

States are entitled to charge such remuneration to national income tax.

Consequently Community law prohibits the imposition of national tax on lump-sum payments made by the

European Parliament to its Members from Community funds by way of reimbursement of travel and subsistence expenses, unless it can be shown in accordance with Community law that such lump-sum reimbursement constitutes in part remuneration.

In Case 208/80

REFERENCE to the Court under Article 177 of the EEC Treaty and Article 30 of the Treaty establishing a Single Council and a Single Commission of the European Communities by the Commissioners for the special purposes of the Income Tax Acts (“the Special Commissioners”) for a preliminary ruling in the case pending before that tribunal between

THE RT HON. LORD BRUCE OF DONINGTON

and

ERIC GORDON ASPDEN, Her Majesty’s Inspector of Taxes,

on the interpretation of certain rules of Community law, in particular Article 142 of the EEC Treaty and Article 8 of the Protocol on the Privileges and Immunities of the European Communities, annexed to the Treaty establishing a Single Council and a Single Commission of the European Communities, concerning the imposition of national taxes on the expenses and allowances paid by the European Parliament to its Members,

THE COURT

composed of: J. Mertens de Wilmars, President, P. Pescatore, Lord Mackenzie Stuart and T. Koopmans (Presidents of Chambers), G. Bosco, A. Touffait, O. Due, U. Everling and A. Chloros, Judges,

Advocate General: Sir Gordon Slynn
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure, the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC and the information supplied pursuant to Article 21 of that Protocol may be summarized as follows:

I — Facts and written procedure

1. The Rt Hon. Lord Bruce of Donington (hereinafter referred to as "Lord Bruce") was designated as a Member of the European Parliament by the House of Lords of the United Kingdom on 30 July 1975. He was a Member of the European Parliament until its election by direct universal suffrage.

During the year 1975/76 Lord Bruce received flat-rate subsistence and travel allowances paid to him by the European Parliament to cover the expenses resulting from his attendance at meetings and participation in the work of the Parliament and of its organs and for other journeys made in the interests of the Parliament.

The payment of those allowances was provided for by Rules governing the payment of expenses and allowances to Members of the European Parliament adopted by the Parliament. The funds in respect thereof were shown in the budget of the European Communities under the

chapter of the expenditure of the Parliament relating to members of the institution (Official Journal 1975, L 54, pp. 1 and 62; Official Journal 1976 L 66, pp. 1 and 64).

The Parliament's rules cited above provided that the allowances were to be paid for Members' travel to official meetings of the Parliament and of its organs on condition that their names appeared on the attendance register and for travel by individual Members of the Parliament in its interests on condition that such travel was duly authorized by the authorities of the Parliament. The allowances comprised first a daily subsistence allowance which for travel within the Community was fixed at BFR 3 000 and, secondly, a travel allowance intended to cover all expenses connected with the journey including any ticket reservation and cancellation fees, taxi fares, luggage fares, hotel costs and other travelling expenses; the travel allowance was to be calculated on the basis of the distance between the point half-way between the seat of the national parliament and the Member's address on the one hand, and the place of the meeting on the other, applying a kilometre rate fixed at BFR 13 for the first 400 kilometres of the journey in each direction, and at BFR 5 for the part of the journey in each direction in excess of 400 kilometres, subject to a minimum refund of BFR 1 500. Under the Rules the Members of the European Parliament were not bound to prove in relation to those allowances the actual amount of their expenditure and were entitled, should the occasion arise, to

retain the surplus where their expenses were less than the lump sum received.

In the year of assessment 1975/76 Lord Bruce was left with such a balance from his total allowances received after meeting his actual expenditure. He kept the balance for himself, the exact amount of which has not been established.

2. Her Majesty's Inspector of Taxes took the view that the allowances received by Lord Bruce were emoluments from an office held by him within the meaning of the provisions of the Income and Corporation Taxes Act 1970 and that Lord Bruce was chargeable to income tax on those emoluments subject to a deduction in respect of his actual expenses pursuant to Section 189 (1) of the Income and Corporation Taxes Act 1970. That provision laid down that "if the holder of an office or employment is necessarily obliged to incur and defray out of the emoluments thereof the expenses of travelling in the performance of the duties of the office or employment, . . . or otherwise to expend money wholly, exclusively and necessarily in the performance of the said duties, there may be deducted from the emoluments to be assessed the expenses so necessarily incurred and defrayed."

Lord Bruce lodged an appeal before the Special Commissioners, a tribunal with jurisdiction in income tax matters in the United Kingdom, against an assessment to income tax made by Her Majesty's Inspector of Taxes in respect of his emoluments for the fiscal year 1975/76 from the office of Member of the European Parliament. By a written decision of 5 July 1979 the Special Commissioners decided that the allowances in question were emoluments from an office within the meaning of the Income and Corporation Taxes Act 1970

and were in principle subject to income tax. It is clear from that decision of the Special Commissioners that there is no dispute that the amounts which had been fixed for the allowances were not unreasonably high. By that decision the Special Commissioners reserved judgment on whether the emoluments were exempt from United Kingdom tax by virtue of Community law and, should a decision be necessary, on the exact amount of the deductible expenses.

On 5 November 1979 the Special Commissioners decided to refer to the Court of Justice pursuant to Article 177 of the EEC Treaty and Article 30 of the Treaty establishing a Single Council and a Single Commission of the European Communities a question asking whether,

"Having regard:

to the Treaty establishing the European Economic Community, and in particular to the first sentence of Article 142;

to the Convention on certain institutions common to the European Communities, and in particular Article 1;

to the Treaty establishing a Single Council and a Single Commission of the European Communities, and in particular Article 28;

to the Protocol on the Privileges and Immunities of the European Communities, and in particular Articles 8, 9, 10, 13 and 14;

to Regulation (EEC, Euratom, ECSC) No 260/68 of the Council of 29 February 1968 and in particular Article 3, paragraph 2; and

to the Rules governing the payment of expenses and allowances to Members of the European Parliament;

those provisions or any other rule of Community law should be interpreted as precluding Member States from taxing any part of the expenses and allowances paid from Community funds to Members of the European Parliament”.

3. The reference to the Court was received at the Court Registry on 23 October 1980.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community written observations were submitted by Lord Bruce, represented by Francis Jacobs, of the Middle Temple, Barrister, instructed by Messrs Berwin Leighton, Solicitors, by the United Kingdom Government, represented by R. D. Munrow, Treasury Solicitor's Department, acting as Agent, assisted by Peter Gibson, by the French Government, represented by Thierry Le Roy, acting as Agent, and by the Commission of the European Communities, represented by Bernard Paulin and Mary Minch, acting as Agents.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court asked the European Parliament and the Council of the European Communities a certain number of questions pursuant to the second paragraph of Article 21 of the Protocol on the Statute of the Court of Justice of the European Economic Community, to which written replies were given, and decided to open the oral procedure without any further preparatory inquiry.

II — Written observations and information supplied by the European Parliament and the Council of the European Communities

1. *Observations of Lord Bruce*

In the opinion of Lord Bruce, although there are no express rules of Community law regarding the imposition of tax on the allowances in question, it follows by implication from certain principles of Community law that those allowances may not be made subject to national taxation.

Lord Bruce bases his arguments first on the principle that Parliament is sovereign in matters of procedure and in its internal relations with its Members, a principle enshrined in the first paragraph of Article 142 of the EEC Treaty. This is a principle of parliamentary democracy which precludes any review by external authorities of the performance by Members of the Parliament of their duties, in particular by the national tax authorities. It is a matter for the Parliament alone to decide on the proper performance by its Members of their duties and no Community or national authority, save possibly the Court of Auditors, may intervene in that matter and review the expenses paid by the Parliament to its Members in connection with those duties.

To allow the imposition of national taxes on the allowances in question would cause discrimination between Members of the Parliament coming from different Member States and allow one or more Member States to benefit from Community funds in an unequal manner.

The President of the Parliament confirmed moreover in a letter to Lord Bruce that since 1952 no Member State had ever charged national income tax on the allowances.

Secondly, Lord Bruce bases his arguments on the privileges and immunities enjoyed by the Communities by virtue of the first paragraph of Article 28 of the Treaty establishing a Single Council and a Single Commission of the European Communities and by virtue of the Protocol on the Privileges and Immunities of the European Communities annexed to that Treaty, in particular the first paragraph of Article 8 which prohibits any administrative or other restriction on the free movement of Members of the Assembly travelling to or from the place of meeting of the Assembly. The principle of the independence of the Community *vis-à-vis* the authorities of the Member States precludes a Member of the Parliament from being obliged to make a claim for the deduction of expenses actually incurred and to account for them to the tax authorities or to prove that those expenses were wholly, exclusively and necessarily incurred in the performance of his duties.

The Inland Revenue was, moreover, led to grant to the Members of the European Parliament extra-statutory concessions, operating outside the existing taxation rules, recognizing the costs of travelling between the Member's constituency and the place where the session of the Parliament is held as allowable expenses, whereas under British law the cost of travel between the taxpayer's home and his place of work does not come within that category. Nevertheless, the consequence of this practice of the Inland Revenue is that where a Member of the Parliament lives outside his constituency and returns

directly to his home after a session of the Parliament, the whole of his travel allowance is taxable with the result that such a Member must bear a substantial part of the travel costs himself.

If the taxation of the allowances were permitted, expenses which the Parliament has decided to authorize and pay would not be deductible in the United Kingdom.

The incidence of tax liability could moreover be particularly severe and rise to a tax rate of 83 % for a taxpayer with other sources of income.

The requirement of proving that the actual expenses were necessary would impose a formidable administrative burden on Members of the Parliament. They would be required, in particular, to satisfy the revenue authorities of the necessity of every part of every journey made and of each item of subsistence. The revenue authorities could thus decide that certain expenses, for example newspapers, periodicals, books, news cutting services, etc. were not necessary and therefore not allowable.

Lord Bruce referred in that regard to the Inland Revenue's Notes on Income Tax for Members of the European Parliament. According to those Notes, Members of the Parliament should keep detailed records of their departures from and returns to the United Kingdom together with a note of the purpose for which the journeys were undertaken.

Thirdly, Lord Bruce bases his argument on the fact that under Article 13 of the Protocol on the Privileges and Immunities of the European Communities and Article 3 (1) of Regulation

(EEC, Euratom, ECSC) No 260/68 of the Council of 29 February 1968 laying down the conditions and procedure for applying the tax for the benefit of the European Communities (Official Journal, English Special Edition 1968 (I) p. 37), lump-sum allowances compensating for expenses incurred by officials and servants of the Communities in the performance of their duties are not subject to any tax, either national or Community. It would be anomalous if expenses and allowances paid by the Parliament to its Members were, unlike those paid to officials, subject to tax. Exemption from national taxation is not the corollary of liability to Community taxation, but is a consequence of the nature of the Community itself and is a rule applicable generally to international organizations.

2. Observations of the United Kingdom Government

The United Kingdom Government supports the view already defended by Her Majesty's Inspector of Taxes in proceedings before the Special Commissioners that there is nothing which precludes a Member State from taxing so much of the allowances in question as exceeds the expenditure incurred.

The United Kingdom Government observes first that the question put by the Special Commissioners is unnecessarily wide inasmuch as there has never been any question of taxing expenses actually and necessarily incurred; and consequently the question should be limited to the taxation of any surplus.

The need for an express provision of a convention in order to give rise to an exemption from taxes accords with the

importance of the sovereign right of States to impose taxes and with the invariable international practice within the Community and in other international organizations.

Article 142 of the EEC Treaty is concerned only with procedural rules. The rules on expenses and allowances are not of that type. The imposition of taxation on allowances does not touch upon the sovereignty of the Parliament and does not subject the relations between the Parliament and its Members to review by the national taxation authorities.

The Protocol on the Privileges and Immunities of the European Communities sets out the privileges and immunities to which Members of the Parliament are entitled and which are necessary for the performance of their functions. No provision is made there for any exemption from taxes. The necessity in practice to keep records of expenditure on journeys undertaken and other expenditure incurred does not constitute a restriction on the free movement of Members of the Parliament within the meaning of Article 8 of the Protocol because no permission from the taxation authorities is necessary for a journey by a Member of the European Parliament and the part of his allowances which the Member of the Parliament expends necessarily in the performance of his functions in any case remains exempt from taxation.

Article 13 of the Protocol on the Privileges and Immunities of the European Communities does not apply to Members of the Parliament. The exemption from national tax for certain categories of persons such as officials and servants of the Communities is the corollary of the imposition of Community tax on those persons.

3. Observations of the French Government

The French Government takes the view that no provision of Community law prohibits Member States from imposing taxes on the allowances in question.

It asserts that the tax rules applicable to the emoluments of Members of the European Parliament fall at the present time within the exclusive legislative responsibilities of the Member States. Even though under Article 13 of the Act concerning the election of the representatives of the Assembly by direct universal suffrage the Council might adopt the measures necessary for the implementation of that Act including arrangements relating to emoluments, advantage was not taken of that power and Member States retain power to adopt rules and regulations concerning the allowances to be paid to Members of the Parliament and also concerning the system of taxation. In support of this view the French Government refers to the minutes of the Council meetings on 18 and 19 December 1978. An actual convention supplementing the Protocol on the Privileges and Immunities of the European Communities would be required in order to make Members of the Parliament liable to Community tax or to set up a system of tax exemption.

A Community system of tax exemption cannot be implied. No analogy is possible with the tax system applicable to officials and servants of the Communities.

Article 142 of the EEC Treaty is concerned with the organization of the work of the Parliament and not with the settlement of tax questions.

It cannot at present be regarded as the intention of the national legislature which retains complete freedom to check the use of the funds, that the allowances paid by the Parliament should be exempt from tax. Such a check does not interfere with the freedom of movement required by Article 8 of the Protocol on the Privileges and Immunities of the European Communities.

4. Observations of the Commission

The Commission supports the argument that Member States are free to apply their national taxation provisions to the allowances in question.

It submits that the fact that the Protocol on the Privileges and Immunities of the European Communities, the provisions of which are clear and precise, contains no tax exemption in favour of Members of the Parliament is not an oversight. The non-payment of national taxes and the payment of a Community tax on salaries and emoluments are inextricably linked.

Article 142 of the EEC Treaty gives no power to the Parliament to adopt through its rules of procedure legislative provisions binding on the Community and on Member States in matters of taxation. If the Parliament has an implied power to decide upon the payment of such expenses and allowances that cannot affect the manner in which the competent authorities of the Member States and of the Community deal with those allowances for the purposes of calculating tax due.

Taxation of the allowances does not constitute a restriction on freedom of movement within the meaning of Article 8 of the Protocol on the Privileges and Immunities of the European Communi-

ties, particularly as tax is due in the United Kingdom only on the surplus over the expenses actually incurred.

Article 3 (2) of Regulation No 260/68, which applies to officials, cannot be taken in isolation because that provision exonerates from Community tax the compensation for expenses, which are themselves regulated by the Staff Regulations of Officials, and calculated to correspond more or less to the actual expenses incurred, whereas Lord Bruce's thesis would put the expenses and allowances, whatever their amount, paid to the Members of the Parliament outside the scope of any taxation system.

5. Information supplied by the European Parliament

In response to the questions asked by the Court, the European Parliament stated in particular that as early as September 1952 the Common Assembly of the European Coal and Steel Community decided to grant subsistence allowances and travel expenses to its Members. The present text of the Rules governing the payment of expenses and allowances to Members of the European Parliament was adopted on 5 July 1972 by the Enlarged Bureau of the Parliament following a resolution relating thereto adopted by the Plenary Assembly on 3 July 1972 and has undergone frequent modifications to take account of rising costs. The Parliament has lodged copies of minutes and other documents relating to those rules.

It is the view of the Parliament that its competence to issue rules on the

payment of allowances derives from the first paragraph of Article 142 of the EEC Treaty, the first paragraph of Article 112 of the EAEC Treaty and the first paragraph of Article 25 of the ECSC Treaty and reflects the principle of the organizational independence of the Parliament. Those provisions do not relate solely to procedure in the narrow sense of the term but to all the matters inherent in the accomplishment of the tasks of the institution. Under Article 5 of the EEC Treaty the Member States are obliged to respect this institutional independence. Rules on the payment of allowances to Members of the Parliament are essential to enable individual Members to participate in the activities of the Parliament without suffering financial loss, regardless of the Member's place of residence or his means or income. It is a fundamental principle of the functioning of the institutions of an international organization, in contrast to the case of an international conference, that those institutions themselves make arrangements to cover the administrative aspects of the performance of the mandate of their members. Appropriate decisions on the reimbursement of expenses have been made without any opposition from the Member States, by the Council, the Economic and Social Committee and the European Parliament and the necessary funds are provided for in the budgets of those institutions.

The flat-rate amounts provided for in the rules in question were based on the average hotel and restaurant costs at the places at which Members of the Parliament were required to attend Parliamentary activities and on first class air fares.

The system of fixing lump-sum allowances is justified by the excessive administrative burdens and disadvantages which the individual checking of all

actual expenses would entail for the institution and its Members. Neither the Court of Auditors nor, previously, the Control Committee have questioned either the amount or the method of calculation of the allowances when reviewing the Parliament's expenditure. Neither Community nor national tax were taken into account in calculating the flat-rate allowances. National taxes imposed by certain Member States would have to be offset by an increase in the expenses of the Members affected because the Parliament is required to ensure that all its Members are treated uniformly as regards the performance of their duties. Furthermore, the principle of flat-rate allowances is applied by the majority of the parliaments of the Member States.

As regards the practice followed in the Member States as to the imposition of national taxes on allowances paid by the European Parliament, the Parliament states that this is the first instance which has come to the knowledge of the Parliament since 1952 where a Member State has attempted to impose national taxation on such allowances.

The Parliament takes the view that if a Member State is of the opinion that the payments are too high or have no legal basis, that Member State should make use of the due forms of Community law in order to change the Parliament's practice. Measures acting to the detriment of Members of the Parliament adopted by one particular Member State are inadmissible.

In conclusion, the Parliament expresses the view that the payment of the allowances is necessary for the functioning of the institution and must be respected by the Member States

pursuant to Article 5 of the EEC Treaty. National taxation provisions are not applicable to these payments. The consequence of a decision to the contrary would be unjustifiable discrimination between the Members of the Parliament.

6. Information supplied by the Council

The Council, at the request of the Court, produced an extract from the minutes of the meeting of the Council on 19 December 1978 and a letter of 15 December 1978 annexed thereto from the President of the Council to the President of the Parliament, to which documents the French Government referred in its written observations. By the letter of 15 December 1978 the President of the Council had informed the President of the Parliament that it had not been possible to achieve agreement before the election of the Parliament by direct universal suffrage on the latter's proposals for the basis of the measures governing the allowances and reimbursement of expenses and a certain number of other matters, that, consequently, the Council was proceeding on the assumption that the competent bodies in the Member States would introduce measures on the allowances to be paid to the directly-elected Members and that the same would hold true for taxation; that, moreover, the Council shared the Parliament's view that the reimbursement of expenses would be a matter for the Parliament and that accounting problems involved in the event of reimbursement for expenditure overlapping with national provisions would be handled by the competent bodies in the Member States. It is clear from the minutes mentioned above that the Council had adopted the conclusions set out in that letter.

III — Oral procedure

Lord Bruce, represented by Francis Jacobs, Barrister, the United Kingdom Government, represented by John Mummery, Barrister, and the Commission of the European Communities, represented by Mary Minch, presented

oral argument at the sitting on 12 May 1981 and, together with the European Parliament, represented by Roland Bieber, replied orally to questions put by the Court at the sitting.

The Advocate General delivered his opinion at the sitting on 16 June 1981.

Decision

- 1 In accordance with a decision of 5 November 1979, notification of which was received at the Court on 23 October 1980, the Commissioners for the special purposes of the United Kingdom Income Tax Acts (hereinafter referred to as the "Special Commissioners") referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty and Article 30 of the Treaty establishing a Single Council and a Single Commission of the European Communities a question on the interpretation of several provisions of Community law, and in particular Article 142 of the EEC Treaty and Article 8 of the Protocol on the Privileges and Immunities of the European Communities annexed to the Treaty establishing a Single Council and a Single Commission of the European Communities in order to determine the compatibility with Community law of the taxation by national revenue authorities of travel and subsistence allowances paid by the European Parliament to its Members.
- 2 That question was raised in the course of appeal proceedings brought by the Rt Hon. Lord Bruce of Donington, who was designated as a Member of the European Parliament by the House of Lords of the United Kingdom from 30 July 1975 until the election of the Parliament by direct universal suffrage, against one of Her Majesty's Inspectors of Taxes, who are responsible for making assessments to income tax in the United Kingdom. The appeal was brought against an assessment to income tax made in respect of travel and subsistence allowances paid by the European Parliament to Lord Bruce during the fiscal year 1975/76 to cover the expenses resulting from his attendance at meetings and participation in the work of the Parliament and its organs and for other journeys made in the interests of the Parliament.

- 3 The Parliament, in pursuance of rules adopted for this purpose, paid to its Members travel and subsistence allowances which were calculated applying a kilometre rate and a fixed-rate daily allowance and were included in the Community budget. Under the rules the Members of the Parliament were not bound to prove in relation to those allowances the actual amount of their expenditure.
- 4 The reference to the Court indicates that Her Majesty's Inspector of Taxes took the view that the allowances were emoluments from an office held by Lord Bruce within the meaning of the provisions of the United Kingdom Income and Corporation Taxes Act 1970 and issued an assessment claiming that Lord Bruce was liable to income tax on the allowances, subject to a deduction in respect of expenses incurred "wholly, exclusively and necessarily in performance of the said duties" which Lord Bruce was required to show under Section 189 (1) of the Income and Corporation Tax Act 1970.
- 5 The Special Commissioners, hearing an appeal against that assessment, decided that under the provisions of national law the allowances in question were in principle liable to income tax. However, they took the view that the outcome of the appeal depended on whether the emoluments were exempt from national income tax by virtue of Community law.
- 6 Consequently, the Special Commissioners referred a question of interpretation of Community law to the Court for a preliminary ruling. In substance the question asks whether there is any rule of Community law precluding Member States from taxing any part of the travel and subsistence expenses and allowances paid from Community funds to Members of the European Parliament.
- 7 The United Kingdom Government, the French Government and the Commission maintained that in the absence of express provisions in the Protocol on the Privileges and Immunities of the European Communities conferring exemption from national taxes, there is nothing which precludes a Member State from charging such payments by the Parliament to national tax, since a tax exemption cannot be implied.

- 8 Lord Bruce takes the view that by virtue of the principle that Parliament is sovereign in matters of procedure and in its internal relations with its Members, a principle enshrined in the first paragraph of Article 142 of the EEC Treaty, and by virtue of the first paragraph of Article 8 of the Protocol on the Privileges and Immunities of the European Communities which guarantees the free movement of Members of the Assembly, the authorities of the Member States are precluded from reviewing the performance by a Member of the European Parliament of his duties, his travel in connection with those duties and his related expenditure. The Member States may not therefore tax payments made by the Parliament in respect thereof. It would, moreover, be illogical if income tax were charged on these allowances whilst those paid to officials and servants of the Communities, including those employed by the Parliament, are exempt pursuant to Article 13 of the Protocol on the Privileges and Immunities of the European Communities and Article 3 (1) of Regulation No 260/68 of the Council of 29 February 1968 laying down the conditions and procedure for applying the tax for the benefit of the European Communities (Official Journal, English Special Edition 1968 (I), p. 37).

- 9 It is clear from the replies given by the European Parliament to the questions asked by the Court that the Parliament's view is that by virtue of the principle of the independence of the European Parliament with regard to provisions concerning the internal functioning of the institution embodied in the first paragraph of Article 142 of the EEC Treaty, the first paragraph of Article 112 of the EAEC Treaty and the first paragraph of Article 25 of the ECSC Treaty, an independence which the Member States are bound to respect under Article 5 of the EEC Treaty, the national tax provisions do not apply to Community payments which are necessary for the functioning of the institution. That also follows from the requirement that the Parliament must avoid treating differently Members coming from different Member States.

- 10 In reply to the question put by the national tribunal, it must first be observed, as the United Kingdom Government, the French Government and the Commission rightly pointed out during the procedure before the Court, that no provision of Community law confers exemption from national taxes on Members of the European Parliament.

- 11 Article 13 of the Protocol on the Privileges and Immunities of the European Communities provides that officials and other servants of the Communities “shall be exempt from national taxes on salaries, wages and emoluments paid by the Communities”. That provision must be read in the light of the first paragraph of that article which states that those officials “shall be liable to a tax for the benefit of the Communities on salaries, wages and emoluments paid to them by the Communities”. Article 13 also applies, by virtue of Articles 20 and 21 of that Protocol, to the Members of the Commission and to the Judges, Advocates General and Registrar of the Court, by virtue of Article 22 of the Protocol, to Members of the organs and staff of the European Investment Bank and to the representatives of the Member States taking part in its activities and, by virtue of Article 206 (1) of the EEC Treaty, Article 180 (10) of the EAEC Treaty and Article 78e (1) of the ECSC Treaty, to the Members of the Court of Auditors.
- 12 No comparable provision appears amongst the privileges and immunities granted to Members of the Assembly in Chapter III of the abovementioned Protocol. The Members of the European Parliament, who at the time when the relevant events occurred were designated by the national parliaments, received no remuneration from the European Parliament for their activities in the exercise of their mandates. As far as concerns any remuneration for their activities in the exercise of their mandates, their financial arrangements were, apart from the allowances in question here, governed by national law alone. The Community tax provided for by the first paragraph of Article 13 of the abovementioned Protocol and fixed by Regulation No 260/80 of the Council did not apply to them.
- 13 In the absence of any provision conferring a tax exemption on Members of the European Parliament, the Member States are, in the present state of Community law, entitled to tax any emoluments derived by the Members of the Parliament from the exercise of their mandate. Consequently, the view cannot be taken that any payment made by the Parliament to its Members from Community funds is *ipso facto* exempt from national taxes.
- 14 Community law lays down certain limits, however, which the Member States must observe in the enactment of taxation laws applicable to Members of the Parliament. Those limits arise in particular from Article 5 of the EEC Treaty

which provides that the Member States are bound to facilitate the achievement of the Communities' tasks and abstain from any measure which could jeopardize the attainment of the objectives of the Treaty. That obligation includes the duty not to take measures which are likely to interfere with the internal functioning of the institutions of the Community. Furthermore, the effect of the first paragraph of Article 8 of the Protocol on the Privileges and Immunities of the European Communities is to prohibit Member States from imposing *inter alia* by their practices in matters of taxation administrative restrictions on the free movement of Members of the Parliament.

- 15 In this regard it must first be observed that the reimbursement of travel and subsistence expenses incurred by Members of the Parliament in the exercise of their mandates is a measure of internal organization intended to ensure the proper functioning of the institution. It is essential that each Member of the Parliament should at all times be able to attend all the meetings and participate in all the activities of the Parliament and its organs without suffering financial loss, regardless of the Member's place of residence, the location of his constituency and his available financial means. Rules such as those adopted by the Parliament governing subsistence and travel expenses and allowances therefore fall within the scope of measures of internal organization whose adoption is a matter for the Parliament pursuant to the first paragraph of Article 142 of the EEC Treaty, the first paragraph of Article 112 of the EAEC Treaty and the first paragraph of Article 25 of the ECSC Treaty.
- 16 If and so far as a national tax on the allowances received by Members of the Parliament were to be charged on the whole of the sums received, including the part which is in fact needed in order to cover their actual expenditure, it would form a financial obstacle to the movement of the Members of the Parliament who would then be obliged to bear personally a proportion of their travelling expenses. It should be mentioned that the United Kingdom Government did not maintain that it was possible to tax the proportion of the allowances equal to the actual expenditure incurred.
- 17 It is a matter for the Parliament to decide which activities and travel of Members of the Parliament are necessary or useful for the performance of their duties and which expenses are necessary or useful in connection therewith. The autonomy granted to the Parliament in this matter in the interests of its proper functioning also implies the authority to refund travel and subsistence expenses of its Members not upon production of vouchers for each individual item of expenditure but on the basis of a system of fixed lump-sum reimbursements. The choice of this system, as the Parliament

indicated in its replies to the questions put by the Court, arises from a concern to reduce the administrative costs and burdens inherent in a system involving the verification of each individual item of expense and therefore represents sound administration.

- 18 The appropriations available to the European Parliament for the lump-sum reimbursement of the travel and subsistence expenses of its Members appear in the annual Community budget and are subject to the budgetary procedures provided for by Community law. It is in the course of those procedures that the amount of the allowances must be considered in accordance with the applicable financial rules.
- 19 It is clear from the foregoing that the national authorities are bound to respect the decision taken by the European Parliament to refund travel and subsistence expenses to its Members on a lump-sum basis. A review carried out in this area by the national revenue authorities, such as the one provided for by the United Kingdom legislation, constitutes an interference in the internal functioning of the Parliament resulting in a substitution by the national authorities of their appraisal of the system of allowances for the one undertaken by the Parliament in the exercise of its powers. It would therefore be likely to impair the effectiveness of the action of the Parliament and be incompatible with its autonomy.
- 20 Consequently, the revenue authorities cannot demand from a Member of the European Parliament returns or vouchers for the actual travel and subsistence expenses incurred in the interests of the Parliament and reimbursed by it, as such a demand would be incompatible with this method of lump-sum reimbursement.
- 21 It must, however, be observed that the allowances fixed in that manner must not exceed reasonable limits consistent with the refund of travel and subsistence expenses. In so far as the lump sum fixed for the allowances is excessive and in reality constitutes in part disguised remuneration and not reimbursement of expenses, the Member States are entitled to charge such

remuneration to national income tax, given that in the present state of Community law the remuneration of Members of the Parliament is a matter of national law and is not the responsibility of the institutions of the Community. However, an assessment of whether the lump sums fixed by the Parliament are excessive, which is, moreover, a matter of Community law alone, was not requested by the national tribunal, before which it was not alleged that at the time the allowances were unreasonably high.

- 22 Consequently, the reply which must be given to the question put by the Special Commissioners is that Community law prohibits the imposition of national tax on lump-sum payments made by the European Parliament to its Members from Community funds by way of reimbursement of travel and subsistence expenses, unless it can be shown in accordance with Community law that such lump-sum reimbursement constitutes in part remuneration.

Costs

- 23 The costs incurred by the United Kingdom Government, the French Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national tribunal, the decision on costs is a matter for that tribunal.

On those grounds,

THE COURT

in answer to the question referred to it by the Commissioners for the special purposes of the Income Tax Acts, hereby rules:

Community law prohibits the imposition of national tax on lump-sum payments made by the European Parliament to its Members from

Community funds by way of reimbursement of travel and subsistence expenses, unless it can be shown in accordance with Community law that such lump-sum reimbursement constitutes in part remuneration.

Mertens de Wilmars Pescatore Mackenzie Stuart Koopmans Bosco
Touffait Due Everling Chloros

Delivered in open court in Luxembourg on 15 September 1981.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN
DELIVERED ON 16 JUNE 1981

My Lords,

This case has been referred to the Court by the Special Commissioners for Income Tax in London, for a preliminary ruling in accordance with Article 177 of the EEC Treaty and Article 30 of the Treaty establishing a Single Council and a Single Commission of the European Communities ("the Merger Treaty"). The Special Commissioners ask whether certain specified provisions, or any other principle, of Community law should be interpreted as precluding Member States

from taxing any part of the expenses and allowances paid from Community funds to Members of the European Parliament. The Special Commissioners mention in addition to those Treaties, the Convention on certain institutions common to the European Communities (particularly Article 28), the Protocol on Privileges and Immunities of the European Communities (particularly Articles 8, 9, 10, 13 and 14) ("the Protocol"), Council Regulation No 260/68 of 29 February 1968 (particularly Article 3 paragraph 2) ("the Regulation") and the Rules governing the