WRITTEN QUESTION E-1109/04
by Paul Rübig (PPE-DE)
to the Commission

Subject: Restriction on allowances in connection with foreign income

Section 33, paragraph 10, of the 1988 Austrian Income Tax Law (EStG), in the version published in the Austrian Federal Gazette (BGBl 818/1993), lays down that where, with regard to an assessment for the calculation of tax, an average tax rate is applicable, that average rate is to be calculated after account has been taken of the allowances granted pursuant to paragraphs 3 to 7 (except for child allowances granted pursuant to paragraph 4, third line, subparagraph (a)). Those allowances may not be deducted a second time when the average tax rate is applied. That provision guarantees that a taxpayer with an income in his country of origin will receive the full allowances, while a taxpayer with foreign income is entitled solely to allowances granted on a pro rate basis.

According to case-law of the Austrian Administrative Court with regard to the legal situation before the publication of BGBl 818/1993, the allowances were not to be taken into account before the calculation of the average tax rate but only in connection with the tax payable after application of the average tax rate to the income subject to national tax. According to the judgment handed down by the European Court of Justice on 12 December 2002 in Case C-385/00 (F.W.L. de Groot), the allowances granted in Austria, the State of residence, must be admitted as deductible if no guarantee can be given that the amounts will be deductible in the source State.

What measures is the Commission thinking of taking if the method of calculating the average tax rate, including the application of a progressivity clause and the maximum assessment amount laid down in Section 33, paragraph 10, of the 1988 Austrian Income Tax Law, proves to infringe Article 39 of the EC Treaty?