States may limit the guarantee provided for in paragraph 1 or that referred to in paragraph 3 to a specified percentage of the deposits. However, the percentage guaranteed must equal or exceed 90 % of the aggregate deposits until the amount to be paid under the guarantee reaches ECU 20 000.
	Paragraph 5 (new)
	5. No later than five years after the date mentioned in Article 8 (1), the Commission shall present a report to the Council on the application of this Article, accompanied if necessary by proposals which in particular take account of changes in the banking sector and in the economic and monetary situation in the Community.

INITIAL PROPOSAL	AMENDED PROPOSAL
Article 5 is unchanged	
Article 6	*Article 6*
1. Member States shall ensure that the managers of the credit institution provide depositors with the information necessary for them to identify the deposit-guarantee scheme in which the institution and its branches take part within the Community. The limits or ceilings applicable under the deposit-guarantee scheme shall be indicated in a readily-comprehensible manner.	1. Member States shall ensure that the managers of the credit institution provide depositors with the information necessary for them to identify the deposit-guarantee scheme in which the institution and its branches take part within the Community. The amount of coverage under the deposit guarantee shall be made available to depositors. Information shall also be given at first request on the conditions for compensation and the formalities which must be fulfilled in order to obtain compensation.
Paragraph 2 is unchanged	
Articles 7 to 9 are unchanged	
The Annex is unchanged	

Amended proposal for a Council Directive on a common system of taxation applicable to interest and royalty payments made between parent companies and subsidiaries in different Member States (1)

(93/C 178/15)

COM(93) 196 final

(Submitted by the Commission pursuant to Article 149 (3) of the EEC Treaty on 10 June 1993)

The proposal shall be amended as follows:

1. Article 2 becomes paragraph 1 of Article 2.

2. The following paragraph 2 is added to Article 2:

'2. In addition to the provisions in paragraph 1, all other payments regarded as interest or royalty payments, either under a double taxation convention in force between the Member State of the debtor and the Member State of the recipient or, in the absence of such a convention, by the tax laws of the Member State of the debtor, shall be treated as such for the purposes of this Directive.'

(1) OJ No C 53, 28. 2. 1991, p. 26.

III

(Notices)

COMMISSION

Information from the Commission

EC-US agreement on government procurement

(93/C 178/16)

On 25. 5. 1993, the European Community and the United States of America concluded a Memorandum of Understanding ('the Agreement') on government procurement. This Agreement has been published in the Official Journal No L 125 on 20. 5. 1993.

Under the Agreement, public authorities which are subject to the GATT Government Procurement Agreement (these are listed in Annex I of Directive 80/767/EEC as amended and in Annex I of the Agreement) are required to extend to United States bidders, products and services the same advantages as those which Community bidders enjoy for public works contracts under Directive 71/305/EEC and, from 1. 7. 1993, for public service contracts under Directive 92/50/EEC.

Further, EC entities in the electric-power sector, covered by Article 2(1) and 2(a)(ii) and Annex II of Directive 90/531/EEC, are required to extend to United States bidders, products and related services the same advantages as those which Community bidders enjoy in accordance with that Directive. For the purpose of determining, in Article 29, the proportion of the products originating in third countries, products originating in the United States should not be taken into account.

EUROPEAN ECONOMIC INTEREST GROUPING

Notices published pursuant to Council Regulation (EEC) No 2137/85 of 25 July 1985 (1) — Formation

(93/C 178/17)

1. ***Name of grouping:*** International Nacelle Systems EEIG

2. ***Date of registration of grouping:*** 31. 3. 1993

3. ***Place of registration of grouping:***

   (a) ***Member State:*** F

   (b) ***Place:*** Nanterre.

4. ***Registration number of grouping:*** RCS Nanterre C 390-684-736 (93C00014)

5. ***Publication(s):***

   (a) ***Full title of publication:*** Bulletin officiel des annonces civiles et commerciales (BODACC)

   (b)

   (c) ***Date of publication:*** 29. 5. 1993

(1) OJ No L 199, 31. 7. 1985, p. 1.

Assistance with monitoring implementation of Community Directives to trade in foodstuffs

(93/C 178/18)

1. ***Awarding authority:*** Commission of the European Communities, Directorate-General III, Industry, Unit III/E/I, Foodstuffs - Legislation and scientific and technical aspects, 200 rue de la Loi, B-1049 Brussels.

   Tel. (02) 295 08 74 (Mrs G. Schmidt), (02) 295 47 65 (Mrs N. Sauze), (02) 295 43 89 (Mrs A. Fox). Telegraphic address: COMEUR BRUXELLES. Telex COMEUR BRU 21877. Facsimile (02) 296 09 51/295 17 35.

2. ***Award procedure:*** Open procedure.

3. a) ***Place of work:*** The contractors' premises.

   Place of delivery: The relevant Commission (see point 5 (a)).

   b) ***Category of service and description:*** Category: CPC reference number: 861. The Commission is planning to conclude 1 or more contracts for the provision of services to assist it with analyses and expert reports on the conformity of the national regulations adopted by the Member States (hereinafter referred to as 'national implementing measures') with the corresponding Community Directives adopted to remove technical barriers to trade in foodstuffs.

   The invitation to tender is open to service-providers capable of performing the following tasks:

   1) Assistance with monitoring implementation of some 50 Community Directives in the national legislation in 1 or more Member States.

   This will entail analysing each implementing measure adopted by the Member State(s) concerned, using the following method:

   Legal analysis:

   — assessment of the conformity and adequacy of the texts used to incorporate the Directive into the legislation of the country in question;

   — assessment of the legal conformity of the national implementing measure with the text of the Directive, including the annexes thereto.

   2) Establishment of a report on each national implementing measure containing the results of these analyses, based on a model available from the relevant Commission department (see point 5 (a)).

   The final report, containing all the reports mentioned in paragraph (2), must be written in 1 of the official languages of the Community.

   The full list of Community Directives covered by this invitation to tender can be obtained from the relevant Commission department (see point 5 (a)).

   Tenderers may submit bids to provide assistance with monitoring the legislation in 1 or more Member States. The contract will be awarded in batches, with 1 batch for each Member State.

4. ***Time limit for completion:*** The services must be completed within 18 months of signature of the contract.

5. a) ***Requests for documents about the contract should be addressed to:*** Commission of the European Communities, Directorate-General III, Unit III/E/1, 200 rue de la Loi, B-1049 Brussels, (Office Nerviens 9 - 2/29B, Avenue des Nerviens), tel. (02) 295 56 80.

   b) ***Final date for requesting such documents:*** 26 days (17.00) after publication of this invitation to tender.

6. a) ***Final date for the receipt of tenders:*** 60 days (17.00) after the date of dispatch of this invitation to tender.

   b) ***Submission of tenders:*** Tenders may be delevered either by registered post, in which case they must be postmarked at the latest 52 days after publication of this invitation to tender (17.00), or by hand to the Secretariat of the department mentioned in point 6 (a) by the same date (17.00).

   Tenders must be submitted inside 2 sealed envelopes. These envelopes must be addressed as set out above and also be marked:

   'Invitation to tender No..., tender from ... (firm). To be opened by the opening committee only'. Self-adhesive envelopes which can be opened and resealed without leaving any trace must not be used.

   c) ***Language in which the tender must be drawn up:*** Tenders must be written in 1 of the official languages of the Community.

7. a) ***Representatives of the relevant departments of DG III will be present at the opening of the tenders.***

   b) ***Time and place of the opening:*** A few days after the closing date for the invitation to tender. B-Brussels.

8. ***Deposits and guarantees:*** For contracts worth over 250 000 ECU, contractors will be required to provide a 'guarantee of repayment of deposit' in the form of a bank guarantee.

9. ***Financing and payment:*** The terms are set out in the standard services contract, which can be obtained from the Commission department mentioned in point 5 (a).

10.

11. ***Technical standards required of the service-providers:***

   — The service-providers must have legal training and solid experience in food law in the Member State(s) analysed and of the European Community legislation on foodstuffs. They must provide evidence thereof in their tender to the Commission, in the form of a detailed declaration of the technical facilities at their disposal. Tenderers must provide evidence of their experience by submitting the curriculum vitae of the staff involved together with a list of any similar work done over the last 3 years.

12. ***Period during which the tenderer is bound to keep open his tender:*** 6 months with effect from the closing date for receipt of tenders.

13. ***Award criteria:***

   a) The quality of service offered.

   b) Price.

   c) Method used.

14. ***Other information:*** All tenders imply acceptance, by the tenderer, of the Commission's 'General terms and conditions applicable to contracts' on all points not specifically covered by this invitation to tender.

   The service-providers must be liable to VAT. A draft standard services contract and the abovementioned general terms and conditions are available, on request, from the relevant Commission department (see point 5 (a)).

   Tenderers will be informed of the decision taken on their bid.

15. ***Date of dispatch of the notice:*** 22. 6. 1993.

16. ***Date of receipt of the notice by the Office for Official Publications of the European Communities:*** 22. 6. 1993.

Consumer information actions 1993/1994

Call for tender

(93/C 178/19)

The Commission wishes to stimulate actions that improve the flow of consumer information in each of the 12 Member States. These actions are designed to inform consumers of the expected practical impact of the Single Internal Market on their daily lives.

Tenders are invited essentially from non-profit-making organizations, including consumer associations, institutes of consumer affairs and non-commercial communications organizations, working at Community, national, regional or local levels, which have demonstrable experience in providing information to consumers and can show that they have the necessary resources to undertake the work detailed below.

The geographical area covered can be local, regional, national or more than 1 Member State.

The actions for which tenders are invited are as follows: the conception, production and distribution of posters (up to a maximum size of 100 cm × 50 cm); the conception, production and distribution of leaflets or brochures; the conception, production and distribution of special supplements to newspapers or magazines; the conception, production and broadcasting of radio or television programmes.

Each of the 4 types of actions mentioned above are to be considered as being indivisible: e.g. a proposal relating to brochures must cover all the phases from conception to distribution. The actions should relate to 1 or more of the following subject-areas: Product Safety; Misleading Advertising; Banking; Consumer Credit; Insurance; Pharmaceutical goods; Cosmetics; Package Travel; Food Labelling.

The message to be conveyed by these information actions should include one or more of the following themes:

— the Single Internal Market is a reality and can be of direct benefit to consumers;

— although consumer transactions can never be completely free of risk, consumers can generally explore the possibilities offered by Single Internal Market with confidence because their fundamental rights are protected;

— an active consumer, who is well-informed of his/her rights, has an essential role to play in maintaining competitive conditions in the Single Internal Market.

The general public must be able to identify each information action as being 1 element of a Community-wide information effort. Each action should seek, therefore, to integrate the logo which the Commission has developed as a means of identifying consumer information at the Community level (see Annex A).

The action(s) must be completed and a final report submitted by 30. 9. 1994. Tenders should be submitted in 1 of the official languages of the Community.

Financial aspects

Each project which is submitted must include a budget indicating the estimated overall cost and should be accompanied by adequate details to demonstrate the sound basis of the estimates. In particular, the following information must be provided where appropriate:

— which parts of each project will be undertaken by the organization itself, and which parts will be subcontracted to other organizations;

— the total cost of the project and each of its component parts, including VAT and other taxes, transport and insurance costs;

— detailed personnel costs, including the following:

  the number of each type of personnel involved;

  the unit costing rate (on an hourly/weekly/monthly basis as appropriate);

  the overall duration of employment;

  the means to be used to monitor the time effectively worked;

— transport cost;

— the source and estimated amount of any finance other than that provided by the Commission (for example, use of own funds, or receipts from sales of publications).

It should be noted that the European Community is exempt from all duties, taxes and dues, under the provisions of the Protocol on the Privileges and Immunities of the European Communities, annexed to the Treaty of 8. 4. 1965 establishing a Single Council and a single Commission of the European Communities. This exemption is granted by the governments of the Member States either by a refund based on supporting documents or by direct exemption. A successful tenderer will be informed in more detail of the effect of these provisions on the accounting procedures of a specific action.

However, the prices quoted in the tender should be free of duties, taxes and dues. Where tenderers are subject to VAT and obliged to pay it, they should indicate clearly and separately the amount of VAT payable and the price exclusive of VAT.

Tenderers are bound by their tenders during a period of 3 months starting from the date the tender was sent to the Commission.

Procedure for submitting a tender

a) Tenders should be submitted in triplicate.

b) The 3 copies should be enclosed together in 2 sealed envelopes, which should not be of a re-sealable type. The inner envelope should be marked: 'Invitation to tender ref. SPC/U 5/001. Tender submitted by... (name of tenderer). To be opened only by the committee appointed for this purpose'.

c) Tenders should be signed by the authorized representative(s) of the tendering organization.

d) If the tender is transmitted via the postal service, it must be sent by registered post to:

  — Commission of the European Communities, Consumer Policy Service, JII/70, 200, rue de la Loi, B-1049 Brussels.

Tenders sent by post should be postmarked on, or before, the 52nd day following the publication in the OJ (publication date being 'day 1'), unless that day falls on a weekend or a public holiday; in these circumstances, the deadline is extended to the first working day thereafter.

e) A tender may also be delivered by hand to:

  — Commission of the European Communities, Consumer Policy Service, Reception Desk 70, rue Joseph II, B-1040 Brussels.

Tenders delivered by hand should arrive at the above address by 17.00 on the 52nd day following publication in the OJ (publication day being 'day 1'), unless that day falls on a weekend or a public holiday; in these circumstances, the deadline is extended to the first working day thereafter.

The person delivering a tender should hand the tender to an official at the Reception Desk in exchange for a dated receipt.

f) Submission of a tender implies acceptance of the Commission's general terms and conditions applicable to contracts, in relation to all matters not specifically covered in this document.

Selection procedure

The tenders submitted will be examined by a Selection Committee composed of officials of the Services of the Commission assisted, if necessary, by appropriate external specialists.

Additional information

The Commission will inform all tenderers of the outcome of their tender, additional information may be obtained, in so far as strictly necessary, from:

— Commission of the European Communities, Consumer Policy Service, 70 rue Joseph II, B-1040 Brussels, tel. (32 2) 295 56 57.

No other form of contract regarding this invitation to tender shall be allowed.

Ecu exchange value

Values of thresholds in the field of public procurement (Council Directive 92/50/EEC), applicable as from 1. 7. 1993/31. 12. 1993

(93/C 178/20)

The values of the thresholds applicable as of 1. 7. 1993 regarding public services contracts, pursuant to Council Directive 92/50/EEC (1), are as follows:

	ECU 80 000	ECU 200 000	ECU 750 000
Belgian franc/ Luxembourg franc	3 398 728	8 496 820	31 863 075
Danish krone	631 365	1 578 412	5 919 045
German mark	164 213	410 532	1 539 495
Greek drachma	16 444 160	41 110 400	154 164 000
French franc	555 464	1 388 660	5 207 475
Dutch guilder	185 078	462 696	1 735 110
Irish pound	61 527	153 818	576 819
Italian lira	121 776 800	304 442 000	1 141 657 500
Pound sterling	56 572	141 431	530 366
Spanish peseta	10 333 760	25 834 400	96 879 000
Portuguese escudo	14 366 960	35 917 400	134 690 250

(1) OJ No L 209 of 24. 7. 1992, p. 1.