THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION:

the *travaux préparatoires* and selected documents

II. Key Pre-Charter Convention Documents

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II. Key Pre-Charter Convention Documents

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1973 OJ C26/7
Resolution on the Protection of the Fundamental Rights of Member States' Citizens when Community Law is Drafted (Jozeau-Marigné Report)

11. Points to the difficulties that this programme will encounter when the time comes to move from statements of principle to practical action, and in particular the weak legal bases provided by the Treaties if recourse is not had to Article 235, the absence of a genuine political will, dissension within the Council and the differences of opinion regarding the division of responsibilities between Member States, the two sides of industry and the Community institutions;

12. Urges the Commission and the Council to do their utmost to solve these difficulties;

13. Urges the Commission to take all the measures necessary to implement Articles 119 of the Treaty, which establishes the principle that men and women should receive equal pay for equal work, and in its new programme to give the same opportunities and consideration to women as to men;

14. Requests its President to forward this resolution and the report of its committee to the Council and Commission of the European Communities.

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Modification of agenda

At the request of Mr Jozeau-Marigne and with the agreement of Mr Pêtre, it was decided that Parliament should deal with the former's report on the basic rights of Member States' citizens before discussing Mr Pêtre's report on agreement concluded within the framework of international organizations.

Basic rights of Member States' citizens

Mr Léon Jozeau-Marigne introduced his report drawn up on behalf of the Legal Affairs Committee on the motion for a resolution tabled by Mr Lautenschlager on behalf of the Socialist Group (Doc. 103/71) concerning the protection of the fundamental rights of Member States' citizens when Community law is drafted (Doc. 297/72).

The following spoke: Mr Lautenschlager, on behalf of the Socialist Group, and Mr Scarascia Mugnozza, *Vice-President of the Commission of the European Communities.*

The following resolution was agreed to:

RESOLUTION

concerning the protection of the fundamental rights of Member States' citizens when Community law is drafted

The European Parliament,

— having regard to the motion for a resolution tabled by Mr Lautenschlager on behalf of the Socialist Group (Doc. 103/71);

— having regard to the report of the Legal Affairs Committee (Doc. 297/72);

1. Invites the Commission of the European Communities when drafting regulations, directives and decisions, to prevent conflicts from arising with national constitutional law and to examine in particular how the fundamental rights of Member States' citizens may be safeguarded;

2. Invites the Commission, furthermore, to submit to it a report as to how it intends, in the creation and development of European law, to prevent any infringement of the basic rights embodied in the constitutions of Member States, the principles of which represent the philosophical, political and juridical basis common to the Community's Member States;

3. Stresses the need to make the European Court more widely accessible to the individual citizen;

4. Instructs its President to forward this resolution and the report of its Committee to the Council and Commission of the European Communities.

Second Commission report on agreement concluded within the framework of international organizations

Mr René Pêtre introduced his report drawn up on behalf of the Committee on Social Affairs and Public Health on the second report of the Commission of the European Communities to the Council on the possibilities and difficulties facing Member States regarding the ratification of a first list of agreements concluded within the framework of other international organizations (Doc. 289/72).

The following spoke: Miss Lulling, Mr Walkhoff, Mr Hillery, *Member of the Commission of the European Communities,* and Mr Pêtre, *rapporteur*

The following resolution was agreed to:

RESOLUTION

on the second report of the Commission of the European Communities to the Council on the possibilities and difficulties facing Member States regarding the ratification of a first list of agreements concluded within the framework of other international organizations

The European Parliament,

— having regard to the report of the Commission of the European Communities to the Council (SEC (72) 2147 final),

— having regard to the provisions of Articles 117 and 118 of the EEC Treaty,

— having regard to the report of the Committee on Social Affairs and Health Protection (Doc. 289/72),

1. Draws attention to its resolutions of 14 May 1963 [1] concerning the European Social Charter of the Council of Europe, and of 2 July 1968 [2] on the possibilities and difficulties facing Member States regarding the ratification of a first list of agreements concluded within the framework of other international organizations;

2. Is delighted that the Commission has continued to pay close attention to the problem of ratification of ILO and Council of Europe agreements;

3. Welcomes the fact that, following Parliament's resolution and the Commission's proposal, certain Member States proceeded to ratify some of the specified agreements;

4. Regrets, however, that by 1 January 1973, only one of the nine Member States of the Community, Italy, had ratified all the ILO agreements in question and the European Social Charter;

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[1] OJ No 84, 4. 6. 1963, p. 1577/63.
[2] OJ No C 72, 19. 7. 1968.

1975 OJ C179/28
Resolution on European Union

No C 179/28 Official Journal of the European Communities 6. 8. 75

RESOLUTION

on European Union

The European Parliament,

— recalling the hope repeatedly expressed since the Bonn summit conference in July 1961 and the concrete indications concerning the transformation of the Communities established by the Treaties of Paris and Rome into a single and real economic, social and political Community,

— desirous of seeing practical effect given to all the undertakings solemnly entered into by the Heads of State or Government of the Member States on 1 and 2 December 1969 at The Hague, 19 to 21 October 1972 in Paris, 14 to 15 December 1973 in Copenhagen and 9 to 10 December 1974 in Paris,

— emphasizing its essential role and its responsibilities as an institution representing the peoples joined together in the Community in the efforts to transform all the relations of the Member States into a European Union,

— recalling in particular its resolutions of 5 July 1972, 14 November 1972 and 14 October 1974,

— firmly convinced that the progressive achievement of the Union must be based on the active and conscious participation of the peoples, whose interests it must reflect, and that the European Parliament will, therefore, have to take at all times, with the assistance of the national Parliaments, all initiatives likely to foster and ensure such participation,

— in answer to the desire expressed by the Heads of State or Government for the Community institutions to contribute to the work on European Union and, in particular, to the drawing up of a summary report by Mr Leo Tindemans,

Declares that:

1. The European Union must be conceived as a pluralist and democratic Community whose priority aims are as follows:

— to ensure strict respect for liberty and human dignity,

— to promote social justice and solidarity between the Member States and the citizens of the Community, through the establishment of an economic order ensuring full employment and the equitable distribution of incomes and wealth;

— to oppose resolutely any cause of conflict or tension, in order to contribute towards the maintenance of peace and freedom,

— to take part in efforts to reduce tension and settle disputes by peaceful means throughout the world and, in Europe, to develop cooperation and security between States;

2. The European Union must be brought about progressively by means of more rational and efficient forms of relations between Member States, taking existing Community achievements as its point of departure through the introduction of a single organization undertaking duties which the Member States can no longer effectively carry out alone, thus avoiding wastage of effort or actions contrary to the cohesion of the Union;

3. The Union must be based on an institutional structure which will ensure its coherence:

— on a body, within which participation by the Member States in the decision-making process of the Union will be guaranteed,

— on a Parliament having budgetary powers and powers of control, which would participate on at least an equal footing in the legislative process, as is its right as the representative of the peoples of the Union,

— on a single decision-making centre which will be in the nature of a real European government, independent of the national Governments and responsible to the Parliament of the Union,

— on the European Court of Justice,

— on an Economic and Social Council, as a consultative body,

— on a European Court of Auditors.

4. The dynamic character of the present Community must be preserved in full, the powers and responsibilities of the Union must be progressively widened, respecting the essential interests of Member States, in particular:

(a) foreign policy, for which the existing coordination procedures must be further strengthened. New procedures must be developed to enable the Community to speak with a single voice in international politics;

(b) security policy;

(c) social and regional policy;

(d) educational policy;

(e) economic and monetary policy;

(f) a Community budgetary policy;

(g) policy on energy and supplies of raw materials;

(h) a scientific and technical research policy.

The Union, based on the collective exercise of common responsibilities, must remain open to new tasks.

5. The Union can only be achieved through a process of continuous political development, which must make full use of all the provisions and possibilities of the present treaties and the other procedures which link the Member States, in order to bring about quickly and effectively the degree of solidarity necessary to transform the present Community into an organization whose decisions are binding on all parties.

6. Achievement of the Union therefore necessitates immediate action to ensure real progress in the various Community policies and in the institutional structure, which must take place in parallel.

The European Parliament therefore asks

7. That an immediate start be made on the procedures necessary to allow the election of its Members by direct universal suffrage not later than in 1978, the date indicated by the Heads of Government of the Member States, thus giving proof of the political resolve to advance towards the construction of Europe with the active participation of the peoples;

8. That in the course of 1976 the Commission of the European Communities should submit an overall programme of priority action which will enable the main aims of the Community policies on which the future European Union is based to be achieved before the end of the present decade;

9. That this programme should be submitted to the urgent consideration of Parliament and the Council for such amendment or modification as may be jointly agreed between the two institutions and then for approval and implementation by the Council;

10. That the links which exist between Economic and Monetary Union and European Union, making desirable a parallel development in the two fields, should be recognized, without, however, allowing the lack of progress in one field to be used as a pretext for taking no action in the other;

11. That adjustments to the institutional structure necessary to adapt it to its task in the European Union should now be made, in particular,

(a) that, in accordance with the Treaties, the Council should abandon the principle of unanimity and meet in public in its legislative capacity;

(b) that the role of the Commission should be extended to include the primary responsibility for all multilateral relations between Member States; this decision would enable these relations to be simplified and coordinated, while putting an end to the distinction between Community procedures and inter-governmental procedures;

(c) that the Community decision-making process should be organized in accordance with the following procedure:

— the Commission, where appropriate on a proposal from Parliament, draws up a draft proposal;

— this draft is submitted to the Council and Parliament at the same time;

— the Council proceeds to give consideration to the proposal only after having received the text of Parliament and in the light of that text;

— until the Council has adopted its conclusions with regard to the proposal the Commission retains the right to amend it in accordance with the provisions of the second paragraph of Article 149 of the EEC Treaty;

— if the Council feels it has to make changes in the text of the proposal as approved or amended by Parliament, a conciliation procedure must be set up within time limits to be specified, before the Council takes its decision, and the procedure will continue until Council and Parliament have reached agreement;

(d) that all the European Parliament's powers should be substantially reinforced by 1980 and that, above all, in the transfer of new powers to the Communities the European Parliament should be given corresponding powers of legislation and control, since this is the only way to ensure that decisions of the European Communities are democratically legitimate;

(e) that Parliament, in accordance with the wish solemnly affirmed by the Heads of Government of the Member States, should participate fully in the work concerning political cooperation and in all the procedures for coordination and consultation between the Member States;

(f) that Parliament should participate in the appointment of the Members of the Commission of the Communities to emphasize their democratic legitimacy.

The European Parliament,

— emphasizes that these adjustments — provided for in paragraph 8 *et seq.* — do not involve formal modifications to the existing treaties but are necessary if there is a desire to make real progress towards European Union and give proof of the existence of a political resolve capable of affirming and strengthening the solidarity between the peoples of the Community and between their Governments;

12. Hopes that, with a view to giving the peoples of the Community a sense of common destiny, a 'Charter of the rights of the peoples of the European Community' will be drawn up and that practical measures capable of contributing to the development of a European Community consciousness, which have been requested for some time, will be adopted;

13. Appeals to the national Parliaments to associate themselves with the efforts towards the progressive achievement of European Union capable of responding to the legitimate hopes of the peoples and in particular of youth;

14. Expects the Governments of the Member States, the national Parliaments, the Council and the Commission of the European Communities to act on this resolution and undertake the necessary practical steps to achieve European Union within the time limits laid down;

15. Instructs its President to forward this resolution to Mr Tindemans, to the national Parliaments, to the Governments of the Member States, the Council and Commission of the European Communities.

Observation by the Danish delegation: Communiqué issued at the end of the Conference of Heads of State or Government of the European Communities, 9 and 10 December 1974 — statement by the Danish delegation: 'The Danish delegation is unable at this stage to commit itself to introducing elections by universal suffrage in 1978'.

COM (76) 37
The protection of fundamental rights as Community law is created and developed. Report of the Commission submitted to the European Parliament and the Council

Bulletin
of the European Communities

Supplement 5/76

Cover title: The protection of fundamental rights in the European Community

Pages 1-17

COM(76) 37
4 February 1976

The protection of fundamental rights as Community law is created and developed

(Report of the Commission of 4 February 1976 submitted to the European Parliament and the Council)

Commission of the
EUROPEAN COMMUNITIES

Abbreviations

OJ	Official Journal of the European Communities
Bull. EC	Bulletin of the European Communities
CJEC	Court of Justice of the European Communities
ECR	European Court Reports

The protection of fundamental rights, as Community law is created and developed

(Report of the Commission of 4 February 1976 submitted to the European Parliament and the Council)

contents

Introduction and scope of the subject matter

Grounds *

1. In its Resolution of 4 April 1973,[1] based on the report of the Legal Affairs Committee,[2] the European Parliament invited the Commission

'to submit to [the Parliament] a report as to how it intends, in the creation and development of European law, to prevent any infringement of the basic rights embodied in the constitutions of Member States, the principles of which represent the philosophical, political and juridical basis common to the Community's Member States.'

2. The presentation of this report has been delayed for several reasons. On the one hand, both the Court of Justice as well as several national courts have, in the meantime, decided a number of cases involving the problem of fundamental rights.[3] On the other, it is only now that some interim stocktaking on the subject is emerging in academic circles.[4] Finally the Commission itself, in its report on the European Union, has given its views on the protection of fundamental rights in the construction of this Union.[5]

Limited scope of the Commission's responsibility

3. In this report, which in no way claims to be exhaustive, the Commission will first of all naturally consider its own position. It will, however, also make some general comments which apply to both the other Community institutions and the Member States as these bear an equal, if not greater, share of the responsibility and authority for the protection of fundamental rights.

4. In so far as Community law is not affected, the Member States alone are responsible for the protection of fundamental rights within the framework of their national legal systems. As it has repeatedly stated in reply to Parliamentary questions,[6] the Commission is, to this extent, not competent to intervene or pass judgment. Where, however, bodies in the Member States apply Community law, they are bound to act in accordance with the guarantees of fundamental rights which apply under Community law.

There is, therefore, no scope for examining Community law provisions using as a yardstick the fundamental rights guaranteed under the national constitutions because Community law can be applied in the Member States only on a uniform basis and must necessarily be judged according to the same standards. Furthermore, where Member States adopt national measures to implement Community law, national fundamental rights as such are ruled out as a control standard, at all events in so far as mandatory provisions of Community law, including those of Directives, are involved.

5. The Commission exercises the right conferred upon it by the Treaties to make proposals and for this purpose takes part in the deliberations of the Parliament and the Council. In addition, it has to exercise the powers of decision conferred on it by the Treaties or the Council. Finally, the Commission is responsible for supervising the application of Community law and therefore also plays a watchdog role in respect of fundamental rights.

In all its activities the Commission must prevent and, if necessary, oppose possible infringements of fundamental rights.

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* The intermediate headings do not form part of the Report of the Commission.

1 OJ C 26 of 30.4.1973.

2 Doc. 297/72 (EP 30.941/fin.) by Mr Jozeau-Marigné, rapporteur.

3 Points 9 and 10 below.

4 See the results of the special session of the Legal Affairs Committee of the Parliamentary Assembly of the Council of Europe of 12.6.1975 in Strasbourg on the protection of fundamental rights within the framework of the European Communities, the results of the 7th International Congress of the International Federation of European Law (FIDE) of 2 to 4.10.1975 in Brussels and the 4th International Colloquium on the European Human Rights Convention of 5 to 8.11.1975 in Rome.

5 Supplement 5/75 — Bull. EC, points 82 to 85.

6 Cf. e.g., Written Question No 1/75 by Mr Amendola and Mr. Ansart, OJ C 170 of 28.7.1975; Written Question No 282/75 by Mr Bordu, OJ C 242 of 22.10.1975.

Survey

6. The following text indicates:

(i) how the standard of fundamental rights has developed in the Community legal order; in other words according to which yardstick the Community institutions should base their actions (Points 7 to 12);

(ii) the conclusions the Commission has drawn from this in pursuing its activities and the extent to which it has attempted to contribute towards further developing the protection of fundamental rights (Points 13 to 20);

(iii) the conclusions to be drawn by the Commission with regard to future developments (Points 21 to 38).

The standard of fundamental rights in the Community

Fundamental rights as an essential part of the Community legal order

7. There are provisions in the Treaties themselves whose aim, or at least effect, is to guarantee and improve the position of the individual in the Community: e.g., Articles 7, 48, 52, 57, 117, 119 EEC. It is on the basis of some of these articles that the Court of Justice has been able to give important judgments as regards the protection of fundamental rights.

At the same time, it must not be forgotten that the creation of the Common Market has had the effect of extending beyond national frontiers the area over which the freedoms of the citizen, especially in the economic sector, may be exercised.

8. Turning to fundamental rights, strictly speaking, the Community institutions have, since the beginning of the Community, been faced with the question of their existence and with a precise definition of their scope under the Community legal order. Today, fundamental rights —however they may be defined[1]—undeniably constitute an essential part of the Community legal order.

The individual citizen should not be without protection in the face of official power. He must have certain inviolable rights. This is one of the fundamental elements in the identity and cohesion of the Community.

In its report on European Union[2] the Commission has already stated that it sees democracy as one of the basic conditions for coexistence and integration of the Member States within the Community. An essential part of any democracy is protection of and respect for human rights and fundamental freedoms which alone enable the individual citizen freely to develop his personality. There can be no democracy without recognition and protection of human rights and guaranteed freedom of the citizen. This is equally true of the Community.

Even if the basic principles are clear it has nevertheless been difficult to secure agreement on the scope and effect of the various fundamental rights.

The case law of the Court of Justice

9. The Court of Justice of the European Communities was faced with the question of fundamental rights for the first time in 1959. Its case law is sufficiently well known and may be summarized as follows:

(i) In two judgments in 1959 and 1960[3] the Court of Justice initially held that it was not competent to examine the legality of acts of the Community institutions according to the yardstick of national fundamental rights.

(ii) The subsequent cases of Stauder (1969) and Internationale Handelsgesellschaft (1970)[4] reveal a new attitude in the jurisprudence of the Court when it held that 'respect for fundamental rights forms an integral part of the general principles of law of which (it) ensures respect'.

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1 Point 9.
2 Supplement 5/75 — Bull. EC.
3 CJEC 4.2.1959 — Stork v High Authority, 1/58, [1958-59] ECR 43; CJEC 15.7.1960 — Ruhrkohlenverkaufsgesellschaften v High Authority, 36-38, 40/59, [1960] ECR 857.
4 CJEC 12.11.1969, 29/69, [1969] ECR 419; CJEC 17.12.1970, 11/70, [1970] ECR 1125. For a translation in English, see respectively [1970] CMLR 112 and [1972] CMLR 255.

(iii) In 1974, in the Nold case[1] the Court of Justice went one step further. It seem to have moved towards a sort of optimum standard of fundamental rights by holding that 'in safeguarding these rights, the Court is bound to draw inspiration from the constitutional traditions common to the Member States, and it cannot, therefore, uphold measures which are incompatible with fundamental rights recognized and protected by the Constitutions of those States'. In addition, the Court of Justice draws from international treaties on the protection of human rights in which the Member States have collaborated or of which they are signatories guidelines for determining general legal principles which apply in the Community legal order.

The abovementioned decisions concern the right to human dignity and freedom in general (Stauder) and the principles of the freedom to develop and deal with property from an economic standpoint (internationale Handelsgesellschaft). The Nold case concerned rights of ownership in the economic sense and freedom to choose and practise a profession or trade.

The Court of Justice has, however, recognized that fundamental rights are not to be considered as absolute. As in all legal systems, there are no fundamental rights which are not subject to limitations, the extent of which depends on the nature of the right involved.

In this way the Court of Justice has already held in the Internationale Handelsgesellschaft case that 'the protection of (fundamental) rights, while inspired by the constitutional principles common to the Member States, must be ensured within the framework of the Community's structure and objectives'. In the Nold case, the Court decided that even if the fundamental rights at issue in the case were protected, nevertheless these were to be considered 'in the light of the social function of the property and activities protected thereunder' so that it is legitimate 'that these rights should if necessary be subject to certain limits justified by the overall objectives pursued by the Community, on condition that the substance of these rights is left untouched'.

Furthermore, other judgments of the Court have recognized a number of important general principles of law as essential elements of the principle of the rule of law in order to secure an effective protection of fundamental rights. These include the principle of proportionality,[2] the requirement of legal certainty and the protection of confidence thereby,[3] observance of the principle of the right to be heard and to defend one's rights in legal proceedings,[4] the prohibition of conviction of a single offence twice,[5] the general obligation to give reasons[6] and the principle of non-discrimination.[7]

Furthermore the Court of Justice has not only paid attention to the substantive standard as regards the protection of the citizen against public authority: it has also considered the problem of the access of the individual to the Community court.

On the one hand, by developing a more and more favourable jurisprudence on the subject of the direct effect of Community provisions, it has considerably widened access to the national courts and thereby broadened the scope of application of Article 177 EEC. On the other hand, the cases decided by it since 1971 involving Article 215 EEC[8] enable the individual citizen to go before the Court of Justice even where the damages alleged arise out of Community legal acts which cannot be directly attacked.

In this way access to the Court as laid down in Articles 173 and 175 EEC has been substantially extended.

Role of the courts of the Member States

10. It is well known that the effectiveness of the protection of fundamental rights is based not so

1 CJEC 14.5.1974 — Nold v Commission, 4/73, [1974] ECR 491; CJEC 28.10.1975 — Rutili v The French Minister for the Interior, 36/75, [1975] ECR 1219.
2 CJEC 12.6.1958 — Compagnie des Hauts Fourneaux de Chasse v High Authority, 15/57, [1958] ECR 155.
3 CJEC 4.7.1973 — Westzucker v Einfuhr- und Vorratsstelle für Zucker, 1/73, [1973] ECR 723.
4 CJEC 22.3.1961 — Société Nouvelle des Usines de Pontlieue v High Authority, 42 and 49/59, [1961] ECR 101.
5 CJEC 14.12.1972 — Boehringer Mannheim GmbH v Commission, 7/72, [1972] ECR 1281.
6 CJEC 15.3.1967 — SA Cimenteries CBR, Cementbedrijven NV et al. v Commission, 8-11/66, [1967] ECR 75; CJEC 28.10.1975 — Rutili v the French Minister for the Interior 36/75, [1975] ECR 1219.
7 CJEC 24.10.1973 — Merkur-Aussenhandels-GmbH v Commission, 43/72, [1973] ECR 1055.
8 CJEC 2.12.1971 — Zuckerfabrik Schöppenstedt v Council, 5/71, [1971] ECR 1975.

much on written legal guarantees as on judicial protection in individual cases. Accordingly it is necessary to underline the important role which the courts of the Member States have played towards clarifying the fundamental rights standard which is to apply in the Community, above all by referring questions for preliminary ruling to the Court of Justice.

In this connection, the courts of the Member States may be faced with a conflict in cases relating to Community law if the national standard of fundamental rights that they are required to protect were to go beyond that recognized under Community law. Competition to obtain the best protection of fundamental rights may have some positive effects for the citizen. However, he is also affected if Community law is not applied everywhere on a uniform basis.

Recently, the supreme courts of the Member States have adopted various positions with regard to this undoubtedly more theoretical than real conflict.

The Italian Constitutional Court described such a conflict as 'aberrant' and extremely improbable.[1] Whilst refusing to examine secondary Community legislation according to the fundamental rights in the Italian Constitution it nevertheless reserved the right, in an extreme case, to question, in respect of Italy, the law of the Treaty itself if the effect of this were to permit substantial infringement of fundamental rights.

In its decision of 19 May 1974,[2] it is true that the German Federal Constitutional Court was unable to establish any substantive conflict between secondary Community legislation and national fundamental rights. However, it justified the right it claimed to examine secondary Community law by basing itself on the fundamental rights embodied in the German Basic Law[3] and by stating that in its opinion the fundamental rights standard achieved in the Community was inadequate. In its view this was because there was no written catalogue of fundamental rights enacted by a democratically elected Parliament.

Public opinion

11. At first, a prime concern of the public was that the citizen in the Community would be subjected to a new authority bound neither by national fundamental rights nor by a catalogue of fundamental rights at Community level.[4] Meanwhile the more recent decisions of the Court of Justice in favour of fundamental rights have silenced the original criticisms to a considerable extent. The frequently asserted danger of massive infringements of fundamental rights by the Community institutions has at no time materialized. This must be attributed, first, to the mechanisms adopted by the Community institutions to prevent any conflict between Community legal acts and fundamental rights recognized in the Community legal order and, secondly, to the limited competence of the Community : the powers of intervention written into the Treaties can by the very nature of things come into conflict only with a relatively limited number of fundamental rights. The debate about the deficiency of Community law as far as the protection of fundamental rights is concerned has therefore proved to be, to a considerable extent, theoretical even though the Community institutions' awareness of fundamental rights may thereby have been considerably increased.

Although there are still sporadic assertions that fundamental rights are inadequately protected in the Community, the views of those concerned are usually based on the universal application of their own national systems of fundamental rights. The opinion of most, however, is that the approach indicated by the Court of Justice provides sufficient guarantee that the fundamental rights of the Community's citizens are recognized and effectively protected.[5]

[1] Judgment of 18/27.12.1973 — Frontini 183/73; Giustizia civile 1974 III, 410; Journal des tribunaux, 1974, 412.
[2] Internationale Handelsgesellschaft, BVerfGE 37, 271.
[3] Cf. a corresponding theoretical reservation BVerfGE 22, 293, 298, Decision of 18.10.1976.
[4] Cf. e.g., the debates in the German Bundestag on the ECSC Treaty (Parliamentary reports of the German Bundestag, 1st term, 183rd session of 10.1.1952) and on the EEC Treaty (Parliamentary reports of the German Bundestag, 2nd term, 208th session of 9.5.1957 and 224th session of 5.7.1957). Here, anxiety with regard to a lack of democracy in the Community was expressed with particular intensity.
Similar fears were expressed in the Parliaments of the new Member States during the debates on accession to the Community.
[5] See the many critical observations on the decision of the Federal Constitutional Court of 29.5.1974.

Summary

12. Summarizing the above it can be said that the legal protection of fundamental rights at the Community level is guaranteed by the procedures laid down in the Treaties. As to the substantive standard of fundamental rights, this is based, first, on the fundamental rights and similar guarantees laid down in the Treaties and, secondly, on the general principles of law to be determined according to the criteria set out in the Nold judgment.

The position taken by the Commission on the question of fundamental rights to date

13. The Commission has certainly influenced the development of fundamental rights as described above. It has also adopted in its own sphere a number of preventative measures to meet the requirements necessary to protect fundamental rights.

Development of the freedoms laid down in the Treaties

14. The creation of the Common Market has extended the freedom of Community citizens. As framework Treaties, the Community Treaties call for permanent and continuous enactment of legislation, for example, in the field of freedom of movement and freedom of establishment. The Commission plays a decisive role in this law-making process. The respect and protection of fundamental rights is therefore a permanent task for it. In the field of agricultural policy in particular, where decisions that have a direct effect on the individual citizen have to be taken almost daily, the Commission has constantly to consider how it can safeguard him against discrimination, interference with duly acquired rights and excessive encroachments.

The instrument at the disposal of the Commission, the Treaty infringement procedure, can in certain cases serve to counter breaches of Community law through national measures which adversely affect the citizen. This does not mean that only direct infringements of the fundamental rights of citizens are involved.[1] Disturbances in the free movement of goods, for example, by the levying of unauthorized taxes or the granting of aids which are incompatible with the Treaty, can also limit the citizen's freedom to engage in the trade or profession of his choice.

Contribution to the case law of the Court of Justice

15. The Commission also plays a role in almost all proceedings before the Court of Justice. By this means it is able through its written opinions to contribute towards resolving the question at issue, even when it is not itself one of the parties. In particular, it has always made use of the possibility of presenting its observations in Article 177 EEC procedures. In this way it has contributed in the working out of a jurisprudence which has become increasingly more favourable in the sphere of fundamental rights and as regards the economic liberties and down by the Treaties.

Attitude towards Parliament and public opinion

16. In cooperation with the European Parliament the Commission has had many opportunities to express its views on the protection of the fundamental rights of citizens. In various statements to the Parliament[1 2 3] and in reply to many written and oral questions,[4] the Commission has stated that 'every contravention of human rights and every violation of democracy no matter where it may be, is adhorrent'.[4] In this way it intervenes with all the means at its disposal in favour of the respect of fundamental rights in the Community legal order.

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[1] CJEC 4.4.1974 — Commission v French Republic, 167/73, [1974] ECR 359.

[2] Cf. e.g. statement by Sir Christopher Soames on 14.3.1973 in reply to questions by Mrs Carettoni Romagnoli and Mr Cifarelli, OJ Annex 160.

[3] Statement by Mr. Scarascia Mugnozza on 30.4.1973, re protection of fundamental rights of citizens of Member States OJ Annex 161.

[4] See the following more recent examples: Written Question No 213/75 by Mr Giraud and Mr Schmidt, OJ C 242 of 22.10.1975; Written Question No 285/75 by Mr Seefeld, OJ C 264 of 18.11.1975; Oral Question No H-40/75 of 14.5.1975 by Mr Bordu, EP Debates of May 1973.

This agreement between the views of the Commission and those of the European Parliament was recently shown in the assessment of the effect that the abovementioned decision of the German Federal Constitutional Court of 19 May 1974 may have on the Community legal order and in particular on the protection of fundamental rights. The Commission shares the conclusions drawn by the Legal Committee of the European Parliament in its draft Resolution contained in the report of Mr Rivierez.[1]

17. In addition, one aspect which is also of importance in developing the freedom of the citizen should not be overlooked, namely informing him of his rights. Only when the citizen himself is conviced that the freedoms which are given him by the Treaties will be extended in the course of European integration and that he can count on effective protection of his rights will integration be successful. The Commission is endeavouring to inform the public of those measures which affect the citizen directly.

As part of its public relations work the Commission has promoted scientific examination of the question of fundamental rights through organizational and financial assistance. It is precisely because the Court of Justice refers to 'the fundamental rights embodied in the constitutions of the Member States' as the expression of general principles of law that surveys comparing laws and constitutions are essential.

The Commission summarized its views and aims in respect of the protection of fundamental rights and put them forward for public discussion in its report on European Union of June 1975.

Organizational provisions

18. A system of preventative legal checks which extends to safeguarding fundamental rights exists within the internal decision-making procedure of the Commission. Right from the initial stages of working out a legal act of the Commission the various interested services are on their guard to avoid a conflict between the measure in question and the fundamental rights of the individual.

In addition the Commission has created a special organ, the Legal Service—as has the Council—to examine the legality of drafts of legal acts which are submitted to it. Pursuant to a decision of the Commission of 1958 it was laid down that 'all documents intended for the Commission, either with a view to their forming the subject of a proposal to the Council or for the adoption of one of the measures laid down in Article 189, are first to be referred to the Legal Service.'[2] The Opinion of the Legal Service is to be forwarded to the Commission at the same time as the documents in question.

Because of the cohesive way in which it works, the flexibility of its organization and the means at its disposal, this Service, whose members come from the various legal circles of the Member States, is in a position to clarify any fundamental rights question which may arise with regard to general legal principles or the constitutional traditions of one or more Member State.

In this way, the Commission considers that it has been able up to now to come up with solutions which conform to fundamental rights.

19. Proposals from the Commission for the enactment of a legal instrument affecting the citizen, and the Commission's own instruments, are, of course, preceded by preparatory work. Here there is always adequate opportunity to examine fundamental rights questions. The views of, and meetings with, experts from the Member States, consultations within the framework of the various committees, and contacts with associations representing, *inter alia,* the interests of persons affected by such instruments enable additional checks to be carried out.

Cooperation of Community institutions

20. As regards Community acts, in respect of which the Commission has only the right to make a proposal, responsibility to respect fundamental rights is also in the hands of both the Council, which decides, and the European Parliament, to the extent it is consulted.

In this case the Parliament is able to raise any question concerned with fundamental rights by asking

1 Doc. No 390/75 (EP 41.913/fin.).
2 Decision of 1.10.1958 Doc. COM (58) Minutes 31.

the Commission to reconsider its proposals and to modify them pursuant to Article 149(2) of the EEC Treaty. The Commission, which has undertaken to look at its proposals again in the light of the opinion of the Parliament is naturally ready to modify them every time that the parliamentary debates bring to light an incompatibility of these proposals with the fundamental rights of the citizen.

The Council is then able at the final stage, with the Commission and all sorts of experts from the Member States participating in the work, to make sure that problems bound up with fundamental rights receive a satisfactory solution.

Programmes and objectives

Tasks for the future

21. The Commission is convinced that the conclusions set out above[1] and the preventive measures it has adopted should be sufficient to avoid infringements of the fundamental rights of citizens. Protecting fundamental rights is not, however, a static task. The potential for extending the freedom of citizens within the Community is by no means exhausted. The increasing mass of Community law affecting the individual citizen calls for constant and increased attention. As regards its future activities the Commission has set itself the following tasks:

(i) extending knowledge of the sources and bases of fundamental rights to be safeguarded by the Community;

(ii) pursuing short-term projects concerning the improvement of the position of the citizen in the Community; and

(iii) developing general objectives.

Increasing the knowledge of the theoretical bases

22. If, in the field of fundamental rights, one goes back to national constitutional traditions, the most immediate task from the comparative law standpoint is to acquire detailed knowledge of these traditions. The Commission will support and promote efforts undertaken in this direction. Until very recently there were no detailed comparative surveys of the constitutional traditions of all Member States. The comprehensive preparatory work for the seventh FIDE Congress and and a study requested by the Commission on the problems faced by the Community in drawing up a catalogue of fundamental rights[2] now make it possible to gain an insight into the various systems which have been set up in the Member States to protect the fundamental rights of citizens. Alongside many points in common there are at times profound differences.

23. The abovementioned study comes essentially to the conclusion that the method used at present by the Court of Justice to protect fundamental rights, that is to derive general legal rules from the constitutional traditions of the Member States, ensures adequate protection of fundamental rights. It considers this method to be suitable for the institutional safeguarding of fundamental rights given the present Community structure. On the other hand, a catalogue of fundamental rights embodied in a treaty is hardly likely to improve the protection of fundamental rights in the present state of integration. The study refers in particular to the possibility of using international conventions and legal rules, even where they are not binding in all Member States, to derive general principles of law.

Also according to the study, should there by a structural transformation of the Communities into a European Union or into a subject of international law, analogous to a federal State, it would be 'difficult to imagine that a new European constitution could, contrary to all contemporary trends and demands, dispense with an express and detailed guarantee of fundamental rights'.

Individual programmes

24. Apart from attempts to find solutions to basic problems, the Commission is also pursuing, in the creation and further development of European law, various individual projects (some pursuing objec-

[1] Points 13 to 20.

[2] Drawn up by Professor R. Bernhardt, Director of the Max-Planck Institute for Foreign Public Law and International Law, Heidelberg, together with several colleagues. See Annex.

tives already laid down in the Treaties, others being steps on the path towards European Union) which should bring appreciable improvements in the position of the individual citizen within the Community.

25. In connection with extending the freedom of individual citizens laid down in the Treaties the Commission has, for example, recently submitted to the Council an action programme designed to reinforce the social situation of migrant workers.[1]

At the beginning of 1975 the Council, on a proposal of the Commission, adopted a directive putting into concrete form the principle of equal pay for men and women contained in Article 119 of the EEC Treaty.[2]

Finally, on 18 December 1975, the Council has given effect, to a large extent, to a proposed directive which the Commission submitted to it on 12 February 1975[3] designed to achieve equality of treatment for men and women as regards access to employment, vocational training, promotion and working conditions.[4]

26. Furthermore, on the road towards European Union, the Commission is participating in the progressive creation of a European citizenship. It has submitted two concrete proposals drawn up on the invitation of the Heads of State or Government at the Paris Summit meeting in December 1974[5]:

(i) on the establishment of a Passport Union, which proposes progressive harmonization of legislation affecting aliens and the abolition of passport controls within the Community;

(ii) on the granting of special rights in each Member State to nationals of other Member States on the principle of treating such persons in the same way as nationals of the host Member State. The special political rights are, in particular, to include the right to vote, to stand for election and to hold public office at the local and possibly regional level.[6]

Survey of general objectives

27. The general objectives of the Commission as regards the development of fundamental rights in the Community are determined above all by three problem areas:

(i) due regard for the European Human Rights Convention in the Community;

(ii) the guarantee of a standard of fundamental rights which is as comprehensive as possible;

(iii) the manner in which the institutions are to safeguard this guarantee.

Meaning of the Human Rights Convention

28. In the Nold case the Court of Justice rules that 'similarly, international treaties for the protection of human rights, on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law'.[7] The Commission is of the opinion that this approach is particularly relevant with regard to the Human Rights Convention. The Human Rights Convention sets out, as far as the 'classic' fundamental rights are concerned, that is, certain of the fundamental rights to be protected in the Community, a catalogue of principles of law recognized as binding in all the Member States. It therefore also has binding effect on the activities of the Community institutions.

The Commission does not consider it necessary for the Community as such to become a party to the Convention. The fundamental rights laid down as norms in the Convention are recognized as generally binding in the context of Community law without further constitutive act.

Necessity for a comprehensive standard of fundamental rights

29. The second problem area concerns the guarantee of a standard of fundamental rights which is as comprehensive as possible. It is true that many

1 Supplement 3/76 — Bull. EC.
2 Directive 75/117/EEC, OJ L 45 of 19.2.1975.
3 OJ C 124 of 4.6.1975.
4 Directive 76/207/EEC, OJ L 39 of 14.2.1976.
5 Cf. points 10 and 11 of the final communiqué, Bull. EC 12-1974, point 1104.
6 Supplement 7/75 — Bull. EC.
7 In the Rutili case the Court has for the first time expressly referred to certain articles in the Convention. CJEC 28.10.1975 — Rutili v The French Minister of the Interior, 36/75 [1975] ECR 1219.

basic rights can be involved only in exceptional cases in view of the powers conferred upon the Community institutions.[1]

Fundamental rights are, however, regulatory principles of a pluralistic society and should be taken into account as such by the Community institutions even if it is unlikely that they may, in a specific case, be infringed.

30. On the other hand, a dual tendency of Community law makes the protection of civil and political rights as well as economic and social rights appear more necessary than before:

(i) the tendency to adopt increasingly detailed and specific rules which, by virtue of this fact, affect the individual more directly, and this not only in the field of economic activity;

(ii) the extension of the powers of the Community institutions as part of the dynamic development towards European European Union.

Extension of the area of protection of fundamental rights

31. These tendencies increase the need for the protection of fundamental rights which the Commission will meet in two ways.

Firstly, it will, in its legislative actions and in exercising its right of initiative *vis-à-vis* the Council, pay particular attention to the development of economic and social fundamental rights. It considers this field of fundamental rights to be of particular significance since the activities of the Community institutions are mainly in the economic sector. The Commission is aware that these types of fundamental rights need in particular to be put into concrete form and complemented by being given effect on the Community as well as the Member State level. It can only confirm its intention increasingly to encourage developments in the direction indicated.

Secondly, in interpreting the decisions of the Court of Justice, the Commission proceeds from the basis that the substantive content of the fundamental rights recognized under Community law must be defined in accordance with the national standard that affords the maximum protection to the individual whilst taking into account the general interest, in order to achieve an optimum standard of protection of fundamental rights in the Community. In considering the legal positions of the individual and of the Community the Commission will, on every occasion, align its activities on the optimum standard in question and not on the lowest common denominator of the standards of fundamental rights achieved in the Member States. A high standard of fundamental rights at Community level will constitute an element in the Community legal order that will encourage integration.

Safeguarding of fundamental rights by the institutions

32. The last problem area, mentioned under paragraph 27, concerns the question of the best method of safeguarding of fundamental rights from the technical point of view. As already indicated, expert opinions expressed recently on this question in legal academic circles have been overwhelmingly to the effect that protection of fundamental rights by the judicial authority is preferable to an attempt to codify the rights to be protected. The Commission, although being in favour of a Community catalogue in its report on European Union, considers that in the present state of integration the reasons put forward in favour of a judicial solution are conclusive.

Advantage and disadvantages of a catalogue of fundamental rights

33. A written Community catalogue of fundamental rights would have many advantages: such a catalogue would improve legal certainty and would lend solid support to the law-making by the judiciary. In addition it would emphasize the importance of fundamental rights and remove any remaining doubts about their relevance in Community law. Finally it would enable the exercise of economic and social rights, most of which require legislative measures to make them effective, to be more completely assured.

34. The advantages of codifying fundamental rights can, however, hardly be realized in the short term. If the legal systems of the Member States do indeed have many fundamental points in common,

[1] Cf. the views of Mr Jozeau-Marigné in his report referred to above, Doc. No 297/72 (EP 30.941/fin.).

certain differences nevertheless remain. The fundamental rights, and bound up with them the freedom of action of the State *vis-à-vis* its citizens, are based on the structural principles of the individual constitutions. It might be difficult for certain Member States to accept a codification of fundamental rights, binding in its entirety, especially if this differed considerably from their own constitutional traditions. The establishment of a catalogue of fundamental rights would require, in the present state of the Community, an intergovernmental negotiation and would have to receive the unanimous agreement of the Member States. Defining the fundamental rights to be included in the Community catalogue could therefore result in compromises and deletions. There would be a real danger that the result of such efforts would be a minimum consensus on the matters to be included.

35. Any catalogue of fundamental rights must, moreover, provide for the possibility of limitations and involve making an inevitable choice between the protection of individual rights and the necessity of safeguarding the common good. In the present political and institutional structure of the Community an undertaking of this kind could only be realized on the basis of concepts which often differ among the Member States. There could be a risk of working out formulas which would be too general to have any value or of different reservations by different Member States. Legal security, which is the objective of a catalogue, would therefore not really be achieved.

36. In every case in which a problem is raised as regards fundamental rights the Court of Justice can, at the present time, be guided by the optimum level of these rights. A catalogue would not greatly improve the material position of the citizen in the Community if, being drawn up under the conditions mentioned above, it ended up on a lower level.

37. On the other hand the position would be completely different on the totality of relations between the Member States being transformed into a European Union. Both the powers and the means of action of the Union, even if, although attributed, they were not immediately fully exercisable, would apply over a much larger area and would reveal a much more political quality than those of the present Communities.

Undertaking the action involved will affect individual citizens even more in their daily lives. Just as it is difficult to imagine that the constitutional law of democratic States would not have provisions covering the protection of fundamental rights, so it would be difficult for the European Union to avoid this. Furthermore, in the construction of the European Union there will certainly be political pressure to emphasize fundamental rights: this will facilitate the work preparatory to the establishment of a Community catalogue.

Moreover it is clear that a predominant role would fall on a European Parliament elected by direct universal suffrage in the establishment of this catalogue: this would conform to the traditions of all the Member States.

Proposal for a common declaration

38. For the time being the Commission feels that the idea already put forward to confirm, by a solemn common declaration of the three political institutions of the Community, respect for fundamental rights in the Community, merits serious consideration. Such a declaration could underline the importance of the Human Rights Convention and the indispensable nature of the protection of these rights by the Court of Justice. In this way a reply would be given to certain objections directed against the present system, objections which, based on the principle of the separation of powers, take exception to its exclusively judge-made character.

However, such a declaration would have to be adopted without giving rise to long discussions on its contents. If there is not immediate agreement between the institutions involved on the declaration such an attempt would be of no use and even dangerous. It might create doubts—not justified—as to the credibility of the Community institutions in the field of fundamental rights.

Conclusions

39. In view of developments so far, the Commission is of the opinion that the present standard of protection of fundamental rights, as this can be

taken from the more recent decisions of the Court of Justice, is satisfatory.

Furthermore, it considers that the protective machinery at present available within the institutional structure of the Communities is sufficient to prevent and counter infringements of fundamental rights through Community acts and, following the implementation of these acts, at the national level. However, it feels that while the European Union is being set up access by the individual to the Community Court should be improved.

The Commission considers that it has a constant duty, in the further development of the common market, to safeguard and extend the freedom of the individual citizen. It will accordingly pursue its efforts in this area.

As already stated in the report on European Union, express embodiment of fundamental rights in a future European constitution remains desirable, if not essential.

As regards the present and the near future, however, the Commission shares the opinion of the Parliament that in the light of the present structure of the Community, the most complete protection of fundamental rights is ensured by the Court of Justice which guarantees a maximum level of protection. Nevertheless the Commission considers it desirable to stress by a declaration to this end the importance of fundamental rights in the Community.

Annex to COM (76) 37
The problems of drawing up a catalogue of fundamental rights for the European Communities. A study requested by the Commission - Report annexed to COM (76) 37

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of the European Communities

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Cover title: The protection of fundamental rights in the European Community

Pages 18-69

The problems of drawing up a catalogue of fundamental rights for the European Communities

(A study requested by the Commission
and drawn up by Professor R. Bernhardt,
Director of the Max-Planck-Institute for Foreign Public Law
and International Law, Heidelberg)

Commission of the
EUROPEAN COMMUNITIES

ANNEX

The problems of drawing up a catalogue of fundamental rights for the European Communities

A study requested by the Commission and drawn up
by Professor Rudolf Bernhardt,
Director of the Max-Planck-Institute
for Foreign Public Law
and International Law, Heidelberg

The contributions relating to the individual legal systems of the Member States have been produced by colleagues from the Max-Planck-Institute for Foreign Public Law and International Law, namely by Dr K. Oellers-Frahm for Italy, by Mr A. Berg for Denmark, Dr M. Bohe for Ireland and the United Kingdom, Dr K. Hailbronner for France, Mr H. Krück for Luxembourg and the Netherlands and Professor H. van Mangoldt for Belgium.

18-19

The Commission of the European Communities, represented by the Director-General of the Legal Service, has asked me to submit a study on the problems of a catalogue of fundamental rights for the European Communities. The task of the study has been defined as follows:

'The study commissioned should show, on the basis of existing knowledge of comparative law and codification in the field of international law, the problems posed by the elaboration of a catalogue of fundamental rights for the European Communities.

It should start with a short survey of the protection of fundamental rights within the different Member States and the present protection of fundamental rights under Community law. More detailed research on some specific fundamental rights having special relevance to Community law (for instance, the protection of legitimate confidence placed in a legal position already established, in relation to economic matters, or the freedom of trade or occupation) should then illustrate by way of comparative techniques the level of protection of fundamental rights in the nine Member States.

Finally, it will have to be considered whether it is desirable, given the current degree of integration, to elaborate such a catalogue, and, if so, what procedure in terms of legal methodology is appropriate,'

Due to the lack of time available, it has not been possible to carry out an examination to compare the law in all countries to the same degree. Not only in details, but also in examples were differences unavoidable. In other respects *individual* shortcomings and occasional mistakes are unavoidable in the course of an attempt to deal with a large number of different legal systems and to understand their basic problems. The study was terminated in the autumn of 1975.

Contents

Abbreviations

AB	Administratieve en rechterlijke beslissingen
AJDA	Actualité juridique, Droit administratif
AöR	Archiv des öffentlichen Rechts
Bull. EC	Bulletin of the European Communities
BVerfG	Bundesverfassungsgericht
BVerfGE	Entscheidungen des Bundesverfassungsgerichts
CC	Conseil constitutionnel
CE	Conseil d'État
CJEC	Court of Justice of the European Communities
D	Recueil Dalloz
DÖV	Die Öffentliche Verwaltung
D.Sir	Dalloz Sirey
DVBl.	Deutsches Verwaltungsblatt
ECHR	European Convention on Human Rights
ECR	European Court Reports
EuGRZ	Europäische Grundrechte-Zeitschrift
Gem.St.	Gemeentestem
ILTR	Irish Law Times Reports
IR	Irish Reports
J	Jurisprudence
JCP	Juris classeur périodique (Semaine juridique)
JORF	Journal officiel de la République française
JöR NF	Jahrbuch des öffentlichen Rechts, Neue Folge
JZ	Juristenzeitung
NJ	Nederlandse jurisprudentie
OJ	Official Journal of the European Communities
Pas. Lux.	Pasicrisie luxembourgeoise
RDP	Revue du Droit Public et de la Science Politique
Rec.	Recueil
RSV	Rechtspraak sociale verzekering
Sir.	Sirey
v.	versus
WLR	Weekly Law Reports
ZaöRV	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht

I — Introduction

1. The problem

The European Communities exercise sovereign authority through their institutions. Making regulations, directing, intervening, they are arrayed against the individual, and set limits to his potential for development and achievement, especially in the economic field. Although it is the objective of the Communities and of the Treaties on which they are founded to extend the scope for the economic activity of 'citizens of the Common Market' ('Marktbürger')[1] beyond the frontiers of the individual Member States, and thereby to create a greater freedom, none the less this freedom requires in many respects to be regulated and subjected to limitations. In many important fields and questions this is no longer—or no longer solely—effected by the state and its organs, but by virtue of Community authority (Gemeinschaftsgewalt). There is no need here to consider how the European Communities may be classified within traditional categories, that is: whether they are to be viewed more as members of the family of international organizations, or as supranational organizations *sui generis,* or even as having, to some extent, the configuration of a State itself; what however cannot be ignored or disputed is that powers to regulate and to intervene, hitherto exercised by the States alone, are now asserted by Community organs.

The limiting of State authority (Staatsgewalt) by the fundamental rights (Grundrechte) and human rights of the individual is one of the most outstanding achievements of the modern constitutional State. The extent, form and means of protection of these fundamental rights vary from State to State and reflect the influences of history and different traditions; we shall revert to this below. However, in the States with which we are concerned the fact that there is this fundamental constraint upon State authority is not in question. At national as well as international level, efforts are continually being made to make good deficiencies in the protection of human rights. Such deficiencies are currently being picked up and discussed with particular emphasis in the field of Community law. The Community Treaties contain no catalogue of fundamental rights (Grundrechtskatalog), but only certain disparate and incomplete reference points for fundamental rights and the corresponding constraints on Community authority. This creates dangers both for the individual and for the Community itself: the protection of the individual seems insufficiently secured; in so far as it is—and that is the case to a not inconsiderable extent—considered to be inalienable, there is the danger that measures taken at the national level in the interest of fundamental rights could run contrary to, and take effect against, Community authority. Protection of the individual could therefore operate in a manner inimical to integration.

To resolve this difficulty various means and measures are proposed. Ranging from embodying a formal and detailed catalogue of fundamental rights in Community law, to dispensing with any provisions in express terms—combined with confidence in a Community Court exercising its jurisdiction in a manner both constitutional and sympathetic to the Community—there are a variety of ideas and possible solutions. Only in relation to the general aim does there seem to be at least a broad consensus. The individual requires protection against Community authority, and this protection must be found within Community law, since recourse to purely national guarantees and procedural machinery must jeopardize the existence and further development of the Community.

The present study is intended as a contribution to the discussion from the point of view of legal science. The question is how, in terms of law, the aim, namely, to guarantee and develop the protection of fundamental rights by Community law, can best be achieved. In finding the answer, a comparative study of the various national catalogues of fundamental rights, and provisions of law relating thereto, will be as valuable a contribution as a glance at general international developments and tendencies. It is for those having the power and the responsibility of political decision to draw the conclusions, both from previous experience and from the political requirements of the present time. In this study our purpose is simply to survey and assess from the point of view of legal science, which itself cannot in the nature of things be immune from personal assessment and political evaluation.

At any given moment, fundamental rights have to be seen in the context of the legal and constitutional systems in which they subsist or are to be inserted. This affects the present study in the following way: the problem of the protection of fundamental rights will have to be considered in the context of the European Community as it now exists, and as it continues to develop on the basis already created. We are concerned with the subsistence or insertion of fundamental rights in the existing structure of the Community, which can of course be developed and modified, but which can be assumed for the foreseeable future to be likely to remain in essence the same. If a European federal State or a European Union were to come into being, with a fundamentally different 'constitutional' basis, the protection of fundamental rights would also have to be viewed differently and thought out afresh.[2] It is hard to imagine that a new European 'constitution' could, contrary to the trends and demands of the times, dispense with an explicit and detailed guarantee of fundamental rights; but this is not our problem. We are solely concerned with the protection of fundamental rights within the current legal system of the European Communities which, although capable of development, will retain its basic structure.

[1] Expression of *Ipsen*; cf. his Europäisches Gemeinschaftsrecht, 1972, p. 187 and *passim*.

[2] Cf. the comments in the Report of the Commission on European Union of 25.6.1975, Supplement 5/75 — Bull. EC, point 82 *et seq.*

2. Evolution of fundamental rights

Any consideration of the protection of fundamental rights within the European Communities cannot disregard the question of how far the classical fundamental rights, and the inherited concepts of such rights, are in process of change and evolution.[1] The discussion of fundamental rights within individual States as well as on the international level has recently undergone a change of emphasis; and no end to this search for new or modified approaches and solutions can yet be discerned.

The classical fundamental and human rights were and are intended to protect the individual from undue interference by State authority in his personal and individual development. Belief and conscience, property, personal freedom, freedom of opinion and assembly should be safeguarded against State intervention and statutory regulation. This was, and still is, the basic premise, and even nowadays remains an especially important concern of fundamental rights. This view of fundamental rights is closely related to a social order in which private initiative and individual freedom are accorded considerable scope, with a high degree of tolerance for the differing circumstances of actual cases.

'Social fundamental rights' have little place in the classical catalogue of fundamental rights. It is true that the French catalogue of fundamental rights of 1793 did mention public welfare and stressed the duty of society to protect citizens in need of help, and since then the right to work or to receive social protection from the State has found its way into the catalogue of fundamental rights in many constitutions; but the legal systems prevailing in States of the Western constitutional type have only made constitutional provision for social fundamental rights in a sporadic and eclectic fashion. On the other hand, social security has, outside the catalogue of fundamental rights, found its way in many instances into the national or international legal system. Modern legislation relating to the protection given to employees and social security are, like other services provided by the State for socially disadvantaged persons, characteristics of modern legal development. At the international level, numerous agreements of the International Labour Organization, the European Social Charter of 1961 and the International Convention of the United Nations of 1966 on Economic, Social and Cultural Rights make provision for significant social guarantee. Some countries are discussing the adoption of social fundamental rights into their constitution.[2] This development is probably still incomplete. It will have to be borne in mind in any consideration of the protection of fundamental rights within the European Communities.

The same applies in the case of a further tendency in the current discussion on fundamental rights. There are indications and evidence to suggest that the discussion of fundamental rights is linked more strongly than before to overall democratic demands. Partly by stressing the principle of equality and the demand for citizens to enjoy equality in the real, and not merely in the legal sense, and partly by invoking the general principles of democracy there is a demand for more active participation and involvement (Teilhabe und Teilnahme) on the part of the citizen in establishing what interests of the community are to be.[3] From various quarters the democratization of the administration, the economy and other social areas is sought after, and set out as a requirement. It is hard to judge how far this tendency will prove both lasting and justified; we do not intend to expresss any view on this aspect.

In any discussion on the protection of fundamental rights within the European Communities a decision has to be reached as to whether the classical protective fundamental rights alone should be codified and strengthened or whether social and democratic fundamental rights—the word 'democratic' being used in the broad sense—should also be included within the strengthened protection. Contemporary social and intellectual trends speak in favour of such inclusion, but there are strong reasons to the contrary. Social and democratic fundamental rights and rights of participation are not only less capable of being formulated in a clear and unequivocal manner than protective rights, but they are also less susceptible fo direct application and enforcement by the courts. The discussion on fundamental rights within the European Communities has hitherto been conducted from the point of view of the requirements of the rule of law (unter rechtsstaatlichen Gesichtspunkten); predominantly, the search has been, and is, for rights on the part of the individual which can be protected by the courts. If the protective rights against undue encroachment by State authority are supplemented by rights in relation to the performance of statutory duties by the State (Leistungsansprüche) and to democratic participation, the discussion will acquire new dimensions both in theory and in practice: the actual conferring and guaranteeing of fundamental rights by the legislature, the executive and the judiciary must clearly differ in relation to protective rights from what it would be in relation to social fundamenal rights and democratic rights of participation. This is merely mentioned in passing. In my opinion, there is however a dilemma to consider here: the insertion of social and democratic basic rights into a catalogue of fundamental rights accords with a contemporary trend, but if it is to be followed, the price will probably be a surrender of some degree of judicial protection.

[1] Cf. among many others *Friesenhahn*, Der Wandel des Grundrechtsverständnisses, Sitzungsberichte des 50. Deutschen Juristentages 1974, G 1 *et seq*; and *Saladin*, Grundrechte im Wandel, 1970, each with further references.
[2] Cf. e.g. for Switzerland Jörg P. *Müller*, Soziale Grundrechte in der Verfassung? Schweiz. Juristenverein, Referate und Mitteilungen, 107 (1973) No 4; and *Benz*, Die Kodifikation der Sozialrechte, Zürcher Beiträge zur Rechtswissenschaft, 419 (1973) each with further references.
[3] Cf. discussions in Germany e.g. *Martens-Häberle*, Grundrechte im Leistungsstaat, Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer 30 (1972).

3. Comparative law and creation of law in the field of fundamental rights

Any consideration of the guaranteeing of fundamental rights at a European level must obviously and unavoidably have regard to the fundamental rights already entrenched in the legal systems of the Member States. In view of the fact that the catalogue of fundamenal rights and guarantees in respect thereof of the Member States of the European Communities differ so appreciably, one of the most difficult questions is the extent to which national legal concepts and provisions should be incorporated into 'European' law. Between two unacceptable extremes—incorporating the catalogue of fundamental rights of only one Member State into Community law, and aggregating all national guarantees in respect of fundamental rights with the consequence that Community authority would be closely hemmed in by a diversity of constraints—there lies a large number of possible structures, between which those bearing political responsibility will have to make their choice. This choice can, to a certain extent, be made easier by comparative legal survey.

Comparative public law is not only a relatively young discipline but also gives rise to special difficulties and problems.[1] First, studies on comparative law are more productive according to the extent to which the legal systems compared are in accord on questions of principle, or approximate to each other thereon; on the other hand, comparisons between constitutional systems which are unalike, such as a constitutional system exemplifying the rule of law and separation of powers and the constitution of a people's democracy, are particularly difficult. This difficulty may be disregarded below, since in the case of the Member States of the European Community we do find agreement as to basic questions on the organization of the State, despite all the differences on particular aspects.

A mere comparison of the texts of the constitutions and of the ordinary statutes (einfache Gesetze) giving expression to fundamental rights under the national laws in question may be interesting and valuable from a philological or semantic point of view, but for exploration in the field of comparative law such mere textual comparison is inadequate and unproductive. The subsistence, significance and scope of provisions of law can only be accurately perceived if the actual exercise of authority by the State, not least through the courts, is explored. In comparing legal systems it is not normally appropriate to consider first one particular system and its structure, and then to compare the provisions obtaining in other systems by reference to it. Rather, comparisons of law will normally proceed on a practical basis (zweckmässig), from the matter of fact in question, from the issues of actual fact to be resolved, and will then inquire as to what legal solutions and provisions for dealing with these issues are available under the various national systems. Not infrequently it will be apparent that different legal systems pursue, and achieve, the same objective in quite different ways. Herein lies one of the particular difficulties of comparative legal studies, and in this field of fundamental rights it is aggravated by the fact that the problems relating to fundamental rights are at the same time eminently 'political' problems, because they are highly relevant to the structure of State and society.

These difficulties require further clarification, and we shall revert to specific aspects in due course. As is well known, most, though not all, countries of the European Community have a written constitution. In so far as written constitutions exist, some contain no provisions, or scarcely any, relating to fundamental rights; others contain detailed catalogues of fundamental rights which present notable differences of detail. There are furthermore important differences between the powers vested in the courts to review alleged violations of these rights (Kontrollbefugnisse). Many constitutions provide for the courts of the legislature (by means of a constitutional court or by the ordinary courts in the broader sense), while other constitutions such as the (unwritten) British one regard the legislature as omnipotent. Such important structural differences may well prove largely irrelevant for the purpose of practical questions of fundamental rights and for considering the policy of the law on the establishment of a European catalogue of fundamental rights. It may well be that some fundamental right, e.g. the freedom of conscience, or the protecion of property, is more effectively and extensively secured within a constitutional system having only minimal guarantees for fundamental rights and deficient provision for judicial review, than in a State with an elaborate catalogue of fundamental rights and jurisdiction to review on the part of constitutional courts; in one State certain rights may as a rule be respected by reason of tradition and the prevailing social order without any formal constitutional guarantees, whereas in another State having a catalogue of fundamental rights statutory reservations (Regelungsvorbehalt) attaching to the rights secured in the constitution may deprive the fundamental rights in question of a large measure of their efficacity. The structural differences between the constitutional systems can in other contexts become extremely important, that is, where we are concerned with readiness to accept basic changes: a national legislature which is constitutionally omnipotent but which in practice respects certain fundamental rights may be less willing to surrender its virtually absolute powers of regulation than a legislature whose acts are subject to review by a constitutional court. These overlapping questions and considerations must be identified and borne in mind in any search for Europen guarantees of fundamental rights conducted on the basis of an exploration of comparative law.

In this context we must take into account yet another fundamental difficulty, which is hitherto largely without historical

[1] Cf. e.g. the remarks on 'Vergleichung im öffentlichen Recht' by *Kaiser, Strebel, Bernhardt* and *Zemanek*, ZaöRV, 24 (1964), p. 391 *et seq*, and the colloquia on comparative law of the Max-Planck-Institut on 'Verfassungsgerichtsbarkeit in der Gegenwart', 'Haftung des Staates für rechtswidriges Verhalten seiner Organe' and 'Gerichtsschutz gegen die Exekutive', Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, 36 (1962), 44 (1967) and 52 (1969) with introductions by Mosler.

parallel. Fundamental rights, and catalogues thereof, have hitherto always been intended to set limits to the sovereign and inherently boundless authority of the State. In principle, all fields of personal activity and life in society are potentially vulnerable to intrusion by State authority. The comprehensive powers for interference on the part of the State are countered by the individual's entitlement to protection (Individualpositionen) of his fundamental rights (such at least is the traditional constitutional concept of the Western democracies, as opposed to the meaning given to fundamental rights in the people's democracies). The usual content of any catalogue of fundamental rights now becomes entirely clear: protection is afforded above all in those areas of individual activity wherein the dignity and freedom of the individual is particularly affected and protection from the omnipotent State is seen as a matter of particular urgency. The catalogues of fundamental rights which have been evolved on the level of international law during these last three decades, and which have in part become legally binding, have also pursued in essence the same objectives as the systems of fundamental rights under national law: they are intended to protect the individual against interference and undue intrusion by the State, and principally in the particularly important field of the individual's choice as to how he leads his life in relation to freedom of the person, of belief, of conscience, of home, etc.—as witness the freedoms contained in the European Convention of Human Rights ('the ECHR').

Within the ambit of the European Communities, the initial question is different. At present, and for the foreseeable future, Community authority can only to a limited extent be compared to national authority. Freedom of belief and conscience, protection from unjust arrest and prosecution, postal secrecy, freedom of the press and of artistic endeavour and many other freedoms are scarcely, if at all, affected by Community authority. This statement is not free from qualification, and occasional interference by Community authority with certain of these rights can by no means be ruled out; but this will be demonstrated at a later stage. Nevertheless it is not in doubt that the traditional fundamental rights appear to be jeopardized only to a slight degree by the authority wielded by the European Communities. This concerns perhaps chiefly the freedom to carry on a trade or occupation, the protection of property, the right to equal treatment, and also those guarantees for the protection of the individual which can be described as essential features of the constitutional State or of 'due process of law'. We shall revert to this. It does, however, given the current structure and current powers of the Community, seem doubtful whether the question of fundamental rights should be gone into in its entirety and to its traditional extent, or whether it is not preferable to restrict discussion to those fundamental rights which are more likely to be jeopardized and violated by the Community.

This would have the following consequences for any relevant comparison of law. First, it must be considered which individual rights and possible fields for individual activity seem to be most endangered by the Community organs (and by national organs acting pursuant to Community law). These dangers will have to be set against the appropriate fundamental rights of the national legal systems, and it must then be considered whether, and, if so, to what extent, common rules of national legal systems should be incoporated into Community law, or whether an independent catalogue of European guarantees of fundamental rights could be evolved, perhaps loosely founded on existing national models, or whether we should, for the time being at least, refrain from seeking to embody Community fundamental rights in legal rules at all.

4. The conduct and limits of this study

The following study is chiefly concerned with making a survey and arriving at conclusions as to the extent to which fundamental rights are currently guaranteed and embodied in national legal systems, and in the legal system of the Community. This can be no more than a cursory portrayal, since a complete discussion of fundamental rights and related problems in nine Member States and in Community law is manifestly impossible. We shall start by examining and describing in a general way the entrenchment (Verankerung) of fundamental rights in the legal systems of the nine Member States; in doing this, it will scarcely be possible to discuss current trends in the direction of a fresh interpretation of fundamental rights, and the emphasis will be on the traditional view of fundamental rights and their protection by the courts up to the present time. This will be followed by conclusions as to how far fundamental rights are recognized within the present legal system of the Community. These findings will include a discussion of the question how far Member States of the Community have obligations under international treaty, in particular the ECHR, to respect fundamental rights, and how far these obligations have effect in relation to the Community and its organs. The contrast between the protection of fundamental rights within the Member States on the one hand and safeguarding them within the legal system of the Community on the other hand, may indicate to what extent, if any, protection of fundamental rights in the Community is deficient.

In a further section we shall discuss, by way of example, one particular fundamental right—the right to freedom of economic activity (Gewerbefreiheit)—and a constitutional duty having the characteristics of a fundamental right—the duty to respect an individual's vested rights and interests (Gebot zur Respektierung erworbener Rechte und Interessen des einzelnen). These two fundamental rights, if they are in fact fundamental rights, have been selected since they can be of particular significance for th European Community, and are at the same time suitable for demonstrating the possibilities and limitations of regulating such matters at European level on the basis of a comparison of national legal concepts. In this context also, it will not be possible to follow all the ramifications of national legal systems and to do complete justice to all problems arising. To evolve a complete set of findings in full detail, omitting nothing and free from any inaccuracy, would require considerably wider and more time-consuming preparatory work, and consultation with experts from the various Community countries. It should however be possi-

ble, on the basis of this conspectus, to identify the possibilities and limitations of introducing a European catalogue of fundamental rights on the basis of studies in comparative law.

This paper will conclude with an attempt to summarize and assess, accompanied by some reflections on questions of legal policy.

II — The general position in relation to fundamental rights in the legal systems of the Community and its Member States

1. Fundamental rights in the legal systems of the nine Member States : A survey

As has already been said, an exploration in comparative law should not in principle be restricted to a comparison of individual provisions and their wording, but should rather consider how rules are entrenched in the legal systems in question, their most important characteristics, and the efficacy of the written rules. This applies especially in relation to the comparative survey of fundamental rights in the Member States of the European Communities. We shall seek to outline below the extent to which, if at all, fundamental rights are entrenched in the legal systems of the Member States, whether and if so, to what extent, they are at the mercy of the legislative body having power to enact constitutional amendments or ordinary statutes, and to what extent the national courts review and guarantee respect for fundamental rights.

Belgium

The Belgian Constitution of 1831 contains in its Title II a series of fundamental rights. With the exception of the particular prohibition of discrimination incorporated into the Constitution in 1970, these fundamentel rights are still valid in the form given to them by those enacting the Constitution in 1831. They bear the stamp of the liberal thought of that period. They are therefore almost exclusively rights of freedom, intended to protect the human being as such, and they hardly consider him at all in his relations with society. We therefore find the guarantee of individual freedom (Article 7) combined with safeguards in the event of prosecution and arrest, and also the prohibition of certain forms of punishment (Articles 12, 13); then there is the inviolability of the home (Article 10); equality before the law (Article 6); inviolability of property (Article 11); and constitutional provision for cases of expropriation 'pour cause d'utilité publique'; free use of languages (Article 23). Of no small importance, moreover, is the protection of the various aspects of freedom of opinion, which according to the Belgian Constitution embraces the protection of religion (Articles 14, 15), the freedom of assembly (Article 19), and the freedom of association (Article 20), and, moreover, extends to the freedom of education (Article 17), press freedom (Articles 18, 19), postal secrecy (Article 22), and the right of petitioning (Article 21). These fundamental rights are in part subject to a general reservation that they may be amended by law. This

applies especially to the guarantee of individual freedom, the inviolability of the home, the freedom of education and the freedom of assembly. But even in respect of those fundamental rights not subject to such reservation, limitation by enactment of Parliament is thought to be permissible, as for instance regarding postal secrecy.[1]

From this and from the fact that no clear limitations can be established on the restriction of fundamental rights by the legislature, one might infer that the idea in the minds of those enacting the fundamental rights of the Belgian Constitution, and which continues to make itself felt, is that the protection of the individual must primarily be secured against the executive, since it is most directly concerned with the individual and would be most likely to be in a position to infringe individual rights in the interests of effective administration. For this reason, the maintenance of liberties was entrusted primarily to the legislature and the courts.[2]

Although fundamental rights are binding on all State authority and therefore in principle on the legislature as well, according to constitutional practice hitherto the legislature nevertheless has the power, in enacting statutes having constitutional implications, to interpret and apply, free from any kind of constraint or review, the fundamental rights thereby affected and therein to be answerable only to itself.

Nor does the Belgian Constitution contain any limitations as to constitutional amendments in relation to fundamental rights. Any constitutional amendment is however subject to a rather complicated procedure. Pursuant to Article 131 of the Constitution, any constitutional amendment requires first of all a declaration by the legislature showing cause that the constitutional provision should be amended. After such declaration both chambers are dissolved by law. It is only the newly elected chambers which then have the power to amend the Constitution, together with the King and by a qualified majority. In this way it is ensured that by means of the fresh elections the electorate is indirectly able to assert its views on the proposed constitutional amendment.

Outside the Constitution, guarantees of fundamental rights are found principally in the ECHR which came into force in Belgium as part of the law of the land by virtue of the Law of 13 May 1955. According to recent developments in Belgian case law, and especially after the judgment of the Cour de Cassation of 27 May 1971,[3] the courts may review the compatibility of a statute resolved by Parliament with international law embodied in treaties having directly applicable legal effect in Belgium, and can, if they find such statute incompatible with such a provision of international law, set it aside. In derogation therefore from the principle that the courts have no jurisdiction to review statutes as to their compatibility with the Constitution, the individual is, in this regard, placed in a position where he can bring before the Belgian courts breaches of fundamental rights arising by virtue of ordinary statutes, at least in so far as there is a breach of the ECHR or even of the EEC Treaty.[4]

Fundamental rights are only partly subject to the protection of the courts. For the review by the courts of the constitutionality of statutes, the provision to be relied on, pursuant to the decided cases and the prevailing opinion of learned writers, has hitherto without exception been Article 107 of the Constitution, which reads: 'Les cours et tribunaux n'appliqueront les arrêtés et règlements généraux, provinciaux et locaux, qu'autant qu'ils seront conformes aus lois'. From this provision the negative inference has hitherto always been drawn, particularly by the Cour de Cassation, that it is no part of the courts' jurisdiction to review the constitutionality of statutes.[5] According to the statute relating to the Conseil d'État of 23 December 1946, all that is possible is a preliminary review by the Section de législation of the Conseil d'État in proceedings for an opinion (Gutachtenverfahren). This review is mandatory only where legislative proposals are introduced by the executive, and then only in cases which are not matters of urgency—and the executive determines what is urgent. Moreover, this preliminary review does not derogate from the power of the legislature to interpret and apply the Constitution in sovereign manner. Certainly the principle of immunity from review applies only to the statute itself and not to subordinate instruments nor to royal decrees, which can of course only be applied if they are compatible with the law, even the highest kind of law (the Constitution). A judgment of the Cour de Cassation of 3 May 1974 and in particular the opinion of Procureur général Ganshof van der Meersch in that case, have now given rise to doubt as to whether the courts are still disposed to maintain the principle whereby statutes are immune from review.[6] A bill accepted by the Senate on 26 June 1975 and now transmitted to the House of Representatives is an attempt to counter this. The provision accepted by the Senate reads: 'Les cours et tribunaux ne sont pas juge de la constitutionnalité des lois et des décrets'.[7] The outcome of the parliamentary process remains to be seen.

Legal protection against undue intrusion by the executive in the field of constitutionally guaranteed fundamental rights is not restricted to that arising merely incidentally from an application of Article 107 of the Constitution, when the courts refuse to give effect to an unconstitutional provision of a subordinate instrument; in so far as the claim for legal protection is not directly aimed against the Crown, the courts and the Conseil d'État will also always grant judicial protection directly where the party affected can show that his fundamental rights have been breached by the executive.[8]

[1] Cf. *Wigny*, Droit constitutionnel, 1952, p. 320 *et seq.*; *id.* Cours de droit constitutionnel, 1973, p. 154.
[2] Cf. e.g. *Wigny*, Cour de droit constitutionnel, p. 138.
[3] Journal des tribunaux 1971, pp. 471 to 474; also extracts in ZaöRV 32 (1972), p. 529 *et seq.* with notes by *Bleckmann*, op. cit., p. 516 *et seq.*
[4] See also *Wigny*, Cours de droit constitutionnel, p. 140.
[5] See *Wigny*, Droit constitutionnel, p. 195, with further references to decided cases. See also the report of *de Stexhe*, Sénat, 1974-1975, Doc. 602, No 2, p. 2 *et seq.*
[6] Cf. Journal des tribunaux 1974, p. 564; and the report of *de Stexhe*, Sénat, 1974-1975, Doc. 602 No 2, p. 4 *et seq.*
[7] Cf. Sénat, 1974-1975, Doc. 602, Nos 1 and 2; Chambre, 1975, Doc. 637.
[8] Cf. the detailed report of *Velu*, Gerichtsschutz gegen die Exekutive, Vol. 1, 1969, Beiträge zum auslandischen öffentlichen Recht und Völkerrecht 52 (1969), p. 60 *et seq.*

Denmark[1]

The Danish Constitution of 5 June 1953 contains a fairly large number of fundamental rights, which can be subdivided into three main groups: protective rights; rights of political freedom; and rights against the State to require performance of public obligations (Forderungsrechte). Both the administration and the legislature are bound to observe these fundamental rights or rights of freedom. If a citizen considers his fundamental rights to have been breached by the executive or the legislature, he can bring proceedings in the courts in respect thereof.

In Chapter VII of the Constitution, Articles 67, 68, 70 guarantee freedom of religion; every citizen thus on the one hand has the right freely to practise his religion (Article 67) and on the other hand he may not be forced to perform specific religious observances (Article 68). Finally, his religious convictions or his origin may not set him at any disadvantage (Article 70).

Chapter VIII of the Constitution grants a number of fundamental rights, defines their actual content., and identifies in part the possible limitations thereto. Article 71(1) protects personal freedom, though not as a general freedom for personal activity, but only as opposed to deprivation of freedom.[2] The further paragraphs of the Article set out the circumstances under which—on the basis of statute or of court order—personal freedom may be restricted, and what legal protection is available. Article 72 guarantees the inviolability of the home, and the secrecy of the postal and telephone services. These may be curtailed by statute or by court order. According to Article 73 the right of property is inviolable. Under certain conditions—statutory authority, demands of public interest, guarantee of compensation—expropriation may take place; it can be challenged in the courts, as can the quantum of any compensation. Article 74 enjoins the legislature to abrogate any discriminatory statutes relating to the taking-up of a trade or occupation and not justified in terms of public interest. Article 75 contains in paragraph (1) a general right to work, and in paragraph (2) a right to social assistance from the State. Article 76 relates to compulsory education and the right to education. Article 77 guarantees freedom of expression and prohibits the reintroduction of censorship or similar measures. The freedom of association is entrenched in Article 78; in addition, it states in what circumstances association may be prohibited, and the preconditions therefor. According to Article 79 citizens have the right without prior notification to assemble without arms. The police nevertheless retain a right of supervision over public assemblies; they may even disperse open-air assemblies. Article 80 contains rules of conduct for the armed forces in case of civil commotion. Article 81 obliges all men capable of bearing arms to contribute to the defence of the country. Article 82 contains the right of social councils to administrative autonomy. Article 83 guarantees, so far as the legislative process is concerned, equality of treatment, irrespective of title or rank, whether inherited or not. Article 84 prohibits the introduction of feudalism and entails. Article 85 finally provides for a possible restriction of personal freedom such as of the rights of association and assembly, in the case of members of the armed forces.

This conspectus shows that the Danish Constitution contains an impressive catalogue of fundamental rights, including social fundamental rights (the right to work, the right to social assistance, to education).

In principle, these fundamental rights are available both for Danish nationals and for foreigners. It is only occasionally that foreigners are explicitly denied the protection of fundamental rights (for instance Article 71(1)(2)).

The Danish legal system lacks amongst other things a codified general requirement of equality of treatment or a prohibition on discrimination. Although some parts of the Constitution (Articles 70, 71(1), 83) do contain a prohibition against treating an individual by reference to specific personal circumstances on his part, it is doubtful whether any general principle can be deduced from these provisions. Some commentators leave the whole question open;[3] others affirm the duty of the administration to observe a general principle of equality of treatment.[4]

According to Article 88 of the Constitution every constitutional provision, and therefore every fundamental right, can be changed or abrogated, and new provisions can likewise be incorporated into the Constitution. There is no inviolate core in the Danish Constitution, either as a whole or in individual provisions thereof.[5] Nevertheless Article 88 sets out rather a ponderous procedure for constitutional amendment. Any proposed amendment must first of all be accepted by Parliament. A new Parliament must then be elected, and it must likewise approve the proposal. Finally a referendum is held, in which a majority of all persons voting and at least 40 % of the electorate must approve the constitutional amendment.

Although Denmark ratified the European Convention on Human Rights in 1953, the provisions thereof have not yet become the law of the land.

In principle, fundamental rights in Denmark are reinforced by judicial protection. There is one single jurisdiction which is competent in actions under both private and public law, and also in actions for constitutional review of statutory rules.

Any person who has a legitimate interest in a statute or who is likely to be affected to his detriment can challenge a statute in the courts on the ground that it is in breach of one of the aforesaid fundamental rights. This independent power of review of statutory rules, which is entrenched neither in the Constitution nor in any other statute, has been recognized generally since a judgment of the Supreme Court in 1921. The introduction of such a right to review was founded on the one hand on the considera-

[1] The description of the legal situation is based substantially on *Andersen*, Dansk Forvaltningsret, 5th ed. 1966; it is not possible to deal with more recent trends in the interpretation of fundamental rights.
[2] *Sørensen*, Statsforfatningsret, 1969, p. 321.
[3] *Sørensen*, op. cit., p. 318.
[4] *Andersen*, Dansk Forvaltningsret, op. cit., p. 426 *et seq.*
[5] *Andersen*, Dansk Statsforfatningsret, 1954, p. 439.

tion of legal theory that higher-ranking constitutional law must prevail over lower-ranking ordinary statutes , and on the other hand on the desire to protect the citizen from decisions of the legislature which were contrary to law.[1] Procedure and judgment in an action for review of a statutory provision follow the rules applicable generally. There is however controversy as to whether the right of judicial review of statutory provisions deriving from the common law has the status of constitutional law,[2] or whether it can be abrogated by an ordinary statute.[3] In practice, there has not been any case in which a court has declared a statutory provision to be unconstitutional. This is particularly connected with the fact that the legislature is allowed by the courts extensive scope for the exercise of political discretion.[4] Only in a case of undoubted violation of the Constitution may the provision in question be declared unconstitutional. Also, the principle of interpretation in conformity with the Constitution applies.[5]

In addition to the independent power to review statutory provisions, it is recognized that the courts also have the right to exercise such review in cases where constitutionality is not the substantive issue (Inzidentkontrolle). What is not entirely free from doubt is whether the court in this respect is also entitled to proceed to such review of its own motion; in any event this does not happen as a matter of practice.[6]

In respect both of the independent power to review statutory provisions and of the power to exercise such review in cases where constitutionality is not the substantive issue, any judgment rendered will only have effect in the future and between the parties involved. However, the administration and the courts generally follow judicial precedent, and it may be assumed that they will thereafter refrain from applying any provision declared unconstitutional.

A fundamental right expressed in the constitution in the form of a right to require the performance of some public obligation (Forderungsrecht), e.g. a right to work or to social assistance, cannot be asserted in the courts solely on the basis of the constitutional provision. The relevant constitutional provisions (Articles 74, 75, 76) are of importance merely as a programme—as evidenced by the history of the development of the Constitution.[7]

If an international treaty entered into by the State interferes with the rights of the individual, a similar action may be brought against the statute concerning its relation to the treaty.

Regulations promulgated by the administration may also be reviewed, both independently and in cases where constitutionality is not the substantive issue, as to their compatibility with statute or Constitution.

According to Article 63 of the Danish Constitution, the courts have the right to determine all questions as to the extent of the powers of administrative authorities. While in principle any executive action, e.g. even an act of the Government (Regierungsakt), can be reviewed as to its legality, the legislature can exclude the right to bring an action in the courts by adding to the statute a provision whereby the terms of that statute are to be conclusive. The power of the courts to review is likewise removed if the administration was given scope for the exercise of discretion in making its decision. Despite more recent trends—the courts do to a certain extent review administrative acts notwithstanding clauses declaring them conclusive or conferring discretion—this is still basically the position today. An action can be brought not only against provisions of general application, e.g. regulations, but also against individual administrative acts. If a citizen seeks specific action by the administration, and the administration refuses, or fails to do anything, he may bring proceedings in respect of such omission. In certain circumstances, the citizen is bound to respect a particular preliminary procedure; and this is normally done without the need for any statutory requirement to that effect, since this can usually bring about a satisfactory outcome more expeditiously and cheaply than recourse to the courts.

The Danish administrative authorities are bound by the principle of administration in accordance with the law,[8] that is, that their acts must be based on law, which in turn cannot be contrary to the Constitution. It also holds good that individual administrative acts may not be contrary to the Constitution.

Danish administrative law contains some possibilities of extra-judicial legal protection. The citizen has in some cases the opportunity, or, in other cases, the obligation to challenge administrative acts and subordinate instruments which infringe his rights by referring the matter in the first place to the administrative authority immediately superior. The decision of the administration is then reviewed both as to its legality and as to its appropriateness in relation to the purpose it is intended to achieve (Zweckmässigkeit) and if necessary another decision is substituted therefor. If there is provisoin for appeal, the person affected may subsequently turn to the courts. For certain matters there are 'appellate committees', which review, to a certain extent independently of the other parts of the administration, the measures taken by the authority in question; the decisions of such committees may as a rule be challenged in court.[9]

In addition to those forms of appeal and appellate committees, the 'Ombudsman' is by far the most important of all the forms of extra-judicial protection of rights. The institution of the Ombudsman, who is appointed by Parliament and is completely independent, has its legal basis in Article 55 of the Constitution and in the statute of 1 December 1961. The creation of such an institution was intended on the one hand to give the citizen a quicker and cheaper form of legal protection against the administration, and on the other hand to render subject to review such

[1] *Castberg*, Verfassungsgerichtsbarkeit in Norwegen und Dänemark, Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, 36 (1962), p. 420.
[2] Thus the predominant view: e.g. *Andersen*, Dansk Statsforfatningsret, p. 460; *Sørensen*, op. cit., p. 302.
[3] Thus *Ross*, Dansk Statsforfatningsret, 2nd ed. 1966, p. 195 *et seq.*, with further references.
[4] *Ross*, op. cit., p. 194.
[5] *Sørensen*, op. cit., p. 298.
[6] Cf. *Bent Christensen*, Der gerichtliche Rechtsschutz des einzelnen gegenüber der vollziehenden Gewalt in Dänemark, Beiträge zum ausländischen öffentlichen Recht und Völkerrecht 5 (1) (1969), p. 122.
[7] *Castberg*, op. cit., p. 432; *Sørensen*, op. cit., p. 319; *Ross*, op. cit., p. 758.
[8] *Krarup* and *Mathiassen*, Forvaltningsret, 1967, p. 118 *et seq.*
[9] *Sørensen*, op. cit., p. 289; *Christensen*, op. cit., p. 124.

administrative action as would not normally be capable of challenge in court. Of his own motion, or on the application of an individual in that behalf, the Ombudsman investigates any administrative act—simple administrative measures, administrative action, or even activities having no legal significance whatsoever—as to its legality and reasonableness. There are doubts as to whether the institution of the Ombudsman—which was initially intended as an experiment—may be abolished by ordinary statute, or only by constitutional amendment.[1] Since the decisions of the Ombudsman are not legally binding—he may refer the matter for investigation and legal proceedings to the authorities competent to take such action in the case in question, but cannot alter or annul the decision—the administrative authority concerned is free to decide whether it will look afresh at what it has done, and thereafter adopt a different attitude in the actual case in question. It should however be said that the administration as a rule follows the recommendations of the Ombudman.[2]

Federal Republic of Germany

The Basic Law for the Federal Republic of Germany of 23 May 1949 has shaped the protection of the individual's fundamental rights in a manner which is without parallel in former German constitutions or in comparable foreign constitutional systems. This is not so as regards the guaranteed rights themselves, but rather as regards the way in which they are protected. The predominant guarantees are in respect of the traditional rights of the individual against undue intrusion by State authority. Among the most significant of the guaranteed fundamental rights are: the protection of the dignity of the individual human being (Article 1), the right of free personal development (Article 2), the pinciple of equality (Article 3), freedom of religion and conscience (Article 4), freedom of opinion and of the press, as well as freedom of artistic and scientific endeavour (Article 5), freedom of assembly (Article 8), freedom of association (Article 9), secrecy in relation to letters, mails and telephone communications (Article 10), freedom of movement (Article 11), freedom of choice of trade or profession (Article 12), and the guarantee of property (Article 14). In addition there are provisions as to the civil (staatsbürgerlich) equality of all German nationals (Article 33), the constitutional entrenchment of the principle of liability on the part of the State for breaches of administrative duties (Article 34), provisions on the principles relating to electoral law (Article 38), and on the protection of the individual during civil or criminal proceedings (abolition of the death penalty, Article 102; the right to be heard; no punishment without legal justification; *autrefois convect,* Article 103; and guarantees in relation to deprivation of freedom, Article 104).

Many of the fundamental rights are available to any person, regardless of nationality, others only to 'Germans'.

The Constitution contains a complicated system providing for possible derogations from these fundamental rights. Many fundamental rights are guaranteed without reservation (which does not however completely exclude any requisite delimitation and more specific elaboration by the courts and by learned writers), while other fundamental rights have been subjected by the Constitution itself to a reservation permitting more detailed statutory provision; under no circumstances may the 'essential content' ('Wesensgehalt') of a fundamental right be altered (Article 19(2)).

Social fundamental rights are largely absent from the Basic Law. In this context we cannot go into greater detail in relation to certain recent tendencies, in some areas of learned writing, and also in decided cases, to declare social rights and democratic rights of participation (Teilhaberechte) to be parts of the Constitution pursuant to the general principle of the social State and the constitutional requirement of democracy (in some cases in conjunction with the principle of equality), and to interpret them afresh accordingly.

Apart from the guaranteed fundamental rights contained in the Basic Law there are a number of other provisions for the protection of the individual. Thus, some of the constitutions of the Länder of the Federation contain detailed catalogues of fundamental rights which subsist concurrently with the Basic Law (Article 142). The ECHR with its Additional Protocols has the force of law in the Federal Republic, ranking according to the prevailing view, on a par with an ordinary statute. In numerous other statutes, the social protection of the individual in particular is more specifically established, and judicial protection will as a rule be available to reinforce such social protection.

So far as the text of the Constitution is concerned (Articles 1(3), 20(3)) it is beyond doubt and undisputed that the legislature also is bound by the Basic Law. While, as has been mentioned above, the legislature has the power within certain limits to evolve more specific elaborations of fundamental rights or derogations therefrom, none the less there is no single fundamental right which is at the mercy of the legislature, and ultimately it is always for the courts to draw the line between those derogations from fundamental rights which are lawful and those which are not.

The manner in which the judicial protection of rights has been shaped by the Basic Law is the really outstanding and perhaps unique feature of West German constitutional law. From the outset, the Constitution itself provides that there are rights of action in the courts against any breach by public authority of the rights of the individual (Article 19(4)). Thus, independently of any enabling provision in the ordinary statute in question, every act of the executive constituting an interference in the sphere of the individual can be challenged in court. The courts have the right and the duty to review the manner in which public authority has observed the Constitution, including the fundamental rights. It follows that in judicial practice, especially that of the administrative courts, the fundamental rights and certain further constitutional maxims play an unusually important role. Individual fundamental rights, including the principle of equality, and 'unwritten' constitutional principles such as the requirements of the rule of law, the principle of proportionality, etc., frequently govern the manner in which the courts conduct their re-

[1] As to the latter: *Ross*, op. cit., p. 774.
[2] On this point in detail: *Ross*, op. cit., p. 771 *et seq.*; *Christensen*, op. cit., p. 125, and bibliography, p. 126.

view. Whenever the courts hold these rights and principles to have been breached they correct the executive act in question.

They do so on their own authority and alone are answerable therefor; they are only subject to restrictions in so far as they deny the constitutionality of a formal statute.

In principle, the compatibility of statutes with the Constitution, and thereby also with the fundamental rights guaranteed by the Constitution, can come before the Bundesverfassungsgericht in three separate ways. First, other organs of State and a one-third minority of the members of the Bundestag may demand a review of the constitutionality of a statute by the constitutional court (Article 93(1) (2)).

Secondly, any court of the Federal Republic can submit to the constitutional court for review any provision of law which it would have to apply but which it considers to be unconstitutional (Article 100(1)). Finally, any citizen can apply directly to the constitutional court by way of objection on constitutional grounds (normally after the exhaustion of other legal remedies) (Article 93(1) (4)(a)) in cases of alleged breaches of fundamental rights by any public authority including the legislature.

This system for guaranteeing fundamental rights and legal protection, which clearly bears the marks of previous experience of the inhumanity of a totalitarian regime, demonstrates the importance of fundamental rights within the West German legal system, and, at the same time, the problems for European Community law thereby arising. By virtue of their jurisdiction outlined above, the courts of the Federal Republic, led by the Bundesverfassungsgericht, have evolved a body of case law relating to all the important fundamental rights and fundamental constitutional principles, which imposes constraints on all other parts of State authority and which must be respected by them. In this way judgments on, for instance, the freedom of trade or occupation, the right of property, the principle of equality or the requirements of the rule of law, have led to extremely subtle distinctions and differentiations, intended to protect the sphere of the individual, without at the same time disregarding unduly the necessary interests of the community as a whole. The central importance of the fundamental rights within the West German constitutional system creates at the same time familiar problems for the European Communities. While the Basic Law enjoins (especially in Article 24) international cooperation and integration as well as comprehensive protection of fundamental rights, it does not deal in any explicit way with the possible tensions thereby created. This probably accounts for the fact that the problem of protection of fundamental rights within the framework of the European Communities is being, and will continue to be, canvassed in the Federal Republic with particular intensity, and that the legal view which found its authoritative expression in the judgment of the Bundesverfassungsgericht of 29 May 1974[1] and according to which national fundamental rights are to prevail, for the time being at least, over acts of the Community, is generally recognized as unsatisfactory.[2]

It must also be mentioned that a corpus of constitutional provisions embodying a core of human rights remains unalterable even by means of the procedure for constitutional amendment (Article 79 (3)); the difficult question of where the line is to be drawn between constitutional amendments which are lawful and those which are not, cannot be gone into here.

France

The Constitution of the Fifth Republic of 4 October 1958, like the Constitutions of 1875 and 1946[3] has no fixed catalogue of fundamental rights.[4] As far as human rights are concerned, the Preamble refers instead to the Declaration of 1789 as well as to the Preamble of the Constitution of 1946: 'Le peuple français proclame solennellement son attachement aux droits de l'homme et aux principes de la souveraineté nationale tels qu'ils ont été définis par la Déclaration de 1789, confirmée et complétée par le préambule de la Constitution de 1946'.

Beyond this, the text of the Constitution of 1958 mentions only a few of the classical fundamental rights, such as the equality of all citizens before the law without regard to origin, race or religion (Article 2 (1)), the freedom of belief (Article 2 (1)), the freedom of the person from arbitrary arrest and the right to judicial control of any deprivation of personal liberty (Article 66).

For the protection of fundamental rights the reference to the Preamble of 1946 is of special importance. This Preamble refers in turn to the human rights of the Declaration of 1789 and the 'principes fondamentaux reconnus par les lois de la république'. In addition the Constitution of 1946 acknowledges the 'principes politiques, économiques et sociaux particulièrement nécessaires à notre temps'. We can therefore distinguish the following

[1] BVerfGE 37, p. 271 *et. seq.*

[2] There are already a large number of comments on this judgment, from the point of view of Community law as well as from that of German constitutional law; cf. *inter alia*, *Feige*, Bundesverfassungsgericht — Grundrechte — Europa, JZ 1975, p. 476 *et seq.*; *Hallstein*, Europapolitik durch Rechtsprechung, Wirtschaftsordnung und Staatsverfassung, Festschrift für Franz Böhm zum 80. Geburtstag, 1975, p. 205 *et seq.*; *Hilf, Klein, Bleckmann*, Sekundäres Gemeinschaftsrecht und deutsche Grundrechte, Zum Beschluß des Bundesverfassungsgerichts vom 29. Mai 1974, ZaöRV 35 (1975), p. 51 *et seq.*; *Ipsen*, BVerfG versus EuGH *re* 'Grundrechte', Europarecht, 10 (1975), p. 1 *et seq.*; *Pestalozza*, Sekundäres Gemeinschaftsrecht und nationale Grundrechte, DVBl. 1974, p. 716 *et seq.*; *Scheuner*, Der Grundrechtsschutz in der Europäischen Gemeinschaft und in der Verfassungsrechtsprechung, AöR 100 (1975), p. 30 *et seq.*; *Zuleeg*, Das Bundesverfassungsgericht als Hüter der Grundrechte gegenüber der Gemeinschaftsgewalt, DÖV 1975, p. 44 *et seq.*

[3] The *draft* Constitution of 1946, which set out in detail the traditional fundamental rights and social rights, was rejected by the French people in a referendum. A partial reason for this, as well as the excessive power conferred on the National Assembly, was the fear of a whittling down of the classic fundamental liberties of the Declaration of 1789 by legal implementing rules and 'interventionist' and 'socialist' conceptions of fundamental rights. On this, cf. *Burdeau*, Droit constitutionnel et institutions politiques, 1959, p. 330; *Vedel*, Cour de droit constitutionnel, 1950-51, p. 570 *et seq.*; *Prélot*, Institutions politiques et droit constitutionnel, 1961, p. 510 *et seq.*; *Laferrière*, Manuel de droit constitutionnel, 1947, pp. 904, 910 *et seq.*

[4] Cf. on the fundamental position of basic rights within the French legal system esp. *Rivero*, Les liberté publiques, Vol. 1, Les droit de l'homme, 1973; *Burdeau*, Les libertés publiques, 4th ed. 1972; *Colliard*, Libertés publiques, 4th Ed. 1972; *Stahl*, Die Sicherung der Grundfreiheiten im öffentlichen Recht der Fünften Französischen Republik, Veröffentlichungen des Instituts für Internationales Recht an der Universität Köln 61 (1970); *Duverger-Sfez*, Die staatsbürgerlichen Freiheitsrechte in Frankreich und in der Union Française, in: *Bettermann-Nipperdey-Scheuner*, Die Grundrechte, 1967, Vol. 1, Part 2, p. 543 *et seq.*

groups of constitutionally entrenched fundamental rights ('libertés publiques'):

(i) the classical freedoms contained in the Declaration of 1789 such as the freedom of the person, the principle of equality, of private property, and freedom of opinion and of the press;

(ii) the political, economic and social principles of 1946. The courts and legal writers are predominantly of the view that the reference in the Preamble of 1958 embraces these rights as well, although, strictly speaking, this does not amount to an extension of the 'droits de l'homme' listed in the Declaration of 1789.[1] Amongst these additional rights are the right to strike, to work, and to industrial participation, the principle of social security for all, as well as the guarantee of equal educational opportunity;

(iii) the 'principes fondamentaux reconnus par les lois de la république'. By virtue of the reference to these principles, the fundamental freedoms provided for by ordinary statute during the Third Republic are raised to the constitutional level.[2] Some of the fundamental rights which are the most important in practice come within the 'principes fondamentaux', as, for instance, the freedom of assembly (liberté de réunion—protected by statute of 30 June 1881), the freedom of commerce and industry (liberté de commerce et de l'industrie—statute of 21 March 1819).

It was for a long time disputed whether the Preamble had the status of a directly applicable legal rule or represented a mere guideline for construction.[3] The prevailing view, both in the decided cases and in learned writing, was that the Preamble, as part of the Constitution resolved upon by the French nation, had the same legal status as the text of the Constitution itself, in so far as directly binding provisions could be deduced therefrom. This was affirmed as regards the rights to freedom, but denied as regards the social rights laid down in the Preamble to the Constitution of 1946 which require the performance of a positive act on the part of the State.[4] The question of the legal status of the Preamble can today essentially be regarded as resolved, since the Conseil Constitutionnel in its judgment of 16 July 1971 declared unconstitutional a bill for the reform of the French law relating to association, in reliance on the Preamble.[5]

The 'libertés publiques' constitutionally entrenched in the Preamble cannot be assimilated to the individual fundamental rights of the German Basic Law, for instance. The constitutional securing of a precisely defined corpus of individual rights against the State is a concept alien to French legal thought.[6] The traditional rights of the citizen are defined in ordinary statutes and are, in the French view, thereby secured. The respect for the achievement of the French revolution renders it scarcely conceivable that a statute could be in breach of human rights. The possibility of a contradiction between the acknowledgement of fundamental rights in the Preamble and an ordinary statute has only been discussed since the said judgement of the Conseil Constitutionnel.[7] This understanding of the role of the legislature explains moreover why the attempt to set fundamental rights out in detail in the draft 1946 Constitution was rejected by the French nation in a referendum.

The French courts have furthermore never conceived of the 'libertés publiques' as subjective public rights in the sense of the German doctrine. The established rights are to be understood rather as a guarantee of a general principle. This view is manifest externally in that the Conseil d'État does not as a rule speak of rights, but rather speaks for example of the 'principe de la liberté de réunion'.[8] This makes possible a more flexible approach by the courts in relation to fundamental freedoms.

According to Article 89 of the Constitution, Parliament, or on the recommendation of the Prime Minister, the President of the Republic may initiate the procedure for constitutional amendment. The proposed amendment requires the approval of the National Assembly and the Senate, and must be endorsed by referendum. A referendum may be dispensed with only if the President of the Republic decides to submit the amendment to the entire Parliament. In this case the amendment is accepted, if three-fifths of the votes cast are in favour of it. Only the principle of the republican form of government is excluded from constitutional amendment.

Since the decision of the Conseil d'État in Aramu[9] fundamental freedoms may, even if not covered by the twofold reference in the Preamble to the Constitution, none the less subsist as general principles of law inherent in the French legal system. Such fundamental freedoms will apply 'même en l'absence de textes' if they are in conformity with French legal tradition.[10] We are therefore concerned in essence with judge-made law. It covers, in addition to certain fundamental freedoms, such as the freedom of movement, the inviolability of the home, freedom of education and the right to be heard, also administrative principles, such as recourse to the administrative courts, the prohibition on retrospective administrative decisions, and many other principles of proper administration (impartiality of investigating commissions, legal force of administrative decisions).[11] The distinction between the general legal principles and the constitutionally entrenched principles is made more difficult by the fact that the Conseil d'État increasingly considers the fundamental freedoms as general principles 'résultant notamment du préambule de la Constitution'. The constitutional entrenchment is therefore only one of the possible sources of general legal principles.[12]

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[1] *Stahl*, op. cit., p. 23 with further references; for a different opinion *Vedel* Cours de droit constitutionnel et des institutions politiques, 1961, p. 790.
[2] *Rivero*, Les 'principes fondamentaux reconnus par les lois de la République': une nouvelle catégorie constitutionnelle? D. Sir. 1972, Chron. 265.
[3] *Pelloux*, Quelques réflexions sur le préambule de la Constitution française de 1958, Hommage d'une génération de juristes au Président Basdevant, 1960, p. 389 *et seq.*; *Morange*, Valeur juridique des principes contenus dans les déclarations des droits, RDP 1945, p. 229 *et seq.*; *Georgel*, Aspects du Préambule de la Constitution du 4 octobre 1958, RDP 1960, p. 85 *et seq.*
[4] *Georgel*, op. cit., p. 91; *Rivero-Vedel*, Les principes économiques et sociaux de la Constitution: Le préambule, Collection Droit Social 31 (1947), p. 20; *Stahl*, *op. cit.*, *p. 32 et seq.*
[5] JORF 1971, p. 7114; see *Ress*, Der Conseil Constitutionnel und der Schutz der Grundfreiheiten in Frankreich, JöRNF 23 (1974), p. 123 *et seq.*
[6] See *Stahl*, op. cit., p. 53 *et seq.*
[7] *Ress*, op. cit., p. 125; *Rivero*, note to CC of 16.7.1971, AJDA, p. 537 *et seq.*
[8] References from judgments of the CE in *Stahl*, op. cit., p. 57 *et seq.*
[9] CE of 26.10.1945, Aramu, D. 1946, J., p. 158 with notes by *Morange*.
[10] *Morange*, Les principes généraux du droit sous la Ve République, RDP 1960, p. 1188 *et seq.*; *Letourneur*, Les 'principes généraux du droit' dans la jurisprudence du Conseil d'État, Étude s et Documents (pub. by CE) 1951, p. 19 *et seq.*; *Krech*, Die Theorie der allgemeinen Rechtsgrundsätze im französischen öffentlichen Recht, Studien zum internationalen Wirtschaftsrecht und Atomenergierecht 49 (1973), p. 11 *et seq.*
[11] Review in *Krech*, op. cit., p. 179 *et seq.*
[12] Cf. CE of 26.6.1959, Syndicat général des ingénieurs-conseils, Rec. p. 394.

There is considerable controversy amongst learned writers as to the status of such of those general principles as are not embraced within the reference in the Preamble. From the decisions of the Conseil d'État the prevailing inference is that all general legal principles enjoy constitutional status.[1] There will be no need to answer this question so long as it is only executive acts which are being reviewed as to their compatibility with the 'liberté publiques'. The Conseil Constitutionel has hitherto had no occasion to decide on the question whether these general legal principles are also binding on the legislature.

It has already been said that by virtue of the reference in the Preamble the fundamental human rights provided for in the statutes of the Third Republic are constitutionally safeguarded. The legislature is thus prohibited from proceeding to amend the law in such a way as to contravene the 'principes fondamentaux' therein contained. A question therefore arises as to whether this will lead to what can be termed the petrification of the content of these statutes, that is, which part of a statute partakes of the fundamental substance of the principle.[2] It would furthermore seem possible as a result of the decisions of the Conseil Constitutionnel since the judgment of 16 July 1971, to draw, to some extent, the conclusion that not only are the freedoms entrenched in the statutes of the Third Republic to be numbered amongst the 'principes fondamentaux', but also further basic freedoms which have been enacted in subsequent ordinary statutes.[3]

The reference to the 'principes fondamentaux' and the legal decisions in relation to the general legal principles greatly complicate the answer to the question whether any given right against the State on the part of a citizen is protected by ordinary statute only or by the Constitution itself. As in practice this problem has only recently become of importance, as a consequence of the recent decisions of the Conseil Constitutionnel, the discussion on this point is still very much in its early stages. The necessity to identify those fundamental rights which are protected by the Constitution against encroachment by the legislature could alter the entire scheme of things existing hitherto. It is now for the courts to give shape to the vague concept of 'principes fondamentaux', in order to evolve a secured corpus of fundamental freedoms.

France has in the meantime ratified the European Convention on Human Rights (ECHR), and four of the five Additional Protocols, by a decree of 3 May 1974.[4] The Second Additional Protocol was not ratified: it confers on the European Court of Human Rights the power to render opinions on legal questions relating to the construction of the Convention, upon the application of the Committee of Ministers. Moreover, France has only accepted the right of appeal on the part of the State, and not on the part of individuals under Article 25. As with any other international treaty gazetted in France in the appropriate manner, the ECHR applies directly as part of the French legal system. Under Article 55 of the Constitution properly ratified or approved treaties or conventions shall prevail, as from the date of their gazetting, over the statutes of the country, subject to the proviso that the treaty or convention in question is also applied by the other party thereto. The true meaning of precedence in this way is a matter of controversy in learned writing and in decided cases.[5] The Conseil Constitutionnel, in its decision of 15 January 1975 in relation to the termination of pregnancy, made clear that, as far as the ECHR is concerned, the incompatibility of a statute with the treaty in question cannot be assimilated to unconstitutionality.[6] For this reason the Conseil Constitutionnel declined to incorporate the ECHR into the constitutional criteria for review for the purposes of the procedure under Article 61.

French legal tradition, moulded by Jean-Jacques Rousseau's doctrine of laws as the expression of the 'volonté générale', cannot conceive of the judicial review of legislative acts by reference to fundamental rights guaranteed by the Constitution.[7] It is only by establishing fundamental rights in statutory form that, in the French view, the acknowledgement of fundamental freedoms of the Declaration of 1789 and Preamble of 1946 can be secured. Accordingly, protection of freedoms against the executive is the focus of the protection of fundamental rights. Article 61 of the Constitution nevertheless confers upon the Conseil Constitutionnel a right to review statutes as to constitutionality. Statutes are subject to such review when they have been passed by Parliament but not yet gazetted. There is thus no constitutional review of statutes after their publication. The decisions of the Conseil Constitutionnel have legal force. A provision which has been declared unconstitutional may not be published or applied. The decisions of the Conseil Constitutionnel are binding upon public authority, and all authorities or courts (Article 62 (2)). This procedure has only become of practical importance since the Conseil Constitutionnel in its judgment of 16 July 1971 has declared the Preamble to be among the criteria for review.[8] In this case a Government bill was for the first time declared unconstitutional for breach of the fundamental freedoms guaranteed by the Preamble. Additional importance was acquired by this decision by the constitutional amendment of 29 October 1974.[9]

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[1] *Vedel*, Droit administratif, 4th Ed. 1964, p. 252 *et seq.*; *Auby-Drago*, Traité de contentieux administratif, Vol. 3, 1962, p. 23; *Batailler*, Le Conseil d'État, juge constitutionnel, 1966, p. 132 *et seq.*

[2] See *Ress*, op. cit., p. 156 *et seq.*

[3] Cf. *Rivero*, Les 'principes fondamentaux reconnus par les lois de la République', une nouvelle catégorie constitutionnelle? D. Sir. 1972, Chron. 265.

[4] JORF of 4.5.1974, p. 4750; see also *Madiot*, Du Conseil Constitutionnel à la Convention européenne: vers un renforcement des libertés publiques? D. Sir. 1975, Chron. I p. 3 *et seq.*

[5] See *Ress*, Der Rang völkerrechtlicher Verträge nach französischem Verfassungsrecht, Überlegungen zur Entscheidung des Conseil Constitutionnel vom 15. Januar 1975 über den Rang der Europäischen Konvention zum Schutz der Menschenrechte und Grundfreiheiten nach Art. 55 der französischen Verfassung, ZaöRV 35 (1975), p. 445 *et seq.*

[6] JORF of 16.1.1975, 671; JCP 1975 II, 18030 note *Bey*; AJDA 1975 II, 134 note *Rivero*; EuGRZ 1975, p. 54 *et seq.*

[7] See in detail *Stahl*, op. cit., p. 72 *et seq.* In general on the judicial protection of fundamental rights: *Dran*, Le contrôle juridictionnel et la garantie des libertés publiques, 1968; *Rivero*, Le système français de protection des droits de l'homme, Les droits de l'homme, Revue de Droit International et Comparé I (1968), p. 70 *et seq.*; *Franck*, Les fonctions juridictionnelles du Conseil Constitutionnel et du Conseil d'État dans l'ordre constitutionnel, 1974; *Goose*, Die Normenkontrolle durch den französischen Conseil Constitutionnel, Schriften zum Öffentlichen Recht, 212 (1973).

[8] Cf. for the most recent decisions of the CC: *Hamon*, Contrôle de constitutionalité et protection des droits individuels: A propos de trois décisions récentes du Conseil Constitutionnel, D. Sir. 1974, Chron. 83; *Favoreu-Philip*, La jurisprudence du Conseil Constitutionnel, RDP 1975, p. 165 *et seq.*; see also *Favoreu-Philip*, Les grandes décisions du Conseil Constitutionnel, 1975.

[9] Loi constitutionnelle No 74-904 of 29.10.1974, JORF of 30.10.1974; see *Franck*, Le nouveau régime des saisines du Conseil Constitutionnel, JCP 1975 I, p. 2678; *Philip*, L'élargissement de la saisine du Conseil Constitutionnel, AJDA 1975, p. 15 *et seq.*

Whereas hitherto the jurisdiction of the Conseil Constitutionnel could only be invoked by the President of the Republic, the Prime Minister, or the Presidents of both Chambers, the right is now conferred upon 60 deputies for the time being of the National Assembly or the Senate to invoke the jurisdiction of the Conseil Constitutionnel by seeking a review of the constitutionality of a statute which has not yet been published. The extension of this right to apply to the Conseil Constitutionnel is of great importance, since now a parliamentary minority may also use the procedure under Article 61 as a political instrument against the Government. It has already been so used on three occasions, and on one of these occasions the Conseil Constitutionnel rendered its decision (on the question of termination of pregnancy, decision of 15 January 1975).[1]

Recent decisions of the Conseil Constitutionnel have provoked lively discussion in France as to whether parliamentary sovereignty was being replaced by government by the courts.[2] The problem of judicial review of legislative action is posed all the more acutely since the twofold reference in the Preamble to the Constitution of 1958 rarely permits of any precise and unequivocal definition of the substance and extent of protected fundamental rights.

Furthermore, recently decided cases have imposed on the legislature substantive limitations within the field of fundamental rights when enacting provisions in relation to matters reserved to it under Article 34.[3] Article 34 states: 'La loi fixe les règles concernant: — les droits civiques et les garanties fondamentales accordées aux citoyens pour l'exercice des libertés publiques...'. The development in France could lead to a weakening of the traditional aversion to any catalogue of fundamental rights. The development of a jurisdiction to review on the part of a constitutional court, which would be effective and at the same time acceptable to Parliament, would only be possible in the long term if the court can proceed on the basis of sufficiently concrete criteria for review.

The French administrative courts determine the legality of any act of an administrative authority.[4] They review the compatibility of executive measures with the law. The Conseil d'État reviews indirectly administrative decisions as to their compatibility with the Constitution, in so far as contitutional provisions are embodied or given concrete form in ordinary statutes. Moreover, since the judgment of the Conseil d'État of 28 June 1918,[5] the constraint has been removed whereby the Conseil d'État could neither apply nor interpret the Constitution. In this way, the Conseil d'État secured the means of taking into account, when construing statutes, the constitutional guarantees relating to the protection of fundamental rights in cases of undue encroachment by the executive. This will however not be possible where the wording of the statute is unequivocal. In such case, the statute in question must be applied, in spite of its being unconstitutional, and any administrative act founded thereon will be binding.[6]

The Conseil d'État however applies the Constitution as the direct criterion in cases of government regulations which are issued independently of any statute (gesetzesunabhängige Verordnungen). By Article 37 of the Constitution of 1958 the government is empowered to issue regulations independently of any statute, in so far as the matter is not reserved to the legislature under Article 34 of the Constitution. On 7 July 1950[7] in Dehaene the Conseil d'État had regard for the first time to the Preamble and deduced therefrom that, pursuant to paragraph 7 of the Preamble of 1946, the right to strike was recognized in law even for civil servants. In the following period, the principle of equality in the Preamble was used several times in the review of provisions governing the civil service (dienstrechtliche Vorschriften). In its judgment in Société d'Eky of 12 February 1960[8] the Conseil d'État conclusively settled that the Declaration of 1789 imposes, as directly applicable constitutional law, constraints on the authority of the Government to issue regulations. Nevertheless, the review of government regulations and administrative acts on the basis of the Preamble has not acquired any great importance within the case-law of the Conseil d'État. In fact, the application of the Preamble will in most cases be unnecessary since the fundamental freedoms are normally regarded as 'principes généraux du droit applicables même en l'absence des textes', quite independently of the fact that they may be statutorily or constitutionally secured. It is true that the Conseil d'État in its more recent judgments refers to the connection between the 'principes généraux' and the Preamble to the Constitution. The Preamble however plays only a supporting role. What is decisive is the creation of law by the administrative courts, which has brought into being an extensive catalogue of freedoms.[9] The general principles of law bind the 'autorité réglementaire', which means that they assert themselves directly in relation to regulations issued independently of statutes, and in relation to administrative acts. The bounds of this doctrine are reached where the adminstrative decision can be founded on a statutory provision. The unconstitutionality of the administrative act will in this case not lead to its being set aside. The fact that the act is in accordance with th statute will prevail. But since even within the field of administration independent of statutory provision the administration usually enjoys a broad measure of discretion, there are numerous cases in which the Conseil d'État

[1] JORF of 16.1.1975, p. 671; see *Ress.* Der Rang völkerrechtlicher Verträge nach französischem Verfassungsrecht, Überlegungen zur Entscheidung des Conseil Constitutionnel vom 15. Januar 1975 über den Rang der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten nach Artikel 55 der französischen Verfassung, ZaöRV 35 (1975), p. 445 *et seq.*; *Ruzié.* La Constitution française et le droit international (à propos de la décision du Conseil Constitutionnel du 15 janvier 1975), Clunet 1975, p. 249 *et seq.*

[2] Cf. *Rivero.* Les 'principes fondamentaux reconnus par les lois de la République': une nouvelle catégorie constitutionnelle? D. Sir. 1972, Chron. 265; *Hamon.* loc. cit.; further references in *Ress.* Der Conseil Constitutionnel und der Schutz der Grundfreiheiten in Frankreich, JöRNF 23 (1974), p. 123 *et seq.*

[3] Cf. the decision of the CC of 28.11.1973, JORF of 6.12.1973, p. 12949; see also *de Soto.* La décision du Conseil Constitutionnel en date du 28 novembre 1973, RDP 1974, p. 889; *Rivero.* Peines de prison et pouvoir réglementaire, AJDA 1974, p. 229.

[4] See *Fromont.* La protection juridictionnelle du particulier contre le pouvoir exécutif en France, Gerichtsschutz gegen die Exekutive, Beiträge zum ausländischen öffentlichen Recht und Völkerrecht 52(1) (1970), p. 221 *et seq.*; *Stahl.* Die Sicherung der Grundfreiheiten im öffentlichen Recht der Fünften Französischen Republik, Veröffentlichungen des Instituts für Internationales Recht an der Universität Köln 61 (1970), p. 133 *et seq.*

[5] *Heyriès,* Sir. 1922, 3, 49 note *Hauriou.*

[6] *Stahl,* op. cit., p. 59 *et seq.*

[7] *Dehaene.* RDP 1950, p. 691 *et seq.*

[8] Société d'Eky, D. 1960, J., p. 263, note *Huillier*; JCP 1960, II, No 11629 bis with note by *Vedel.*

[9] *Stahl,* op. cit., p. 72 *et seq.*

has reviewed administrative action directly as to its compatibility with the freedoms recognized as 'principes généraux'.

General statements as to the circumstances in which fundamental rights may be curtailed by the administration are more difficult to make than for example is the case with the judgments of the German courts. The fundamental considerations which have influenced the decision in the specific case are generally not disclosed. Learned writers in France appear to consider the setting-off of opposing interests according to the principle of proportionality as constituting something of a guideline in the case-law of the Conseil d'État.[1] The interest of the State in exercising its authority to intervene is weighed against the value of the freedom thereby affected and the extent of the damage inflicted. The severity of the intervention must bear some reasonable relation to the interest of the State which is thereby to be secured. No intervention may therefore affect the substance of the freedom in question. This covers 'absolute, general' prohibitions (e.g. the prohibition upon persons suffering from tuberculosis from entering areas of tourism).[2] Moreover, any interference with freedoms must be based on a careful weighing-up of the actual circumstances of the case. In this weighing-up an important consideration is the value of the freedom in questions. The extension of powers of control will thus depend on the value of the freedom opposing such extension. The Conseil d'État in this respect is guided by the intentions of the legislature. The possible limitations will vary depending on whether the legislature has employed a greater or lesser degree of care in order to guarantee the various fundamental rights. Particularly stressed is the value of the 'liberté fondamentale', which chiefly comprises the rights attaching to the individual's personal sphere, such as the freedom of the person, the inviolability of the home, and property. In addition, the 'principes fondamentaux reconnus par les lois de la république' usually carry particular weight. These include, *inter alia*, the freedoms of the press, of assembly, of association, and of religion. It is true that no systematic approach in relation to the content of, and the limitations upon, the 'liberté fondamental' has been evolved. Whether the protection of freedom or the interests of the State should prevail is decided by the Conseil d'État by weighing-up in each individual case the basic freedoms against the 'intérêts de l'ordre et de la sécurité'.

No formal appellate procedure within the administration is known to French law. There is the 'recours à gracieux', whereby a citizen may address himself to the authority which has taken the administrative action in question, or has declined to take such action when requested. In addition there is the possibility of the 'recours hiérarchique' whereby an appeal is made to superior authority. Both these forms of appeal are referred to as 'recours administratif', as opposed to 'recours contentieux', that is, actions brought in the courts.[3] These are not appeals having particular requirements as to form or to time-limits. The authority to which they are addressed is under no duty to take any decision thereon. The absence of any formal procedure for legal protection by the administration is to be explained in terms of the history of the development of the French administrative jurisdiction. This jurisdiction has evolved from the system for legal protection operated by the administration itself. Until 1953 it was for the Prefectoral Councils to determine complaints wherein administrative action was challenged, and against their decisions an appeal lay to the Conseil d'État. In the reforms of 1953 these Prefectoral Councils were replaced by 'tribunaux administratifs' which thenceforth had jurisdiction at first instance in all administrative disputes. Procedurally, the principles applying in the administrative courts are very much akin to those of the Conseil d'État. The prerequisite for any action is first of all that there be a decision of the administrative authrority in question, dismissing an objection raised by a citizen. Against the decision containing such dismissal appeal can be made to the administrative court within two months. Silence on the part of the authority in question will, after four months, be construed as a refusal. The administrative courts deal with a wide variety of actions, each of which has its own peculiarities.[4] The most important form of action is the 'recours pour excès de pouvoir'. In this action the setting aside of administrative acts violating statutory law can be sought. For the citizen seeking redress there is also the 'recours de pleine juridiction', which is a species of action in the administrative courts for the fulfilment of an obligation. It is concerned with subjective rights against the adminstration arising under statute or contract. According to French legal opinion, the administration can only be adjudged liable for the payment of money, but not to perform an administrative act. For all practical purposes this action can therefore be regarded as an action for damages.

Ireland

The Irish Constitution of 1937 contains a comprehensive inventory of fundamental rights. In the section on fundamental rights (Article 40 *et seq.*) there are guaranteed, in particular, general equality, the 'personal rights of the citizen' (a general freedom), the right to personal freedom, the inviolability of the home, freedom of opinion, freedom of assembly, freedom of association and combination, family rights, parental rights, private property, freedom of religion and conscience. There are moreover fundamental rights in relation to criminal procedure (Article 38) and a prohibition on giving retrospective effect to criminal statutes (Article 15 (5)), as well as the guarantee of judicial independence (Article 35 (2)). Any constitutional amendment is subject to a referendum (Article 46 (2)). Constitutional amendments are therefore extremely difficult.[5] The Constitution also contains certain social fundamental rights. In the provisions on 'fundamental rights' the right to free primary education should above all be mentioned (Article 42 (4)). Reference should further be made to Article 41 (2)[6]:

[1] For this point and the following, see *Burdeau*, Les libertés publiques, p. 43 *et seq.*; *Colliard*, Libertés publiques, 1972, p. 158 *et seq.*; *Vedel*, Droit administratif, 5th ed. 1973, p. 794 *et seq.*
[2] References in *Burdeau*, op. cit., p. 48.
[3] *De Laubadère*, Traité de droit administratif, 6th ed. 1973, p. 257 *et seq.*; *Lücking*, Die Grundlagen der französischen Verwaltungsgerichtsbarkeit, 1955, p. 56 *et seq.*
[4] Cf. *Debbasch*, Droit administratif, 2nd ed. 1971, p. 435 *et seq.*; *de Laubadère*, op. cit., p. 478 *et seq.*; *Bourjol*, Droit administratif, Vol. 2, Le contrôle de l'action administrative, 1973, p. 163 *et seq.*
[5] *Kelly*, Fundamental rights and the Irish Law and Constitution, 2nd ed. 1967, p. 9 *et seq.*
[6] *Kelly*, op. cit., p. 305 *et seq.*

'The State shall... endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home'.

The Constitution also contains principles in relation to social policy ('directive principles of social policy') the observance of which cannot, unlike that of the fundamental rights, be reviewed by the courts (Article 45).

A whole series of fundamental rights, which are not contained in the Irish Constitution, are guaranteed elsewhere in the legal system, such as the right to be heard, the right to an early trial.[1] The ECHR is not however part of the domestic law.[2]

The fundamental rights of the Irish Constitution bind the administration and the legislature.[3] Various forms of judicial protecion are available to ensure that they do so.

Article 26 of the Irish Constitution provides initially for a preliminary procedure for obtaining an opinion in relation to the constitutionality of any statute. The President may, before signing any statute, submit it to the Supreme Court for an opinion as to its constitutionality.

Apart from statutes which have already been the subject of a pronouncement by the Supreme Court pursuant to the abovementioned procedure, the High Court and the Supreme Court can also pronounce on the constitutionality of statutes in cases where constitutionality is not the substantive issue (Article 34 (3)(2)).[4] Moreover, in a judgment in 1970, the Irish Supreme Court has recognized the possibility of an objection on constitutional grounds to statutes in so far as the objectors are directly affected by the statutory provision in question.[5]

Though no general right to legal protection against illegal acts of public authority is formulated explicitly in the Constitution, the courts have deduced such a right from Article 34 (3)(1), and Article 40 (3).[6] There exists therefore comprehensive judicial protection against illegal executive action.[7] It should be noted, however, that under Article 37 of the Constitution 'limited functions and powers of a judicial nature' may be conferred on persons or bodies other than judges or courts. Even when this has been done by statute, the ordinary courts have still exercised a control over the constitutionality of the procedure.[8]

Italy

The Italian Constitution of 1947 contains a very comprehensive catalogue of fundamental rights, consisting of the general principles prefacing the Constitution and the entire Part I thereof; there are in all 54 articles, which are subdivided as follows: Title I: civil liberties; Title II: socio-ethical relations; Title III: economic relations; Title IV: political relations. Provision for derogation by statute is reserved in the case of numerous fundamental rights.

The major part of the Constitution can be amended by the procedure for constitutional amendment. Only the principle of the republican form of government is expressly excluded from such amendment, pursuant to Article 139. However, according to the prevailing view, in addition to the republican form of government, Article 2 of the Constitution contains a further limitation on constitutional amendment. Since Article 2 speaks of inviolable human rights, any setting aside of these rights is not lawful; what alone is lawful is to amend and adjust them to new situations, without affecting their essence.[9] None the less an amendment to the Constitution can only be achieved by a cumbersome procedure prescribed under Article 138 of the Constitution: any law to amend the Constitution must be accepted by both chambers in two separate readings at an interval of at least three months, and with an absolute majority. It is subjected to a referendum, if one-fifth of the members of one chamber or 500 000 voters or five regional councils so demand. A law which has been subjected to a referendum will not be published if it is not approved by a majority of the valid votes cast. A referendum will not however take place if the law has been approved during the second division by each chamber by a two-thirds majority of the members.[10]

A further guarantee of fundamental rights has been achieved by the ratification by Italy of the ECHR and the Additional Protocol of 20 March 1952, by statute No 848 of 4 August 1955.[11] The ECHR is Italian domestic law with the status of an ordinary statute.

The observance of the Constitution is ensured primarily by the Corte Costituzionale. The tasks of the Court are set out in Article 134 of the Constitution. The protection of fundamental rights is not secured by the direct appeal by way of objection on the grounds of constitutionality, as in Germany, but only incidentally, or by a procedure 'in via principale' whereby the State may request a review of the constitutionality of the legislation of a Region, or a Region may apply to the Corte Costituzionale for a review of the constitutionality of a national statute or the legislation of another Region.

The procedure whereby constitutionality is reviewed when it is not the substantive issue in the dispute in question is set out in greater detail by Article 1 of the Constitutional Act No 1 (legge costituzionale) of 9 February 1948 and Articles 23-30 of ordinary

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[1] *Kelly*, op. cit., p. 305 *et seq.*
[2] *Süsterhenn*, La protection internationale des droits de l'homme dans le cadre européen, 1961, pp. 303 *et seq.*, 308, with further references.
[3] *Boldt*, Grundrechte und Normenkontrolle im Verfassungsrecht der Republik Irland, JOR, 19 (1970), p. 229 *et seq.*
[4] See *Boldt*, op. cit., p. 244 *et seq.*
[5] East Donegal Cooperative v Attorney-General, 1970, IR 335, esp. at p. 338 *et seq.*; cf. also *Boldt*, op. cit., p. 247.
[6] *Kelly*, op. cit., p. 291 *et seq.*; *Kelly*, Judicial Protection of the Individual against the Executive in the Republic of Ireland, Gerichtsschutz gegen die Executive, Vol. 1, 1969, pp. 426 *et seq.*, 435; cf. also *Barrington*, Private Property under the Irish Constitution, The Irish Jurist 8 (1973), p.16 *et seq.*; *Kelly*, Judical Review of Administrative Action: New Irish Trends, The Irish Jurist 6 (1971), p. 40 *et seq.*
[7] The opinion of *Boldt*, op. cit., p. 242, that the control of the executive by the courts is rarely effective, cannot be accepted. The references cited by *Boldt* rather indicate the contrary.
[8] Foley v Irish Land Commission and Attorney-General, Irish Law Times 86 (1952), p. 55 *et seq.*, (1952) IR 118. Cf. however Fisher v Irish Land Commission (1968) IR 3, and the criticism of this decision in *Barrington*, loc. cit. See also on these problems *Grogan*, Administrative Tribunals, in King (ed.), Public Administration in Ireland, Vol. 3 (1954), who, however, relies for his restrictive interpretation of the jurisdiction of the ordinary courts on decisions given before the Constitution of 1937, which thus have only a limited value as precedents on question of constitutional law.
[9] Cf. *Mortati*, Instituzioni di diritto pubblico, 8th ed. 1969, p. 1126.
[10] On the problem of constitutional amendment *Mortati*, op. cit., p. 1105, *et seq.*
[11] References to learned authors in *Mortati*, op. cit., p. 1128.

statue No 87 of 11 March 1953. Some details of importance for the protection of rights deserve special mention. Article 23 of the ordinary statute of 1953 provides that constitutionality may be reviewed incidentally in any 'giudizio dinanzi and un'autorità giurisdizionale'. These words have always been broadly interpreted by the Corte Costituzionale,[1] thus bringing within their ambit not only the ordinary courts as 'giurisdizione volontaria' but also the various 'giurisdizioni speciali' (e.g. Commissari per la liquidazione degli usi civici, Commissione dei ricorsi in materia di brevetti, etc.). There is uncertainty as to arbitration tribunals and the Giunta per le elezioni nell'ambito delle Camere parlamentari. The Corte costituzionale has confirmed (Ordinanza 22/1960 and 57/1961) that it may in the course of proceedings, e.g. in conflitti di attribuzioni or in sede penale, itself raise the question of constitutionality, and refer it to itself. According to a judgment of the Corte costituzionale, no such right of referral is granted to the investigating judge in civil proceedings (sentenza 109/1962); and while the public prosecutor in criminal cases may raise the question of constitutionality, he has no power to refer the papers to the Corte Costituzionale (sentenza 40/1963). In sentenza 53/1968 the Corte Costituzionale recognizes the power to refer on the part of the giudice di sorveglianza in cases relatng to the application of security measures, and with sentenza 72/1968 in cases relating to the execution of sentence.

There are special time-limits prescribed for the course of the proceedings, with the effect that they are completed relatively quickly.[2] What merits mention is that the proceedings before the Corte Costituzionale are independent of the proceedings in the course of which the referral has occurred. If the latter for any reason come to an end, the proceedings before the Corte Costituzionale will continue; moreover, the proceedings in the Corte Costituzionale are removed from the control of the parties thereto.

A judgment of the Corte Costituzionale has the following effect: any provision declared unconstitutional will cease to apply as from the day following the publication of the judgment. The question whether unconstitutionality has an *ex tunc* or *ex nunc* effect is thus avoided and a practical solution is what is contemplated (cf. Article 30 (2) of the Act of 1953). The dismissal of a referral will only be effective for the particular case in question, or for the actual proceedings between the parties in provision. The dismissal does not exclude a referral in a different case, even on the same grounds and by the same parties.

The legal protection for the citizen alleging undue encroachment by the executive is based on Articles 24 (1) and 113 of the Constitution. According to these provisions every person may, for the protection of his own rights or legitimate interests, seek the assistance of the courts. For the protection of rights and legitimate interests against acts of the public administration there is always the right to sue in the ordinary and in the administrative courts. This protection may not be excluded or restricted in favour of special forms of appeal or in respect of particular kinds of acts. The law defines which courts may set aside acts of the public administration in the cases prescribed by statute and with the effects so prescribed. Title IV of the Constitution, which relates to courts (Article 101 *et seq.*), contains further important provision on the judicial protection of the rights of the individual. No exceptions are permitted from the absolute jurisdiction of the courts.[3]

Luxembourg

The Luxembourg Constitution of 1868 with its significant subsequent amendments contains in its Chapter II ('Des Luxembourgeois et de leurs droits') a catalogue of fundamental rights. For the best part, these fundamental rights subsist in their original form, bearing the stamp of a bourgeois-liberal concept of the State. Only by the constitutional amendment of 12 May 1948 were some social fundamental rights brought into the catalogue, such as the right to work, but also the protection of freedom of economic acitivity.

Following a proclamatory basic statement in Article 11 (3) ('L'État garantit les droits naturels de la personne humaine et de la famille'), the Luxembourg catalogue of fundamental rights provides, *inter alia,* for the following fundamental rights: equality before the law (Article 11 (2)), general freedom of the person (Article 12 (1)), inviolability of the home (Article 15), guarantee of property (Article 16), freedom of opinion (Article 24 (1), freedom of the press (also Article 24 (1), postal secrecy (Article 28), right of petition (Article 27), freedom of religion (Article 19), freedom of assembly (Article 25), freedom of association (Article 26), the right to public primary education (Article 23) the right to work and to social security (Article 11 (4)), the guarantee of trade union rights (Article 11 (5)), freedom to carry on an independent trade or profession (Article 11 (6)), the right to trial by the lawful judge (Article 12). Some of these fundamental rights are subject to a reservation permitting statutory restriction, and others, such as the freedom of economic activity, can only be given shape by statute. But even where the legislature is entrusted with the task of giving shape to certain rights, the Constitution has in some cases attached a further reservation permitting statutory restriction.

According to prevailing legal opinion, fundamental rights take precedence over ordinary statutes by virtue of their embodiment in the Constitution. This precedence derives from Article 113 ('Aucune disposition de la Constitution peut être suspendue').[4] Although the Constitution entrusts the courts with the review

[1] *Biscaretti di Ruffia,* Diritto costituzionale, 10th ed. 1974, p. 567.
[2] *Biscaretti di Ruffia,* op. cit., p. 568 *et seq.*
[3] *Bachelet,* La protection juridictionnelle du particulier contre le pouvoir executif en Italie, Gerichtsschutz gegen die Exekutive, 1972, p. 469 *et seq.*; *Mortati,* op. cit., p. 1125 *et seq.*; *Landi-Potenza,* Manuale di diritto amministrativo, 4th ed. 1971, p. 57 *et seq.*, esp. pp. 585, 659, *et seq.*
[4] Cf. *re* constitutional precedence *Bonn,* Le contrôle de la constitutionalité des lois, Pas. Lux., 1973, p. 5 *et seq.*; *Majerus,* L'État Luxembourgeois, 2nd ed. 1959, p. 42 *et seq.*; *Pescatore,* Introduction à la science du droit, 1960, No 92.

of the constitutionality of subordinate instruments,[1] it does not contain any provision for the review of the constitutionality of statutes. The courts have accordingly declined to review ordinary statutes.[2] This cn be explained by the liberal concept of the Constitution of the previous century which considered the legislature to be the most appropriate guarantor of the protection of civil rights and freedoms. Further support was derived from the principle of the separation of powers.[3] However, this is not a necessary inference from the Constitution.[4] The aforementioned principle is however also applied by the courts to grand-ducal regulations issued in lieu of statutes.[5] Whether the courts can continue with this line of authority seems doubtful, given the influence of the Belgian courts, and in particular of a more recent judgment of the Belgian Cour de Cassation.[6] But the legislature in enacting ordinary statutes has followed the view of the courts, and has in section 237 of the Penal Code made it a punishable offence for a judge to fail to give effect to a statute.[7] These decisions of the courts have recently been criticized by learned authors, especially in comparison with the review of statutes on the basis of international treaties.[8]

The provisions on fundamental rights are, like all constitutional provisions, liable to constitutional amendment. The procedure for constitutional amendment has several stages. First, the legislature must satisfy itself of the necessity for a constitutional amendment, by reference to the provisions to be amended (Article 114). Thereafter, the Chamber is dissolved by operation of law. Only a re-elected Chamber may resolve to amend the constitution and in so doing it is bound by the decision of its predecessor as regards the subject-matter. With not less than three-quarters of its members present, the Chamber votes on the amendment by a two-thirds majority of all votes cast. The legislature is not bound as to the actual contents of the amendment. There is no limit to possible constitutional amendments. Only during a regency are constitutional amendments without exception inadmissible under Article 115.

Apart from the Constitution the ECHR is of importance. Previously the courts had, just as in relation to the constitutional guarantees, declined to review national law by reference to international treaties.[9] They have nevertheless developed a presumption of interpretation that until the contrary is proved the legislature is not to be taken to have intended to put itself in breach of an international obligation; and therefore the law of Luxembourg should as far as possible be interpreted in accordance with treaty previsions.[10] Since 1950 a change is discernible in the approach of the courts. Provisions of international treaties which are 'directly applicable' are now given precedence over national statutes, irrespective of the date of their coming into force;[11] the international treaty is a source of law of higher status.[12] The courts of Luxembourg have nevertheless declined to accord such precedence in relation to the application of the ECHR, on the footing that it is not directly applicable under national law but that it merely provides for obligations on the part of the States.[13] The approach of the courts of Luxembourg therefore contrasts with that of the other Benelux States, which give the ECHR direct applicability and precedence over national law.

There is no judicial control directed to compliance with the Constitution in Luxembourg.[14] The ordinary law (Article 237 of the Penal Code) denies the courts any powers in relation to review of legislation. The power of the Conseil d'État to advance constitutional objections under the legislative procedure (pursuant to Article 76) cannot be considered as a judicial procedure. No binding force attaches to the opinion of the Conseil d'État. The Conseil d'État can only withold its assent to dispensing with a second reading of a statute in the Chamber. Since this could only take place, at the earliest, three months after the first reading, the Conseil d'État is in a position to exercise a temporary veto; it has no further means of blocking the statute in question (Article 59 of the Constitution).

For the legal protection of citizens alleging undue encroachment on the part of the executive, proceedings may be brought either in the ordinary courts or in the administrative courts, depending on the matter in issue.[15] Before the Conseil d'État, Comité Contentieux, two kinds of proceedings are possible: the 'contentieux de pleine juridiction' as proceedings at second instance against decisions of the administrative courts, or as appellate proceedings, but only in so far as provided by statute. In addition, the Conseil d'État has jurisdiction in the 'contentieux d'annulation', as a court of cassation, having power to determine all objections to administrative decisions where there are no other means of legal protection

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[1] Article 95: 'Les cours et tribunaux n'appliquent les arrêtés et règlements généraux et locaux qu'autant qu'ils sont conformes aux lois'. The Conseil d'État considers this provision directly applicable to itself, though it is neither a 'cour' nor 'tribunal'. Cf. *Loesch*, Le Conseil d'État du Grand-Duché de Luxembourg, Livre Jubilaire, 1956, pp. 507, 515.

[2] Cour de Cassation, judgment of 14.8.1877, Pas. Lux. I, p. 370; judgment of 24.4.1879, Pas. Lux. I p. 534; Conseil d'État, Comité du Contentieux, judgment of 3.1.1883, Pas. Lux. II p. 174; Cour de Cassation, judgment of 21.11.1919, Pas. Lux. XI, p. 72; judgment of 26.5.1920, Pas. Lux. XI, p. 72.

[3] ... ils [les tribunaux] n'ont pas reçu la mission de contrôler les dispositions législatives et de les écarter pour cause d'inconstitutionalité ... S'il en était autrement il y pourraient anéantir les actes du corps législatif... le juge doit se rappeler sans cesse que sa mission se borne à juger suivant la loi, et non à juger la loi' (Cour de Cassation, judgment of 14.8.1877, Pas. Lux. I, p. 370).

[4] Cf. *Bonn*, op. cit., p. 18.

[5] Cour de Cassation, judgment of 29.7.1948, Pas. Lux. XIV, p. 422; judgment of 13.5.1954, Pas. Lux. XVI, p. 99; Cour d'Appel, judgment of 25.1.1958, Pas. Lux. XVII, p. 248.

[6] Journal des Tribunaux 1974 p. 564, Cf. re the influence of Belgian cases, *Bonn*, op. cit., p. 12; see also latest developments in Belgium, above II 1.

[7] 'Seront punis ... les juges ... qui se seront immiscés dans l'exercice du pouvoir législatif, soit par des règlements contenant des dispositions législatives soit en arrêtant ou suspendant l'exécution d'une ou plusieurs lois, soit en déliberant sur le point de savoir, si ces lois seront exécutées ...'

[8] Cf. *Bonn*, loc. cit.

[9] Cour Supérieure de Justice, judgment of 21.11.1919, Pas. Lux. XI, p. 74.

[10] Cour Supérieure de Justice, judgment of 13.6.1890, Pas. Lux. II, p. 621. Cf. on this question *Pescatore*, Conclusion et effet des Traités internationaux selon le droit constitutionnel, les usages et la jurisprudence du Grand-Duché de Luxembourg, 1964.

[11] Cour Supérieure de Justice, judgment of 8.6.1950, Pas. Lux. XV, p. 41; more detailed judgment of 14.7.1954 Pas. Lux. XVI, p. 150; judgment of 21.7.1951, Pas. Lux. XV, p. 235.

[12] Cour Supérieure de Justice, judgment of 14.7.1954, loc. cit.; doubtful as to the reasoning, but in agreement with the outcome: *Pescatore*, op. cit., p. 106, *et seq.*

[13] Tribunal Correctionnel Luxembourg, judgment of 24.10.1960; unpublished, mentioned (with dissenting comment) by *Bonn*, op. cit., p. 16, and *Pescatore*, Pas. Lux. XVIII, pp. 97, 107.

[14] Cf. *Welter*, La protection du particulier contre le pouvoir exécutif au Luxembourg, Gerichtsschutz gegen die Exekutive, 1969, Vol. 2, pp. 679, *et seq.*

[15] *Welter*, loc. cit.

available.[1] What is exceptional is that no judicial protection is available against 'actes de Gouvernement'.[2]

The Netherlands

The 'Statuut voor het Koninkrijk der Nederlanden', regulating the legal relationship between the European dominions, the former colonies, and the now autonomous dominion of the Netherlands Antilles contains in Articles 43 to 45 general provisions relating to fundamental rights. By virtue thereof, each domination is bound to give effect to fundamental human rights and liberties. Amendments to the provisions on fundamental rights in the Constitution of the European Netherlands or in the local legislation of the Antilles require the assent of the Imperial Government.[3]

The Constitution of the European Netherlands, the Grondwet (GW), of 1815 (with numerous amendments) contains a number of fundamental rights without, however, establishing a uniform and consistent catalogue of fundamental rights. Essentially the GW contains the classical fundamental rights. It is however thought there also exist further unwritten social fundamental rights, such as the right to be cared for by the State and the right to provision for ill-health and old age.[4] At present, the GW contains the following fundamental rights: the right to equal protection of person and property for all who are within the imperial dominions (which is the equivalent of the principle of equality of treatment, Article 4): equal opportunity for all Dutch citizens to enter the government service (Article 5); the prohibition of censorship and freedom of the press (Article 7); right of petition (Article 8); freedom of association and assembly (Article 9); expropriation only for the benefit of the public, and only subject to prior compensation, or compensation guaranteed prior to expropriation (Article 165); the right to trial by the lawful judge (Article 170); protection from arbitrary arrest (Article 171); protection of the home (Article 172); postal secrecy (Article 173); freedom of religious observance and the liberties relating to religious communities (Articles 181 to 187); freedom of education (Article 208(2)). It is worth observing that the right of property is not protected generally but only against certain forms of interference.[5] No fundamental right to choose one's own trade or occupation can be deduced from the Constitution. As part of the current moves to amend the Constitution of the Netherlands, it is intended to preface the GW with a catalogue of classical fundamental rights (as Chapter I). In Chapter IV some social fundamental rights are to be incorporated in the Constitution, including a right to work, which would also cover work on one's own account, the promotion of public welfare and the safeguarding of the nation's health, etc.[6]

The fundamental rights currently guaranteed in the Netherlands are considered as general principles requiring more specific elaboration by the legislature.[7] There are no real restrictions on the legislature enacting ordinary statutes; in elaborating further statutory provisions including provisions restricting fundamental rights, they may go a considerable way without infringement of the letter of the Constitution.[8] The extent of most fundamental rights therefore depends on this further elaboration, which is reserved to the legislature alone. The real protection of fundamental rights lies in the fact that any restrictions must be based on a formal statute.[9] It is consonant with this understanding of fundamental rights that they are not considered to be law having any higher status. They may be amended at will, like other provisions of the GW, by any legislature effecting constitutional amendments. Any form of constraint on such a legislature is alien to Dutch law.[10] There are no restrictions as to subject-matter in relation to constitutional amendments. A complicated procedure is however provided for in the case of constitutional amendment. First, Article 210 of the GW requires a statement as to the necessity for constitutional amendment, in the form of a statute providing for amending provisions. Thereupon both Chambers are dissolved (Article 211 of the GW). The new Chambers then resolve upon the constitutional amendment, which requires in both Chambers a two-thirds majority of the votes cast. Since constitutional amendments relating to fundamental human rights and liberties are, pursuant to Article 45(a) of the Statute of the Kingdom of the Netherlands, 'empire matters', the provisions relating to imperial legislation must also be applied (Articles 15 to 20 of that Statute). The extent of the participation of the other dominions in the amendment of the provisions relating to fundamental rights in the GW is however a disputed question.[11]

Of the extra-constitutional guarantees of fundamental rights the ECHR is of particular importance. The constitutional amendment of 1953 has provided, under Article 65 of the GW, for the direct application of international treaty law; pursuant to Article 66 of the GW the Dutch courts must dis-

[1] *Re* administrative jurisdiction *Bonn*, Le contentieux administratif en droit luxembourgeois, 1966; *Welter*, loc. cit.; *Majerus*, op. cit., p. 155 *et seq.*
[2] *Welter*, op. cit., p. 686.
[3] This consists of the Government of the European Netherlands, supplemented by a Minister from the Government of the Netherlands Antilles.
[4] *Belinfante*, Beginselen van Nederlands Staatsrecht, 1964, p. 162 *et seq.*
[5] *Belinfante*, op. cit., p. 178.
[6] Draft Constitution by the State Commission (Cals-Donner-Commission): Tweede rapport, Eindrapport van de Staatscommissie van advies inzake de Grondwet en de Kieswet, 1969, p. 25 *et seq.*; 1971, p. 212 *et seq.*
[7] *Belinfante*, op. cit., p. 162.
[8] *Kranenburg*, Het Nederlands Staatsrecht, 1958, p. 501; *Van der Pot-Donner*, Handboek van het Nederlandse Staatsrecht, 9th ed. 1972, p. 462.
[9] *Oud*, Het Constitutioneel Recht van het Koninkrijk der Nederlanden, Vol. 2, 2nd ed. 1970, p. 698.
[10] *Oud*, loc. cit.
[11] Thus *Kranenburg*, De Nieuwe Structuur van ons Koninkrijk, 1955, p. 56; *Van Helsdingen*, Het Statuut voor het Koninkrijk der Nederlanden, 1957, Note to Article 45, p. 497, *et seq.*; *Oud*, Het Constitutioneel Recht van het Koninkrijk der Nederlanden, Vol. 1, 2nd ed. 1967, p. 57; *Van der Pot-Donner*, op. cit., p. 635 (somewhat hesitantly, wishing to emphasize the particular circumstances of individual cases).

regard any Dutch law to the contrary.[1] Directly applicable international treaty law therefore has acquired precedence over national law, including constitutional law. In contrast to the Luxembourg courts, which regard the ECHR merely as an obligation undertaken by the States without any direct applicability in national law, the Dutch Hoge Raad has acknowledged that the ECHR is so applicable.[2] Accordingly, the Dutch courts must review provisions of national law by reference to the ECHR.[3] This duty to review is of heightened importance, since review of ordinary statutes by reference to the Constitution is prohibited under Article 131 of the GW.[4] In order to overcome this inconsistency in the jurisdiction to review, the State Commission for Constitutional Reform has proposed the adoption into the Constitution of a jurisdiction to review by reference to the classical fundamental rights. Other constitutional provisions, including those relating to social fundamental rights, should not be available as a yardstick for such review.[5] At present, the introduction of this jurisdiction to review seems unlikely, since the Government is not considering the incorporation of such a provision into its draft constitutional amendment.[6] There has not yet been any parliamentary initiative in this matter.

In the Netherlands the courts do not have the power to review the constitutionality of legislation. The procedure before the Raad van State to obtain an opinion, which must be observed in any legislative process pursuant to Article 64 of the GW, cannot be regarded as judicial review. This procedure is merely an internal matter within the government; it is of no consequence if the opinion is disregarded.[7] The opinions are also not published. The vesting of any jurisdiction in the courts to enforce compliance with the Constitution seems unlikely. The Government has, during the discussion on a constitutional amendment, declared its opposition to any such jurisdiction in the courts,[8] as proposed by the State Commission.[9]

In the Netherlands there are a large number of forms of legal protection against excessive encroachment by the executive. That hitherto encountered most frequently is a quasi-judicial protection available within the administration itself, for instance, under the 'Wet Beroep administratieve Beschikkingen' which grants legal protection against measures taken by State authorities. The jurisdiction of the civil courts is also of some importance, as they may issue orders against administrative authorities in interlocutory proceedings, and these courts also give a wide interpretation to the concept of civil law.[10]

In the spring of 1975 the Estates General passed a statute relating to general administrative jurisdiction, although the date of its coming into force is not yet settled. Originally it was to have been 1 January 1976. This statute 'Wet administratieve rechtspraak overheidsbeschikkingen')[11] provides in principle for a general administrative jurisdiction in relation to acts of all administrative authorities, including those of the provinces and the districts. For this purpose a judicial section with judicial functions and guarantees is to be established within the Raad van State. Articles 5 and 6 of the statute provide for the setting-up a negative list of matters to be excluded from the administrative jurisdiction. Some parts of this negative list will remain in force for only a limited period; but there is at any rate the possibility of amendments or extension. The area of application of this general statute on administrative jurisdiction will furthermore be restricted for the time being because the jurisdiction it confers is only available in a subsidiary way. in so far as other means of protection of rights exist, including those existing purely within the administration, the jurisdiction of the administrative court (Raad van State, afdeling rechtspraak) will be excluded. The ambit of the statute can be broadened in two ways: by a curtailing of the 'negative list' of Articles 5 and 6 and by setting aside the provisions relating to special legal protection, since this would bring into force the subsidiary effect of the general statute on administrative jurisdiction.

United Kingdom

As is well known, the United Kingdom has no written constitution, that is, no constitution in the formal sense. Accordingly there can be no question of fundamental rights being entrenched by means of any formal constitutional instrument. On the other hand, there is of course a constitution in the practical sense as the sum of all the rules which govern the conduct of the highest organs of State and the fundamental relationship between the individual and the State. It is in this context that fundamental rights, or fundamental liberties, or civil rights and freedoms, can be spoken of in the United Kingdom.

The guarantee of fundamental rights in the British Constitution amounts in the final analysis to freedom generally, subject to general reservations permitting statutory restrictions. What is guaranteed—this is one of the most important aspects of the 'rule of law'—is the freedom of each individual to do, and not to do, whatever he wishes, so long as what he does is not contrary to the rights of third parties or the

[1] Article 65: 'Bepalingen van overeenkomsten, welke naar inhoud een ieder kunnen verbinden, hebben deze verbindende kracht nadat zij zijn bekend gemacht'. Article 66: 'Binnen het Koninkrijk geldende wettelijke voorschriften vinden geen toepassing wanneer deze toepassing niet verenigbaar zou zijn met een ieder verbindende bepalingen van overeenkomsten, die hetzij voor, hetzij na de totstandkoming der voorschriften zijn aangegaan'.
[2] Hoge Raad, judgment of 13.3.1960, NJ 1960, No 436.
[3] Hoge Raad, judgment of 24.2.1960, NJ 1960, No 483; judgment of 18.4.1961, NJ 1961, No 273; judgment of 19.1.1962, NJ 1962, No 107; judgment of 25.6.1963, NJ 1964, No 239.
[4] Article 131(2): 'De wetten zijn onschendbar'.
[5] Tweede rapport van de Staatscommissie van advies inzake de Grondwet en de Kieswet, 1969, p. 34 *et seq.* (Cals-Donner-Commission).
[6] Nota inzake het Grondwetherzieningsbeleid, 2. Kamer, Zitting 1973-1974, Kamerstuk No 12 944 No 2, p. 12.
[7] Cf. *Oud*, op. cit., Vol. 1, p. 455 *et seq.*; *Van der Pot-Donner*, op. cit., p. 286 *et seq.*
[8] Staatscommissie, op. cit., 1969, p. 34, *re* the classical fundamental rights.
[9] Nota inzake het Grondwetherzieningsbeleid, op. cit., p. 12.
[10] *Re* this still valid legal position cf.: *Langemeijer*, Der gerichtliche Rechtsschutz des einzelnen gegenüber der vollziehenden Gewalt in den Niederlanden, in Rechtsschutz gegen die Exekutive, 1969, p. 793 *et seq.*
[11] For the text of the statute: Eerste Kamer der Staten-Generaal, Zitting 1974-1975, Kamerstuk No 47.

law. From this starting point, certain fundamental rights have, in legislation, case law and learned writing, been shaped in particular ways, such as the right of personal freedom, the freedom of speech, the freedom of assembly, and the freedom of property.[1] In recent years there have however been occasional demands for a formal constitution to be made for the United Kingdom, which could in certain circumstances even include a catalogue of fundamental rights. It cannot however be said that demand for this in the United Kingdom is so widespread that such a project would have any prospect of success in the near future.[2]

In view of what has been said above, the guaranteeing and the circumscribing of the rights of individuals are primarily the task of the legislature and also of the courts. There is however no comprehensive catalogue of fundamental rights prescribed by legislation, in the manner, for instance, of the Canadian Bill of Rights. Also the ECHR is not binding under the domestic law of the United kingdom. It can nevertheless be said that, taken as a whole, the English legal system is fashioned in such a way that the rights contained for instance in the United Nations Treaty on Civil and Political Rights or in the ECHR, are generally speaking, secured within the territory of the United Kingdom. However, any rights so secured are entirely at the mercy of the legislature. The only guarantee that the legislature will not unduly restrict these rights lies in the mechanisms of political control which characterize British constitutional life, and in the libertarian traditions of Britain.[3]

Since fundamental rights are entirely at the mercy of the legislature, there can be no question of any judicial review of statutes for their compatibility with these fundamental rights. In dealing with legislation, the courts can of course effect certain marginal emendations (Randkorrekturen) for the protection of fundamental rights. For this purpose judicial practice has evolved a number of presumptions.[4] Thus, statutes are construed so that, for instance, the levying of taxes requires clear and explicit words. Criminal statutes are strictly construed. In the absence of clear and unequivocal provisions to the contrary, the legislature is not taken to have intended to oust the jurisdiction of the courts, or to give statutes retrospective effect. Similarly, the Court of Appeal has recently held that the ECHR must be taken into account in interpreting statutes: There is a presumption that the legislature did not intend to infringe the ECHR, and statutes are to be interpreted in such a way that they are compatible with that Convention.[5] The legislature is thus obliged to enact in clear and unequivocal terms any intervention in the sphere of the individual, but is not prevented from intervening in this way by any constitutional constraint.

Against this legal background, what in other legal systems might be considered under the heading of 'protection against infringement of fundamental rights by the excutive' amounts in the United Kingdom to a control of the legality of executive action. To this extent, legal protection in the United Kingdom is comprehensive. But the legislature in turn is free to exclude the protection of the courts. This has occurred in a number of cases,[6] though it is usual for quasi-judicial review bodies to be created for the legal protection of the individual. The ordinary courts have (although not invariably) interpreted such ousters of jurisdiction restrictively, and have thus preserved a certain power of review.[7] Some statutes, moreover, provide for limited rights of appeal to the ordinary courts.[8] Moreover, the executive has no immunity from judicial proceedings, with the exception of actions against the sovereign in person.[9]

Recently there have been reports of various suggestions and proposals for the enactment of a 'Bill of Rights' for the United Kingdom (or even for Northern Ireland alone) without the introduction of a formal constitution.[10] It remains to be seen how far such projects will succeed and lead to clear results, and this cannot be judged by an outsider. What merits comment is that the proposals clearly are intended to limit only partially the sovereignty of Parliament, in that the legislature, if it wishes to derogate from the Bill of Rights, will have to make this clear in the statute in question. Such a provision comes very close to the abovementioned presumption evolved by the courts, that, in a case of doubt, the legislature is not to be taken to have intended to infringe particular rights of the individual.

All in all, the position of fundamental rights in the United Kingdom presents unique features which in some degree are alien to continental constitutional thought. With the Magna Carta of 1215 and in the constitutional struggles of the 17th century England produced statements of fundamental importance for the development of fundamental rights. Even today, it cannot be said that the protection of fundamental rights in the United Kingdom does in fact lag behind that in continental European States. However, the formal position is that fundamental rights are at the mercy of the legislature to a far greater extent than in most other Members States of the European Community.

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[1] Cf. *Street*, Freedom, the Individual and the Law, 1963, p. 9 *et seq.*; *Daintith*, The Protection of Human Rights in the United Kingdom, Human Rights 1 (1968), p. 275 *et seq.*; *Mitchell*, Constitutional Law 2nd ed. 1968, p. 323 *et seq.*; *Wade-Phillips-Bradley*, Constitutional Law, 7th ed. 1965, p. 488 *et seq.*; *Padfield* British Constitutional Law Made Simple, 1972, p. 222 *et seq.*; *Crombach*, Civil Liberties in England, DVBl. 1973, p. 561 *et seq.*; *Dicke*, Englisches Verfassungsverständnis und die Schwierigkeiten einer Verfassungskodifikation, DÖV 1971, p. 409 *et seq.*; *Raschauer*, Die Gesetzeskontrolle im britischen Recht, Der Staat 13 (1974), p. 245 *et seq.*

[2] Cf. *Dicke*, loc. cit.; *de Smith*, Constitutional and Administrative Law, 2nd ed. 1973, p. 27 *et seq.*

[3] Cf. *de Smith*, op. cit., p. 92 *et seq.*

[4] Cf. *Daintith*, op. cit., p. 299 *et seq.*; *de Smith*, Statutory Restriction of Judicial Review, Modern Law Review, 18 (1955), p. 575 *et seq.*

[5] Reg v Home Secretary, *ex parte* Bhajan Singh, (1975) 3 WRL 231 (Lord Denning).

[6] Cf. *de Smith*, Statutory Restriction of Judicial Review, Modern Law Review 18 (1955), p. 577 *et seq.*

[7] *De Smith*, op. cit.; *Bentil*, Disregarding the Finality of a Determination by Statutory Authorities and the Order of Certiorari, Public Law 1973, p. 80 *et seq.*; *Marshall-Yardley*, Constitutional Jurisdiction in the United Kingdom, ZaöRV 22 (1962), pp. 542 *et seq.*, 554 *et seq.*; *Lord Salmon*, The Law and Individual Liberty (The Thirty-Fourth Haldane Memorial Lecture Delivered at Birkbeck College, London, 3rd December 1970), p. 5 *et seq.*

[8] *Bradley*, Judicial Protection of the Individual against the Executive in Great Britain, Gerichtsschutz gegen die Exekutive, Vol. 1 (1968), p. 345.

[9] See in detail *Bradley*, op. cit., p. 327 *et seq.*

[10] Cf. e.g. Council of Europe, Newsletter on legislative activities, No 19, June 1975, and *The Times* of 18.3.1975. See also *Lord Salmon*, op. cit., p. 9.

Assessment

This cursory survey of the protection of fundamental rights within the Member States of the European Communities permits certain initial inferences to be drawn, and findings made. By way of simplification it can be said that many common features of principle contrast with deep-rooted differences in the manner in which these fundamental rights have been elaborated amongst the Member States.

The thinking on fundamental rights in all Member States has been largely shaped by the historical development of fundamental rights and by an understanding of them as rights protecting the individual against undue encroachment by the State, and notably by the executive. In the unwritten law of the British constitution, the experience of centuries of British constitutional struggles has a continuing effect in the field of fundamental rights. The present-day guarantee of fundamental rights in French constitutional law is formally linked with the French Revolution, by the references in the current Constitution to the Constitution of 1946 and the Declaration of human and Civil Rights of 1789. The constitutional provisions of other European States, such as the Belgian Constitution, also date back to a considerable extent to the first half of the last century. Constitutional re-formulations of fundamental rights, as in the Federal Republic of Germany, in Italy and Luxembourg, as a rule contain, in so far as protected fundamental rights are concerned, no fundamental changes in relation to the past. Overall, it could be said that in terms of constitutional history and of the history of thought the protection of fundamental rights within the Member States of the European Community manifests similar concepts and basic structures. They continue to have effect with undiminished vigour, and are at the same time reinforced by the international declarations and conventions relating to human rights. It is also worth mentioning that various currents of thought and movements can be discerned at national level, which tend further to develop the protection of fundamental rights. In the United Kingdom a formal Bill of Rights is being discussed. In France there are some signs that, contrary to traditional views, the activity of the legislature itself may be subject to some control as to its compatibility with fundamental rights, although only to a limited extent.

In the States under consideration, the protection of fundamental rights has been judicially secured to varying degrees. All the States of the European Community seem to be at one on the principle of judicial control as to the legality of executive action. While some States favour the principle of enumeration, that is the proposition that administrative acts can only be challenged in court in the cases provided for by law, other States make possible the judicial review of all executive action by means of a general provision. The need for judicial control of the executive, taken with the requirement of legality in all administrative action, is undisputed in principle and a common element in legal thinking in the States of the European Community.

The same cannot be said in relation to control over the legislature as regards respect for fundamental rights. The theoretically comprehensive and absolute power to review legislation vested in the Bundesverfassungsgericht of the Federal Republic of Germany is in contrast to the approach in other States, where the courts are always bound by the law and have no right to test its constitutionality. This view is axiomatic under British constitutional law, and it also prevails to some extent in France and the Benelux States, even though certain moves to restrict this principle can be detected. Italy, on the other hand, possesses in its Corte Costituzionale a tribunal of final instance which also controls in effective manner what the parliament does.

Closer consideration and assessment of the substance of guarantees in relation to fundamental rights and catalogues thereof reveal considerable differences between the States, and thereby disclose appreciable difficulties. In the United Kingdom, apart from the ECHR, there is no catalogue of fundamental rights whatsoever; guarantees of particular rights must be drawn from various instruments, from numerous statutes and recognized principles of law. In France, alongside rudimentary constitutional provisions, the Declaration of Fundamental Human and Civil Rights, the fundamental laws and the general principles of law evolved mainly by the Conseil d'État must be considered for the purposes of any survey. The other European States herein considered have more or less comprehensive catalogues of fundamental rights in their constitutions. The task of a complete survey of the fundamental rights in all these catalogues and of those of such rights which are only guaranteed by express provision in the constitution of certain of the States is no doubt an attractive one but cannot be undertaken here. Two guarantees are to be studied below, by way of example. More detailed consideration could be show that certain rights which have a particular bearing on the personal responsibility and dignity of the human being—as for instance the freedom from arbitrary arrest, the freedom of belief and conscience, postal secrecy—are as a rule guaranteed. The more the rights of the individual are likely to conflict with the interests of the community, without any unequivocal provision for the former to prevail, the greater the discretion to elaborate entrusted to the legislature, whether on the basis of express reservation provided for in the catalogue of fundamental rights or under a general power of the legislature to draw the line in a manner exempt from judicial control between the personal sphere of the individual and the interests of the community. This is for instance true of the protection of property, where no legal system can dispense with some provision for expropriation, and the freedom of trade or occupation, which cannot have the same purport for every occupation, and which is closely linked to the economy in the State in question.

2. Protection of human rights in international law, in particular in the ECHR

For our purposes the ECHR is of particular significance in two ways; first, since the accession thereto of France in 1974, all Member States of the European Communities have been bound by the ECHR, so that its content reflects the common 'minimum standard' which the States with which we are concerned have undertaken to respect. To this extent the ECHR permits of definite conclusions as to what all Member States are unquestionably willing to grant by way of protection for fundamental rights. Secondly, there is the question whether, and, if so, to what extent, the European Community is bound directly by the ECHR.

No more than is the case with most of the national catalogues of fundamental rights can the guarantees of the ECHR be regarded as a system complete in itself and comprehending all the important rights of the individual organized convincingly and coherently. The position is rather that any catalogue of fundamental rights is as a rule, as in this case, simply a consolidation of various rights which historical experience and common belief have caused to be considered as particularly deserving of protection, and which are secured by means of differing formulations, limitations and reservations. Thus, in the ECHR are found predominantly the classical protective rights against particularly grave encroachments by State authority. The ECHR catalogue begins with the right to life in Article 2, followed by the prohibition on torture, slavery and forced labour, and the right to freedom from unjustified arrest and incarceration. These deal primarily with protection from the totalitarian and arbitrary measures of a police State; much the same is true of the rights protected by Article 6 of the ECHR in respect of legal proceedings, and of Article 7 *(nulla poena sine lege).* Then there is the guarantee of the right to respect for the privacy of the individual, including postal secrecy (Article 8), freedom of thought, conscience, and religion (Article 9), the right to free expression of opinion (Article 10), freedom of assembly and association (Article 11), the right to marry and found a family (Article 12). Article 14 contains prohibitions on discrimination. The First Additional Protocol has added to these rights of the Convention the protection of property, a right to eduacation, and the guarantee of free and secret elections. The Fourth Additional Protocol guarantees, *inter alia,* the freedom of establishment and the freedom of movement. Most guarantees of fundamental rights in the ECHR and the additional Protocols are accompanied by possible and more narrowly circumscribed derogations therefrom; in this regard the respective paragraph (2) of Articles 8 to 10 of the ECHR are of special importance.

At this stage it is appropriate to make some remarks on the substantive importance of the ECHR guarantees for the European Communities. Some of the fundamental rights of the ECHR clearly predicate the existence of governmental machine having all-embracing and potentially boundless power, and would therefore have little bearing on the law of the European Communities, given their legal and actual limitations. The right to life, the prohibition of torture and slavery, the rights of the defendant or the accused in criminal proceedings, are, at the current stage of development, matters for the State alone, and not the Community. Most of the other rights of the ECHR could only come into conflict with Community measures in exceptional and borderline cases, as for instance the freedom of consicience and the freedom of opinion; the fact that in this respect conflicts cannot be entirely ruled out will be gone into below; but here one can scarcely speak of far-reaching threats to the individual from acts of Community authority. For the Community the following rights of the ECHR are more likely to be of importance: the right to form trade unions (Article 11), the protection of property (Article 1 of the First Additional Protocol), and the freedom of movement and freedom of establishment (Fourth Additional Protocol). On these points the protection of fundamental rights by the ECHR can acquire relevance in relation to the acts of Community organs in circumstances and situations likely to occur more frequently.

We shall consider below to what extent Community law and the judgments of the Court of Justice of the European Communities impose upon the Community institutions the obligation of compliance with the ECHR. For the time being we shall continue with this conspectus of the position of human rights in international law.

The proposition that State authority is in principle subject to no constraint under international law in relation to its domestic acts and its exercise of power in relation to its own nationals is now a thing of the past, and not only by reason of the ECHR. The protection of the individual against pressures and undue encroachment on the part of the State has found expression in a large number of provisions of international law.

It is not entirely free from doubt to what extent international customary law and the fundamental principles of the international legal system protect fundamental rights and the human rights of the individual. It does however seem to be increasingly accepted that unwritten international law guarantees a modicum of human rights and places upon States an obligation to respect them. The Declaration of Human Rights of the United Nations of 1948, even though lacking any binding character, is, at least to some extent and in conjunction with a large number of other international instruments, evidence that the exercise of State authority is subject to constraints of international law for the benefit of the individual. In any case this can be deduced from the United Nations Charter.

Although the Conventions on Human Rights of the United nations of 1966 are not yet in force, it is probable that they will come into force in the near future.[1] A number of other

[1] The International Agreement on Economic, Social and Cultural Rights came into force on 3 January 1976; the International Agreement on Civil and Political Rights came into force on 23 March 1976. [Editor's Note]

worldwide conventions, such as the UN Convention on the prohibition of racial discrimination, has become binding in certain of the Member States of the European Communities as international treaty law. Then there are the Agreements of the International Labour Organization, the European Social Charter and other bilateral and multilateral agreements which cannot be individually listed and evaluated here. it should however be borne in mind that, apart from the ECHR, a considerable number of obligations arising under international law bind States to respect fundamental rights and place upon them a duty to uphold the rights of the individual.

3. Recognition of fundamental rights in the Treaties of the Communities and by the Court of Justice of the European Communities

The Treaties relating to the European Communities contain no catalogue of fundamental rights. It would however be wrong to infer that the Treaties ascribe no importance to fundamental rights and the rights of the individual, or even take no cognisance of them. The text of the Treaty certainly affords considerable scope for the rights of the individual and objective rules relating to his protection, notably, having regard to the chief objects of the Treaties, in relation to economic endeavour. Thus, the prohibition on discrimination between citizens of the Common Market for reasons of nationality forms part of the basis principles of the Treaties; it is emphasized as a principle in Article 7 of the EEC Treaty and thereafter explicitly in Articles 40, 45, 79 or 95 thereof; the provisions of Articles 85 *et seq.* on competition are concerned, *inter alia,* with prohibitions on discrimination and thus bear upon certain aspects of the principle of equality. The Treaty provisions on freedom of movement for workers (Article 48 *et seq.*) and the freedom of establishment (Article 52 *et seq.*) or even on the free provision of services within the Community (Article 59 *et seq.*) are closely related to the freedom to practise a trade or occupation and thereby to a fundamental right embodied in many national constitutions. The part of the EEC Treaty which relates to social policy (Article 117 *et seq.*) contains provisions on social aims, which can be considered together with the problem of social rights; Article 119 enjoins equal pay for men and women and thus deals with an aspect of the principle of equality which is extremely important in practice and which moreover touches upon the problem of the relevance of fundamental rights in relations between individuals (Drittwirkung). In this context it is neither possible nor necessary to consider the abovementioned provisions in greater detail. The fact is that the Treaties do contain scope and rules for fundamental rights of economic relevance, and in my opinion it is an important task for legal science and for practitioners to consolidate all the rights and entitlements of the individual which are guaranteed explicitly or implicitly by the Treaties, and to examine in greater detail their ambit as well as the existing deficiencies. Apart from the provisions already mentioned, regard would need to be had to Article 220, which provides for negotiations to secure for Community citizens equality of treatment in further areas, but also to Article 222, whereby the Treaty shall in no way prejudice the rules in Member States governing the system of property ownership.

On the question of how far fundamental rights are already protected under the law of the European Communities, the judgments of the Court of Justice of the Communities naturally play a prominent part. The Court has the obligation to ensure that in the interpretation and application of the Treaty, the law is observed (Article 164); in so doing, it reviews, *inter alia,* the legality of the acts of the Council and the Commission (Article 173), Accordingly it is primarily from the judgments of the Court that we can establish how far fundamental rights and the protection of the rights and interests of the individual are currently available under Community law. The Court has on several occasions during recent years explicitly dealt with this question and the judgments in question have rightly attracted great attention. It should however not be overlooked that general legal principles play a major role in the practice of the Court even where fundamental rights are not specifically relied upon, and these general legal principles are seen, on closer examination, to contain much that corresponds or approximates to fundamental rights under national law.

In the meantime there are a number of publications in the field of legal science which deal with the importance of general legal principles in the law of the European Communities, and which find ample material in the judgments of the Court at Luxembourg. To name but a few from German learned writing: Feige has dealt in a monograph[1] with the principle of equality in EEC law. Lecheler has made a special study of general legal principles in the judgments of the European Court,[2] dealing, *inter alia,* with the principle of the legality of administrative action, with its implications for the revocability of administrative acts which are illegal but which have conferred a benefit, in the judgments of the Court of Justice, and has made full use of the impressive dicta on the principles of legal certainty, of good faith, the prohibition of discrimination and the duty to grant a fair hearing. Finally, Gottfried Zieger has also thoroughly analysed the judgments of the Court of Justice in relation to general legal princples.[3] He considers the case-law under the following headings:

'The principle of equality
in legislation relating to pricing
prohibition of special charges

[1] *Feige,* Der Gleichheitssatz im Recht der EWG, 1973.
[2] *Lecheler,* Der Europäische Gerichtshof und die allgemeinen Rechtsgrundsätze, 1971.
[3] *Zieger,* Die Rechtsprechung des Europäischen Gerichtshofs, eine Untersuchung der Allgemeinen Rechtsgrundsätze, JöRNF 22, p. 299 *et seq.*

equality in the levying of public imposts
equality in the European law governing officials
The right to a hearing
Ne bis in idem
Economic freedom
The principle of proportionality
Other fundamental rights
Other principles based on the rule of law
Principle of legal certainty
Principle of administrative legality.'

This is not the place to discuss in detail the various components of this list. What is important is simply that it gives a picture of the general legal principles which play a part in the judgments of the Court of the European Communities, without encountering fundamental objections and difficulties. According to these judgments, which in this respect are unchallenged, the law of the European Communities which the Court of Justice has to apply includes not only the provisions expressly contained in the Treaty but also the unwrittten principles widely acknowledged in systems based on the rule of law. In evolving general principles of law the Court has followed the example of national courts. The case-law of the French Conseil d'État mentioned above has, over the course of its long development, fashioned the most important principles to be observed by an administration which is subject to statutes and the law. In a similar way, although in a different context and in relation to a Community authority holding considerably lesser powers than a State, the European Court of Justice has developed appropriate legal principles; it can be assumed that the exprience of the individual judges, derived from their own legal systems, has played an important part in this. The proximity of these decided cases to the problem of fundamental rights is brought out by another comparison. The Bundesverfassungsgericht of the Federal Republic of Germany, relying loosely on a small number of references in the text of the Constitution, has developed a whole series of constitutional requirements—such as the requirement of legal certainty, the principles of the protection of legitimate expectation (Vertrauensschutz) and of proportionality—and has brought them within the protection of the constitutional court under the procedure for objections on grounds of constitutionality. The relevant judgments of the Court of the European Communities do not refer expressly, or only do so very occasionally, to the requirement, imposed by the rule of law, of upholding the rights of the individual or fundamental rights; but in fact these are limitations laid upon Community authority primarily in the interests of the citizens of the Common Market.

Amongst the decided cases of the Court of the European Communities, there are four principal judgments which contain important fundamental statements as to the protection and the position of fundamental rights within the Community.[1] They have attracted a corresponding measure of attention. We must once again indicate their most salient features.

In Stauder v Sozialamt der Stadt Ulm[2] the Court, in a preliminary ruling under Article 177 of the EEC Treaty, had to make its decision upon a relatively simple set of facts. They were that a person in receipt of war victim welfare benefits thought it wrong that, in order to receive butter at a reduced price as provided under Community law, he was obliged to state his name to third parties. The German administrative court to which appeal was made itself had doubts as to the legality of the provision in question. The very short judgment of the Court of Justice appears to acknowledge fundamental rights as part of the general principles of Community law, but holds that in that particular case, on a certain construction of the provision in question, no illegality was disclosed. The essential part of the judgment reads:

'The provision at issue contains nothing capable of prejudicing the fundamental human rights enshrined in the general principles of Community Law and protected by the Court'.

This was the earliest indication that fundamental rights are entrenched in Community law by means of the general principles of law. It must also be mentioned that in Stauder various fundamental rights and legal principles were canvassed as having possibly been infringed, namely the requirement of respect for human dignity as well as the principle of equality and the requirement to observe the principle of proportionality between the gravity of the interference in question and the needs of the Community. The Court did not elaborate on these points.

In a further fundamental judgment of 17 December 1970 in Internationale Handelsgesellschaft v Einfuhr und Vorratsstelle[3] the European Court of Justice, again in a preliminary ruling under Article 177 of the EEC Treaty, made some statements of principle on the position of fundamental rights in Community law. The case concerned a Community regulation which provided for the forfeiture of deposits where export licences were not used, and which the exporter thereby affected, and the national court considered to be contrary to fundamental rights. The Court of Justice of the Communities stated:

'Recourse to legal rules or concepts of national law to judge the validity of instruments promulgated by Community institutions would have the effect of harming the unity and efficacity of Community law. The validity of such instruments can only be judged in the light of Community law. In fact, the law born from the Treaty, the issue of an autonomous source, could not, by its very nature, have the courts opposing to it rules of national law of any nature whatever without losing its Community character and without the legal basis of the Community itself being put in question. Therefore the validity of a Community instrument or its effect within a Member State cannot be affected by allegations that it strikes at either the fundamental rights as formulated in

[1] See especially the report of *Pescatore* for the Seventh Congress of the International Federation for European Law, Brussels, 2 to 4n October 1975.
[2] [1969] ECR 419 *et seq.*
[3] [1970] ECR 1125 *et seq.* (but English text of quotation from the judgment taken from (1972) CMLR 283, the official English version not yet being published).

that State's constitution or the principles of a national constitutional structure.

An examination should, however, be made as to whether some analogous guarantee, inherent in Community law, has not been infringed. For respect for fundamental rights has an integral part in the general principles of law of which the Court of Justice ensures respect. The protection of such rights, while inspired by the constitutional principles common to the Member States must be ensured within the framework of the Community's structure and objectives. We should therefore examine in the light of the doubts expressed by the Administrative Court whether the deposit system did infringe fundamental rights respect for which must be ensured in the Community legal order.'

The Court of Justice finally decided that there had been no violation by the provision in question. What is of interest here, apart from the basic position taken by the Court of Justice as quoted above, are the fundamental rights alleged to have been infringed. These were primarily the principle of proportionality, then the right of the individual freely to carry on economic activity, and finally the fundamental rights of property and respect therefor. Even if we concur with the Court that on the facts of this particular case, these rights were not infringed, we must nevertheless appreciate that these rights by their very nature are particularly apt to be affected by Community authority.

The next judgment of the Court of Justice of particular importance, namely that of 14 May 1974, in Nold v Commission,[1] concerned the legality of regulations which precluded the applicant because of his modest turnover from receiving deliveries as a wholesale coal merchant. The Court once again laid down principles relating to the protection of basic rights.

'As the Court has already stated, fundamental rights form an integral part of the general principles of law, the observance of which it ensures. In safeguarding these rights, the Court is bound to draw inspiration from constitutional traditions common to the Member States, and it cannot therefore uphold measures which are incompatible with fundamental rights recognized and protected by the Constitutions of those States. Similarly, international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law. The submissions of the applicant must be examined in the light of these principles.

If rights of ownership are protected by the constitutional laws of all the Member States and if similar guarantees are given in respect of the right freely to choose and practise their trade or profession, the rights thereby guaranteed, far from constituting unfettered prerogatives, must be viewed in the light of the social function of the property and activities protected thereunder. For this reason, rights of this nature are protected by law subject always to limitations laid down in accordance with the public interest. Within the Community legal order it likewise seems legitimate that these rights should, if necessary, be subject to certain limits justified by the overall objectives pursued by the Community, on condition that the substance of these rights is left untouched. As regards the guarantees accorded to a particular undertaking, they can in no respect be extended to protect mere commercial interests or opportunities, the uncertainties of which are part of the very essence of economic activity. The disadvantages claimed by the applicant are in fact the result of economic change and not of the contested Decision.'

The regulations under challenge were finally upheld in this case also. However, it is important in this context that the Court once again, and more strongly, emphasized the fact that the Community organs are in principle bound to respect fundamental rights; these are a component part of Community law, the substance of which can be deduced from the guarantees relating to fundamental rights available in the Member States, and also—and this is novel—from the ECHR. What was in question here were, again, the protection of property, the prohibition of discrimination, the right freely to practise a trade or occupation and to carry on economic activity, and the principle of proportionality.

Meanwhile, a new decision of the Court dated 28 October 1975—Case 36/75, Roland Rutili v The Minister for the Interior[2]—has developed the previous case-law and evaluated and restricted the limitations on the freedom of movement for workers guaranteed by Article 48 of the EEC Treaty in the light of the European Convention on Human Rights.

4. General legal principles and the fundamental rights common to all Member States as necessary components of the law of the European Communities

As already pointed out, the basic Treaties of the European Communities do contain certain reference points for the protection of the rights and interests of the individual, but no catalogue of fundamental rights. The Court of Justice has in its judgments, despite this absence of explicit rules in the text of the Treaties, gradually developed and accepted a considerable number of general legal principles; and has, in the judgments cited above, expressed its attitude in a fundamental way on the significance of fundamental rights in Community law. Its position can be summarized thus: although in no case can national law, including fundamental rights arising under national constitutional law, claim priority over Community

[1] [1974] ECR 491, 507.
[2] [1975] ECR 1219.

law as an independent legal order, none the less as general legal principles the fundamental rights generally recognized in the Member States do form part of Community law, and, according to the Nold judgment in 1974, in establishing such rights the ECHR must also be considered. If despite these statements of the Court of Justice, the present state of affairs is regarded in various quarters as unsatisfactory, this may be attributable to more than one reason. For one thing, there is the apprehension, expressed by the constitutional court of the Federal Republic of Germany, that fundamental rights underlying national constitutional law are unprotected under Community law. Moreover, there is a danger that, given the increasing activity of the Community and its organs and the inadequate provision for fundamental rights in the Treaties, important interests of the individual will remain without protection. This in turn is bound up with doubts as to whether the Court of Justice has the jurisdiction and the capacity to develop its own appropriate form of protection of fundamental rights. These questions must be considered briefly at this stage.

There can be no doubt that from the point of view of Community law, there can be no question of national fundamental rights having validity and applicability. Even less would it be possible merely to add together the corpus of fundamental rights of the nine Member States and to have the entire scheme of provisions thus assembled made binding on the Community and its organs. Such an approach must contend with the fact that virtually all the catalogues of fundamental rights contain unique features and are subject to limitations formulated in different ways by reason of national and historical phenomena, and that these cannot be transferred *in toto* and cumulatively into Community law, if the Community is not thereby to become paralysed. The independent character of Community law precludes any direct recourse to national fundamental rights.

Furthermore, every international and supranational legal system (just like any national legal system) will require its written law to be supplemented by general legal principles and legal concepts shared by the Member States. In international law this necessity has found expression in Article 38(1)(c) of the Statute of the International Court of Justice. I have, in another context, already pointed out that international administrative courts, particularly the administrative courts of the United Nations and the International Labour Organization, have of necessity evolved and applied appropriate general legal principles.[1] 'The judgments of the international administrative courts contain ample support for the view that the general legal principles of national legal systems must be observed in the elaboration and application of the internal law of the organization in question. General principles of national administrative procedure and of judicial control of State acts are correctly considered by the courts as also being necessary parts of the international legal system. The requirement of 'due process of law', the duty to grant a hearing, the maxim *audi et alteram partem*, the inherent constraints upon administrative discretion and the judicial review thereof, the principle of proportionality, and further basic legal principles are also applicable to the internal law of international organizations; and the administrative courts rightly assume it to be their duty to ensure that these principles are respected.'[2]

If the matter is looked at in this way, it is not only not unusual but is perfectly natural that the Court of Justice of the European Communities also derives general legal principles, including the underlying guarantees of fundamental rights, from the legal systems of the Member States, and applies them, and that all Community organs are bound to respect these legal principles.

In order to serve any practical purpose this fundamental statement needs more specific elaboration, and in this considerable difficulties will have to be overcome. Whenever there is the possibility that any fundamental rights have been affected, careful scrutiny is requisite to establish how far a fundamental right is directly recognized within the treaty law of the Communities, to what extent and in what form it is to be encountered in the legal systems of the Member States, and how far it is possible to speak of any fundamental significance of the right in question and its implications. Such investigation, however, can hardly be avoided if a correct idea of legal concepts in the Member States is to be conveyed. In this context the ECHR ought also to be considered, since it contains a minimum of rights recognized by all Member States. At the same time, we agree with the judgment of the Court of Justice in Nold, in that the mention of the ECHR is only a supplementary one, since the contents of the ECHR are not identical with the legal principles recognized by Member States of the EEC.

Finally, we shall briefly discuss the question of the direct applicability of the ECHR to Community organs. The Court of Justice of the European Communities in its judgment of 12 December 1972 *re* International Fruit Company[3] has, as is known, declared that the Community is bound directly by the provisions of GATT; and it has been discussed on various occasions whether and to what extent the view of the Court of Justice as expressed in that judgment can be applied to the ECHR. In my opinion, there are strong arguments against the ECHR having direct effect against Community organs. The ECHR contemplates only States as parties thereto, and the organizational structure (Commission, Court of Justice and Committee of Ministers) provided for therein is designed for States as parties to the Convention. Even under the law of the EEC itself (cf. particularly Article 234 of the EEC Treaty) thereis no requirement that the Community need be assumed to be bound directly by the Convention. The appropriate solution, and that conforming to international, can be achieved by other means. The ECHR, as treaty law recognized as binding upon them by all Member States of the EEC, contains

[1] Cf. *Bernhardt (-Miehsler)*, Qualifikation und Anwendungsbereich des internen Rechts internationaler Organisationen, Heft 12 der Berichte der Deutschen Gesellschaft für Völkerrecht, 1973, pp. 7 *et seq.*, 29 *et seq.*
[2] *Ibid*, with further references.
[3] [1972] ECR 1219 *et seq.*

underlying legal concepts common to them all, relating to the necessary protection of the individual; and by virtue of this the prerequisites for the existence of general legal principles under EEC law are met. This does not, however, preclude the possibility that more extensive fundamental rights are present in the law of the nine Member States, which are to be considered as general legal principles of these States, and in such case the protection of fundamental rights under Community law goes beyond that of the ECHR. There are further reasons in favour of the proposition that the ECHR is relevant to the EEC only in an indirect manner; for instance, only in this way will the individuality in actual and in organizational terms of both legal orders be preserved. We cannot go into this more deeply here, and a few observations will suffice. As already mentioned, the human rights guaranteed by the ECHR, by reason of their substantive nature, primarily affect the signatory States. An infringement by the Community organs of most of the fundamental rights of the individual as contained in the ECHR is improbable or impossible. In so far as the rights under the ECHR can have relevance in Community law, the Court of Justice of the European Communities can cite them as principles common to the Member States, and in this connection it can and should take into account the decisions and the practice of the ECHR organs. If the Community were, however, to be bound directly, this would be incompatible with the organizational provisions of the ECHR, and provoke conflicts of jurisdiction. On the other hand, any divergencies between the judgments of the Court of Justice of the European Communities on the one hand and the decisions of the ECHR organs on the other would then become less important.

Considerations similar to those in relation to the ECHR will obtain in relation to other rules and agreements of international law. Treaties to which Member States of the EEC are parties, for instance the agreements of the International Labour Organization, or—after its coming into force—the Human Rights Charter of the United Nations, have to be taken into account when considering whether individual fundamental rights are part of general legal principles. Here, it is not always necessary that all the EEC Member States should be bound by the individual conventions. In so far as national law accords with the convention in question without the State in question being bound thereby, then there can be deduced from the combination of treaty and national law a general principle which will have to be respected in Community law. A certain flexibility is inevitable here, and is in any case appropriate, since in any individual case it willl have to be established from a large number of relevant aspects how far a rule can be regarded as a general legal principle.

In such an assessment of written Community law, tof the principles of the national law of the Member States, and of the binding provisions of international law, it seems likely that all the fundamental rights which are deemed inalienable will be considered as part of Community law to be respected and applied by the Community organs. It is hard to believe that any grave deficiencies continue to subsist in the protection of fundamental right. In any event, contrary to the view of the German Bundesverfassungsgericht, any lack of protection of fundamental rights within Community law is not apparent, or is, to say the least, unlikely, in the light of our understanding of the current position.

III — Comparative legal study of certain fundamental rights

Preliminary

We shall now explore in greater depth the question whether an assessment from the point of view of comparative law of national provisions on fundamental rights can furnish assistance or advice for evolving 'European' fundamental rights, and we shall proceed by considering individual fundamental rights. For this purpose we can discuss only two fundamental rights, or, as the case may be, legally protected rights of the individual. It would be wrong to select such rights on the basis of ease of comparison between States, and it seems more appropriate to select fundamental rights which would be likely to play a greater role in the context of the European Communities. Some of the classical fundamental rights, such as protection from arbitrary arrest or even the freedom of religion, are more readily comparable, but largely unimportant in the EEC context. Those fundamental rights which are of special importance for the European Communities are on the other hand harder to identify and compare; but an attempt to review them must be made.

The freedom to exercise one's trade or occupation is of prime importance in a Community whose object is economic integration transcending national frontiers. In what follows we shall therefore explore a major aspect of the general freedom to exercise a trade or occupation, namely the freedom of economic activity (Gewerbefreiheit), and the manner in which it is regulated by law within the Member States of the EEC. This right is, however, inseparably linked to the whole economic system of the State in question; and this creates additional difficulties in a comparative survey. Once again it must be stressed that the time at our disposal permits only of a very cursory glance at the relevant legal provisions of the nine Member States of the EEC, and no doubt experts from the relevant countries could suggest improvements in many respects.

In addition to the fundamental rights expressly formulated and reasonably clearly defined, general precepts or legal principles play an important part in most legal systems. This has already been demonstrated more than once in the course of this study, notably in connection with the discussion of the development of fundamental rights in France, as well as in the reference to the judgments of the Bundesverfassungsgericht on the requirements of the rule of law, and finally in the survey of the legal principles which have been evolved in the judgments of the Court of Justice of the European Communities for the purposes of these Communities. It seems appropriate to bring into the following survey a legal principle which can be of special importance for the position and protection of the individual and which has on various occasions had a part to play in the judgments of the Court of Justice at Luxembourg. It is the problem of how far public authority may interfere with the rights of the individual which are already established. This question is extremely important, and just as hard to answer unequivocally. On this subject too, it should be said that in what follows allowance will need to be made for shortcomings and deficiencies.

1. Freedom of economic activity

In the wide variety of possible activities by way of trade or occupation, freedom of economic activity occupies an important position. By this right we mean the freedom to pursue on one's own account the business of manufacturing, supplying services, or of buying and selling with the object of participating in economic life and achieving profits. The essential features of the relevant legal rules of the Member States of the European Communities can be described as follows.

Belgium

Freedom to carry on economic activity as part of the freedom to practise a trade or occupation is not expressly provided for in the Belgian Constitution. Earlier writers sometimes sought to deduce it from Article 7 of the Constitution ('La liberté individuelle est garantie').[1] This view has now been abandoned. Prevailing opinion sees in Article 7 a guarantee merely of the 'liberté d'aller et venir', corresponding to the English habeas corpus.[2] This restrictive interpretation of Article 7 of the Constitution is confirmed by the various attempts to amend the Constitution as regards fundamental economic rights. As late as 1954 Parliament saw no necessity for a constitutional amendment to this end. Within the relevant Committee of the Chamber it had been pointed out that the then current text of the Constitution contained no guarantee of freedom of economic activity, but that had been no bar to appropriate legislative development. To incorporate economic fundamental rights into the Constitution was deemed to be superfluous[3] and ineffectual, since provision for such economic fundamental rights would still have to leave to the legislature extensive powers of regulation.[4] Although a Declaration of 1968 acknowledged the necessity of amending the Constitution 'par l'insertion de dispositions relative aux droits économiques et sociaux', no such constitutional amendment

[1] References in *Dor* and *Braas*, Les novelles, corpus iuris belgici, Vol. 2, 1935, paragraph 143; further *Perin*, Cours de Droit Public, Vol. 3, 1967, pp. 59, 73.
[2] References in *Buchmann* and *Buttgenbach*, Revue de droit international et de droit comparé, 27 (1950), p. 154; *De Visscher*, Annales de droit et des sciences politiques, 12 (1952), pp. 310 *et seq.* 315; *Wigny*, Droit constitutionnel, p. 389 *et seq.*; id., Cour de Droit Constitutionnel, p. 177; *Vlaeminck*, Le Droit constitutionnel belge, 5th ed. 1966, p. 70.
[3] Cf. the *de Schryver* Committee Report, Chambre 1952-1953, Doc. 693, p. 33.
[4] Chiefly *De Visscher*, Annales de droit et des sciences politiques, 12 (1952), p. 315 *et seq.*

has so far been effected because of heavy pressure of other business on the legislature in its constitution-amending capacity.[1]

In the absence of such a constitutional basis, the courts found the right to freedom of economic activity upon Article 7 of the French Decree of 2 March 1791 and Article 2 of the Law of 21 March 1819.[2] Article 7 of the Decree of 2 March 1791 reads, 'Il sera libre a toute personne de faire tel négoce ou d'exercer telle profession, art ou métier qu'elle trouvera bon; mais elle sera tenue de se conformer aux règlements de police qui pourront être fait'.

Règlements de police in the implementation of this provision are therefore capable of restricting freedom of economic activity, but could not abolish it completely, as they would thereby go beyond mere implementation. This could, however, be achieved by statute, as the legislature is not subject to any restriction if it wishes to disregard some other ordinary statute (here that of 1791). Belgian learned writing contains no comprehensive portrayal of the current exceptions from the right to freedom of economic activity. None the less a brief glance at Belgian ordinary statute law makes it clear that there are, for instance, State monopolies, as in the field of broadcasting and telephone communications (Law of 14 May 1930). The Constitution furthermore contains no restrictions as to the establishment of State economic enterprises, so that here also, as a pure matter of fact, freedom of economic activity could be undermined.[3] Finally, entry to certian occupations is in many cases regulated, whether to ensure professional qualification (as for instance with doctors and pharmacists), or to preserve economic balance (as with trade and crafts), or to protect third parties (as with banks, insurance undertakings).[4] The lengths to which statutory regulation can go here is perhaps shown by a law of 22 April 1948,[5] which prescribed a set-off of profits and losses amongst the different coalmining enterprises and provided at the same time that any coalmine which was closing down would continue to be worked by the State on its own account.

Judicial protection to ensure the legality of administrative action within the field of freedom of economic activity is guaranteed in principle. We can refer to what is said above. There is, in addition, legal protection available within the administration: first the informal application for legal redress in the shape of the submission of grievances (Gegenvorstellung) or appeals to higher authority (Dienstaufsichtsbeschwerde); then there are the formal appeals also to be brought within the administration. These are individually prescribed by statute. An appeal to the courts, in particular to the Conseil d'État, is possible only in cases where the prescribed formal appeals within the administration have been made without success.[6]

Denmark

Denmark has no fundamental right to freedom of economic activity entrenched in the Constitution. Neither from the constitutional duty upon the legislature to abrogate any discriminatory statute governing occupations (Article 74), nor from the right to work entrenched in Article 75 (1), can such a fundamental right be inferred. Only indirectly is a person exercising economic activity protected by Article 73 of the Basic Law (right of property). Thus the withdrawal from such a person of his trade licence can amount in certain circumstances to an interference with his rights of property.

Each individual has a right to obtain a trade licence, if he fulfills all criteria prescribed in the statute relating to trading. If he is refused such a licence in spite of his fulfilling all the criteria, he may sue in court for the issue thereof. This will not be the case, if—as is provided in specific cases—the authorities in question have been given a measure of discretion in the issue of a licence.

There are in principle no general restrictions on commencing and carrying on economic activity. The specific criteria for the issue of a trade licence are set out in the Trade Law of 8 June 1966. There are particular areas (private Bereiche) which are almost completely under State control and supervision.[7] The State also participates to a modest degree in economic life directly; chiefly, however, in the field of public services, such as railway and local transport undertakings, and postal and telegraph services. The organizations in question are either directly incorporated into the administration or the undertakings are carried on as joint stock companies under private law in which the State holds a majority of the shares and to which it has granted the appropriate concessions. Finally there are various statutes relating to unfair competition and monopolies which curtail to some extent the autonomy of the private sector. Actual nationalizations have not yet taken place.

Federal Republic of Germany

The Basic Law of the Federal Republic of Germany contains, in the part dealing with fundamental rights, varius provisions which are of importance for the individual's economic activity. Thus the freedom for personal development guaranteed in Article 2 extends, according to prevailing learned opinion, also to certain areas of economic activity, *inter alia*, to freedom of contract. Article 9 protects the formation of economic associations. Article 14 contains a guarantee of property; Article 15 allows, under certain circumstances, nationalization (Überfüh-

[1] On the so far unsuccessful attempt to amend the Constitution as regards fundamental economic rights, see especially—with further references in each case—*de Stexhe*, La révision de la constitution belge, 1968-1971, 1972, p. 349 *et seq.*; *Wigny*, La troisième révision de la constitution, 1972, p. 406 *et seq.*
[2] Cour de Cassation, 18 June 1906, Pasicrisie belge 1906, I, 311; cf. *Wigny*, Cours de Droit Constitutionnel, p. 177; *Vlaeminck*, op. cit., p. 70.
[3] See *Buchmann*, *Buttgenbach*, Revue de droit international et de droit comparé, 27 (1950), p. 160 *et seq.*
[4] Cf. *Wigny*, Cours de Droit Constitutionnel, p. 177; *id.*, Droit Constitutionnel, p. 389 *et seq.*; *Buchmann* and *Buttgenbach*, op. cit., p. 161 *et seq.*
[5] Pasimonie 1 1948, Collection complète des lois, Arrêtés et règlements généraux.
[6] Cf. the report of *Velu*, loc. cit. and *Mast*, Précis de droit administratif belge, 1966, p. 306 *et seq.*
[7] Cf. *Andersen*, Dansk Forvaltningsret, 5th ed. 1966, p. 79.

rungen in Gemeineigentum). Of cardinal importance for our purposes is Article 12(1) of the Basic Law:

'Alle Deutschen haben das Recht, Beruf, Arbeitsplatz und Ausbildungsstätte frei zu wahlen. Die Berufsausübung kann durch Gesetz oder aufgrund eines Gesetzes geregelt werden.'

This constitutional provision has led to copious case-law from the Bundesverfassungsgericht. Of particular importance was and still is a judgment of 11 June 1958,[1] in which the constitutional court described in greater detail the extent to which freedom of trade or occupation could lawfully be regulated by statute. Since then, the Bundesverfassungsgericht has continued to follow the views evolved in this judgment, while at the same time it has in a large number of further judgments defined more closely where the line is to be drawn between lawful and unlawful interference with the freedom to choose one's trade or occupation.[2] The 'philosophy' of the constitutional court can be described as follows: interference with the freedom of trade or occupation is lawful for the purpose of safeguarding important public interests, but only by a process of weighing up the public interests at stake against the individual's freedom of personal development. Here, the court has evolved a 'graduated levels approach' ('Stufentheorie'), which distinguishes between three main levels where interference is permissible under conditions which become increasingly stringent from one level to the next. The first level relates to the *exercise* of occupations, that is, to the specific circumstances under which any activity, which is lawful in principle and open to any person, may be regulated by statute. Here we have the provisions relating to industrial safety, working conditions, requirements of hygiene or measure for the protection of the environment. In the case of such provisions the individual may therefore carry on a specific activity, but must, so far as the practical aspects are concerned, comply with certain requirements. Here the legislature is given a considerable measure of discretion. The second level relates to what are termed the subjective qualifying conditions (sogenannte subjektive Zulassungsbedingungen). These are conditions which the individual must personally satisfy in order to take up and practice a trade or occupation. Examples of this are passing the requisite examinations for the practice of medicine or pharmacy and the personal requirements imposed on a driver or a hotel-keeper. At the level of the subjective qualifying conditions interference is only permissible in so far as important public interests are at stake and in need of protection. The third level relates to what are termed the objective qualifying conditions. Here, decisions as to whether any person may embark on any particular activity are made by reference to objective criteria which the individual cannot influence. For example, only a limited number of persons are permitted to become chimney-sweeps, taxi-drivers or surveyors. Such interventions restrict the individual's right to free development in a particularly serious way and in the judgments of the Bundesverfassungsgericht they are only permitted in terms of constitutional law for the purposes of safeguarding pre-eminent community interests.

The constitutional court has applied these principles to numerous occupations in a manner which has attracted not only approval but also considerable oppositon. We cannot here go into detail; and the exceptions in the case of certain professions linked in a particular way to the State (such as notaries) cannot be considered here. The State organs must however take into consideration a large number of points of view and criteria when regulating professional activity, and in the final analysis the Bundesverfassungsgericht will determine in binding manner the intervention which the legislature may undertake. It follows from what is said above that each individual case is subject to judicial control.

These comments on the law of the Federal Republic must suffice. The constitutional formulations of the Basic Law are particularly apt to demonstrate the possibilities and the limitations of incorporating the right to freedom of trade or occupation in a catalogue of fundamental rights. The fundamental right itself can be relatively easily and clearly defined. Given that economic life can take so many different shapes and that society makes a variety of demands, the freedom of trade or occupation can hardly be constitutionally guaranteed without allowing to the legislature by means of explicit or implicit reservations a measure of discretion in the elaboration by statute of these rights—going as far as the power to prohibit individual activities or to set up State monopolies and to nationalize parts of the economy. The conditions for lawful intervention can hardly be particularized in the catalogue of fundamental rights, and certain generalized provisions would be unavoidable. It seems all the more important therefore that some judicial athority should have the power to review the acts of the legislature, and of the executive, and, if necessary, to correct them, if the fundamental right is not to be left entirely at the mercy of the legislature.

France

Although the Preamble to the Constitution of 1946 does not list the right to free economic activity among the 'principes sociaux', the judgments of the Conseil d'État proceed on the footing that the 'liberté de commerce et de l'industrie' and the 'liberté de l'activité professionnelle' are fundamental principles.[3] The Council d'État relies on the one hand on the constitutional assurance in the Constitution of 1848 and on the other hand on a decree of 1791 on freedom of economic activity: 'Il sera libre à toute personne de faire tel négoce ou

[1] BVerfGE 7, 377.
[2] Cf. BVerfGE 39, 210 (225 *et seq.*).
[3] Cf. *Schmid*, Die Handels- und Gewerbefreiheit in der französischen Rechtsprechung, Diss. Tübingen 1965; *Burdeau, Libertés publiques*, p. 425 *et seq.*; *Morange*, Réflexions sur la protection accordée par le juge administratif à la liberté du commerce et de l'industrie, D. 1956, Chron. 117 *et seq.*; *Mallen, La liberté du commerce et de l'industrie, en droit français, in: La liberté du commerce et de l'industrie en droit public suisse et comparé, 1954, p. 199 et seq.*; *Stahl*, Die Sicherung der Grundfreiheiten im öffentlichen Recht der Fünften Französischen Republik, Veröffentlichungen des Instituts für International Recht an der Universität Köln 61 (1970) p. 268 *et seq.*

d'exercer telle profession, art ou métier qu'elle trouvera bon; mais elle sera tenue de se conformer aux règlements de police qui pourront être faits'.[1] The freedom of economic activity is nevertheless subject to extensive restriction. In the case of many undertakings there is no longer any freedom of economic activity, and they are carried on exclusively by State monopolies (for instance, PTT, tobacco, matches, gunpowder). Against the establishment of monopolies by the legislature no appeal will lie on the principle of the right to freedom of economic activity. The power of the legislature to establish such monopolies for police or fiscal reasons has never been doubted by French learned writers.[2] The Preamble to the Constitution of 1946 does only envisage nationalization for 'services publics nationaux'; these are predominantly banks, insurance undertaings, motor car manufacturers and the industries concerned with raw materials. Some of these nationalized public undertakings compete with the private sector (for instance Gaz et Electricité de France, Radiotélévision, Renault), and others have the character of a monopoly.

If however industrial or commercial activities are carried on by a public undertaking, only the legislature can confer monopoly status upon such activities.[3] A *de facto* monopoly can come into being where the State acquires interests in private commercial undertakings and assists them by special measures. Moreover, where the private sector competes with public undertakings in the 'domaine public' the executive has the power to promulgate rules for the carrying-on of these activities, in order to secure optimal use of the 'service public'. This can go so far as to withhold any requisite permit from competing private undertakings, if competition could harm the public undertaking.[4] Also, the right to freedom of economic activity does not in practice impose any constraints on the setting-up of public undertakings in competition with the private sector. Originally, this was only permissible if 'special circumstances, such as the ensuring of appropriate supply' justified such measures.[5] To an increasing extent, however, the Conseil d'État has deemed it sufficient if any public purpose could be achieved by a public undertaking.[6] The right to freedom of economic activity could only place constraints upon public authority to the extent that it acted exclusively for gain.

Pursuant to Article 37 of the Constitution of 1958, the executive is directly authorized to issue directives for the purpose of regulating the economy. In its judgment the Conseil d'État has however set certain limits to this law-making power of the executive in that it has numbered the 'liberté de commerce et de l'industrie' amongst the fundamental guarantees under Article 34 of the Constitution, which can only be regulated by Parliament.[7] In this way it has for instance, declared illegal the issue of a permit to a film company subject to the condition that a State official held the right to take part in all meetings and to suspend the implementation of all decisions of company organs.[8] Although a statute of 1946 empowered the authorities to make the grant of licences subject to conditions, the Conseil d'État nevertheless held that conditions of this kind could only be imposed on the basis of explicit statutory provision. Accordingly, any fundamental intervention in this sphere of free economic activity will amount to regulating a fundamental principle within the meaning of Article 34; examples of such intervention are the introduction of marketing organizations for certain products; price restrictions, quota arrangements. This has been established explicitly in the judgment of the Conseil d'État of 28.5.1965 in relation to the quantitative limitation of petroleum imports.[9] The executive will therefore retain the power to make provision, within the framework of the law, for the more detailed implementation of measures for the purpose of regulating the economy.

It is still an open question how far the 'liberté de commerce' sets limits to the power of the legislature to enact provisions for regulating the economy. In view of the necessity, widely recognized in France, of extending state intervention in the economy, the hypothesis is scarcely conceivable in which the Conseil Constitutionnel could declare unconstitutional a statute for regulating the economy.

The taking-up of a trade or profession, and the practice thereof, and economic activity, generally, are subject to the reservation of 'ordre public'.[10] There are thus numerous restrictions based on statutes and regulations and designed to ensure the oversight of the way in which businesses are conducted, as for instance the Law of 19 December 1917 on the setting-up of undertakings which are dangerous, dirty, and cause disturbance. Restrictions can be made for moral, sanitary, economic or even general reasons relating to public safety. They range from the absolute prohibition on the carrying-on of certain kinds of trade (for instance no person may carry on the business of banking if he has a previous conviction for an offence relating to money) to the requirement for certain licences or particular evidence of competence to be given and finally to detailed rules for particular trades (pharmacists).

The courts distinguish between the freedom to exercise a trade or occupation ('liberté de l'activité professionnelle')[11] and the freedom to be admitted to a trade or occupation ('principes du libre accès à l'exercise par les citoyens de toute activité professionnelle').[12] In regulating the freedom to be admitted to a trade or occupation the executive is subject to appreciably more stringent constraints than in regulating the

1 Dalloz, Code administratif, 1951, p. 771.
2 Cf. *Schmid*, op. cit., p. 14, *Burdeau*, op. cit., 37, p. 437 *et seq.*
3 CE of 16.11.1956, Société des grandes huileries Perusson, RDP 1957, p. 351.
4 CE of 16.11.1956, Société Desaveine, Rec. p. 440.
5 *Stahl*, op. cit., p. 271; *Burdeau* op. cit., p. 437.
6 *Loschak*, Les problèmes juridiques posés par la concurrence des services publics et des activités privés AJDA 1971, p. 261 *et seq.*; *Burdeau*, op. cit., p. 440; *Stahl*, op. cit., p. 273; *Colliard*, Libertés publiques, p. 718 *et seq.*
7 CE of 28.10.1960, de Laboulaye, Rec. p. 570, further references in *Stahl*, p. 275 *et seq.*
8 CE of 29.7.1953, Société générale des travaux cinématographiques, Rec. p. 430.
9 CE of 28.5.1965, Société Mobil Oil française, Rec. p. 310.
10 Cf. for police restrictions in detail: *Burdeau*, op. cit., p. 425; *Morange*, op. cit., p. 117 *et seq.*; *seq.*; *Colliard*, Libertés publiques; *Waline*, Traité élémentaire de droit administratif, 9th ed. 1963.
11 CE of 28.10.1960, de Laboulaye, Rec. p. 570.
12 CE of 29.6.1963, Syndicat du personnel soignant de la Guadeloupe, RDP 1963, p. 1210; in general *Stahl*, op. cit., p. 268 *et seq.*

manner in which a trade or occupation is carried on. Thus, the Conseil d'État has stated in several judgments that the administration may not prohibit the exercise of a trade or occupation or make it subject to conditions or to administrative licences having no statutory basis.[1] In regulating the exercise of a trade or occupation, the administration may however have full regard to 'ordre public'. It is therefore lawful to stipulate the opening hours for pharmacies for reasons of public health, to prohibit certain activities in slaughterhouses for the prevention of disease, or to place dairies under a duty to supply milk to large families at the preferential State price.[2]

It has been widely assumed from these judgments that the change in economic and social thought allows extensive restrictions to be imposed on the exercise of a trade or occupation. There can be therefore not only the traditional restrictions in the sense of supervision for the avoidance of dangers but also restrictions on grounds of social justice. The overall impression from French learned writing is that the 'liberté de commerce et de l'industrie' is a freedom which is controlled and guided to a considerable extent.[3] It is epitomized by *Roche* as follows: 'Pur produit du libéralisme, la liberté du commerce et de l'industrie sans être abandonnée comme principe général de notre droit n'a cessé de dépérir en même temps que l'État étendait son contrôle sur l'économie'.[4]

Ireland

The Irish Constitution contains no provision explicitly guaranteeing the freedom of trade and occupation. The freedom of property guaranteed under Article 43(1)(2), which comprises 'the general right to transfer, bequeath and inherit property', may have some relevance to freedom of economic activity, but the question cannot be considered to have been elucidated by the courts.[5] Freedom of trade and occupation could perhaps be protected as a 'personal right of the citizen' within the meaning of Article 40(3)(1).[6] This also has still to be elucidated by the courts. Two cases dealing with the exercise of a profession are only concerned with the power of professional bodies to exclude members, and thereby to make it impossible for them to practice their profession. In the case of barristers a statutory provision ousting the jurisdiction of the ordinary courts has been held unconstitutional, though only by reference to the fundamental rights of justice (Justizgrundrechte) in the Constitution.[7] In another case, the question whether Article 40(3) contained 'a right to earn a living' was expressly left open since in the case in question there was in any case no infringement of such right.[8] If it be assumed that there is a guarantee of freedom of economic activity in Article 40(3) of the Irish Constitution, there is no doubt that statutory restrictions are possible to a considerable extent. What 'personal rights' are protected against interference by hte legislature and the extent to which powers are available to restrict such rights cannot be regarded as settled, having regard to the judgment of the Supreme Court in Ryan v Attorney-General, which was considered to be *avant-garde* by Irish learned authors.[9] In this case, the Court allowed little discretion to the legislature to pass a statute which could affect the bodily integrity of the individual. On the other hand, in reviewing by reference to the guarantee of property (Article 43) legislation for the purpose of regulating the economy, the Court has in some decisions accorded the legislature considerable freedom. The Court's decisions are not, however, entirely consistent on this subject.[10] All in all, we can speak of a constitutional guarantee in Ireland of freedom of economic activity, but one in relation to which the statutory powers to regulate have not been clarified. There are in fact numerous statutes regulating the freedom to take up a trade or profession.[11]

In Ireland there also exist several State monopolies which preclude any activity on the part of the private individual, such as the production, distribution and sale of electricity.[12] In other areas, the State carries on economic activity but does not exclude parallel private sector activity. In large areas there is competition between public and private sectors, though it would be wrong to speak of any appreciable restriction of freedom of economic activity because of the existence of the State-run economic undertakings.[13]

In accordance with what has been said above on legal protection generally, any restriction on commercial activity which cannot be justified by statutory provision can be challenged in court. In many cases, particular statutes also make express provision for appeals within the administration and also to the courts.[14]

Italy

Trade or occupational freedom is not expressly mentioned in the Italian catalogue of fundamental rights, but can be deduced indirectly from numerous provisions of the Constitution, particularly from the text of Article 4(2):

[1] CE of 22.6.1951, Daudignac, Rec. p. 362; CE of 26.2.1960, Ville de Rouen, Rec. p. 154; CE of 15.10.1965, Alcaraz, Rec. p. 516.
[2] Examples and references in *Stahl*, op. cit. p. 270; *Burdeau*, op. cit., p. 429.
[3] Cf. for instance, *Burdeau*, op. cit., p. 437; *Morange*, loc. cit., Chron. p. 117.
[4] *Roche*, *Libertés Publiques*, 3rd. ed. 1974, p. 85.
[5] Cf. *Kelly*, Fundamental Rights and the Irish Law and Constitution, 2 ed. 1967, p. 54 *et seq.*; *Barrington*, Private Property under the Irish Constitution, The Irish Jurist 8 (1973), p. 1 *et seq.*; *Temple Lang*, The Common Market and Common Law (1966), pp. 359-264.
[6] *Boldt*, Die Grundrechte in der Verfassung Irlands vom 29.12.1937, Diss. Bonn 1968, p. 116.
[7] *Boldt*, op. cit., p. 114 *et seq.*
[8] McDonald v. Bord na gCon, 100 ILTR89 (1966), Supreme Court.
[9] 1965, IR 294, Cf. *Kelly*, Fundamental Rights and the Irish Law and Constitution, 2 ed. 1967, p. 36 *et seq.*; also *Temple Lang*, Private Law Aspects of the Irish Constitution, The Irish Jurist 6 (1971), p. 237, 252.
[10] For a detailed account see *Barrington*, Private Property under the Irish Constitution, The Irish Jurist 8 (1973), p. 3 *et seq.*
[11] See references in *Boldt*, op. cit., p. 114.
[12] *Hegarty*, The Control of Government and Business, in *King* (ed.), Public Administration in Ireland, Vol. 3 (1954), p. 191.
[13] Cf. on such competition *FitzGerald*, State sponsored Bodies, 2nd ed. 1963, p. 30 *et seq.*
[14] Cf. from more recent legislation s. 5 of the Employment Agency Act 1971, No 27, and s. 10 & 11 of the Pawnbroker's Act 1964, No 31.

'Ogni cittadino ha il dovere di svolgere, secondo le proprie possibilità e la propria scelta, un'attività o una funzione che concorra al progresso materiale e spirituale della società'.[1]

Along with Article 4, Articles 41 (freedom of economic enterprise) and 33 (freedom of artistic and scientific endeavour, and the establishment of schools) must be considered.

The right to freedom of economic activity as a part of the freedom of trade or occupation is also not expressly guaranteed by the Italian Constitution, but Article 41(1) does provide for the freedom of private enterprise, a provision which embraces the right to freedom of economic activity.[2] This paragraph 1 may however be misconstrued, if it is not taken with the two following paragraphs of that Article, and with Articles 42 and 43 of the Constitution. The combination of these provisions allows a very considerable limitation to be placed on the freedom of private enterprise, which cannot be set forth here in greater detail.[3] As examples of the very extensive economic activities of the State which create limitations on free enterprise we refer only to some of the industries which are operated in a semi-public way: ENI (petrol), ENEL (electricity), IRI (banks, radio, television, Alitalia, motorways, etc.).

Article 43 seems to be of special significance in relation to freedom of economic activity:

'43. A fini di utilità generale la legge può riservare originariamente o trasferire, mediante espropriazione e salvo indennizzo, allo Stato, ed enti pubblici o a comunità di lavatori o di utenti determinate imprese o categorie di imprese, che si riferiscano a servizi pubblici essenziali o a fonti di energia o a situazioni di monopolio ed abbiano carattere di preminente interesse generale.'

As has been shown above, there is comprehensive judicial protection against unconstitutional statutes and unlawful administrative measures, which will accordingly also be available in cases of infringements of freedom of economic activity. But as the legislature has given a considerable measure of discretion to regulate this freedom, the constitutional protection of the individual is as a result correspondingly slight.

Luxembourg

By a constitutional amendment of 21 May 1948, there was incorporated into the Constitution, *inter alia*, a guarantee of economic activity (gewerbliche Tätigkeit) as Article 11(6). This took place as a result of recommendations by the Conseil d'État, which expressed doubts as to whether the right to work, the incorporation of which had alone been envisaged prior thereto, would be apt to cover independent activity. The new provision reads:

'La loi garantit la liberté du commerce et de l'industrie, l'exercice de la profession libérale et du travail agricole sauf restrictions à établir par le pouvoir législatif'.

Despite the twofold reservation this constitutional provision is of some importance. The legislature is entrusted with the task itself of defining the freedom of economic activity and of providing for the limits thereto and for possible derogations therefrom.[4] State intervention in the economy is thus precluded in so far as the executive can no longer itself define the substance of the freedom of economic activity. Existing statutes will however remain in force until new legislation has been passed, in accordance with Article 11(6) of the Constitution.[5] Directives having the force of statute, which were issued before the constitutional amendment, also may continue to limit freedom of economic activity.[6]

Since the Constitution guarantees the right to freedom of economic activity without elaborating on what its substance is, those enacting ordinary statutes enjoy considerable discretion to define and restrict such right. They are however prevented from abolishing it altogether.[7] On the other hand, the courts themselves further limit any limitations on a fundamental right by means of the principle that restrictive provisions must be narrowly construed.[8] The statutes elaborating and restricting freedom of economic activity can empower the administration to issue implementing regulations. These must however be within the ambit of the limitations which are possible by statute. Administrative regulations cannot be founded directly upon the power in the Constitution to impose limitations.[9]

Certain areas may be excluded from the freedom of economic activity. This follows from Article 11(6) of the Constitution. The learned authors in Luxembourg have not yet discussed how far such such exclusion may go.

The Netherlands

There is no constitutional guarantee of trade or occupational freedom in the Netherlands. Nor do writers on constitutional law assume the existence of any unwritten constitutional principle to that effect.[10] The State Commission for Constitutional Reform (Cals-Donner-Commission) has incorporated in its draft constitution a right to free choice of occupation:

[1] Cf. on Article 4 Corte Costituzionale, sentenga. 45/1965
[2] Cf. Corte Costituzionale, sentenga 16 December 1958 No 78 on the concept of the initiativa economica.
[3] Cf. in this respect *Mortati*, op. cit., p. 1013 *et seq.*; *Biscaretti di Ruffia*, op. cit., p. 721 *et seq.*; both with extensive references to other authors; and also *Lavagna*, La Costituzione italiana, commentata con le decisioni della Corte Costituzionale, Article 41, paragraph D (p. 555 *et seq.*).
[4] Thus *Majerus*, op. cit., p. 82.
[5] Thus, with reference to Article 120 of the Constitution, Conseil d'État, judgment of 29.5.1965, Pas. Lux. XIX, p. 528.
[6] Cour supérieure de justice, judgment of 26.10.1955, Pas. Lux. XVI, p. 397.
[7] Cf. the judgments on the right to strike defined by similar legal method (Article 11 (5) of the Constitution) Cour de Cassation, judgment of 24.7.1952, Pas. Lux. XV, p. 355; judgment of 15.12.1959, Pas. Lux. XVIII, p. 90.
[8] Conseil d'État, Comité du contentieux, judgment of 2.7.1958, Pas. Lux. XVII, p. 319.
[9] Conseil d'État, Comité du contentieux, judgment of 12.7.1957, Pas. Lux. XVII, p. 158.
[10] Cf. the works cited above by *Belinfante*, *Kranenburg*, *Oud*, *Van der Pot-Donner*, and *Stellinga*, Grondtrekken van het Nederlands Staatsrecht 1953.

'Article 80(3): Het recht van iedere Nederlander op vrije keuze van arbeid wordt erkend, behoudens de beperkingen bij of krachtens de wet gesteld'.

In the view of the Commission, this provision covers work either as an employee or on one's own account. This article contains an extensive reservation, which lacks substantive definition: the right is recognized subject to reservations to be effected by statute or powers derived thereunder. Accordingly, choice of occupation will no longer be subject to restrictions based on general powers. It will however remain possible for, say, a local authority to regulate, by virtue of its powers of administrative autonomy, the actual carrying-on of trades or occupations.[1] The delegation of the power to impose restrictions is considered to be lawful also for the future.[2] It is worth noting that this proposed provision for fundamental rights is placed amongst the social fundamental rights, with the consequence that even according to the draft of the State Commission, judicial review of ordinary statutes by reference to this constitutional provision will not be permitted.

Until the new constitutional provision is promulgated, the regulating of the freedom of economic activity in the Netherlands is completely in the hands of those enacting ordinary statutes. We cannot set forth in detail here the extent to which in this way interference occurs in practice. What is certain however is that in the current state of the law most areas of economic activity are open to the individual, but greater and increasing interference cannot be ruled out.

United Kingdom

Freedom of economic activity is guaranteed under the British constitutional system as part of the freedom of conduct generally, as described above. The right to do whatever is not prohibited also applies to the economic activity of the individual. It is true however that freedom of economic activity is not one of those fundamental rights which have acquired particular features in constitutional practice. Thus only occasionally in learned writing is there mention of 'economic liberty'.[3] Street in his fundamental study of fundamental rights in the United Kingdom[4] deals with these questions under the heading of 'freedom to work'.

The fact that freedom of economic activity is guaranteed as part of the freedom of conduct generally does of course not imply that any person may take up and carry on any trade, since the legislature now increasingly regulates economic activity. The extent to which this should and may occur is, having regard to the legal situation as described, not a question of constitutional law but a political question. The two major parties have held and continue to hold different views on it.[5] There is however a long tradition of regulating trade for reasons of public order. Thus, a licence is required for the taking-up of many occupations.[6] The right to authorize the taking-up of a trade or profession may also be transferred to professional or trade bodies.

Where there are no statutory rules relating to the issue of licences the general right to freedom of economic activity can develop to the fullest extent. An example of this is the appearance of what are referred to as radio-cabs in British cities, in addition to the duly licensed taxis. A licence is only necessary for a driver who plies for hire on the streets, but not for one who is summoned by radio. Thus the radio-cabs have become established as a flourishing trade.

In the United Kingdom, major parts of the economy have been nationalized, especially after the Second World War.[7] This nationalization extends in particular to the coal and steel industry, the supply of electricity and gas, and to major parts of the transport industry. Coal, electricity and gas are public sector monopolies and accordingly no trade can be carried on in these areas. In the transport industry, the area available to the private sector has been altered by statute on several occasions, and has been a subject of political controversy.[8]

Judicial protection is in principle available if the administration interferes without lawful cause with freedom of economic activity. Various statutes provide for particular appellate procedures. Even where such a procedure is not explicitly provided for, the courts can still review the administrative act in question. This will always be the case unless judicial control has been expressly excluded. From time to time however, there is criticism that in this regard legal protection is deficient in certain respects.[9]

In view of the fact that it is not possible to speak of a constitutionally secured freedom of economic activity in the United Kingdom and that everything depends on numerous and varied provisions, both statutory and extra-statutory, this short survey is sufficient for our purposes.

Assessment

Freedom of economic activity of the individual has, as the preceding conspectus shows, been expressly regulated under the Constitutions of the Federal Republic of Germany and of Luxembourg. Rudimentary or at least obscure points of reference for the protection of freedom of economic activity are

[1] This is deduced from Article 168 of the Gemeentewet: 'Aan hem (= de Raad) behoort het maken van de verordeningen, die in het belang der openbare orde, zedelijkheid en gezondheid worden vereischt...'.
[2] Staatscommissie, Eindrapport, op. cit., p. 220 *et seq.*
[3] *Mitchell*, op. cit., p. 343 *et seq.*
[4] Cf. *Street*, Freedom, the Individual and the Law, 1963, p. 9 *et seq.*
[5] Cf. on the one side *Utley, the Principles of State Intervention. A Conservative View, Public Law, 1957, p. 203, and on the other side Shore*, The Principles of State Intervention, A Socialist View, *idem*, p. 218. On the problem of statutes conferring on the executive a discretion in questions of management of the economy, cf. *Ganz*, The Control of Industry by Administrative Process, Public Law 1967, p. 93 *et seq.*
[6] Cf. the survey in *Williams*, Control by Licensing, Current Legal Problems 20 (1967), p. 81 *et seq.*; *Street*, op. cit., p. 238 *et seq.*
[7] Cf. the survey in *Tivey*, Nationalization in British Industry, 1966, especially p. 38 *et seq.*; *Kelf-Cohen*, British Nationalization 1945-1973, 1973, especially p. 19 *et seq.*
[8] Cf. *Tivey*, op. cit., p. 46 *et seq.*
[9] Cf. *Williams*, op. cit., p. 102 *et seq.*

to be found in the Constitutions of France, Ireland and Italy. No relevant constitutional provisions appear in the Constitutions of Belgium, Denmark, the United Kingdom and the Netherlands; but for the Netherlands there is at least a proposal for the enlargement of the Constitution. In the case of all countries of the European Communities it is thus established that within the framework of an economic system oriented towards a market economy important areas of commercial venture and activity are privately owned and open to entry by the individual. It is also beyond doubt that the extent of State intervention and regulation varies from State to State, but that no State refrains from intervening in many different ways in the economic process and in the freedom of economic and commercial activity.

The right to choose freely and exercise a trade or occupation, especially in the commercial field, can be considered a common feature of the legal systems of the Member States of the European Communities. The EEC Treaty also proceeds on the assumption, *inter alia,* in its provisions relating to freedom of movement and establishment, that the individual is free to choose and determine his occupation largely on his own responsiblity. Any comprehensive regulation of commercial or professional life would moreover be incompatible with any legal system based on liberties, and would go to the heart of the principle of personal development. For these reasons, any catalogue of fundamental rights for the European Community could hardly dispense with the fundamental right of freedom to carry on a trade or occupation (whether as an employee or on one's own account). Formulating such a right should not present any fundamental difficulty; existing fundamental rights at the national level, the rules contained in ordinary statutes, and the views arrived at by the courts, such as the French Conseil d'État, could be of assistance.

It is at the same time inevitable that the national legislature as well as Community authority will, to the extent of their competence in that behalf, intervene in the freedom of trade or occupation for regulatory purposes. This is happening continuously, as a glance at the national official gazettes and the Official Journal of the European Communities will show. These interventions occur at different levels and with varying degrees of intensity. In many States, State monopolies and nationalizations remove important areas from the ambit of the individual's right to choose freely an economic activity. In all States, there are certain occupations and activities which are reserved to persons in the service of the State. Many activities may only be taken up by government authority or permission. In the exercise of most trades or occupations various aspects of the public interest must be kept in mind.

The lany forms of State intervention in the freedom of trade or occupation are governed by different motives and aims. Sometimes the intervention is prompted—as is the case with nationalization—by general ideas of a just and democratic economic system. On other occasions the factors governing the extent and purport of the restrictions placed on the freedom of trade or occupation are public safety and order, the protection of particular occupational are public safety and order, the protection of particular occupational groups, the protection of the immediate environment and of the environment generally. These are different concerns which can take various forms, but whose basic justification or reasonableness can hardly be disputed, and they cannot, in my view, be set out in any catalogue of fundamental rights as limitations on the freedom of trade or occupation in a manner which is comprehensive and at the same time sufficiently precise. There is therefore hardly any alternative to making any incorporation of a fundamental right relating to freedom of trade or occupation within a European catalogue subject to a reservation which would permit Member States and Community organs alike to make rules, to the extent of their competence at any given time, as to the limitation on the freedom of trade or occupation requisite for the life of the Community.

2. Protection of the legal right to rely on an established legal position

As mentioned above, it is sensible, in this discussion of certain fundamental rights taken by way of example, to select also an unwritten right or a legal principle serving to protect the individual. As is shown by the judgments for instance of the French Conseil d'État or the German Bundesverfassungsgericht or even the Court of Justice of the European Communities, it is by no means the clearly defined traditional fundamental rights which always play the most important part within the daily work of the administration and the courts; in practice it is rather the expression of general principles such as legal certainty and constitutionality of administrative action that can be more important to the individual than for instance the freedom of belief and conscience. The importance of general constitutional principles will increase as sovereign authority intervenes more and more at national and supranational level for the purpose of regulating the economic process.

One of the most important questions in any constitutional system is that of the legality of State interference with rights of the individual which are already established. Part of the question has been clearly answered in the field of criminal law: most States accord protection as a fundamental right to the maxim *nullum crimen, nulla poena sine lege;* it even appears in the ECHR (Article 7). Here we are not concerned with this prohibition on retrospective criminal liability, but other problems are of importance for European Community law. For one thing, it is of great importance to know how far the legislature (including the law-making authority at European level) may impose on citizens liability of a retrospective nature; this is of special importance in fiscal legislation. Equally important is the question of the extent to which the rights of the individual once acquired or established may be set aside *ab initio* or in the future, whether by the legislature or by the executive; in relation to concessions, licences, etc. this may be

of cardinal importance for the economic existence of the individual. This question of the protection of the legal right to rely on the continuance of the legal position, and of established rights of the individual, will be explored below by means of comparative legal studies. This problem also is too complex to be treated here without over-simplification and certainly also incidental inaccuracy. However, a brief review should convey the possibilities and the limitations of what could be secured by an explicit fundamental right.

Belgium

There appears to be no prohibition in Belgium on alterations to the legal status quo to the detriment of the individual. The restrictions of Article 11 of the Constitution ('Nul ne peut être privé de sa propriété que pour cause d'utilité publique, dans les cas et de la manière établis par la loi, et moyennant une juste et préalable indemnité') are not capable of generalization. The right of property itself is subject to restrictive regulation in accordance with the concept of the individual's commitment to society (Sozialbindung): and as to the right to compensation under constitutional law, the protection it affords seems only to extend to immovable property, since those who enacted the Constitution clearly took propriété to mean only propriété immobilière.[1] There are, however, ordinary laws which provide for compensation for deprivation of moveable property.[2] Moreover, the Conseil d'État may recommend that compensation be paid for damage suffered by reason of lawful acts on the part of the State. At any rate we can find no general prohibition or substantive restriction on the power of the State to interfere with the rights of the individual.

There seems to be no bar to the retrospective application of statutes. Even in the case of retrospective fiscal legislation, its constitutionality is not questioned. At worst, it is considered bad politics.[3]

As to the power of the administration to revoke, or to modify to the detriment of the individual, licences lawfully issued, there is little in relevant Belgian learned writing to permit of precise conclusions. It seems however to be recognized that the administration may modify or revoke concessions on the basis of a statutory provision, if they relate to the 'gestion privée de service public', that is, the discharging of a task of the administration by private persons. This covers, for instance, the operation of railway or bus services.[4] Moreover, it would appear that the withdrawal or modification of licences is lawful, at least on the basis of statutory provision, in cases where in principle there is freedom of economic activity. But this question is not the subject of any coherent exposé in Belgian learned writing, with the result that it is difficult to make unequivocal statements thereon.

Denmark

A general prohibition on the alteration of the legal position to the detriment of the individual exists neither as part of the Constitution nor in other statutes. Only in individual statutes are there provisions prescribing to any extent whether and in what circumstances an administrative act can, or must, be revoked and when not. Similarly, it is only in certain statutes that provision is made as to the extent to which an administrative act may be accompanied by a power of revocation.[5] For the rest, the general principles established by writers and by the courts will apply. In this respect the following distinctions are to be drawn: Constitutive administrative acts (konstitutive Verwaltungsakte) governed by statute may be altered or revoked only to the benefit of the citizen. The reservation of a power of revocation is unlawful in the absence of any enabling statutory provision. Constitutive administrative acts which are in the discretion of the administrative authority may, if they impose a liability on the individual, be revoked at will; but they may also be altered to his detriment if the statute provides for the imposition of liabilities which exceed those imposed by the act in question. Discretionary administrative acts which benefit the individual may be revoked, unless, exceptionally, the reliance placed by the citizen on the continuance of the *status quo* must prevail. When acting within scope of any discretion conferred upon it, the administration may reserve a power of revocation. Declaratory (feststellende) administrative acts may only be altered to the benefit of the person concerned. The revocation of an administrative act cannot be justified by an error of fact—this is a risk which the administration must bear—nor by an error of law, if the administration mistakenly considered itself to be under an obligation, or by changes in the law brought about by the passing of a new statute. If however a substantial change in the external circumstances has occurred, or if the public interest so requires, revocation is possible, provided regard is had to the interests of the individual.

In the case of what are termed police licences, whereby a statutory fetter placed on the general freedom of conduct is removed in the individual case in question, the interests of the individual and the public interest in security and order oppose each other. If there is a threat to public security and order, the licence can as a rule be revoked or modified. But in cases where the legal position has changed appreciably, where there have been errors of fact or of law on the part of the administration, and where new statutes have been passed, the public

[1] Cf. *Dor* and *Brass*, Les novelles, Vol. 2, p. 83 *et seq.*; *Wigny*. Cours de droit constitutionnel, p. 186; *id.* Droit constitutionnel, p. 288; Cour de Cassation, 6 April 1960, Revue critique de jurisprudence belge, 14 (1960), p. 257-308 with note by *Dabin*.
[2] Cf. *Mast*, Précis de droit administratif belge, 1966, p. 144.
[3] Cf. *Wigny*, Droit constitutionnel, pp. 127, 833 *et seq.*, 835 *et seq.*
[4] Cf. *Buttgenbach*, Manuel de droit administratif, 1954, pp. 191, 201 *et seq.*
[5] Cf. the list in *Andersen*, Dansk Forvaltningsret, 5th ed. 1966, pp. 494, 498.

interest will as a rule prevail, and then a licence granted unconditionally may be withdrawn. This principle will however apply only to a limited extent if the citizen concerned has already incurred particular expense in connection with the licence, e.g. as with construction and trading licences.[1]

With the exception of Article 3 of the Penal Code, which states that any provision increasing penalties shall not have retrospective force, the Danish legal system contains no general prohibition on the retrospective application of statutes. Where the legislature deems it necessary, it may give statutes such retrospective effect. There is however a presumption that a statute is only to have effect for the future.[2] Regulations and administrative provisions can, as a rule, only have retrospective effect if the statute in question makes provision for this.[3]

Federal Republic of Germany

The comprehensive judicial protection of the individual against State interference in the Federal Republic of Germany has led to a large number of decisions on the question whether and to what extent legislature and administration may interfere with rights of the individual which are already established, and may modify the legal position, and also to a process of ever-increasing differentiation, which makes it difficult to draw the line correctly between those interferences which are lawful and those which are not. In this regard the text of the Constitution provides no help for the organs of State and for legal science; and it has been left to the courts, in particular the Bundesverfassungsgericht, to deduce the appropriate rules from the constitutional principle of the rule of law. At the level of ordinary statutes, there are a variety of different rules for the various areas, such as for the revocation of licences under the law relating to trade, for the withdrawal of approval in the case of a doctor or a pharmacist, etc. The courts have furthermore evolved general unwritten principles of administrative action in accordance with the rule of law which must also be observed. The most important distinctions in the current law of the Federal Republic of Germany will be described below.

The retrospective amendment of statutes to the detriment of the individual is, according to the judgments of the Bundesverfassungsgericht, fundamentally incompatible with the princple of the rule of law in the Constitution, and is therefore unlawful. This seemingly simple principle presents many difficulties in practice. Thus one speaks of a true and a false retrospective effect, and distinguishes between the respective categories; and in relation to amendments of statutes the matter does not always depend on the date upon which the statute is published, but a limited measure of retrospective effect is permitted in cases where the individual must have been able to foresee his position being adversely affected and could make arrangements accordingly. A recent decision[4] summarizes the relevant principles as follows:

'Onerous statutes which interfere with transactions already completed in the past, and thus have a true retrospective effect, are generally contrary to the Constitution since they offend against the requirements of legal certainty and protection of legitimate expectation which form part of the principle of the rule of law.[5] A statute is said to have false retrospectivity when it does not affect past transactions and legal relationships, but affects not merely future ones, but also, for the future, those not yet completed, thereby devaluing after the event the legal position as a whole.[6] Such statutes are in principle permissible. The concept of protection of legitimate expectation may, however, in this case set limits, depending on the facts of the particular situation, to the power of the legislator.[6]

The citizen cannot invoke the protection of legitimate expectation as an expression of the principle of the rule of law if his expectation of the continuance of a legal situation cannot fairly claim to be respected by the legislator. The relevant considerations here are, on the one hand, the extent to which his legitimate expectations have been disappointed, and, on the other hand, the importance of the public good which the legislator is seeking to secure. They must be balanced against each other.[7]

In German constitutional law, seen as a whole, there is thus in principle a prohibition on giving retrspective effect to statutes which impose a liability, but this prohibition is somewhat mitigated by the consideration afforded to the protection of legitimate expectation and to overriding community interests. The principle of th rule of law is not opposed to statutory amendment *pro futuro;* but other constitutional provisions and principles, particularly the protection of property, can prevent statutory interference with the established rights of the individual.

Even more complicated is the legal position in relation to the power of the administration to interfere with the established rights of the individual, or to disappoint his expectations when they are well founded in law. Here, various overlapping legal considerations have a part to play: the lawfulness or otherwise of the existing situation, the protection of the legitimate expectations of the individual, and the weight of the community interests at stake. In the case of rights acquired contrary to law, the following distinctions are drawn: benefits contrary to law which are acquired by fraud, or by the fault of the individual in question, may be revoked retrospectively; payments made or services rendered by the State contrary to law without any fault can however only be withheld for the

[1] Cf. on all the above the comprehensive comments in *Andersen*, op. cit., p. 485 *et seq.*
[2] *Andersen*, op. cit., p. 27.
[3] *Ross*, op. cit., p. 499.
[4] BVerfGE 39, 128 (143 *et seq.*, 145 *et seq.*); cf. also BVerfGE 39, 156 (166 s) and, among earlier cases, e.g. BVerfGE 30, 272 (285 *et seq.*).
[5] BVerfGE 30, 392 (401); consistent case law.
[6] BVerfGE 30, 392 (402); consistent case law.
[7] BVerfGE 14, 288 (301); 22, 241 (249); 24, 220 (230); 25, 142 (154); 25, 269 (291); 31, 222 (228 *et seq.*).

future, and no recovery claimed in respect of the past; finally, in exceptional cases the administration must, in accordance with decided cases, even allow a situation contrary to law to continue, if in the case in question the protection of legitimate expectation so requires. These rules have chiefly been evolved in relation to the payment of pensions. When the administration has acted lawfully, the power to revoke concessions, licences etc. is not without limitation, but such revocation is usually lawful where preponderant interests of the community so require, and the legal provisions in question so permit. The pre-conditions and the consequences of revocation of benefits or licences by the authorities will vary as to the area of human activity affected. It is easily perceived that for the protection of the community, a driving licence for a motor vehicle may be withdrawn from a person whose health is such that he is no longer fit to drive, the approval may be withdrawn from a doctor who is a danger to the public, and a pharmacist's licence may be revoked if he is addicted to drugs. An important provision is contained in Article 51 (1) of the Trade Act (Gewerbeordnung):

'Wegen überwegenden Nachteile und Gefahren für das Gemeinwohl kann die fernere Benützung einer jeden gewerblichen Anlage durch die zuständige Behörde zu jede Zeit untersagt werden. Doch muß dem Besitzer alsdann für den erneislichen Schaden Ersatz geleistet werden.'

The first sentence of this provision can perhaps be regarded as a general principle of law, even though the principle of the rule of law has caused it to be formulated explicitly in a statute. In a case of serious conflict between the interests of the community and rights hitherto enjoyed by an individual, the latter must bow to te former, although compensation is to be granted if necessary.

It should be clear that neither the principle of the rule of law whereby the rights of the individual are to be respected by public authority, nor the exceptions therefrom for the benefit of the community can be precisely formulated in any succinct fundamental rights provision; but general clauses are a possibility. According to the law of the Federal Republic of Germany the courts, and not only the Bundesverfassungsgericht but particularly the administrative courts, have the duty to be vigilant to ensure both respect for the constraints of constitutional law by the legislature and compliance by the administration with the unwritten and written norms and principles of the rule of law. This duty is discharged effectively, with the result that a body of case-law based on fine distinctions is becoming increasingly difficult to relate back to uniform principles.

France

As to the prohibition on the retrospective effect of the acts of sovereign authority:[1] in the judgments of the Council d'État it has been repeatedly stated that no administrative act may have retrospective effect prior to the date of its publication or gazetting.[2] The reason for this prohibition on retrospective effect lies in the principle of legal certainty. The citizen may not have imposed upon him any liability of which he could not have known at the time when he entered upon the activity in question. This prohibition, however does not apply where a statute contains an express provision to the contrary.[3] The problem of retrospective effect must be distinguished from the application of an administrative measure to a situation which in legal terms had come into being prior to the adoption of that measure.[4]

As to the retrospective effect of statutes: under Article 2 of the 'Code Civil', thee is a statutory prohibition on retrospective effect: 'La loi ne dispose que pour l'avenir; elle n'a point d'effet rétroactif'. However, from ths specific prohibition on retrospective effect for the purposes of the Code Civil, no general prohibition on retrospective amendment of statutes to the detriment of the individual may be deduced. The problem itself so far as we can see has not been more widely discussed in learned writing. This is due to the fact that until recently statutes could only under very restrictive conditions be reviewed as to their compatibility with the Constitution. From the principles relating to the retrospective effect of administrative acts it can however be inferred that there exists no statutory prohibition on retrospective effect. The Conseil d'État has allowed exceptions from the prohibition on retrospective effect of acts of sovereign authority, whenever the law expressly empowered the administration in that behalf.[5] It may be inferred from this that a statute itself could be amended retrospectively to the detriment of the individual. A prohibition on retrospective effect for statutes would not in any case be in keeping with French legal tradition.

As to revocation of licences:[6] French law proceeds from the principle that the administration can in the public interest always adapt its position to accord with new situations.[7] Thus, regulatory administrative acts ('actes réglementaires') may always be revoked. The persons affected have no protection in respect of any reliance they have placed on the continuance of a regulatory provision. An individual act may however only be revoked at will by the administration, if it has not created a right (nicht rechtserzeugend). Acts not creating a right in this sense are deemed to include authorizations ('autorisations') and revocable measures ('actes précaires et révocalbes').[8] There is for instance no right to the continuance of a permit for the carrying-on of an activity within the 'domaine public'. Furthermore, any act the object of which is of a provisional nature may be revoked. Even an act creating a

[1] *Debbasch*, op. cit., p. 332 et seq.; *de Laubadère*, Traité de Droit Administratif, 6th ed. 1973, Vol. I, p. 300 *et seq.*; *Dupeyroux*, La règle de la non-rétroactivité des actes administratifs, 1954; *Letourneur*, Le principe de la non-rétroactivité des actes administratifs, Études et documents 1955, p. 37 *et seq.*
[2] CE of 25.6.1948, Société l'Aurore, D. 1948, p. 437, Note *Waline*.
[3] CE of 14.11.1962, Dupré de Pomarède, Rec. 871.
[4] Cf. *Debbasch*, op. cit., p. 333 with references from decided cases.
[5] CE of 14.11.1962 Dupré de Pomarède, Rec. 871.
[6] Cf. *de Laubadère*, op. cit., p. 322 *et seq.*; *Debbasch*, op. cit., p. 333 *et seq.*
[7] CE of 25.5.1954, *Syndicat national de la meunerie à seigle*. D.1955, p. 49; CE of 27.1.1961, Vaumier, Rec. p. 6'.
[8] *Debbasch*, op. cit., p. 334.

right may be revoked if the law so provides. Similarly, revocation is possible if important changes have occurred in the factual or legal setting which militate against the continuance of the act.

The retrospective revocation of an act which has created a right is impossible. This is not so in respect of an act which has created no right. The revocation of an act contrary to law is possible, if it has not resulted in the creation of a right. In such case, revocation may be effected within the time prescribed for objection, or in the course of administrative court proceedings. The principle will apply that wherever a court may quash an act, the administration must likewise be entitled to do so.

Ireland

On the protection of rights which are already established under Irish law, no more detailed statement can be derived from Irish learned writing or case-law. It can probably be assumed however that the Irish legal system, in so far as it has not been amended by statutes passed after independence, continues to follow the principles of English law, admittedly with the important additional feature that a series of rights, which in the United Kingdom merely form part of the constitutional tradition and are at the mercy of the legislature, are constitutionally secured in Ireland. A general prohibition on the alteration of the legal position to the detriment of the individual, or individual particular prohibitions of this kind, cannot really be deduced from the Irish Constitution. Even the prohibition on statutes with retrospective effect exists, as has been said, only in relation to criminal law. As to the possibility of the revocation of lawfully issued licences, what is said in relation to the United Kingdom holds good here.

Italy

The question as to the lawfulness of alterations of the legal position to the detriment of the individual, as well as of the revocation or modification of lawfully issued licences to the detriment of the individual, as well as of the revocation of modification of lawfully issued licences to the detriment of the individual, arises in a special way in the Italian legal system, in that the character of the right concerned has a major part to play. The Italian legal system differentiates between four kinds of rights or legally protected interests, which attract differing measures of protection. The most strongly protected are the 'diritti soggettivi (privati e pubblici)' that is, subjective rights; they are defined as interests accorded by law to the individual exclusively, and thus enjoying direct protection.[1] These subjective legal rights cannot be affected or amended by the State.

The second group of rights and legally protected interests comprises the 'diritti affievoliti' or 'diritti esposti ad affievolimento',[2] that is, rights from whch derogations have been or can be made. These are subjective rights which could come into conflict with the interests of public administration. As long as this conflict does not arise, these rights have the same protection as subjective rights. If however such conflict does arise, the interests of the individual are subordinated to the public interest.[3] This correlation of the right of the individual and the public interest can arise from the moment the right comes into being or only subsequently; in the first case the rights are called 'diritti affievoliti', and in the second 'diritti esposti ad affievolimento'. An example of typical 'diritti affievoliti' are the rights arising under concessions; and an example of the 'diritti esposti ad affievolimento' is the right of property, the 'affievolimento' of which may, in an extreme case, be expropriation. All fundamental rights to which a reservation attaches can generally be taken as examples of 'diritti esposti ad affievolimento'. The protection of the 'diritti affievoliti' is equivalent to that of the 'interessi legittimi', the third kind of right now to be described in detail.

The 'interesse legittimo' is an interest of the individual which is closely bound up with the public interest.[4] If the public interest is a preponderant one the right of the individual must be subordinated thereto. This means that the administration may always revoke or modify at will any alteration in an individual's right where it is a 'diritto affievolito' or an 'interesse legittimo', if this is in the public interest.[5] The fourth group of rights is what are called the 'interessi semplici'[6] which are not recognized by law. The protection of these interests is normally effected by the administrative authorities but rarely by the administrative courts.[7]

The position is therefore that the rights of individuals may not be altered, if such rights are subjective rights, but that all other forms of rights may be altered at any time, if there is an over-riding public interest. Whether any right is a subjective right will be determined by the court whose jurisdiction is invoked; moreover, this can as a rule be elicited from the provision of law regulating the right in question. Thus, for instance, all fundamental rights to which a reservation attaches are to be regarded as 'diritti esposti ad affievolimento'; whether in any given case the limitation of the right is justified is for the courts to decide. In the case of concessions, approvals, etc. any alteration in the rights granted to the individual is always lawful, if the public interest demands it. If the public interest, for instance, requires the revocation of a concession, this is not, according to Italian legal thought, an instance of the revocation of an unimpeachable administrative act to the detriment of the individual, but is rather the revocation of an adminstrative act which was originally unimpeachable but which has become defective by reason of

1 *Zanobini*, Corso di diritto amministrativo, I, p. 187.
2 *Sandulli*, Manuale di diritto amministrativo, p. 74 *et seq.*
3 *Zanobini*, op. cit., p. 189.
4 *Landi/Potenza*, op. cit., p. 149, Consiglio di Stato, 24.11.1962 No 13 and 8.1.1966 No 1 in Il Consiglio di Stato 1962, I, p. 1734 and 1966, I, p. 1.
5 Cf. Consiglio di Stato, IV, 30.3.1966 No 182, in Il Consiglio di Stato 1966, I, p. 478.
6 *Zanobini*, op. cit., p. 192.
7 *Landi/Potenza*, op. cit., p. 153.

the subsequent disappearance of the proper relationship between the act and the requirements of good administration. The legal basis for any such revocation is the principle that the action of the public administration must at all times accord to the greatest possible extent with the public interest.

The question whether statutes may be retrospectively amended to the detriment of the individual is dealt with in Article 11 of the Disposizioni sulla legge generale (also called preleggi), which states that the provisions of statutes may only affect the future and may not have any retrospective effect. (La legge non dispone che per l'avvenire: essa non ha effetto retroattivo). Plainly however this rule does not apply in an absolute way.[1] An amendment may however only be effected by a statute, that is, a source of law of equal status, whereby repeal will take place either implicitly, by virtue of the *lex posterior* rule, or expressly under the provisions of the new statute. A legislative amendment is also possible by means of a referendum (Article 75 of the Constitution, Article 27 of the Law of 25 May 1970, No 352). Criminal statutes are completely excluded from any retrospective effect (Article 25 (2) of the Constitution) and this must be extended by way of analogy to disciplinary measures.[2]

It is difficult to answer the question as to the possible effect of a statute, if the law hitherto in force has led to the creation of what is termed a 'diritto quesito' (acquired right) which in principle should not be affected by the new provision. No such diritto quesito will arise if the previous law had only conferred on the individual in question an expectation, or a legitimate interest. There is no answer of general validity to the question when a diritto quesito arises; opinion is divided and each case will require particular scrutiny.[3] All we can really say is that only criminal statutes and disciplinary provisions are subject to a strict prohibition of retrospective effect; in all other cases such effect must as a rule be affirmed where there is a preponderant public interest; however, where there are rights lawfully acquired (diritti quesiti), the individual case must be examined. There are however moves to extend the absolute prohibition on retrospective effect to fiscal legislation,[4] although the constitutional court has repeatedly declared retrospective fiscal legislation to be constitutional.[5]

Luxembourg

The law of Luxembourg does not contain any evident prohibition on altering the legal position to the detriment of the individual. Whether Article 16 of the Constitution[6] belies this appears doubtful, since hitherto the judgments of the courts in relation to Article 16 have dealt essentially with expropriation of immoveable property and compensation therefor.[7] Here we must refer to the legal position in Belgium, which frequently influences the Luxembourg legal system.

Similarly there is no express prohibition on the retrospective effect of statutes. Such effect has from time to time been denied by the courts in cases of individual statutes on the footing that such effect was not therein contemplated, but not for reasons of principle.[8] From this we can deduce that apart from criminal law the legal system of Luxembourg contains no general prohibition on such retrospective effect.

In terms of constitutional law it is also lawful to revoke or modify duly issued licences to the detriment of the individual. The courts do however require express statutory authority on the part of the administration. According to the decided cases, the administraton is not entitled to revoke a licence at will; this may only be done in the cases contemplated by statute, and on the basis of circumstances which have arisen after the licence has been issued.[9]

The Netherlands

Save in the more recent decided cases referred to below, there is in the Netherlands no prohibition on alterations of the legal position to the detriment of the individual. Retrospective amendment or retrospective enactment of statutes is precluded by Article 4 of the Law containing General Provisions in relation to Legislation;[10] but that Article is a provision having no more than the force of an ordinary statute, and is not formulated as a general constitutional principle.[11] The said provision is not directed to the legislature but to the courts, who have thereby placed at their disposal the presumption of construction that statutes are not enacted with retrospective effect unless there is specific provision.[12] Statutes having retrospective effect, though infrequent in the Netherlands, are none the less not unlawful.[13] In the context of law reform, however, the adoption into the Constitution of the principle of the prohibition on retrospective effect is being urged.[14]

The extent to which the administration is free to revoke licences depends on the extent to which it was under a duty

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[1] Cf. Consiglio di Stato IV, 30.4.1955, No 297 and VI, 11.7.1956, No 508 in Il Consiglio di Stato, 1955, I, p. 440 and 1956, I. p. 1002.
[2] *Zanobini*, op. cit., p. 108.
[3] Cf. *Romano*, Corso di diritto amministrativo, p. 72 *et seq.*; *Cammeo*, Corso di diritto amministrativo ristampa 1960), p. 252 *et seq.*; *Landi/Potenza*, op. cit., pp. 23 *et seq.*, 25; *Mortati*, op. cit., p. 345 with references to other works.
[4] Cf. the references in *Mortati*, op. cit., p. 346, Note 3.
[5] Cf. Corte Costituzionale, 9.3.1959, No 9, 16.6.1964, No 46, and many other decided cases.
[6] 'Nul ne peut être privé de sa propriété que pour cause d'utilité publique dans le cas et de la manière établis par la loi et moyennant une juste et préalable indemnité'.
[7] Cf. Cour de Cassation, judgment of 4.6.1953, Pas. Lux. XV, p. 493 on the substance of ownership. In connection with expropriation: judgment of 26.11.1915, Pas. Lux. IX, p. 487; Tribunal de Luxembourg, judgment of 15.6.1908; Pas. Lux. VIII, p. 14; judgment of 13.7.1955, Pas. Lux. XVI, p. 455; judgment of 28.10.1953, Pas. Lux. XVI, p. 29; judgment of 6.1.1960, Pas. Lux. XVIII, p. 175. In respect of the guarantee of ownership: *Majerus*, op. cit., p. 62 *et seq.*
[8] Cour supérieure de justice, judgment of 9.7.1959, Pas. Lux. XVIII, p. 5; Conseil supérieur des assurances sociales, judgment of 12.2.1953, Pas. Lux. XV, p. 467; Conseil arbitral des assurances sociales, decision of 30.6.1959, Pas. Lux. XVIII, p. 46.
[9] Conseil d'État, Comité du contentieux, judgment of 30.4.1952, Pas. Lux. XV, p. 441.
[10] Wet van 15 mei 1829, houdende algemeene bepalingen der wetgeving van het Koninkrijk (AB).
[11] *Oud*, op. cit., Vol. II, p. 171.
[12] *Duk*, Terugwerkende Kracht, Geschriften van de Vereniging voor Asministratief Recht, 54 (1965) pp. 5 *et seq.*, 51.
[13] Cf. the list in *Oud*, op. cit., p. 174.
[14] Thus *Jeukens*, Terugwerkende Kracht, Geschriften, loc. cit., pp. 53 *et seq.*, 94.

to grant such licences. A revocation may not be founded on reasons which would not justify a refusal of the licence. A licence the granting of which is not regulated by statute may be revoked, if the public interest requires such revocation and is not disproportionate to the interests of the person benefiting by the licence.[1] Modifications of a licence are subject to restrictions in so far as they represent a substantial alteration in the elicence originally issued.[2]

Certain statutes themselves contain provisions relating to the revocation of licences, such as the Law relating to the Carriage of Persons, the Cinema Law, the Law relating to Places of Refreshment and Closing Hours.[3] In these cases the fact that the issue of a licence is provided for by statute means that the administration is similarly bound as to revocation. On the other hand a licence the issue of which is in the discretion of the administration may be revoked at will. Originally the courts accepted such revocation at will.[4] More recent judgments however reveal a change. In these judgments there have been developed general principles of administrative law which run contrary to revocation at will. This revocation now requires the presence of real grounds,[5] or the principle of legal certainty and of protection of legitimate expectation is invoked.[6] In social security matters the importance of the rights lawfully acquired by the insured ('verkrgen rechten') has been held to preclude revocation at will.[7]

For the rest, the opinion seems to be gaining ground that in cases of revocation of licences there has to be a weighing-up of the respective public and private interests.[8] This may sometimes mean that while the revocation is lawful the person affected must be compensated.[9]

United Kingdom

Under the constitution of the United Kingdom there can be no general prohibition flowing directly from the constitution on the alteration of the legal *status quo* to the detriment of the individual. None the less there is a kind of constitutional tradition whereby rights lawfully acquired are to be respected. This is shown in the basic inclination of the legislature not to expropriate without compensation, and in the inclination of the courts not to construe statutes in such a way as to allow expropriation without compensation.[10]

Nor can there be any rigorous prhibition on retrospective statutes under the British constitutional system. British constitutional tradition is however reluctant to give statutes retrospective effect. In particular the reluctance to enact retrospective criminal statutes is a well-established part of this tradition. The question of the lawfulness of retrospective statutes has recently played a part in the controversy surrounding the Burmah Oil case. The House of Lords had in this case found in favour of an award of compensation for loss of certain facilities in Rangoon as a result of hostilities. The British Government thereupon introduced a bill in the House of Commons which prohibited the payment of such compensation and which had retrospective force, that is, it disentitled the plaintiffs in Burmah Oil from the compensation already awarded to them. During the debates on the bill in the House of Lords grave reservations were voiced against the bill on account of the prohibition on retrospective legislation. The House of Lords finally passed the bill, but it was clear that this was only because of the particular circumstances of the case, because ultimately the victims of the hostilities in Burma would have been placed in a considerably better position than those in the United Kingdom, who had no entitlement to compensation. The prohibition on retrospective legislation as a constitutional principle was heavily emphasized throughout the debate.[11]

Decisions made by the administration within the ambit of its powers are in principle binding on the administration.[12] On the other hand, the administration cannot bind itself by an act which is *ultra vires*. Accordingly, such an act may always be revoked. A difficult question is whether acts which at the time they were promulgated were *intra vires* can be revoked by reason of changes in the factual and legal setting. Learned authors assume this to be so.[13] These general principles are however only applicable in so far as there are no specific statutory rules.

Assessment

The preceding conspectus has demonstrated some basic underlying features but leaves a bewildering variety of individual questions. Apart from the prohibition on retrospective criminal statutes, only in the case of the Federal Republic of Germany can we speak of a prohibition on retrospective legislation that is reasonably clear and firm and also subject to judicial review. In all other Member States of the European Community the legislature is considered to have the power to enact formal statutes having retrospective effect even to the detriment of the individual. It is true that in various legal sys-

[1] Rapport van de commissie inzake algemeene bepalingen van administratief recht, 4th ed., p. 108.
[2] Rapport, op. cit., p. 109.
[3] Rapport, op. cit., p. 102.
[4] Centrale Raad van Beroep, judgment of 30.9.1924, AB 1924, No 4, 380; 20.12.1957, Gem. St. 1957, 5469; judgment of 30.5.1961, RSV 1961, No 135; Hoge Raad, judgment of 19.10.1936, NJ 1937, No 154; Gerechtshof Amsterdam, judgment of 30.6.1961, NJ 1962, No 486.
[5] Centrale Raad van Beroep, judgment of 22.12.1955, AB 1956, No 402 *et seq.*
[6] Centrale Raad van Beroep, judgment of 13.1.1959, AB 1959, 222; judgment of 12.12.1969, AB 1971, No 130; Gerechtshof te 's Gravenhage, otder of 23.6.1971, NJ 1971, No 308. In this case the President of the Court in interlocutory proceedings ordered the Government to continue to pay subsidies.
[7] Centrale Raad van Beroep, judgment of 7.11.1963, AB 1965, No 180; judgment of 23.1.1964, AB 1965, No 594.
[8] Rapport, op. cit., p. 107.
[9] Koninklijk Besluit of 19.12.1969, AB 1970, No 318; Koninklijk Besluit 8.4.1970, AB 1970, No 577.
[10] Cf. *Daintith*, op. cit., p. 300, and the example in *Wade*, op. cit., p. 180 *et seq.*; cf. further *Street/Wortley*, State and Private Property in English Law, Staat und Privateigentum, 1960, p. 131.
[11] Daintith, op. cit., p. 292; *Goodhart*, The Burmah Oil Case and the War Damage Act of 1965, Law Quarterly Review 82 (1966), p. 97 *et seq.*
[12] Cf. *Fazal*, Reliability of Official Acts and Advice, Public Law, 1972, p. 43 *et seq.*; *Ganz*, Estoppel and res judicata in Administrative Law, Public Law 1965, p. 237 *et seq.*
[13] *Ganz*, op. cit., p. 253 *et seq.*

tems there are presumptions as to the substance of such statutes, namely that in cases of doubt they are not to be given retrospective effect, and that other doubts have been expressed against the retrospective divesting of rights (compare for instance the doubts expressed in the British House of Lords), and that to some extent there is a demand, as in Italy, that retrospective fiscal legislation be prohibited. Such presumptions, doubts and demands can be seen as evidence for the fact that the giving of retrospective effect to statutes which impose a liability is constitutionally doubtful or repugnant; however, in most countries it is, in the final analysis, left to the legislature to decide whether for reasons of public interest there should be any retrospective effect.

Even less than a general prohibition on retrospective effect is it possible to demonstrate and justify any prohibition on the withdrawal even by statute of rights of the individual which have already been granted, and of vested individual which have already been granted, and of vested individual rights. On the contrary, the legislature is in principle, and subject always to specific provisions such as those protecting property, not precluded in terms of constitutional law from interfering with rights lawfully vested, and in this the question as to whether compensation shall be granted is very much left to the sovereign decision of parliament.

As regards the interference with vested or subsisting rights of individuals by administrative measures, we find in the various legal systems discussed a bewildering variety of statutory provisions, of general legal principles developed by the courts and by learned authors, and of particular aspects of detail. As a general principle it may well be accepted that the rights and interests of the individual must as a rule give way to preponderant community interests, that is, that the administration (usually on the basis of statutory provision), may interfere with rights, revoke or modify licences, if this is urgently required for reasons of public interest, in which case liability to pay compensation is probably more the exception than the rule. The prerequisites for, and the extent of, any interference with the rights of individual differ according to the sphere of activity in question and the interests at stake and cannot be regulated uniformly.

The fact that public authority is enjoined to respect the reliance placed by the individual on the existing legal position and on the continuance of vested rights can, on the whole, probably be seen as a general legal principle within the law of the Member States as well as in the law of the European Community; but it can scarcely be regarded as a constitutionally secured fundamental right. The adoption into a European catalogue of fundamental rights of any provision in this regard would certainly encounter considerable difficulties and require reservations expressed in general terms. This comparative legal study has shown that national law cannot provide any convincingly formulated precedents.

IV — Summary and outlook

1. Protection of fundamental rights under existing Community law

The Treaties relating to the European Communities contain individual provisions and reference points for the protection of the rights of the individual, but they contain no concluded catalogue of fundamental rights, nor do the various rules of Community law scattered throughout the Treaties together amount to a complete protection of all fundamental rights which might be infringed by Community authority.

The absence of written provisions relating to fundamental rights on the part of the Community does not, however, mean that the Community and its organs are not bound by fundamental rights. The position is rather that Community law, like the law of other international organizations and the written law of the individual States, requires to be supplemented by unwritten legal principles, which include, predominantly, fundamental rights and human rights. These legal principles, which supplement written Community law and are of equal status with primary Community law, can by means of comparative legal studies be identified out of the law of the Member States and from the rules of international law, including the ECHR, by which these States are bound. In its judgments the Court of Justice of the European Communities has with increasing precision acknowledged that Community law bears the imprint of fundamental rights which belong to the legal principles common to all Member States and which are embedded in their understanding of law; with this we would agree. The progressive development and deployment of general principles within the field of fundamental rights is part of the legitimate duties of the judicial arm, and of the jurisdiction of the Court of justice, as defined in the Community Treaties, to maintain Community law. In the nature of things it is only gradually and by the surmounting of uncertainties that judicial acknowledgment and implementation of unwritten legal principles can lead to a secured canonical corpus of protected fundamental rights.

In spite of the uncertainties and deficiencies in the safeguarding in practice of fundamental rights under Community law, it cannot be assumed that without the incorporation into written Community law of a formal catalogue of fundamental rights, the essential rights of the individual will remain unprotected. Written Community, law, the common legal principles of the Member States and the rules of international law relating to the protection of fundamental rights, seen as a whole, do provide, so far as can be foreseen, an adequate and reasonable measure of protection of fundamental rights against the action of Community organs.

2. Basic questions in relation to a catalogue of fundamental rights in the European Communities

Despite the fact that the lack of written provisions of Community law within the field of fundamental rights can be made good by evolving general principles of law—which in my opinion would be adequate—a written catalogue of fundamental rights in the European Communities would undoubtedly have many advantages. Such a catalogue would increase the certainty of law, reduce the difficulties of law-making judicial labour, and lend weight to the democratic entrenching of fundamental rights in Community law. Such a catalogue of fundamental rights could only become legally binding by means of a formal supplement to the Community Treaties, in the form of an international treaty to be ratified according to the law of the Member States.

If it is desired, by means of a comparison of the guarantees of fundamental rights in the nine Member States, to determine their common elements and to draw up on this basis a catalogue of fundamental rights under Community law, there are in principle two ways of doing this. It would be possible to concentrate on examining what fundamental rights, irrespective of all questions of their detailed implementation, really are in principle recognized in the various States; an attempt could then be made, having regard to the requirement of the Community legal order, to find appropriate independent formulations of 'European fundamental rights'. Alternatively, the comparative method might attempt to examine, in respect of each fundamental right individually, how far it is, both in law and in fact, protected in the States concerned. On this basis an attempt could then be made to draft a catalogue of fundamental rights embracing the whole Community. Any investigation of this kind would require extremely extensive and time-consuming preparatory work, and its value from the point of view of development of the law might well be doubted.

The fundamental rights to be incorporated into such an inventory cannot easily be defined. The priority would be to secure those fundamental rights which could be particularly vulnerable to attack by Community authority. Of the classical fundamental rights, few seem greatly to be threatened by Community organs. Protection is primarily needed for those fundamental rights which secure the individual's freedom of economic development; in addition to the principle of equality, there is for instance the protection of property, the freedom of trade or occupation and the freedom of movement; moreover requirements of the rule of law such as that of legal certainty, or the principles of proportionality and of protection of legitimate expectation, need to be safeguarded, although it is extremely difficult to frame these principles in the form of clear-cut fundamental rights.

The fact that some fundamental rights are particularly apt to be infringed by Community authority and are therefore to be protected as a matter of priority, should not, however, obscure the fact that numerous other fundamental rights can, if only in exceptional cases, acquire significance under Community law; any catalogue of fundamental rights purporting to be comprehensive would therefore require to be more widely drawn.

Even certain rights of the individual which *a priori* seem safe from interference by the Community may in particular cases require protection. For instance, the criminal law principle of *ne bis in idem* may be of significance in connection with the imposition of sanctions in cartel law or in the law relating to the discipline of those in the service of the Community. Press freedom may be affected by measured taken for economic purposes. The freedom of conscience, of opinion, and of scientific and artistic endeavour may require protection, at least for a limited class of persons, namely those in the service of the Community. Any consideration of the establishment of a catalogue of fundamental rights for the European Communities must therefore deal with the question whether only the most important and the most threatened of the fundamental rights are to be expressly guaranteed, or whether all fundamental rights which could possibly be breached by Community authority should be included. In the latter case, a comprehensive catalogue would have to be drawn up, whereas in the case of a catalogue restricted merely to a few fundamental rights there would be a need to avoid giving the impression that all fundamental rights not expressly mentioned were left unprotected, even if the general principles of law of the Member States require their protection.

A further question requiring an answer is whether and, if so, to what extent, social and democratic fundamental rights should be included in a catalogue of fundamental rights. What is the position of the right to work or the right of participation in the realizing of Community interests? In view of the widespread demand for extension of the powers of the European Parliament, the question of the establishment under the Treaty of a right of petition for the indivual must be considered. Recently there has been discussion of the question whether the nationals of a Member State should be entitled to vote in elections at local level in other States of the Community. Should a provision to this effect be included in any European catalogue of fundamental rights? In answering this question, regard would need to be had to whether the national law of individual Member States at present grants voting rights to foreigners, or whether in this respect constitutional amendment would be necessary. Finally it must be considered whether the system of legal protection of the EEC Treaty is in need of amendment intended to bring about increased protection of the individual's fundamental rights.

Comparative legal studies may certainly be of help in evolving a catalogue of fundamental rights, but such help appears to be of limited value. The fundamental rights discussed above, incompletely and by way of example, show that while the legal systems of the Member States have much in common at the level of principle, there do however remain considerable differences in detail. It is, above all, impossible to dispense

with more detailed examination and definition of lawful restrictions on fundamental rights. There will, in the majority of cases, be no alternative to providing for possible restrictions, since conflicts between individual interests and demands of the community are unavoidable and in many cases have to be resolved in favour of the general good. In view of the heterogeneity of the activities that require to be regulated, definitions of fundamental rights can rarely be drawn clearly and conclusively; accordingly, provisions in general terms will be essential. This in turn will involve the risk that the fundamental rights will be left turning in the void.

3. Outlook for future legal development

It is the duty of those having political authority to weigh up the reasons in favour of a formal catalogue of fundamental rights in the law of the European Communities against the difficulties and disadvantages of such a catalogue, and to arrive at their decision on the basis of such an appraisal. In concluding this study, it only remains to set out some points which will have to be taken into account in that appraisal.

I do not believe that the protection of the individual's fundamental rights can be appreciably improved by a catalogue of fundamental rights as part of the law of the Community, in relation to the protection currently available. As has been shown, the general legal principles of the Member States and of international law are capable of making good any absence of express provisions in the Treaties of the Communities. The Court of Justice of the European Communities has recognized and has assumed this duty. It can be expected the Court of Justice will follow the path it has already taken and will set to right breaches of fundamental rights by other Community organs. It is hardly conceivable that rights of the individual which are important and deserving of protection will remain unprotected because of the lack of a catalogue of fundamental rights, since the general legal principles of the Member States will probably contain all those guarantees which are also inalienably part of Community law. If the protection of fundamental rights is entrusted to the Court of Justice by way of general legal principles, Community law can progressively be developed by judgments rendered in accordance with practical needs.

A catalogue of fundamental rights in the European Community would on the other hand strongly emphasize the importance attaching to fundamental rights, and dispel any lingering doubts as to their relevance to Community law. It would moreover, be possible to go beyond the present position, as determined by general legal principles, and to extend the protection of fundamental rights by a political decision. When evolving a catalogue of fundamental rights it should however be kept in mind that recourse to general legal principles should not be excluded, since even the most elaborate list cannot contemplate all possible threats to the individual's rights, and make provision for them.

This illustrates, moreover, that a European catalogue of fundamental rights may involve not only advantages, but also dangers and even a retreat from the legal position already attained. After the recent decisions of the Court of Justice of the European Communities[1] it is scarcely conceivable that situations involving fundamental rights, which would in one of the Member States be regarded as substantial and inviolable, are unprotected in Community law. In these decisions, regard is had to the state of the law in all nine Member States so as to arrive at the maximum guarantees for fundamental rights. If a European catalogue were to lay behind this—and in view of the difficulties of drawing up a comprehensive catalogue, this is certainly not unlikely—the protection of fundamental rights might in the end be weakened rather than strengthened by codification.

If any binding catalogue of fundamental rights is to be evolved, this would in any event require extensive preparatory work and discussion at Community level as well as in the Member States. If the catalogue is to be founded on a broad basis of comparative law, considerable difficulties will have to be overcome and detailed examination will be necessary. Initially the question to be asked would presumably be: which fundamental rights appear necessary or important, in view of the structure and the tasks of the Community? With this, one would also have to consider whether the catalogue should be restricted to protective rights, or should also contain social fundamental rights and rights of democratic participation. This should be followed by detailed studies—perhaps on the basis of a questionnaire—on the way in which these fundamental rights are guaranteed under the current law of the different States and to what extent they are subject to reservation. From the comparative material thereby assembled it would then be necessary to distil the various common features and differences. In any event, the outcome must be a matter for political decision. It seems to me doubtful whether comparative legal studies going beyond mere review of principles into more detailed scrutiny could facilitate any such decision to any degree, since no catalogue of fundamental rights can, in the final analysis, do without reservations couched in general terms.

In my opinion a different means of strengthening fundamental rights in Community law should be considered. The gradual development of fundamental rights by hte Court of Justice alone without any formal basis in Community legislation, as opposed to a formal and binding catalogue of fundamental rights, is open to criticism chiefly on the grounds the the judicial authority lacks any direct democratic mandate (Legitimation) and that it ought to be entrusted with an independent law-making function only within certain limits. This argument could be countered by the other Community or-

[1] See above II, 3.

gans—Parliament, Council, Commission—acknowledging by express declaration the validity of fundamental rights in the European Communities and their protection by the Court of Justice, without any formal treaty in this respect. It could in this way, even without formal binding force, be emphasized that the protection of fundamental rights is, in the view of all Community organs, secured under Community law at present, and that such protection is to be developed by the Court of Justice on the basis of general legal principles. Such a declaration would, in my opinion, not change the existing legal position, but could none the less help to deal with existing legal uncertainties and dispel misgivings.

1977 OJ C103/1
Joint Declaration by the European Parliament, the Council and the Commission Concerning the Protection of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms

27. 4. 77 Official Journal of the European Communities No C 103/1

I

(Information)

EUROPEAN PARLIAMENT

COUNCIL

COMMISSION

JOINT DECLARATION

by the European Parliament, the Council and the Commission

THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION,

Whereas the Treaties establishing the European Communities are based on the principle of respect for the law;

Whereas, as the Court of Justice has recognized, that law comprises, over and above the rules embodied in the treaties and secondary Community legislation, the general principles of law and in particular the fundamental rights, principles and rights on which the constitutional law of the Member States is based;

Whereas, in particular, all the Member States are Contracting Parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950,

HAVE ADOPTED THE FOLLOWING DECLARATION:

1. The European Parliament, the Council and the Commission stress the prime importance they attach to the protection of fundamental rights, as derived in particular from the constitutions of the Member States and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

2. In the exercise of their powers and in pursuance of the aims of the European Communities they respect and will continue to respect these rights.

Done at Luxembourg on the fifth day of April in the year one thousand nine hundred and seventy-seven.

For the European Parliament	*For the Council*	*For the Commission*
E. COLOMBO	D. OWEN	R. JENKINS

1984 OJ C77/33
Draft Treaty Establishing the European Union (Spinelli Report)

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DRAFT TREATY ESTABLISHING THE EUROPEAN UNION

CONTENTS

NB: The titles of the Articles in this draft Treaty have indicative value only.

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PREAMBLE

— With a view to continuing and reviving the democratic unification of Europe, of which the European Communities, the European Monetary System and European Political Cooperation represent the first achievements, and convinced that it is increasingly important for Europe to assert its identity;

— Welcoming the positive results achieved so far, but aware of the need to redefine the objectives of European integration, and to confer on more efficient and more democratic institutions the means of attaining them;

— Basing their actions on their commitment to the principles of pluralist democracy, respect for human rights and the rule of law;

— Reaffirming their desire to contribute to the construction of an international society based on cooperation between peoples and between States, the peaceful settlement of disputes, security and the strengthening of international organizations;

— Resolved to strengthen and preserve peace and liberty by an ever closer union, and calling on the other peoples of Europe who share their ideal to join in their efforts;

— Determined to increase solidarity between the peoples of Europe, while respecting their historical identity, their dignity and their freedom within the framework of freely accepted common institutions;

— Convinced of the need to enable local and regional authorities to participate by appropriate methods in the unification of Europe;

— Desirous of attaining their common objectives progressively, accepting the requisite transitional periods and submitting all further development for the approval of their peoples and States;

Intending to entrust common institutions, in accordance with the principle of subsidiarity, only with those powers required to complete successfully the tasks they may carry out more satisfactorily than the States acting independently;

The High Contracting Parties, Member States of the European Communities, have decided to create the European Union.

PART ONE — THE UNION

Article 1

Creation of the Union

By this Treaty, the High Contracting Parties establish among themselves the European Union.

Article 2

Accession of new Members

Any democratic European State may apply to become a Member of the Union. The procedures for accession, together with any adjustments which accession entails, shall be the subject of a treaty between the Union and the applicant State. That treaty shall be concluded in accordance with the procedure laid down in Article 65 of this Treaty.

An accession treaty which entails revision of this Treaty may not be concluded until the revision procedure laid down in Article 84 of this Treaty has been completed.

Article 3

Citizenship of the Union

The citizens of the Member States shall *ipso facto* be citizens of the Union. Citizenship of the Union shall be dependent upon citizenship of a Member State; may not be independently acquired or forfeited. Citizens of the Union shall take part in the political life of the Union in the forms laid down by this Treaty, enjoy the rights granted to them by the legal system of the Union and be subject to its laws.

Article 4

Fundamental rights

1. The Union shall protect the dignity of the individual and grant every person coming within its jurisdiction the fundamental rights and freedoms derived in particular from the common principles of the Constitutions of the Member States and from the European Convention for the Protection of Human Rights and Fundamental Freedoms.

2. The Union undertakes to maintain and develop, within the limits of its competences, the economic social and cultural rights derived from the Constitutions of the Member States and from the European Social Charter.

3. Within a period of five years, the Union shall take a decision on its accession to the international instruments referred to above and to the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. Within the same

period, the Union shall adopt its own declaration on fundamental rights in accordance with the procedure for revision laid down in Article 84 of this Treaty.

4. In the event of serious and persistent violation of democratic principles or fundamental rights by a Member State, penalties may be imposed in accordance with the provisions of Article 44 of this Treaty.

Article 5

Territory of the Union

The territory of the Union shall consist of all the territories of the Member States as specified by the Treaty establishing the European Economic Community and by the treaties of accession, account being taken of obligations arising out of international law.

Article 6

Legal personality of the Union

The Union shall have legal personality. In each of the Member States, the Union shall enjoy the most extensive legal capacity accorded to legal persons under national legislation. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. In international relations, the Union shall enjoy the legal capacity it requires to perfom its functions and attain its objectives.

Article 7

The Community patrimony

1. The Union shall take over the Community patrimony.

2. The provisions of the Treaties establishing the European Communities and of the Conventions and Protocols relating thereto which concern their objectives and scope and which are not explicitly or implicity amended by this Treaty, shall constitute part of the law of the Union. They may only be amended in accordance with the procedure for revision laid down in Article 84 of this Treaty.

3. The other provisions of the Treaties, Conventions and Protocols referred to above shall also constitute part of the law of the Union, in so far as they are not incompatible with this Treaty. They may only be amended by the procedure for organic law laid down in Article 48 of this Treaty.

4. The acts of the European Communities, together with the measures adopted within the context of the European Monetary System and European Political Cooperation, shall continue to be effective, in so far as they are not incompatible with this Treaty, until such time as they have been replaced by acts or measures adopted by the institutions of the Union in accordance with their respective competences.

5. The Union shall respect all the commitments of the European Communities, in particular the agreements or conventions concluded with one or more non-member States or with an international organization.

Article 8

Institutions of the Union

The fulfilment of the tasks conferred on the Union shall be the responsibility of its institutions and its organs. The institutions of the Union shall be:

— the European Parliament,

— the Council of the Union,

— the Commission,

— the Court of Justice,

— the European Council.

PART TWO — THE OBJECTIVES, METHODS OF ACTION AND COMPETENCES OF THE UNION

Article 9

Objectives

The objectives of the Union shall be:

— the attainment of a humane and harmonious development of society based principally on endeavours to attain full employment, the progressive elimination of the existing imbalances between its regions, protection and improvement in the quality of the environment, scientific progress and the cultural development of its peoples,

— the economic development of its peoples with a free internal market and stable currency, equilibrium in external trade and constant economic growth, without discrimination between nationals or undertakings of the Member States by strengthening the capacity of the States, their citizens and their undertakings to act together to adjust their organization and activities to economic changes,

— the promotion in international relations of security, peace, cooperation, détente, disarmament and the

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free movement of persons and ideas, together with the improvement of international commercial and monetary relations,

— the harmonious and equitable development of all the peoples of the world to enable them to escape from under-development and hunger and exercise their full political, economic and social rights.

Article 10

Methods of action

1. To attain these objectives, the Union shall act either by common action or by cooperation between the Member States; the fields within which each method applies shall be determined by this Treaty.

2. Common action means all normative, administrative, financial and judicial acts, internal or international, and the programmes and recommendations, issued by the Union itself, originating in its institutions and addressed to those institutions, or to States, or to individuals.

3. Cooperation means all the commitments which the Member States undertake within the European Council.

The measures resulting from cooperation shall be implemented by the Member States or by the institutions of the Union in accordance with the procedures laid down by the European Council.

Article 11

Transfer from cooperation to common action

1. In the instances laid down in Articles 54 (1) and 68 (2) of this Treaty, a matter subject to the method of cooperation between Member States may become the subject of common action. On a proposal from the Commission, or the Council of the Union, or the Parliament, or one or more Member States, the European Council may decide, after consulting the Commission and with the agreement of the Parliament, to bring those matters within the exclusive or concurrent competence of the Union.

2. In the fields subject to common action, common action may not be replaced by cooperation.

Article 12

Competences

1. Where this Treaty confers exclusive competence on the Union, the institutions of the Union shall have sole power to act; national authorities may only legislate to the extent laid down by the law of the Union. Until the Union has legislated, national legislation shall remain in force.

2. Where this Treaty confers concurrent competence on the Union, the Member States shall continue to act so long as the Union has not legislated. The Union shall only act to carry out those tasks which may be undertaken more effectively in common than by the Member States acting separately, in particular those whose execution requires action by the Union because their dimension or effects extend beyond national frontiers. A law which initiates or extends common action in a field where action has not been taken hitherto by the Union or by the Communities must be adopted in accordance with the procedure for organic laws.

Article 13

Implementation of the law of the Union

The Union and the Member States shall cooperate in good faith in the implementation of the law of the Union. Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Union. They shall facilitate the achievement of the Union's tasks. They shall abstain from any measure which could jeopardize the attainment of the objectives of the Union.

PART THREE — INSTITUTIONAL PROVISIONS

TITLE I — THE INSTITUTIONS OF THE UNION

Article 14

The European Parliament

The European Parliament shall be elected by direct universal suffrage in a free and secret vote by the citizens of the Union. The term of each Parliament shall be five years.

An organic law shall lay down a uniform electoral procedure; until such a law comes into force, the procedure applicable shall be that for the election of the Parliament of the European Communities.

Article 15

Members of the Parliament

The members of the Parliament shall act and vote in an individual and personal capacity. They may not be bound by any instructions nor receive a binding mandate.

Article 16

Functions of the Parliament

The Parliament shall:

— participate, in accordance with this Treaty, in the legislative and budgetary procedures and in the conclusion of international agreements,

— enable the Commission to take office by approving its political programme,

— exercise political supervision over the Commission,

— have the power to adopt by a qualified majority a motion of censure requiring the members of the Commission to resign as a body,

— have the power to conduct inquiries and receive petitions addressed to it by citizens of the Union,

— exercise the other powers attributed to it by this Treaty.

Article 17

Majorities in the Parliament

1. The Parliament shall vote by a simple majority, i.e. a majority of votes cast, abstentions not counted.

2. Where expressly specified by this Treaty, the Parliament shall vote:

(a) either by an absolute majority, i.e. a majority of its members;

(b) or by a qualified majority, i.e. a majority of its members and of two-thirds of votes cast, abstentions not counted. On the second reading of the budget, the qualified majority required shall be a majority of the members of Parliament and three-fifths of votes cast, abstentions not counted.

Article 18

Power to conduct inquiries and right of petition

The procedures for the exercise of the power of the Parliament to conduct inquiries and of the right of citizens to address petitions to the Parliament shall be laid down by organic laws.

Article 19

Rules of Procedure of the Parliament

The Parliament shall adopt its Rules of Procedure by an absolute majority.

Article 20

The Council of the Union

The Council of the Union shall consist of representations of the Member States appointed by their respective Governments; each representation shall be led by a Minister who is permanently and specifically responsible for Union affairs.

Article 21

Functions of the Council of the Union

The Council shall:

— participate, in accordance with this Treaty, in the legislative and budgetary procedures and in the conclusion of international agreements,

— exercise the powers attributed to it in the field of international relations, and answer written and oral questions tabled by members of the Parliament in this field,

— exercise the other powers attributed to it by this Treaty.

Article 22

Weighting of votes in the Council of the Union

The votes of the representations shall be weighted in accordance with the provisions of Article 148 (2) of the Treaty establishing the European Economic Community.

In the event of the accession of new Member States, the weighting of their votes shall be laid down in the treaty of accession.

Article 23

Majorities in the Council of the Union

1. The Council shall vote by a simple majority, i.e. a majority of the weighted votes cast, abstentions not counted.

2. Where expressly specified by this Treaty, the Council shall vote:

(a) either by an absolute majority, i.e. by a majority of the weighted votes cast, abstentions not counted, comprising at least half of the representations;

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(b) or by a qualified majority, i.e. by a majority of two-thirds of the weighted votes cast, abstentions not counted, comprising a majority of the representations. On the second reading of the budget, the qualified majority required shall be a majority of three-fifths of the weighted votes cast, abstentions not counted, comprising a majority of the representations;

(c) or by unanimity of representations, abstentions not counted.

3. During a transitional period of 10 years, where a representation invokes a vital national interest which is jeopardized by the decision to be taken and recognized as such by the Commission, the vote shall be postponed so that the matter may be re-examined. The grounds for requesting a postponement shall be published.

Article 24

Rules of Procedure of the Council of the Union

The Council shall adopt its Rules of Procedure by an absolute majority. These rules shall lay down that meetings in which the Council is acting as a legislative or budgetary authority shall be open to the public.

Article 25

The Commission

The Commission shall take office within a period of six months following the election of the Parliament.

At the beginning of each parliamentary term, the European Council shall designate the President of the Commission. The President shall constitute the Commission after consulting the European Council.

The Commission shall submit its programme to the Parliament. It shall take office after its investiture by the Parliament. It shall remain in office until the investiture of a new Commission.

Article 26

Membership of the Commission

The structure and operation of the Commission and the Statute of its members shall be determined by an organic law. Until such a law comes into force, the rules governing the structure and operation of the Commission of the European Communities and the Statute of its members shall apply to the Commission of the Union.

Article 27

Rules of Procedure of the Commission

The Commission shall adopt its Rules of Procedure.

Article 28

Functions of the Commission

The Commission shall:

— define the guidelines for action by the Union in the programme which it submits to the Parliament for its approval,

— introduce the measures required to initiate that action,

— have the right to propose draft laws and participate in the legislative procedure,

— issue the regulations needed to implement the laws and take the requisite implementing decisions,

— submit the draft budget,

— implement the budget,

— represent the Union in external relations in the instances laid down by this Treaty,

— ensure that this Treaty and the laws of the Union are applied,

— exercise the other powers attributed to it by this Treaty.

Article 29

Responsibility of the Commission to the Parliament

1. The Commission shall be responsible to the Parliament.

2. It shall answer written and oral questions tabled by members of the Parliament.

3. The members of the Commission shall resign as a body in the event of Parliament's adopting a motion of censure by a qualified majority. The vote on a motion of censure shall be by public ballot and not be held until at least three days after the motion has been tabled.

4. On the adoption of a motion of censure, a new Commission shall be constituted in accordance with the procedure laid down in Article 25 of this Treaty. Pending the investiture of the new Commission, the Commission which has been censured shall be responsible for day-to-day business.

Article 30

The Court of Justice

1. The Court of Justice shall ensure that in the interpretation and application of this Treaty, and of any act adopted pursuant thereto, the law is observed.

2. Half the members of the Court shall be appointed by the Parliament and half by the Council of the Union. Where there is an odd number of members, the Parliament shall appoint one more than the Council.

3. The organization of the Court, the number and Statute of its members and the duration of their term of office shall be governed by an organic law which shall also lay down the procedure and majorities required for their appointment. Until such a law comes into force, the relevant provisions laid down in the Community Treaties and their implementing measures shall apply to the Court of Justice of the Union.

4. The Court shall adopt its Rules of Procedure.

Article 31

The European Council

The European Council shall consist of the Heads of State or Government of the Member States of the Union and the President of the Commission who shall participate in the work of the European Council except for the debate on the designation of his successor and the drafting of communications and recommendations to the Commission.

Article 32

Functions of the European Council

1. The European Council shall:

— formulate recommendations and undertake commitments in the field of cooperation,

— take decisions in the cases laid down by this Treaty and in accordance with the provisions of Article 11 thereof on the extension of the competences of the Union,

— designate the President of the Commission,

— address communications of the other institutions of the Union,

— periodically inform the Parliament of the activities of the Union in the fields in which it is competent to act,

answer written and oral questions tabled by members of the Parliament,

— exercise the other powers attributed to it by this Treaty.

2. The European Council shall determine its own decision-making procedures.

Article 33

Organs of the Union

1. The Union shall have the following organs:

The Court of Auditors,

— The Economic and Social Committee,

— The European Investment Bank,

— The European Monetary Fund.

Organic laws shall lay down the rules governing the competences and powers of these organs, their organization and their membership.

2. Half the members of the Court of Auditors shall be appointed by the Parliament and half by the Council of the Union.

3. The Economic and Social Committee shall be an organ which advises the Commission, the Parliament, the Council of the Union and the European Council; it may address to them opinions drawn up on its own initiative. The Committee shall be consulted on every proposal which has a determining influence on the drawing up and implementation of economic policy and policy for society. The Committee shall adopt its Rules of Procedure. The membership of the Committee shall ensure adequate representation of the various categories of economic and social activity.

4. The European Monetary Fund shall have the autonomy required to guarantee monetary stability.

5. Each of the organs referred to above shall be governed by the provisions applicable to the corresponding Community organs at the moment when this Treaty enters into force.

The Union may create other organs necessary for its operation by means of an organic law.

TITLE II — ACTS OF THE UNION

Article 34

Definition of laws

1. Laws shall lay down the rules governing common action. As far as possible, they shall restrict themselves

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to determining the fundamental principles governing common action and entrust the responsible authorities in the Union or the Member States with setting out in detail the procedures for their implementation.

2. The organization and operation of the institutions and other matters expressly provided for in this Treaty shall be governed by organic laws adopted in accordance with the specific procedures laid down in Article 38 of this Treaty.

3. Budgetary laws shall be adopted pursuant to the provisions of Article 76 of this Treaty.

Article 35

Differentiated application of laws

A law may subject to time limits, or link to transitional measures which may vary according to the addressee, the implementation of its provisions where uniform application thereof would encounter specific difficulties caused by the particular situation of some of its addressees. However, such time limits and measures must be designed to facilitate the subsequent application of all the provisions of the law to all its addressees.

Article 36

Legislative authority

The Parliament and the Council of the Union shall jointly exercise legislative authority with the active participation of the Commission.

Article 37

Right to propose draft laws and amendments thereto

1. The Commission shall have the right to propose draft laws. It may withdraw a draft law it has submitted at any time until the Parliament or the Council of the Union have expressly adopted it on first reading.

2. On a reasoned request from the Parliament or the Council, the Commission shall submit a draft law conforming to such request. If the Commission declines to do so, the Parliament or the Council may, in accordance with procedures laid down in their rules of procedure, introduce a draft law conforming to their original request. The Commission must express its opinion on the draft.

3. Under the conditions laid down in Article 38 of this Treaty:

— the Commission may put forward amendments to any draft law. Such amendments must be put to the vote as a matter of priority,

— members of the Parliament and national representations within the Council may similarly put forward amendments during the debates within their respective institutions.

Article 38

Voting procedure for draft laws

1. All draft laws shall be submitted to the Parliament. Within a period of six months, it may approve the draft with or without amendment. In the case of draft organic laws, the Parliament may amend them by an absolute majority; their approval shall require a qualified majority.

Where the majority required for approval of the draft is not secured, the Commission shall have the right to amend it and to submit it to the Parliament again.

2. The draft law approved by the Parliament, with or without amendment, shall be forwarded to the Council of the Union. Within a period of one month following approval by the Parliament, the Commission may deliver an opinion which shall also be forwarded to the Council.

3. The Council shall take a decision within a period of six months. Where it approves the draft by an absolute majority without amending it, or where it rejects it unanimously, the legislative procedure is terminated.

Where the Commission has expressly delivered an unfavourable opinion on the draft, or in the case of a draft organic law, the Council shall by a qualified majority approve the draft without amending it or reject it, in which cases the legislative procedure is terminated.

Where the draft has been put to the vote but has not secured the majorities referred to above, or where the draft has been amended by a simple majority or, in the case of organic laws, by an absolute majority, the conciliation procedure laid down in paragraph 4 below shall be opened.

4. In the cases provided for in the final subparagraph of paragraph 3 above, the Conciliation Committee shall be convened. The Committee shall consist of a delegation from the Council of the Union and a delegation from the Parliament. The Commission shall participate in the work of the Committee.

Where, within a period of three months, the Committee reaches agreement on a joint text, that text shall be

submitted for approval to the Parliament and the Council; they shall take a decision by an absolute majority or, in the case of organic laws, by a qualified majority within a period of three months. No amendments shall be admissible.

Where, within the period referred to above, the Committee fails to reach agreement, the text forwarded by the Council shall be submitted for approval to the Parliament which shall, within a period of three months, take a decision by an absolute majority or, in the case of organic laws, by a qualified majority. Only amendments tabled by the Commission shall be admissible. Within a period of three months, the Council may reject by a qualified majority the text adopted by the Parliament. No amendments shall then be admissible.

5. Without prejudice to Article 23 (3) of this Treaty, where the Parliament or the Council fails to submit the draft to a vote within the time limits laid down, the draft shall be deemed to have been adopted by the institution which has not taken a decision. However, a law may not be regarded as having been adopted unless it has been expressly approved either by the Parliament or by the Council.

6. Where a particular situation so requires, the Parliament and the Council may, by common accord, extend the time limits laid down in this Article.

Article 39

Publication of laws

Without prejudice to Article 76 (4) of this Treaty, the President of the arm of the legislative authority which has taken the last express decision shall establish that the legislative procedure has been completed and shall cause laws to be published without delay in the *Official Journal of the Union.*

Article 40

Power to issue regulations

The Commission shall determine the regulations and decisions required for the implementation of laws in accordance with the procedures laid down by those laws. Regulations shall be published in the *Official Journal of the Union;* decisions shall be notified to the addressees. The Parliament and the Council of the Union shall be immediately informed thereof.

Article 41

Hearing of persons affected

Before adopting any measure, the institutions of the Union shall, wherever possible and useful, hear the persons thereby affected. Laws of the Union shall lay down the procedures for such hearings.

Article 42

The law of the Union

The law of the Union shall be directly applicable in the Member States. It shall take precedence over national law. Without prejudice to the powers conferred on the Commission, the implementation of the law shall be the responsibility of the authorities of the Member States. An organic law shall lay down the procedures in accordance with which the Commission shall ensure the implementation of the law. National courts shall apply the law of the Union.

Article 43

Judicial review

The Community rules governing judicial review shall apply to the Union. They shall be supplemented by an organic law on the basis of the following principles:

— extension of the right of action of individuals against acts of the Union adversely affecting them,

— equal right of appeal and equal treatment for all the institutions before the Court of Justice,

— jurisdiction of the Court for the protection of fundamental rights *vis-à-vis* the Union,

— jurisdiction of the Court to annul an act of the Union within the context of an application for a preliminary ruling or of a plea of illegality,

— creation of a right of appeal to the Court against the decisions of national courts of last instance where reference to the Court for a preliminary ruling is refused or where a preliminary ruling of the Court has been disregarded,

— jurisdiction of the Court to impose sanctions on a Member State failing to fulfil its obligations under the law of the Union,

— compulsory jurisdiction of the Court to rule on any dispute between Member States in connection with the objectives of the Union.

Article 44

Sanctions

In the case provided for in Article 4 (4) of this Treaty, and in every other case of serious and persistent violation by a Member State of the provisions of this

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Treaty, established by the Court of Justice at the request of the Parliament or the Commission, the European Council may, after hearing the Member State concerned and with the approval of the Parliament, take measures:

— suspending the rights deriving from the application of part or the whole of the Treaty provisions to the State in question and its nationals, without prejudice to the rights acquired by the latter,

— which may go as far as suspending participation by the State in question in the European Council, the Council of the Union and any other organ in which that State is represented as such.

The State in question shall not participate in the vote on the sanctions.

PART FOUR — THE POLICIES OF THE UNION

Article 45

General provisions

1. Starting from the Community patrimony, the Union shall continue the actions already undertaken and undertake new actions in compliance with this Treaty, and in particular with Article 9 thereof.

2. The structural and conjunctural policies of the Union shall be drawn up and implemented so as to promote, together with balanced expansion throughout the Union, the progressive elimination of the existing imbalances between its various areas and regions.

Article 46

Homogeneous judicial area

In addition to the fields subject to common action, the coordination of national law with a view to constituting a homogeneous judicial area shall be carried out in accordance with the method of cooperation. This shall be done in particular:

— to take measures designed to reinforce the feeling of individual citizens that they are citizens of the Union,

— to fight international forms of crime, including terrorism.

The Commission and the Parliament may submit appropriate recommendations to the European Council.

TITLE I — ECONOMIC POLICY

Article 47

Internal market and freedom of movement

1. The Union shall have exclusive competence to complete, safeguard and develop the free movement of persons, services, goods and capital within its territory; it shall have exclusive competence for trade between Member States.

2. This liberalization process shall take place on the basis of detailed and binding programmes and timetables laid down by the legislative authority in accordance with the procedures for adopting laws. The Commission shall adopt the implementing procedures for those programmes.

3. Through those programmes, the Union must attain:

— within a period of two years following the entry into force of this Treaty, the free movement of persons and goods; this implies in particular the abolition of personal checks at internal frontiers,

— within a period of five years following the entry into force of this Treaty, the free movement of services, including banking and all forms of insurance,

— within a period of 10 years following the entry into force of this Treaty, the free movement of capital.

Article 48

Competition

The Union shall have exclusive competence to complete and develop competition policy at the level of the Union, bearing in mind:

— the need to establish a system for the authorization of concentrations of undertakings based on the criteria laid down by Article 66 of the Treaty establishing the European Coal and Steel Community,

— the need to restructure and strengthen the industry of the Union in the light of the profound

disturbances which may be caused by international competition,

— the need to prohibit any form of discrimination between private and public undertakings.

Article 49

Approximation of the laws relating to undertakings and taxation

The Union shall take measures designed to approximate the laws, regulations and administrative provisions relating to undertakings, and in particular to companies, in so far as such provisions have a direct effect on a common action of the Union. A law shall lay down a Statute for European Undertakings.

In so far as necessary for economic integration within the Union, a law shall effect the approximation of the laws relating to taxation.

Article 50

Conjunctural policy

1. The Union shall have concurrent competence in respect of conjunctural policy, with a particular view to facilitating the coordination of economic policies within the Union.

2. The Commission shall define the guidelines and objectives to which the action of the Member States shall be subject on the basis of the principles and within the limits laid down by laws.

3. Laws shall lay down the conditions under which the Commission shall ensure that the measures taken by the Member States conform with the objectives it has defined. Laws shall authorize the Commission to make the monetary, budgetary or financial aid of the Union conditional on compliance with the measures taken under paragraph 2 above.

4. Laws shall lay down the conditions under which the Commission, in conjunction with the Member States, shall utilize the budgetary or financial mechanisms of the Union for conjunctural ends.

Article 51

Credit policy

The Union shall exercise concurrent competence as regards European monetary and credit policies, with the particular objective of coordinating the use of capital market resources by the creation of a European Capital Market Committee and the establishment of a European Bank Supervisory Authority.

Article 52

European Monetary System

1. All the Member States shall participate in the European Monetary System, subject to the principle set out in Article 35 of this Treaty.

2. The Union shall have concurrent competence for the progressive achievement of full monetary union.

3. An organic law shall lay down rules governing:

— the Statute and the operation of the European Monetary Fund in accordance with Article 33 of this Treaty,

— the conditions for the effective transfer to the European Monetary Fund of part of the reserves of the Member States,

— the conditions for the progressive conversion of the ECU into a reserve currency and a means of payment, and its wider use,

— the procedures and the stages for attaining monetary union,

— the duties and obligations of the central banks in the determination of their objectives regarding money supply.

4. During the five years following the entry into force of this Treaty, by derogation from Articles 36, 38 and 39 thereof, the European Council may suspend the entry into force of the organic laws referred to above within a period of one month following their adoption and refer them back to the Parliament and the Council of the Union for fresh consideration.

Article 53

Sectoral policies

In order to meet the particular needs for the organization, development or coordination of specific sectors of economic activity, the Union shall have concurrent competence with the Member States to pursue sectoral policies at the level of the Union. In the fields referred to below, such policies shall, by the establishment of reliable framework conditions, in particular pursue the aim of facilitating the decisions which undertakings subject to competition must take concerning investment and innovation.

The sectors concerned are in particular:

— agriculture and fisheries,

— transport,

— telecommunications,

— research and development,

— industry,

— energy.

(a) In the fields of agriculture and fisheries, the Union shall pursue a policy designed to attain the objectives laid down in Article 39 of the Treaty establishing the European Economic Community.

(b) In the field of transport, the Union shall pursue a policy designed to contribute to the economic integration of the Member States. It shall, in particular, undertake common actions to put an end to all forms of discrimination, harmonize the basic terms of competition between the various modes of transport, eliminate obstacles to trans-frontier traffic and develop the capacity of transport routes so as to create a transport network commensurate with European needs.

(c) In the field of telecommunications, the Union shall take common action to establish a telecommunications network with common standards and harmonize tariffs. It shall exercise competence in particular with regard to the high technology sectors, research and development activities and public procurement policy.

(d) In the field of research and development, the Union may draw up common strategies with a view to coordinating and guiding national activities and encouraging cooperation between the Member States and between research institutes. It may provide financial support for joint research, may take responsibility for some of the risks involved and may undertake research in its own establishments.

(e) In the field of industry, the Union may draw up development strategies with a view to guiding and coordinating the policies of the Member States in those industrial branches which are of particular significance to the economic and political security of the Union. The Commission shall be responsible for taking the requisite implementing measures. It shall submit to the Parliament and the Council of the Union a periodic report on industrial policy problems.

(f) In the field of energy, action by the Union shall be designed to ensure security of supplies, stability on the market of the Union and, to the extent that prices are regulated, a harmonized pricing policy compatible with fair competitive practices. It shall also be designed to encourage the development of alternative and renewable energy sources, to introduce common technical standards for efficiency, safety, the protection of the environment and of the population, and to encourage the exploitation of European sources of energy.

Article 54

Other forms of cooperation

1. Where Member States have taken the initiative to establish industrial cooperation structures outside the scope of this Treaty, the European Council may, if the common interest justifies it, decide to convert those forms of cooperation into a common action of the Union.

2. In specific sectors subject to common action, laws may establish specialized European agencies and define those forms of supervision applicable thereto.

TITLE II — POLICY FOR SOCIETY

Article 55

General provisions

The Union shall have concurrent competence in the field of social and health, consumer protection, regional, environmental, education and research, cultural and information policies.

Article 56

Social and health policy

The Union may take action in the field of social and health policy, in particular in matters relating to:

— employment, and in particular the establishment of general comparable conditions for the maintenance and creation of jobs,

— the law on labour and working conditions,

— equality between men and women,

— vocational training and further training,

— social security and welfare,

— protection against occupational accidents and diseases,

— work hygiene,

— trade union rights and collective negotiations between employers and employees, in particular with a view to the conclusion of Union-wide collective agreements,

— forms of worker participation in decisions affecting their working life and the organization of undertakings,

— the determination of the extent to which citizens of non-member States may benefit from equal treatment,

— the approximation of the rules governing research into and the manufacture, active properties and marketing of pharmaceutical products,

— the prevention of addiction,

— the coordination of mutual aid in the event of epidemics or disasters.

Article 57

Consumer policy

The Union may lay down rules designed to protect the health and safety of consumers and their economic interests, particularly in the event of damage. The Union may encourage action to promote consumer education, information and consultation.

Article 58

Regional policy

The regional policy of the Union shall aim at reducing regional disparities and, in particular, the under-development of the least-favoured regions, by injecting new life into those regions so as to ensure their subsequent development and by helping to create the conditions likely to put an end to the excessive concentration of migration towards particular industrial centres. The regional policy of the Union shall, in addition, encourage trans-frontier regional cooperation.

The regional policy of the Union, whilst supplementing the regional policy of the Member States, shall pursue specific Union objectives.

The regional policy of the Union shall comprise:

— the development of a European framework for the regional planning policies pursued by the competent authorities in each Member State,

— the promotion of investment and infrastructure projects which bring national programmes into the framework of an overall concept,

— the implementation of integrated programmes of the Union on behalf of certain regions, drawn up in collaboration with the representatives of the people concerned, and, where possible, the direct allocation of the requisite funds to the regions concerned.

Article 59

Environmental policy

In the field of the environment, the Union shall aim at preventing or, taking account as far as possible of the 'polluter pays' principle, at redressing any damage which is beyond the capabilities of the individual Member State or which requires a collective solution. It shall encourage a policy of the rational utilization of natural resouces, of exploiting renewable raw materials and of recycling waste which takes account of environmental protection requirements.

The Union shall take measures designed to provide for animal protection.

Article 60

Education and research policy

In order to create a context which will help inculcate in the public an awareness of the Union's own identity and to ensure a minimum standard of training creating the opportunity for free choice of career, job or training establishment anywhere in the Union, the Union shall take measures concerning:

the definition of objectives for common or comparable training programmes,

— the Union-wide validity and equivalence of diplomas and school, study and training periods,

— the promotion of scientific research.

Article 61

Cultural policy

1. The Union may take measures to:

— promote cultural and linguistic understanding between the citizens of the Union,

— publicize the cultural life of the Union both at home and abroad,

— establish youth exchange programmes.

2. The European University Institute and the European Foundation shall become establishments of the Union.

3. Laws shall lay down rules governing the approximation of the law of copyright and the free movement of cultural works.

Article 62

Information policy

The Union shall encourage the exchange of information and access to information for its citizens. To this end, it shall eliminate obstacles to the free movement of information, whilst ensuring the broadest possible competition and diversity of types of organization in this field. It shall encourage cooperation between radio and television companies for the purpose of producing Union-wide programmes.

TITLE III — INTERNATIONAL RELATIONS OF THE UNION

Article 63

Principles and methods of action

1. The Union shall direct its efforts in international relations towards the achievement of peace through the peaceful settlement of conflicts and towards security, the deterrence of aggression, détente, the mutual balanced and verifiable reduction of military forces and armaments, respect for human rights, the raising of living standards in the third world, the expansion and improvement of international economic and monetary relations in general and trade in particular and the strengthening of international organization.

2. In the international sphere, the Union shall endeavour to attain the objectives set out in Article 9 of this Treaty. It shall act either by common action or by cooperation.

Article 64

Common action

1. In its international relations, the Union shall act by common action in the fields referred to in this Treaty where it has exclusive or concurrent competence.

2. In the field of commercial policy, the Union shall have exclusive competence.

3. The Union shall pursue a development aid policy. During a transitional period of 10 years, this policy as a whole shall progressively become the subject of common action by the Union. In so far as the Member States continue to pursue independent programmes, the Union shall define the framework within which it will ensure the coordination of such programmes with its own policy, whilst observing current international commitments.

4. Where certain external policies fall within the exclusive competence of the European Communities pursuant to the Treaties establishing them, but where that competence has not been fully exercised, a law shall lay down the procedures required for it to be fully exercised within a period which may not exceed five years.

Article 65

Conduct of common action

1. In the exercise of its competences, the Union shall be represented by the Commission in its relations with non-member states and international organizations. In particular, the Commission shall negotiate international agreements on behalf of the Union. It shall be responsible for liaison with all international organizations and shall cooperate with the Council of Europe, in particular in the cultural sector.

2. The Council of the Union may issue the Commission with guidelines for the conduct of international actions; it must issue such guidelines, after approving them by an absolute majority, where the Commission is involved in drafting acts and negotiating agreements which will create international obligations for the Union.

3. The Parliament shall be informed, in good time and in accordance with appropriate procedures, of every action of the institutions competent in the field of international policy.

4. The Parliament and the Council of the Union, both acting by an absolute majority; shall approve international agreements and instruct the President of the Commission to deposit the instruments of ratification.

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Article 66

Cooperation

The Union shall conduct its international relations by the method of cooperation where Article 64 of this Treaty is not applicable and where they involve:

— matters directly concerning the interests of several Member States of the Union, or

— fields in which the Member States acting individually cannot act as efficiently as the Union, or

— fields where a policy of the Union appears necessary to supplement the foreign policies pursued on the responsibility of the Member States, or

— matters relating to the political and economic aspects of security.

Article 67

Conduct of cooperation

In the fields referred to in Article 66 of this Treaty:

1. The European Council shall be responsible for cooperation. The Council of the Union shall be responsible for its conduct. The Commission may propose policies and actions which shall be implemented, at the request of the European Council or the Council of the Union, either by the Commission or by the Member States.

2. The Union shall ensure that the international policy guidelines of the Member States are consistent.

3. The Union shall coordinate the positions of the Member States during the negotiation of international agreements and within the framework of international organizations.

4. In an emergency, where immediate action is necessary, a Member State particularly concerned may act individually after informing the European Council and the Commission.

5. The European Council may call on its President, on the President of the Council of the Union or on the Commission to act as the spokesman of the Union.

Article 68

Extension of the field of cooperation and transfer from cooperation to common action

1. The European Council may extend the field of cooperation, in particular as regards armaments, sales of arms to non-member States, defence policy and disarmament.

2. Under the conditions laid down in Article 11 of this Treaty, the European Council may decide to transfer a particular field of cooperation to common action in external policy. In that event, the provisions laid down in Article 23 (3) of this Treaty shall apply without any time limit. Bearing in mind the principle laid down in Article 35 of this Treaty, the Council of the Union, acting unanimously, may exceptionally authorize one or more Member States to derogate from some of the measures taken within the context of common action.

3. By way of derogation from Article 11 (2) of this Treaty, the European Council may decide to restore the fields transferred to common action in accordance with paragraph 2 above either to cooperation or to the competence of the Member States.

4. Under the conditions laid down in paragraph 2 above, the European Council may decide to transfer a specific problem to common action for the period required for its solution. In that event, paragraph 3 above shall not apply.

Article 69

Right of representation abroad

1. The Commission may, with the approval of the Council of the Union, establish representations in non-member States and international organizations.

2. Such representations shall be responsible for representing the Union in all matters subject to common action. They may also, in collaboration with the diplomatic agent of the Member State holding the presidency of the European Council, coordinate the diplomatic activity of the Member States in the fields subject to cooperation.

3. In non-member States and international organizations where there is no representation of the Union, it shall be represented by the diplomatic agent of the Member State currently holding the presidency of the European Council or else by the diplomatic agent of another Member State.

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PART FIVE — THE FINANCES OF THE UNION

Article 70

General provisions

1. The Union shall have its own finances, administered by its institutions, on the basis of the budget adopted by the budgetary authority which shall consist of the European Parliament and the Council of the Union.

2. The revenue of the Union shall be utilized to guarantee the implementation of common actions undertaken by the Union. Any implementation by the Union of a new action assumes that the allocation to the Union of the financial means required shall be subject to the procedure laid down in Article 71 (2) of this Treaty.

Article 71

Revenue

1. When this Treaty enters into force, the revenue of the Union shall be of the same kind as that of the European Communities. However, the Union shall receive a fixed percentage of the basis for assessing value added tax established by the budget within the framework of the programme set out in Article 74 of this Treaty.

2. The Union may, by an organic law, amend the nature or the basis of assessment of existing sources of revenue or create new ones. It may by a law authorize the Commission to issue loans, without prejudice to Article 75 (2) of this Treaty.

3. In principle, the authorities of the Member States shall collect the revenue of the Union. Such revenue shall be paid to the Union as soon as it has been collected. A law shall lay down the implementing procedures for this paragraph and may set up the Union's own revenue-collecting authorities.

Article 72

Expenditure

1. The expenditure of the Union shall be determined annually on the basis of an assessment of the cost of each common action within the framework of the financial programme set out in Article 74 of this Treaty.

2. At least once a year, the Commission shall submit a report to the budgetary authority on the effectiveness of the actions undertaken, account being taken of their cost.

3. All expenditure by the Union shall be subject to the same budgetary procedure.

Article 73

Financial equalization

A system of financial equalization shall be introduced in order to alleviate excessive economic imbalances between the regions. An organic law shall lay down the procedures for the application of this system.

Article 74

Financial programmes

1. At the beginning of each parliamentary term, the Commission, after receiving its investiture, shall submit to the European Parliament and the Council of the Union a report on the division between the Union and the Member States of the responsibilities for implementing common actions and the financial burdens resulting therefrom.

2. On a proposal from the Commission, a multiannual financial programme, adopted according to the procedure for adopting laws, shall lay down the projected development in the revenue and expenditure of the Union. These forecasts shall be revised annually and used as the basis for the preparation of the budget.

Article 75

Budget

1. The budget shall lay down and authorize all the revenue and expenditure of the Union in respect of each calendar year. The adopted budget must be in balance. Supplementary and amending budgets shall be adopted under the same conditions as the general budget. The revenue of the Union shall not be earmarked for specific purposes.

2. The budget shall lay down the maximum amounts for borrowing and lending during the financial year. Save in exceptional cases expressly laid down in the budget, borrowed funds may only be used to finance investment.

3. Appropriations shall be entered in specific chapters grouping expenditure according to its nature or destination and subdivided in compliance with the provisions of the Financial Regulation. The expenditure of the institutions other than the Commission shall be

the subject of separate sections of the budget; they shall be drawn up and managed by those institutions and may only include operating expenditure.

4. The Financial Regulation of the Union shall be established by an organic law.

Article 76

Budgetary procedure

1. The Commission shall prepare the draft budget and forward it to the budgetary authority.

2. Within the time limits laid down by the Financial Regulation:

(a) on first reading, the Council of the Union may approve amendments by a simple majority. The draft budget, with or without amendment, shall be forwarded to the Parliament;

(b) on first reading, the Parliament may amend by an absolute majority the amendments of the Council and approve other amendments by a simple majority;

(c) if, within a period of 15 days, the Commission opposes the amendments approved by the Council or by the Parliament on first reading, the relevant arm of the budgetary authority must take a fresh decision by a qualified majority on second reading;

(d) if the budget has not been amended, or if the amendments adopted by the Parliament and the Council are identical, and if the Commission has not exercised its right to oppose the amendments, the budget shall be deemed to have been finally adopted;

(e) on second reading, the Council may amend by a qualified majority the amendments approved by the Parliament. It may by a qualified majority refer the whole draft budget as amended by the Parliament back to the Commission and request it to submit a new draft; where not so referred back, the draft budget shall at all events be forwarded to the Parliament;

(f) on second reading, the Parliament may reject amendments adopted by the Council only by a qualified majority. It shall adopt the budget by an absolute majority.

3. Where one of the arms of the budgetary authority has not taken a decision within the time limit laid down by the Financial Regulation, it shall be deemed to have adopted the draft referred to it.

4. When the procedure laid down in this Article has been completed, the President of the Parliament shall declare that the budget stands adopted and shall cause it to be published without delay in the *Official Journal of the Union*.

Article 77

Provisional twelfths

Where the budget has not been adopted by the beginning of the financial year, expenditure may be effected on a monthly basis, under the conditions laid down in the Financial Regulation, up to a maximum of one-twelfth of the appropriations entered in the budget of the preceding financial year, account being taken of any supplementary and amending budgets.

At the end of the sixth month following the beginning of the financial year, the Commission may only effect expenditure to enable the Union to comply with existing obligations.

Article 78

Implementation of the budget

The budget shall be implemented by the Commission on its own responsibility under the conditions laid down by the Financial Regulation.

Article 79

Audit of the accounts

The Court of Auditors shall verify the implementation of the budget. It shall fulfil its task independently and, to this end, enjoy powers of investigation with regard to the institutions and organs of the Union and to the national authorities concerned.

Article 80

Revenue and expenditure account

At the end of the financial year, the Commission shall submit to the budgetary authority, in the form laid down by the Financial Regulation, the revenue and expenditure account which shall set out all the operations of the financial year and be accompanied by the report of the Court of Auditors.

Article 81

Discharge

The Parliament shall decide to grant, postpone or refuse a discharge; the decision on the discharge may be accompanied by observations which the Commission shall be obliged to take into account.

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PART SIX — GENERAL AND FINAL PROVISIONS

Article 82

Entry into force

This Treaty shall be open for ratification by all the Member States of the European Communities.

Once this Treaty has been ratified by a majority of the Member States of the Communities whose population represents two-thirds of the total population of the Communities, the Governments of the Member States which have ratified shall meet at once to decide by common accord on the procedures by and the date on which this Treaty shall enter into force and on relations with the Member States which have not yet ratified.

Article 83

Deposit of the instruments of ratification

The instruments of ratification shall be deposited with the Government of the first State to have completed the ratification procedure.

Article 84

Revision of the Treaty

One representation within the Council of the Union, or one-third of the members of Parliament, or the Commission may submit to the legislative authority a reasoned draft law amending one or more provisions of this Treaty. The draft shall be submitted for approval to the two arms of the legislative authority which shall act in accordance with the procedure applicable to organic laws.

The draft, thus approved, shall be submitted for ratification by the Member States and shall enter into force when they have all ratified it.

Article 85

The seat

The European Council shall determine the seat of the institutions. Should the European Council not have taken a decision on the seat within two years of the entry into force of this Treaty, the legislative authority shall take a final decision in accordance with the procedure applicable to organic laws.

Article 86

Reservations

The provisions of this Treaty may not be subject to any reservations. This Article does not preclude the Member States from maintaining, in relation to the Union, the declarations they have made with regard to the Treaties and conventions which form part of the Community patrimony.

Article 87

Duration

This Treaty is concluded for an unlimited period.

— *Motion for a resolution*

Preamble: adopted.

Before recital A

— amendment 24/rev. by Mr Moreau, Mr Radoux, Mr Seeler and Mr van Miert: adopted.

Recital A

— amendment 136 by Mr Spinelli, on behalf of the Committee on Institutional Affairs: adopted,

— amendment 42: fell.

(amendment 102/rev.: withdrawn).

Recital B

— amendment 103/rev. by Mr Prag and others: adopted.

Recital B: adopted as amended.

Recital C: adopted.

(amendment 104/rev. by the same: linguistic.)

Paragraphs 1, 2 and 3:

— compromise amendment 139 by Mr Glinne, on behalf of the Socialist Group, Mr Barbi, on behalf of the EPP Group, Mr Prout, on behalf of the ED Group, Mr Bangemann, on behalf of the Liberal and Democratic Group, Mr Fanti and Mr Ferri:

The following spoke: Mr Ferri, *Chairman of the Committee on Institutional Affairs,* who proposed a modification to paragraph 1 ('. . . its President assisted by a delegation from the Committee on Institutional Affairs'), and Mr Glinne, who did not accept this proposal.

The President undertook to submit the proposal to the enlarged Bureau.

Roll-call vote requested by the Liberal and Democratic Group:

Members voting: 291 (1),

For: 239.

Against: 24.

Abstentions: 28.

Amendment 139 was thus adopted.

(All other amendments thus fell.)

(1) See Annex.

In view of the late hour, the President proposed that explanations of vote should be limited to one minute for members speaking on their own behalf and two minutes for members speaking on behalf of their group.

Explanations of vote:

The following spoke: Mr Barbi, on behalf of the EPP Group, Mr Nord, on behalf of the Liberal and Democratic Group, Mr Hord, on a point of procedure, Sir Fred Catherwood, Mr Glinne, Mr Prag, Mr Di Bartolomei, Mr Pannella, who spoke also on behalf of Mrs Bonino, Mr Kirk, Mr Adamou, Mrs Castle, Mrs Lizin, Mr Megahy, Mr De Pasquale, on behalf of the Italian Members of the Communist and Allies Group, Mrs Gredal, on behalf of the Danish Members of the Socialist Group, Mr Balfe, Mr Luster, Mr Israël, Mrs Nielsen, who spoke also on behalf of Mr Nielsen, Mr Maher, Mr Enright, Mr Pfennig, on the drafting change to Article 56, Mr Moreland and the coordinating rapporteur.

Roll-call vote on the motion for a resolution as a whole requested by the Socialist Group.

Members voting: 303 (1).

For: 237.

Against: 32.

Abstentions: 34.

Parliament thus adopted the following resolution:

RESOLUTION

on the draft Treaty establishing the European Union

The European Parliament,

— having regard to its decision of 9 July 1981 setting up a Committee on Institutional Affairs (1),

— having regard to its resolution of 6 July 1982 concerning the reform of the Treaties and the achievement of European Union (2),

— having regard to its resolution of 14 September 1983 concerning the substance of the preliminary draft Treaty establishing the European Union (3),

— having regard to the report of the Committee on Institutional Affairs (Doc. 1-1200/83);

A. persuaded that, having regard to the present difficulties, there is an urgent and vital need for a revival of European integration: such a revival should include a further

(1) OJ No C 234, 14. 9. 1981, p. 48.
(2) OJ No C 238, 13. 9. 1982, p. 25.
(3) OJ No C 277, 17. 10. 1983, p. 95.

development of existing policies, the introduction of new policies and the establishment of a new institutional balance;

B. recalling that European Union has been designated as an objective by the Member States in the Treaties establishing the European Communities, at the Conference of the Heads of State or Government of 20 October 1972 and in the Solemn Declaration of 19 June 1983, as well as by the institutions of the Communities themselves,

C. conscious of its historic duty as the first Assembly directly elected by the citizens of Europe, to put forward a proposal for Union,

D. noting that the preliminary draft Treaty establishing the European Union submitted by the Committee on Institutional Affairs, which is based on the experience of 30 years of Community activities and on the manifest need to progress beyond the current degree of unity, is compatible with the guidelines it adopted in its resolution of 14 September 1983,

1. Approves the preliminary draft, which hereby becomes the draft Treaty establishing the European Union, and instructs its President to submit it to the Parliaments and Governments of the Member States;

2. Calls on the European Parliament which will be elected on 17 June 1984 to arrange all appropriate contacts and meetings with the national parliaments and to take any other useful initiatives to enable it to take account of the opinions and comments of the national parliaments;

3. Hopes that the Treaty establishing the European Union will ultimately be approved by all the Member States in accordance with their respective constitutional procedures.

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11. **Agenda for next sitting**

The President announced the following agenda for the sitting on Wednesday, 15 February 1984.

9 a.m. to 1 p.m. and 3 p.m. to 7 p.m.:

— Decisions on urgency,

— 17th general report on the activities of the Communities for 1983 and programme of work for 1984 (followed by a debate) (1),

— Joint debate on an oral question by the EPD Group to the Commission on the inadequacy of the agricultural appropriations allocated to the EAGGF in the 1984 budget and an oral question on behalf of the Committee on Budgets to the Commission on Parliament's proposals for corrections to the 1984 budget.

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(1) Oral Questions Docs 1-1080/83, 1-952/83, 1-954/83, 1-960/83 and 1-1316/83 would be included in the debate.

Tuesday, 14 February 1984

3 p.m. to 4.30 p.m.:

— Topical and urgent debate (objections),

— Question Time (Questions to the Commission),

4.30 p.m.:

— Action taken on the opinions of Parliament by the Commission.

(The sitting closed at 9 p.m.)

H-J. OPITZ
Secretary-General

Pieter DANKERT
President

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Tuesday, 14 February 1984

ATTENDANCE REGISTER

Sitting of 14 February 1984

ABENS, ADAM, ADAMOU, ADONNINO, VAN AERSSEN, AIGNER, ALBER, VON ALEMANN, ALEXIADIS, ALFONSI, ALMIRANTE, ANSQUER, ANTONIOZZI, ARFE, ARNDT, BADUEL GLORIOSO, BAILLOT, BALFE, BANGEMANN, BARBAGLI, BARBARELLA, BARBI, BATTERSBY, BAUDIS, BEAZLEY, BERKHOUWER, BERNARD, BETHELL, BETTIZA, BEUMER, BEYER DE RYKE, VON BISMARCK, BLANEY, BLUMENFELD, BOCKLET, BØGH, BOMBARD, BONACCINI, BONDE, BONINO, BOOT, BORD, BOSERUP, BOURNIAS, BROK, BROOKES, BUCHAN, BUTTAFUOCO, CABORN, CAILLAVET, CALVEZ, CARDIA, CARETTONI ROMAGNOLI, CARIGLIA, CAROSSINO, CASSANMAGNAGO CERRETTI, CASTLE, CATHERWOOD, CECOVINI, CERAVOLO, CHAMBEIRON, CHANTERIE, CHARZAT, CINCIARI RODANO, CINGARI, CLINTON, CLWYD, COHEN, COLLESELLI, COLLINS, COLLOMB, COSENTINO, COSTANZO, COTTRELL, DE COURCY LING, COUSTE, CRONIN, CROUX, CURRY, DALSASS, DALZIEL, DAMETTE, DAMSEAUX, D'ANGELOSANTE, DANKERT, DAVERN, DE GUCHT, DELATTE, DEL DUCA, DELEAU, DELOROZOY, DENIS, DE PASQUALE, DESCHAMPS, DESOUCHES, DE VALERA, DIANA, DI BARTOLOMEI, DIDO, DILIGENT, DONNEZ, DOURO, DUPORT, DURY, EISMA, ELLES, ENRIGHT, EPHREMIDIS, ERCINI, ESTGEN, EYRAUD, FAJARDIE, FANTI, FAURE, FERGUSSON, FERNANDEZ, DE FERRANTI, FERRY, FICH, FILIPPI, FISCHBACH, FOCKE, FORSTER, FORTH, FRANZ, FRIEDRICH B., FRIEDRICH I., FRISCHMANN, FUCHS K., FUILLET, GABERT, GAIOTTI DE BIASE, GALLAGHER, GALLAND, GALLUZZI, GATTO, GAUTHIER R., GAUTIER F., GAWRONSKI, GENDEBIEN, GEROKOSTOPOULOS, GERONIMI, GEURTSEN, GHERGO, GIAVAZZI, GIUMMARRA, DE GOEDE, GOERENS, GONTIKAS, GOPPEL, GOUTHIER, GREDAL, GRIFFITHS, HAAGERUP, HABSBURG, HAHN, HALLIGAN, HÄNSCH, HAMMERICH, HARMAR-NICHOLLS, HARRIS, VON HASSEL, HEINEMANN, HELMS, HERKLOTZ, HERMAN, VAN DEN HEUVEL, HOFF, HOOPER, HOPPER, HORD, HOWELL, HUME, HUTTON, IPPOLITO, ISRAEL, JACKSON C., JACKSON R., JAKOBSEN, JAQUET, JONKER, KALLIAS, KALOYANNIS, KASPEREIT, KATZER, KAZAZIS, KEATING, KELLETT-BOWMAN ED., KELLETT-BOWMAN EL., KEY, KIRK, KLEPSCH, KLINKENBORG, KROUWEL-VLAM, KYRKOS, LAGAKOS, LALOR, LALUMIERE, LANGE, LANGES, LECANUET, LEGA, LEMMER, LENTZ-CORNETTE, LENZ, LEONARDI, LIGIOS, LINKOHR, LIZIN, LOMAS, LOO, LOUWES, LÜCKER, LUSTER, LYNGE, MACARIO, MCCARTIN, MACCIOCCHI, MAFFRE-BAUGE, MAHER, MAIJ-WEGGEN, MAJONICA, MALANGRE, DE LA MALENE, MARCHESIN, MARCK, MARKOPOULOS, MARSHALL, MART, MARTIN S., MEGAHY, MERTENS, MIHR, VAN MINNEN, MODIANO, MOORHOUSE, MOPREAU J., MOREAU L., MORELAND, MÜLLER-HERMANN, NEBOUT, NEWTON DUNN, NIELSEN J. B., NIELSEN T., NIKOLAOU C., NIKOLAOU K., NORD, NORDMANN, NORMANTON, NOTENBOOM, NYBORG, O'HAGAN, ORLANDI, D'ORMESSON, OUZOUNIDIS, PAISLEY, PAJETTA, PAPAEFSTRATIOU, PAPANTONIOU, PAPAPIETRO, PATTERSON, PAUWLEYN, PEDINI, PELIKAN, PENDERS, PERY, PESMAZOGLOU, PETERS, PETERSEN, PETRONIO, PFENNIG, PFLIMLIN, PHLIX, PICCOLI, PININFARINA, PINTAT, PLASKOVITIS, PÖTTERING, PONIATOWSKI, PRAG, PRICE, PROTOPAPADAKIS, PROUT, PROVAN, PRUVOT, PULETTI, PURVIS, QUIN, RABBETHGE, RADOUX, RHYS WILLIAMS, RIEGER, RINSCHE, RIPA DI MEANA, RIVIEREZ, ROBERTS, ROGERS, ROMUALDI, ROSSI, RUMOR, RYAN, SABLE, SABY, SÄLZER, SALISCH, SCHIELER, SCHINZEL, SCHLEICHER, SCHMIDT, SCHNITKER, SCHÖN KARL, SCHÖN KONRAD, SCHWENCKE, SCOTT-HOPKINS, SCRIVENER, SEAL, SEEFELD, SEELER, SEGRE, SEIBEL-EMMERLING, SEITLINGER, SELIGMAN, SHERLOCK, SIEGLERSCHMIDT, SIMMONDS, SIMONNET, SIMPSON, SKOVMAND, SPAAK, SPENCER, SPICER, SPINELLI, SQUARCIALUPI, STELLA, STREHLER, SUTRA, TAYLOR J. D., TAYLOR J. M., THAREAU, THEOBALD-PAOLI, TOLMAN, TRAVAGLINI, TREACY, TUCKMAN, TURNER, TYRRELL, VANDEMEULEBROUCKE, VANDEWIELE, VAN HEMELDONCK, VANKERKHOVEN, VAN MIERT, VANNECK, VAN ROMPUY, VAYSSADE, VEIL, VERGEER, VERGES, VERNIMMEN, VERONESI, VERROKEN, VETTER, VGENOPOULOS, VIE, VIEHOFF, VITALE, VON DER VRING, WAGNER, WALTER, WALZ, WARNER, WAWRZIK, WEBER, WEDEKIND, WELSH, WETTIG, WIECZOREK-ZEUL, VON WOGAU, WOLTJER, WURTZ, ZAGARI, ZARGES, ZECCHINO.

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ANNEX

Result of roll-call votes

(+) = Yes

(—) = No

(O) = Abstention

Preliminary draft Treaty (Doc. 1-1200/83)

Amendment 38

(+)

BALFE, HUTTON, KIRK, LALUMIERE.

(—)

ADDONINO, ALBER, ALBERS, ALMIRANTE, ANTONIOZZI, ARFE, ARNDT, BADUEL GLORIOSO, BANGEMANN, BARBAGLI, BARBARELLA, BARBI, BARTOLOMEI, BATTERSBY, BAUDIS, BEAZLEY, BEUMER, BISMARCK VON, BLUMENFELD, BOCKLET, BOMBARD, BONACCINI, BONINO, BOOT, BOURNIAS, BUTTAFUOCO, CAILLAVET, CALVEZ, CARDIA, CARETTONI ROMAGNOLI, CARIGLIA, CAROSSINO, CASSANMAGNAGO CERRETTI, CECOVINI, CHANTERIE, CINCIARI RODANO, CINGARI, CLINTON, COHEN, COLLESELLI, COLLOMB, COSENTINO, COSTANZO, CROUX, D'ANGELOSANTE, DALSASS, DE GUCHT, DE PASQUALE, DEL DUCA, DELATTE, DELOROZOY, DESCHAMPS, DIANA, DIDO, DUPORT, EISMA, ERCINI, ESTGEN, FAJARDIE, FANTI, FAURE E., FERRI, FICH, FORSTER, FRANZ, FUCHS K., GABERT, GAIOTTI DE BIASE, GALLAGHER, GALLUZZI, GATTO, GAWRONSKI, GENDEBIEN, GEROKOSTOPOULOS, GERONIMI, GHERGO, GIUMMARRA, GLINNE, GOERENS, GONTIKAS, GOPPEL, GOUTHIER, GREDAL, HAAGERUP, HABSBURG, HAHN, HARMAR-NICHOLLS, HERKLOTZ, HERMAN, HEUVEL VAN DEN, HOOPER, HOPPER, IPPOLITO, ISRAEL, JACKSON C., JAKOBSEN, KATZER, KAZAZIS, KEATING, KLEPSCH, KLINKENBORG, KROUWEL-VLAM, LANGES, LECANUET, LEGA, LEMMER, LENTZ-CORNETTE, LENZ, LEONARDI, LIGIOS, LIZIN, LOO, LOUWES, LÜCKER, LUSTER, MACARIO, MAHER, MAJONICA, MALANGRE, MARCHESIN, MARCK, MARSHALL, MARTIN S., MCCARTIN, MERTENS, MIHR, MODIANO, MOORHOUSE, MOREAU J., MOREAU L., MORELAND, NEWTON DUNN, NIELSEN J., NIELSEN T., NORD, NOTENBOOM, ORLANDI, D'ORMESSON, OUZOUNIDIS, PAISLEY, PANNELLA, PAPAEFSTRATIOU, PAPAPIETRO, PAUWELYN, PEDINI, PELIKAN, PENDERS, PERY, PETERS, PETERSEN, PETRONIO, PHLIX, PICCOLI, PININFARINA, PINTAT, PONIATOWSKI, PRAG, PROTOPAPADAKIS, PROVAN, PRUVOT, PULETTI, PURVIS, RABBETHGE, RADOUX, RHYS WILLIAMS, RINSCHE, RIPA DI MEANA, RUMOR, RYAN, SABLE, SABY, SCHMID, SCHNITKER, SCHÖN KARL, SCRIVENER, SEEFELD, SEGRE, SEIBEL-EMMERLING, SEITLINGER, SELIGMAN, SHERLOCK, SIMONNET, SPAAK, SPINELLI, SQUARCIALUPI, STELLA, STREHLER, SUTRA, THAREAU, THEOBALD, TOLMAN, TRAVAGLINI, TREACY, TUCKMAN, VANDEMEULEBROUCKE, VANDEWIELE, VANKERKHOVEN, VANNECK, VEIL, VERGEER, VERNIMMEN, VERONESI, VERROKEN, VGENOPOULOS, VIEHOFF, VITALE, VRING VON DER, WALZ, WAWRZIK, WELSH, WETTIG, WOGAU VON, ZAGARI, ZECCHINO.

(O)

BOSERUP, CASTLE, FUILLET, GRIFFITHS, LAGAKOS, NIKOLAOU C., PLASKOVITIS, QUIN.

Amendment 29

(+)

ADONNINO, AERSSEN VAN, AIGNER, ALBER, ANTONIOZZI, BARBAGLI, BARBI, BARTOLOMEI, BAUDIS, BEAZLEY, BEUMER, BISMARCK VON, BLUMENFELD, BOCKLET, BOOT, BOURNIAS, BROK, CARIGLIA, CHANTERIE, CLINTON, COLLESELLI, COLLOMB, COSENTINO, COSTANZO, CROUX, DALSASS, DEL DUCA, DIANA, DILIGENT, ERCINI, ESTGEN, FISCHBACH, FRANZ, FRIEDRICH I., FRÜH, FUCHS K., GALLAGHER, GEROKOSTOPOULOS, GERONIMI, GHERGO, GIAVAZZI, GIUMMARRA, GONTIKAS, GOPPEL, HABSBURG, HAHN, HASSEL VON, HELMS, HERMAN, ISRAEL, JAKOBSEN, KALLIAS, KALOYANNIS, KATZER, KAZAZIS, KLEPSCH, LANGES, LECANUET, LEGA, LEMMER, LENTZ-CORNETTE, LENZ, LIGIOS, LÜCKER, LUSTER, MACARIO, MAIJ-WEGGEN, MAJONICA, MALANGRE, MARCK, MCCARTIN, MERTENS, MODIANO, MOREAU L., MÜLLER-HERMANN, NIELSEN J., NOTENBOOM, ORLANDI, D'ORMESSON, PAPAEFSTRATIOU, PEDINI, PENDERS, PFENNIG, PFLIMLIN, PHLIX, PICCOLI, PÜTTERING, PROTOPAPADAKIS,

Tuesday, 14 February 1984

RABBETHGE, RINSCHE, RUMOR, RYAN, SÄLZER, SCHLEICHER, SCHNITKER, SCHÖN KONRAD, SEITLINGER, SIMONNET, STELLA, TOLMAN, TRAVAGLINI, TUCKMAN, TURNER, VANDEWIELE, VANKERKHOVEN, VERGEER, VERROKEN, WALZ, WAWRZIK, WOGAU VON, ZARGES.

(—)

ALBERS, ALEMANN VON, ALMIRANTE, ARFE, ARNDT, BADUEL GLORIOSO, BANGEMANN, BARBARELLA, BOMBARD, BONACCINI, BONINO, BOSERUP, CABORN, CAILLAVET, CALVEZ, CARDIA, CARETTONI ROMAGNOLI, CAROSSINO, CATHERWOOD, CECOVINI, CERAVOLO, CHARZAT, CINCIARI RODANO, CINGARI, COHEN, COLLINS, CURRY, D'ANGELOSANTE, DALZIEL, DE FERRANTI, DE GUCHT, DE PASQUALE, DELATTE, DELOROZOY, DIDO, DOURO, DUPORT, EISMA, ENRIGHT, FAJARDIE, FANTI, FAURE E., FERGUSSON, FERRI, FICH, FOCKE, FORSTER, FUILLET, GABERT, GALLAND, GALLUZZI, GATTO, GAUTIER, GAWRONSKI, GENDEBIEN, GEURTSEN, GLINNE, GOERENS, GOUTHIER, GREDAL, HAAGERUP, HÄNSCH, HARMAR-NICHOLLS, HEINEMANN, HERKLOTZ, HEUVEL VAN DEN, HOFF, HOOPER, HOPPER, HUME, HUTTON, IPPOLITO, JACKSON C., JAQUET, KEATING, KELLETT-BOWMAN ED., KEY, KIRK, KLINKENBORG, KROUWEL-VLAM, LAGAKOS, LALUMIERE, LANGE, LEONARDI, LINKOHR, LIZIN, LOO, LOUWES, MAHER, MARCHESIN, MARKOPOULOS, MARSHALL, MARTIN S., MIHR, MINNEN VAN, MOORHOUSE, MOREAU J., MORELAND, NEWTON DUNN, NIKOLAOU K., NORD, NORDMANN, OUZOUNIDIS, PAJETTA, PANNELLA, PAPANTONIOU, PAPAPIETRO, PAUWELYN, PELIKAN, PESMAZOGLOU, PETERS, PETERSEN, PETRONIO, PININFARINA, PINTAT, PLASKOVITIS, PONIATOWSKI, PRAG, PRICE, PROVAN, PRUVOT, PULETTI, PURVIS, RADOUX, RHYS WILLIAMS, RIPA DI MEANA, ROMUALDI, ROSSI, SABLE, SABY, SCHMID, SCHÖN KARL, SCOTT-HOPKINS, SCRIVENER, SEEFELD, SEELER, SEGRE, SEIBEL-EMMERLING, SELIGMAN, SHERLOCK, SIEGLERSCHMIDT, SIMPSON, SPAAK, SPENCER, SPINELLI, SQUARCIALUPI, SUTRA, THAREAU, THEOBALD, TREACY, VAN HEMELDONCK, VAN MIERT, VANNECK, VAYSSADE, VEIL, VERNIMMEN, VERONESI, VETTER, VGENOPOULOS, VIEHOFF, VITALE, VRING VON DER, WAGNER, WALTER, WEBER, WELSH, WETTIG, WIECZOREK-ZEUL, ZAGARI.

(O)

ADAM, BALFE, BATTERSBY, CASTLE, DESCHAMPS, GAIOTTI DE BIASE, GRIFFITHS, HORD, MEGAHY, PERY, QUIN, VANDEMEULEBROUCKE, ZECCHINO.

Amendment 72/rev.

(+)

AERSSEN VAN, ALBER, BALFE, BEUMER, BISMARCK VON, BOOT, BROK, CHARZAT, COSENTINO, DALSASS, DEL DUCA, EISMA, FRÜH, FUCHS K., GOEDE DE, GOPPEL, HÄNSCH, HASSEL VON, HELMS, HERMAN, JAQUET, KATZER, KLEPSCH, LEMMER, LENTZ-CORNETTE, LENZ, LUSTER, MAJONICA, MALANGRE, MERTENS, MÜLLER-HERMANN, NEWTON DUNN, NOTENBOOM, PENDERS, PFENNIG, PHLIX, PÖTTERING, RABBETHGE, SÄLZER, SCHLEICHER, SIMONNET, STELLA, VAN HEMELDONCK, VAN MIERT, VANDEMEULEBROUCKE, VANDEWIELE, WARNER, WELSH, ZARGES.

(—)

ABENS, ADONNINO, ALBERS, ALEMANN VON, ALMIRANTE, ANTONIOZZI, ARFE, ARNDT, BADUEL GLORIOSO, BANGEMANN, BARBAGLI, BARBARELLA, BARBI, BARTOLOMEI, BÄTTERSBY, BAUDIS, BEAZLEY, BERKHOUWER, BERNARD, BETTIZA, BLUMENFELD, BOCKLET, BONACCINI, BOURNIAS, BROOKES, BUTTAFUOCO, CAILLAVET, CALVEZ, CARDIA, CARETTONI ROMAGNOLI, CARIGLIA, CAROSSINO, CASSANMAGNAGO CERRETTI, CATHERWOOD, CECOVINI, CERAVOLO, CHANTERIE, CINCIARI RODANO, CINGARI, COHEN, COLLESELLI, COLLINS, COLLOMB, COSTANZO, CROUX, CURRY, D'ANGELOSANTE, DALZIEL, DE GUCHT, DE PASQUALE, DELATTE, DELOROZOY, DESCHAMPS, DIANA, DIDO, DILIGENT, DUPORT, ELLES, ERCINI, ESTGEN, FANTI, FAURE E., FERGUSSON, FERRI, FISCHBACH, FOCKE, FORSTER, FUILLET, GABERT, GAIOTTI DE BIASE, GALLAND, GALLUZZI, GATTO, GAUTIER, GAWRONSKI, GEROKOSTOPOULOS, GHERGO, GIAVAZZI, GIUMMARRA, GLINNE, GOERENS, GONTIKAS, GOUTHIER, HAAGERUP, HABSBURG, HAHN, HALLIGAN, HARMAR-NICHOLLS, HEINEMANN, HERKLOTZ, HEUVEL VAN DEN, HOFF, HOOPER, HORD, HOWELL, HUME, HUTTON, IPPOLITO, ISRAEL, JONKER, KALLIAS, KALOYANNIS, KAZAZIS, KEATING, KELLETT-BOWMAN ED., KEY, KROUWEL-VLAM, KYRKOS, LALUMIERE, LANGE, LANGES, LECANUET, LEGA, LEONARDI, LIGIOS, LINKOHR, LIZIN, LOO, LÜCKER, MACARIO, MACCIOCCHI, MAHER, MAIJ-WEGGEN, MARCHESIN, MARCK, MARSHALL, MARTIN S., MCCARTIN, MIHR, MINNEN VAN, MODIANO, MOORHOUSE, MOREAU J., MOREAU L., MORELAND, NORD, NORDMANN, ORLANDI, D'ORMESSON, PAJETTA, PAPAEFSTRATIOU, PAPANTONIOU, PATTERSON, PAUWELYN, PEDINI, PELIKAN, PETERS, PETRONIO, PFLIMLIN,

Tuesday, 14 February 1984

PICCOLI, PININFARINA, PINTAT, PONIATOWSKI, PRAG, PRICE, PROTOPAPADAKIS, PROVAN, PRUVOT, PULETTI, PURVIS, QUIN, RADOUX, RHYS WILLIAMS, RINSCHE, RIPA DI MEANA, ROMUALDI, ROSSI, RUMOR, RYAN, SABLE, SABY, SCHINZEL, SCHMID, SCHNITKER, SCHÖN KARL, SCHÖN KONRAD, SCHWENCKE, SCOTT-HOPKINS, SEEFELD, SEELER, SEGRE, SEIBEL-EMMERLING, SEITLINGER, SELIGMAN, SIEGLERSCHMIDT, SIMPSON, SPENCER, SPINELLI, SQUARCIALUPI, STREHLER, SUTRA, THAREAU, THEOBALD, TOLMAN, TRAVAGLINI, TREACY, TUCKMAN, TURNER, VAN ROMPUY, VANKERKHOVEN, VANNECK, VAYSSADE, VEIL, VERGEER, VERONESI, VERROKEN, VETTER, VIEHOFF, VITALE, VRING VON DER, WAGNER, WALTER, WALZ, WAWRZIK, WEBER, WETTIG, WIECZOREK-ZEUL, WOGAU VON, ZAGARI, ZECCHINO.

(O)

ADAM, AIGNER, BØGH, BOMBARD, BONINO, BOSERUP, CLINTON, COURCY LING DE, EYRAUD, FAJARDIE, FICH, FRIEDRICH I., GREDAL, GRIFFITHS, KLINKENBORG, NIELSEN J., PANNELLA, PERY, PETERSEN, PLASKOVITIS, VERNIMMEN.

Amendment 128

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ADONNINO, AERSSEN VAN, AIGNER, ALBER, ALEMANN VON, ALMIRANTE, ANTONIOZZI, ARFE', BADUEL GLORIOSO, BANGEMANN, BARBAGLI, BARBARELLA, BARBI, BARTOLOMEI, BAUDIS, BERKHOUWER, BETTIZA, BEUMER, BISMARCK VON, BLUMENFELD, BOCKLET, BONACCINI, BOOT, BOURNIAS, BROK, BROOKES, CALVEZ, CARDIA, CARETTONI ROMAGNOLI, CARIGLIA, CAROSSINO, CASSANMAGNAGO CERRETTI, CATHERWOOD, CECOVINI, CERAVOLO, CHANTERIE, CINCIARI RODANO, CINGARI, CLINTON, COLLESELLI, COLLOMB, COSENTINO, COSTANZO, COURCY LING DE, CROUX, D'ANGELOSANTE, DALSASS, DE GUCHT, DE PASQUALE, DEL DUCA, DELATTE, DELOROZOY, DESCHAMPS, DIANA, DIDO, DILIGENT, EISMA, ERCINI, ESTGEN, FANTI, FAURE E., FERGUSSON, FERRI, FRANZ, FRIEDRICH I., FRÜH, FUCHS K., GAIOTTI DE BIASE, GALLAND, GALLUZZI, GATTO, GAWRONSKI, GENDEBIEN, GEURTSEN, GHERGO, GIAVAZZI, GIUMMARRA, GOEDE DE, GOERENS, GONTIKAS, GOPPEL, GOUTHIER, HABSBURG, HAHN, HASSEL VON, HELMS, HERMAN, IPPOLITO, JAKOBSEN, JONKER, KALOYANNIS, KATZER, KAZAZIS, KLEPSCH, LANGES, LECANUET, LEGA, LEMMER, LENTZ-CORNETTE, LENZ, LEONARDI, LIGIOS, LOUWES, LUCKER, LUSTER, MACARIO, MACCIOCCHI, MAIJ-WEGGEN, MAJONICA, MALANGRE, MARCK, MARTIN S., MC CARTIN, MERTENS, MODIANO, MOREAU L., MÜLLER-HERMANN, NEWTON DUNN, NORD, NORDMANN, NOTENBOOM, ORLANDI, D'ORMESSON, PANNELLA, PAPAEFSTRATIOU, PAPAPIETRO, PAUWELYN, PEDINI, PELIKAN, PENDERS, PESMAZOGLOU, PETERS, PETRONIO, PFENNIG, PFLIMLIN, PHLIX, PICCOLI, PININFARINA, PINTAT, PONIATOWSKI, PÖTTERING, PROTOPAPADAKIS, PRUVOT, PULETTI, RABBETHGE, RADOUX, RINSCHE, RIPA DI MEANA, ROMUALDI, ROSSI, RUMOR, RYAN, SABLE, SÄLZER, SCHLEICHER, SCHNITKER, SCHÖN KONRAD, SCHWENCKE, SCRIVENER, SEELER, SEGRE, SEITLINGER, SIMONNET, SPAAK, SPINELLI, SQUARCIALUPI, STELLA, STREHLER, TOLMAN, TRAVAGLINI, VAN MIERT, VAN ROMPUY, VANDEWIELE, VANKERKHOVEN, VANNECK, VEIL, VERGEER, VERONESI, VITALE, WALZ, WAWRZIK, WOGAU VON, ZAGARI, ZARGES, ZECCHINO.

(—)

ADAM, ALBERS, ARNDT, BEAZLEY, BERNARD, CAILLAVET, CASTLE, COHEN, CURRY, DALZIEL, DE FERRANTI, DESOUCHES, DUFORT, EYRAUD, FAJARDIE, FICH, FOCKE, FUILLET, GABERT, GALLAGHER, GLINNE, GREDAL, GRIFFITHS, HAAGERUP, HÄNSCH, HALLIGAN, HARMAR-NICHOLLS, HEINEMANN, HERKLOTZ, HEUVEL VAN DEN, HOFF, HOOPER, HORD, HUME, HUTTON, ISRAEL, JACKSON C., JAQUET, KALLIAS, KEATING, KELLETT-BOWMAN ED., KLINKENBORG, KROUWEL-VLAM, KYRKOS, LAGAKOS, LALUMIERE, LANGE, LINKOHR, LIZIN, LOO, LYNGE, MARCHESIN, MARKOPOULOS, MARSHALL, MIHR, MINNEN VAN, MOORHOUSE, MOREAU J., MORELAND, NIELSEN T., NIKOLAOU C., NIKOLAOU K., OUZOUNIDIS, PAJETTA, PAPANTONIOU, PERY, PETERSEN, PLASKOVITIS, PRAG, PRICE, PURVIS, QUIN, RHYS WILLIAMS, SCHINZEL, SCHMID, SCHÖN KARL, SEEFELD, SEIBEL-EMMERLING, SELIGMAN, SIEGLERSCHMIDT, SIMPSON, SPENCER, THAREAU, TREACY, TUCKMAN, TURNER, VAN HEMELDONCK, VANDEMEULEBROUCKE, VAYSSADE, VERNIMMEN, VETTER, VIEHOFF, VRING VON DER, WAGNER, WALTER, WARNER, WELSH, WETTIG.

(O)

BALFE, BØGH, BOSEROP, GEROKOSTOPOULOS, HAMMERICH, KIRK, MAHER, NIELSEN J., PATTERSON, PROVAN, SABY, SCOTT-HOPKINS, WIECZOREK-ZEUL, WOLTJER.

No C 77/60 Official Journal of the European Communities 19. 3. 84

Tuesday, 14 February 1984

Preliminary draft Treaty

Final vote

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ADONNINO, AERSSEN VAN, ALBER, ALBERS, ALEMANN VON, ALMIRANTE, ANTONIOZZI, ARFE, ARNDT, BADUEL GLORIOSO, BANGEMANN, BARBAGLI, BARBARELLA, BARBI, BARTOLOMEI, BATTERSBY, BAUDIS, BEAZLEY, BETTIZA, BEUMER, BISMARCK VON, BLUMENFELD, BOCKLET, BONACCINI, BONINO, BOOT, BOURNIAS, BROK, BUTTAFUOCO, CAILLAVET, CALVEZ, CARDIA, CARETTONI ROMAGNOLI, CARIGLIA, CAROSSINO, CASSANMAGNAGO CERRETTI, CECOVINI, CERAVOLO, CHANTERIE, CINCIARI RODANO, CINGARI, CLINTON, COHEN, COLLESELLI, COLLOMB, COSENTINO, COSTANZO, COURCY LING DE, CROUX, CURRY, D'ANGELOSANTE, DALSASS, DE GUCHT, DE PASQUALE, DEL DUCA, DELATTE, DELOROZOY, DESCHAMPS, DIANA, DILIGENT, EISMA, ERCINI, ESTGEN, FANTI, FAURE E., FERRI, FORSTER, FRANZ, FRIEDRICH I., FRÜH, FUCHS K., GABERT, GAIOTTI DE BIASE, GALLAGHER, GALLAND, GALLUZZI, GATTO, GAWRONSKI, GENDEBIEN, GEROKOSTOPOULOS, GERONIMI, GEURTSEN, GHERGO, GIAVAZZI, GIUMMARRA, GLINNE, GOEDE DE, GOERENS, GONTIKAS, GOPPEL, GOUTHIER, HAAGERUP, HABSBURG, HAHN, HALLIGAN, HASSEL VON, HEINEMANN, HELMS, HERKLOTZ, HERMAN, HEUVEL VAN DEN, HOFF, HOWELL, IPPOLITO, ISRAEL, JACKSON C., JAKOBSEN, JONKER, KALLIAS, KALOYANNIS, KATZER, KAZAZIS, KELLET-BOWMAN ED., KLEPSCH, KLINKENBORG, KROUWEL-VLAM, LANGE, LANGES, LECANUET, LEGA, LEMMER, LENTZ-CORNETTE, LENZ, LEONARDI, LIGIOS, LINKOHR, LIZIN, LOUWES, LÜCKER, LUSTER, MACARIO, MACCIOCCHI, MAHER, MAIJ-WEGGEN, MAJONICA, MALANGRE, MARCK, MARTIN S., MERTENS, MC CARTIN, MODIANO, MIHR, MOORHOUSE, MOREAU L., MORELAND, NEWTON DUNN, NORD, NORDMANN, NOTENBOOM, ORLANDI, D'ORMESSON, PAJETTA, PANNELLA, PAPAEFSTRATIOU, PAPAPIETRO, PATTERSON, PEDINI, PELIKAN, PENDERS, PESMAZOGLOU, PETERS, PETRONIO, PFENNIG, PFLIMLIN, PHLIX, PICCOLI, PININFARINA, PINTAT, PONIATOWSKI, PÖTTERING, PRAG, PROTOPAPADAKIS, PROVAN, PRUVOT, PULETTI, PURVIS, RABBETHGE, RADOUX, RHYS WILLIAMS, RINSCHE, RIPA DI MEANA, ROMUALDI, ROSSI, RUMOR, RYAN, SABLE, SÄLZER, SCHINZEL, SCHLEICHER, SCHNITKER, SCHÖN KARL, SCHÖN KONRAD, SCOTT-HOPKINS, SCRIVENER, SEEFELD, SEELER, SEGRE, SEIBEL-EMMERLING, SEITLINGER, SELIGMAN, SIMONNET, SIMPSON, SPAAK, SPENCER, SPINELLI, SQAURCIALUPI, STELLA, STREHLER, TOLMAN, TRAVAGLINI, TUCKMAN, VAN HEMELDONCK, VAN MIERT, VAN ROMPUY, VANDEMEULEBROUCKE, VANDEWIELE, VANKERKHOVEN, VANNECK, VEIL, VERGEER, VERNIMMEN, VERONESI, VERROKEN, VETTER, VIEHOFF, VITALE, VRING VON DER, WAGNER, WALZ, WAWRZIK, WETTIG, WIECZOREK-ZEUL, WOGAU VON, WOLTJER, ZAGARI, ZARGES, ZECCHINO.

(—)

ADAMOU, BAILLOT, BALFE, BØGH, BONDE, BOSERUP, CABORN, CASTLE, CHAMBEIRON, DAMETTE, DE FERRANTI, DENIS, ELLES, EPHREMIDIS, FICH, FRISCHMANN, GREDAL, GRIFFITHS, HAMMERICH, HARMAR-NICHOLLS, HUTTON, KEATING, LYNGE, MARSHALL, PETERSEN, PROUT, QUIN, ROGERS, SKOVMAND, TREACY, WURTZ.

(O)

ADAM, BERNARD, CATHERWOOD, CHARZAT, DESOUCHES, DUPORT, ENRIGHT, EYRAUD, FAJARDIE, FERGUSSON, FOCKE, FUILLET, HÄNSCH, HORD, HUME, JAQUET, KIRK, KYRKOS, LALUMIERE, LOO, MARCHESIN, MARKOPOULOS, MINNEN VAN, MOREAU J., NIELSEN J., NIELSEN T., NIKOLAOU C., NIKOLAOU K., OUZOUNIDIS, PAPANTONIOU, PERY, PLASKOVITIS, PRICE, SABY, SIEGLERSCHMIDT, SUTRA, THAREAU, THEOBALD, VAYSSADE, VGENOPOULOS, WALTER, WEBER, WELSH.

Motion for a resolution (Doc. 1-1200/83)

Amendment 139

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ABENS, ADONNINO, AERSSEN VAN, AIGNER, ALBER, ALBERS, ALEMANN VON, ALMIRANTE, ANTONIOZZI, ARFE, ARNDT, BADUEL GLORIOSO, BANGEMANN, BARBAGLI, BARBARELLA, BARBI, BARTOLOMEI, BAUDIS, BEAZLEY, BETTIZA, BEUMER, BISMARCK VON, BLUMENFELD, BOCKLET, BONACCINI, BOOT, BOURNIAS, BROK, BROOKES, BUTTAFUOCO, CAILLAVET, CALVEZ, CARDIA, CARETTONI ROMAGNOLI, CARIGLIA, CAROSSINO, CASSANMAGNAGO CERRETTI, CECOVINI, CERAVOLO, CHANTERIE, CINCIARI RODANO, CINGARI, CLINTON, COHEN, COLLESELLI, COLLOMB, COSENTINO, COSTANZO, COURCY LING DE, CROUX, CURRY, D'ANGELOSANTE, DALSASS, DE GUCHT, DE PASQUALE, DEL DUCA, DELATTE, DELOROZOY,

DESCHAMPS, DIANA, DIDO, EISMA, ERCINI, ESTGEN, FANTI, FAURE E., FERGUSSON, FERRI, FISCHBACH, FOCKE, FORSTER, FRANZ, FRIEDRICH I., FRÜH, FUCHS K., GABERT, GAIOTTI DE BIASE, GALLAND, GALLUZZI, GATTO, GAWRONSKI, GENDEBIEN, GEROKOSTOPOULOS, GEURTSEN, GHERGO, GIAVAZZI, GIUMMARRA, GLINNE, GOEDE DE, GOERENS, GOPPEL, GOUTHIER, HAAGERUP, HABSBURG, HÄNSCH, HAHN, HALLIGAN, HASSEL VON, HEINEMANN, HELMS, HERKLOTZ, HERMAN, HEUVEL VAN DEN, HOFF, IPPOLITO, ISRAEL, JACKSON C., JAKOBSEN, JONKER, KALLIAS, KALOYANNIS, KATZER, KAZAZIS, KELLET-BOWMAN ED., KLEPSCH, KLINKENBORG, KROUWEL-VLAM, LANGE, LANGES, LECANUET, LEGA, LEMMER, LENTZ-CORNETTE, LENZ, LEONARDI, LIGIOS, LINKOHR, LIZIN, LOUWES, LÜCKER, LUSTER, MACARIO, MACCIOCCHI, MAHER, MAIJ-WEGGEN, MAJONICA, MARCK, MARTIN S., MCCARTIN, MIHR, MOORHOUSE, MOREAU J., MOREAU L., MORELAND, NEWTON DUNN, NORD, NORDMANN, ORLANDI, D'ORMESSON, PAJETTA, PAPAEFSTRATIOU, PAPAPIETRO, PEDINI, PELIKAN, PENDERS, PESMAZOGLOU, PETERS, PETRONIO, PFENNIG, PFLIMLIN, PHLIX, PICCOLI, PININFARINA, PINTAT, PONIATOWSKI, PÖTTERING, PRAG, PRICE, PROTOPAPADAKIS, PROUT, PROVAN, PRUVOT, PULETTI, PURVIS, RABBETHGE, RADOUX, RHYS WILLIAMS, RIPA DI MEANA, ROMUALDI, ROSSI, RUMOR, RYAN, SABLE, SÄLZER, SCHINZEL, SCHLEICHER, SCHNITKER, SCHÖN KARL, SCHÖN KONRAD, SCHWENCKE, SCRIVENER, SEEFELD, SEELER, SEGRE, SEIBEL-EMMERLING, SEITLINGER, SELIGMAN, SIEGLERSCHMIDT, SIMONNET, SIMPSON, SPAAK, SPENCER, SPINELLI, SQUARCIALUPI, STELLA, SUTRA, TOLMAN, TRAVAGLINI, TUCKMAN, TURNER, VAN HEMELDONCK, VAN MIERT, VAN ROMPUY, VANDEWIELE, VANDEMEULEBROUCKE, VANKERKHOVEN, VANNECK, VEIL, VERGEER, VERNIMMEN, VERONESI, VERROKEN, VETTER, VIEHOFF, VITALE, VRING VON DER, WAGNER, WALTER, WALZ, WARNER, WAWRZIK, WEBER, WELSH, WETTIG, WIECZOREK-ZEUL, WOGAU VON, WOLTJER, ZAGARI, ZARGES, ZECCHINO.

(—)

BALFE, BØGH, BONDE, BONINO, BOSERUP, BUCHAN, CABORN, CASTLE, FICH, GONTIKAS, GREDAL, GRIFFITHS, HAMMERICH, HORD, HOWELL, HUTTON, KEATING, KEY, LYNGE, MARSHALL, PETERSEN, ROGERS, SKOVMAND, TREACY.

(O)

ADAM, BERNARD, CHARZAT, DESOUCHES, DUPORT, ENRIGHT, EYRAUD, FAJARDIE, FUILLET, JAQUET, KIRK, LALUMIERE, LOO, MARCHESIN, MINNEN VAN, NIELSEN J., NIKOLAOU C., NIKOLAOU K., OUZOUNIDIS, PAPANTONIOU, PATTERSON, PLASKOVITIS, SABY, SCOTT-HOPKINS, THAREAU, THEOBALD, VAYSSADE, VGENOPOULOS.

Motion for a resolution

Final vote

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ABENS, ADONNINO, AERSSEN VAN, AIGNER, ALBER, ALBERS, ALEMANN VON, ANTONIOZZI, ARFE, ARNDT, BADUEL GLORIOSO, BANGEMANN, BARBAGLI, BARBARELLA, BARBI, BARTOLOMEI, BAUDIS, BEAZLEY, BERKHOUWER, BETTIZA, BEUMER, BISMARCK VON, BLUMENFELD, BOCKLET, BONACCINI, BONINO, BOOT, BOURNIAS, BROK, BUTTAFUOCO, CALVEZ, CARDIA, CARETTONI ROMAGNOLI, CARIGLIA, CAROSSINO, CASSANMAGNAGO CERRETTI, CECOVINI, CERAVOLO, CHANTERIE, CINCIARI RODANO, CINGARI, CLINTON, COHEN, COLLESELLI, COLLOMB, COSENTINO, COSTANZO, COURCY LING DE, CROUX, D'ANGELOSANTE, DALSASS, DE GUCHT, DE PASQUALE, DEL DUCA, DELATTE, DELOROZOY, DESCHAMPS, DIANA, DIDO, DILIGENT, EISMA, ERCINI, ESTGEN, FANTI, FAURE E., FERRI, FISCHBACH, FOCKE, FORSTER, FRANZ, FRIEDRICH I., FRÜH, FUCHS K., GAIOTTI DE BIASE, GALLAGHER, GALLAND, GALLUZZI, GATTO, GAWRONSKI, GENDEBIEN, GEROKOSTOPOULOS, GEURTSEN, GHERGO, GIAVAZZI, GIUMMARRA, GLINNE, GOERENS, GONTIKAS, GOPPEL, GOUTHIER, HAAGERUP, HABSBURG, HÄNSCH, HAHN, HALLIGAN, HASSEL VON, HEINEMANN, HELMS, HERKLOTZ, HERMAN, HEUVEL VAN DEN, HOFF, HOOPER, HOWELL, HUTTON, IPPOLITO, ISRAEL, JACKSON C., JAKOBSEN, JONKER, KALLIAS, KALOYANNIS, KAZAZIS, KELLET-BOWMAN ED., KLEPSCH, KLINKENBORG, KROUWEL-VLAM, LANGE, LANGES, LECANUET, LEGA, LEMMER, LENTZ-CORNETTE, LENZ, LEONARDI, LIGIOS, LINKOHR, LIZIN, LOUWES, LÜCKER, LUSTER, MACARIO, MACCIOCCHI, MAHER, MAIJ-WEGGEN, MAJONICA, MALANGRE, MARCK, MARTIN S., MCCARTIN, MERTENS, MIHR, MODIANO, MOREAU L., MORELAND, MULLER-HERMANN, NEWTON DUNN, NORD, NORDMANN, NOTENBOOM, ORLANDI, D'ORMESSON, PAJETTA, PANNELLA, PAPAEFSTRATIOU, PAPAPIETRO, PATTERSON, PEDINI, PELIKAN, PENDERS, PESMAZOGLOU, PETERS, PETRONIO, PFENNIG, PFLIMLIN, PHLIX, PICCOLI, PININFARINA, PINTAT, PONIATOWSKI, PÖTTERING, PRAG, PROTOPAPADAKIS, PROVAN, PRUVOT, PULETTI, PURVIS, RABBETHGE, RADOUX, RHYS WILLIAMS, RIPA DI MEANA, ROMUALDI, ROSSI, RUMOR, RYAN, SABLE, SÄLZER, SCHINZEL, SCHLEICHER, SCHMID,

Tuesday, 14 February 1984

SCHNITKER, SCHÖN KARL, SCHÖN KONRAD, SCHWENCKE, SCOTT-HOPKINS, SCRIVENER, SEEFELD, SEELER, SEGRE, SEIBEL-EMMERLING, SEITLINGER, SELIGMAN, SIEGLERSCHMIDT, SIMONNET, SPAAK, SPINELLI, SQUARCIALUPI, STELLA, STREHLER, TOLMAN, TRAVAGLINI, TUCKMAN, TURNER, VAN HEMELDONCK, VAN MIERT, VAN ROMPUY, VANDEMEULEBROUCKE, VANDEWIELE, VANKERKHOVEN, VEIL, VERGEER, VERNIMMEN, VERONESI, VERROKEN, VETTER, VITALE, VRING VON DER, WALTER, WALZ, WAWRZIK, WETTIG, WIECZOREK-ZEUL, WOGAU VON, WOLTJER, ZAGARI, ZARGES, ZECCHINO.

(—)

ADAMOU, BAILLOT, BALFE, BØGH, BONDE, BOSERUP, BUCHAN, CABORN, CASTLE, CHAMBEIRON, CLWYD, DENIS, EPHREMIDIS, FICH, FRISCHMANN, GREDAL, GRIFFITHS, HAMMERICH, HORD, KEATING, LYNGE, MARSHALL, MEGAHY, PAISLEY, PETERSEN, PROUT, QUIN, SKOVMAND, TREACY, VERGES, WARNER, WURTZ.

(O)

ADAM, BERNARD, CHARZAT, COLLINS, DESOUCHES, DUPORT, ENRIGHT, EYRAUD, FAJARDIE, JAQUET, KIRK, KYRKOS, LAGAKOS, LALUMIERE, LOO, MARCHESIN, MARKOPOULOS, MINNEN VAN, MOREAU J., NIELSEN J., NIELSEN T., NIKOLAOU C., NIKOLAOU K., OUZOUNIDIS, PAPANTONIOU, PERY, PLASKOVITIS, PRICE, SABY, SUTRA, THAREAU, THEOBALD, VGENOPOULOS, WELSH.

1989 OJ C120/51
Resolution adopting the "Declaration of Fundamental Rights and Freedoms"

16. 5. 89 Official Journal of the European Communities No C 120/51

Wednesday, 12 April 1989

PART II

Texts adopted by the European Parliament

1. Declaration of fundamental rights

— **Doc. A2-3/89**

RESOLUTION

adopting the Declaration of fundamental rights and freedoms

The European Parliament,

— having regard to the motion for a resolution tabled by Mr Luster and Mr Pfennig to supplement the draft Treaty establishing the European Union (Doc. 2-363/84),

— having regard to the Treaties establishing the European Communities,

— having regard to its draft Treaty establishing the European Union adopted on 14 February 1984, in particular Articles 4 (3) and 7 [1],

— having regard to its resolution of 29 October 1982 on the Memorandum from the Commission on the accession of the European Community to the Convention for the Protection of Human Rights and Fundamental Freedoms [2],

— having regard to the Joint Declaration on Fundamental Rights [3],

— having regard to the preamble to the Single Act,

— having regard to the shared general principles of the law of the Member States,

— having regard to the case law of the Court of Justice of the European Communities,

— having regard to the Universal Declaration of Human Rights,

— having regard to the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights,

— having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols,

— having regard to the European Social Charter and its Protocol,

— having regard to the report of the Committee on Institutional Affairs and the opinion of the Committee on Social Affairs and Employment (Doc. A2-3/89),

A. whereas, as pointed out in the preamble to the Single Act, it is essential to promote democracy on the basis of fundamental rights,

B. whereas respect for fundamental rights is indispensable for the legitimacy of the Community,

C. whereas it is up to the European Parliament to contribute to the development of a model of society which is based on respect for fundamental rights and freedoms and tolerance,

(1) OJ No C 77, 19.3.1984, p. 33.
(2) OJ No C 304, 22.11.1982, p. 253.
(3) OJ No C 103, 27.4.1977, p. 1.

No C 120/52 Official Journal of the European Communities 16. 5. 89

Wednesday, 12 April 1989

D. whereas the identity of the Community makes it essential to give expression to the shared values of the citizens of Europe,

E. whereas there can be no European citizenship unless every citizen enjoys equal protection of his rights and freedoms in the field of application of Community law (1),

F. whereas it is determined to sustain its efforts to promote the achievement of European Union,

G. whereas it is determined to achieve a basic Community instrument with a binding legal character guaranteeing fundamental rights,

H. whereas in the meantime, pending ratification of such an instrument, Parliament restates the legal principles already accepted by the Community,

I. whereas completion of the single market scheduled for 1993 lends greater urgency to the need to adopt a Declaration of rights and freedoms guaranteed in and by Community law,

J. whereas it is the responsability of the European Parliament directly elected by the citizens of Europe to draw up such a Declaration,

1. Hereby adopts the following Declaration and invites the other Community institutions and the Member States to associate themselves normally with this Declaration;

2. Instructs its President to forward this resolution and the Declaration to the other Community institutions and the Governments of the Member States.

(1) See Article 3 of the draft Treaty establishing the European Union.

DECLARATION OF FUNDAMENTAL RIGHTS AND FREEDOMS

PREAMBLE

IN THE NAME OF THE PEOPLES OF EUROPE

Whereas with a view to continuing and reviving the democratic unification of Europe, having regard to the creation of an internal area without frontiers and mindful of the particular responsibility of the European Parliament with regard to the well-being of men and women, it is essential that Europe reaffirm the existence of a common legal tradition based on respect for human dignity and fundamental rights,

Whereas measures incompatible with fundamental rights are inadmissible and recalling that these rights derive from the Treaties establishing the European Communities, the constitutional traditions common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the institutional instruments in force and have been developed in the case law of the Court of Justice of the European Communities,

The European Parliament, lending expression to these rights, hereby adopts the following Declaration, calls on all citizens actively to uphold it and present it to the Parliament which is to be elected in June 1989.

16. 5. 89 Official Journal of the European Communities No C 120/53

Wednesday, 12 April 1989

GENERAL PROVISIONS

Article 1

(Dignity)

Human dignity shall be inviolable.

Article 2

(Right to life)

Everyone shall have the right to life, liberty and security of person.

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 3

(Equality before the law)

1. In the field of application of Community law, everyone shall be equal before the law.

2. Any discrimination on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status shall be prohibited.

3. Any discrimination between European citizens on the grounds of nationality shall be prohibited.

4. Equality must be secured between men and women before the law, particularly in the areas of work, education, the family, social welfare and training.

Article 4

(Freedom of thought)

Everyone shall have the right to freedom of thought, conscience and religion.

Article 5

(Freedom of opinion and information)

1. Everyone have the right to freedom of expression. This right shall include freedom of opinion and the freedom to receive and impart information and ideas, particularly philosophical, political and religious.

2. Art, science and research shall be free of constraint. Academic freedom shall be respected.

Article 6

(Privacy)

1. Everyone shall have the right to respect and protection for their identity.

2. Respect for privacy and family life, reputation, the home and private correspondance shall be guaranteed.

Article 7

(Protection of family)

The family shall enjoy legal, economic and social protection.

Article 8

(Freedom of movement)

1. Community citizens shall have the right to move freely and choose their residence within Community territory. They may pursue the occupation of their choice within that territory.

2. Community citizens shall be free to leave and return to Community territory.

3. The above rights shall not be subject to any restrictions except those that are in conformity with the Treaties establishing the European Communities.

Article 9

(Right of ownership)

The right of ownership shall be guaranteed. No one shall be deprived of their possessions except where deemed necessary in the public interest and in the cases and subject to the conditions provided for by law and subject to fair compensation.

Article 10

(Freedom of assembly)

Everyone shall have the right to take part in peaceful meetings and demonstrations.

Article 11

(Freedom of association)

1. Everyone shall have the right to freedom of association including the right to form and join political parties and trade unions.

2. No one shall in their private life be required to disclose their membership of any association which is not illegal.

Article 12

(Freedom to choose an occupation)

1. Everyone shall have the right to choose freely an occupation and a place of work and to pursue freely that occupation.

2. Everyone shall have the right to appropriate vacational training in accordance with their abilities and fitting them for work.

3. No one shall be arbitrarily deprived of their work and no one shall be forced to take up specific work.

Article 13

(Working conditions)

1. Everyone shall have the right to just working conditions.

2. The necessary measures shall be taken with a view to guaranteeing health and safety in the workplace and a level of remuneration which makes it possible to lead a decent life.

Article 14

(Collective social rights)

1. The right of negotiation between employers and employees shall be guaranteed.

2. The right to take collective action, including the right to strike, shall be guaranteed subject to obligations that might arise form existing laws and collective agreements.

16. 5. 89 Official Journal of the European Communities No C 120/55

Wednesday, 12 April 1989

3. Workers shall have the right to be informed regularly of the economic and financial situation of their undertaking and to be consulted on decisions likely to affect their interests.

Article 15

(Social welfare)

1. Everyone shall have the right to benefit from all measures enabling them to enjoy the best possible state of health.

2. Workers, self-employed persons and their dependants shall have the right to social security or an equivalent system.

3. Anyone lacking sufficient resources shall have the right to social and medical assistance.

4. Those who, through no fault of their own, are unable to house themselves adequately, shall have the right to assistance in this respect from the appropriate public authorities.

Article 16

(Right to education)

Everyone shall have the right to education and vocational training appropriate to their abilities.

There shall be freedom in education.

Parents shall have the right to make provision for such education in accordance with their religious and philosophical convictions.

Article 17

(Principle of democracy)

1. All public authority emanates from the people and must be exercised in accordance with the principles of the rule of law.

2. Every public authority must be directly elected or answerable to a directly elected parliament.

3. European citizens shall have the right to take part in the election of Members of the European Parliament by free, direct and secret universal suffrage.

4. European citizens shall have an equal right to vote and stand for election.

5. The above rights shall not be subject to restrictions except where such restrictions are in conformity with the Treaties establishing the European Communities.

Article 18

(Right of access to information)

Everyone shall be guaranteed the right of access and the right to corrections to administrative documents and data concerning them.

Article 19

(Access to the courts)

1. Anyone whose rights and freedoms have been infringed shall have the right to bring an action in a court or tribunal specified by law.

2. Everyone shall be entitled to have their case heard fairly, publicly and within a reasonable time limit by an independent and impartial court or tribunal established by law.

3. Access to justice shall be effective and shall involve the provision of legal aid to those who lack sufficient resources otherwise to afford legal representation.

Article 20

(Non bis in idem)

No one shall be tried or convicted for offences for which they have already been acquitted or convicted.

Article 21

(Non-retroactivity)

No liability shall be incurred for any act or omission to which no liability applied under the law at the time when it was committed.

Article 22

(Death penalty)

The death penalty shall be abolished.

Article 23

(Right of petition)

Everyone shall have the right to address written requests or complaints to the European Parliament.

The detailed provisions governing the exercise of this right shall be laid down by the European Parliament.

Article 24

(Environment and consumer protection)

1. The following shall form an integral part of Community policy:

— the preservation, protection and improvement of the quality of the environment,

— the protection of consumers and users against the risks of damage to their health and safety and against unfair commercial transactions.

2. The Community institutions shall be required to adopt all the measures necessary for the attainment of these objectives.

FINAL PROVISIONS

Article 25

(Field of application)

1. This Declaration shall afford protection for every citizen in the field of application of Community law.

2. Where certain rights are set aside for Community citizens, its may be decided to extend all or part of the benefit of these rights to other persons.

3. A Community citizen within the meaning of this Declaration shall be any person possessing the nationality of one of the Member States.

Article 26

(Limits)

The rights and freedoms set out in this Declaration may be restricted within reasonable limits necessary in a democratic society only by a law which must at all events respect the substance of such rights and freedoms.

16. 5. 89 Official Journal of the European Communities No C 120/57

Wednesday, 12 April 1989

Article 27

(Degree of protection)

No provision in this Declaration shall be interpreted as restricting the protection afforded by Community law, the law of the Member States, international law and international conventions and accord on fundamental rights and freedoms or as standing in the way of its development.

Article 28

(Abuse of rights)

No provision in this Declaration shall be interpreted as implying any right to engage in any activity or perform any act aimed at restricting or destroying the rights and freedoms set out therein.

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Community Charter of the Fundamental Social Rights of Workers (adopted by 11 Members)

COMMISSION

OF THE EUROPEAN COMMUNITIES

Community Charter of the Fundamental Social Rights of Workers

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This Charter is the product of an undertaking I made to the European Trade Union Confederation at its meeting in Stockholm in May 1988. Nearly 18 months later, at a meeting of the European Council in Strasbourg on 8/9 December 1989, the Heads of State or Government of 11 Member States of the European Community adopted the 'Community Charter of the Fundamental Rights of Workers'.

Based on earlier texts such as the Social Charter of the Council of Europe and the Conventions of the International Labour Office, this Charter will form a keystone of the social dimension in the construction of Europe in the spirit of the Treaty of Rome supplemented by the Single European Act.

It is a solemn declaration and lays down the broad principles underlying our European model of labour law and, more generally, the place of work in our societies. It incorporates a foundation of social rights which are guaranteed and implemented, in some cases at the level of the Member States or at Community level depending on the field of competence. But it cannot be put into practice without the active participation of the two sides of industry.

The Charter is an instrument embodying European aspirations, a reflexion of our common identity, and contains a message for all those who inside and outside the Community are looking to the progress of Europe to give them reason for hope.

Jacques DELORS

In 1972, the Heads of State or Government of the European Community, meeting in Paris, agreed to affirm the social dimension of the construction of Europe. Two years later this took the form of the social action programme, presented by the Commission and adopted by the Council. Since its foundation, the Community has not been inactive in this area; the first regulations on freedom of movement for workers date from 1968, and by 1963 the Commission had already established the general principles for vocational training. However, on the eve of the first enlargement, it seemed necessary to emphasize that Europe signified more than a single common market and the elimination of customs barriers.

Fifteen years have passed and during this time great strides have been made. Adoption of the Single European Act confirmed this dimension, especially stressing the need to reinforce economic and social cohesion in the Community which was supported by the reform of the structural Funds in 1988.

All the same, efforts towards completing the internal market in 1992 have highlighted the importance of this social dimension. It is not simply a question of ensuring freedom of movement for persons, together with goods, services and capital. It also covers all that contributes to improving the well-being of Community citizens and in the first place workers. The construction of a dynamic and strong Europe depends on the recognition of a foundation of social rights. A political signal given at the highest level was crucial. Vigorous action was needed as urged by the European Parliament and the Economic and Social Committee.

The Community Charter of the Fundamental Social Rights of Workers, adopted in Strasbourg a few weeks ago by 11 Heads of

State or Government has a long history. On the basis of one text — a preliminary draft, which after consultation with the two sides of industry became a draft — proposed by the Commission in September 1989, the Council on Social Affairs first, followed by the European Council, took note of this dossier with the results that we have seen. The Charter as such represents a first step, but a first step which was essential.

Vasso PAPANDREOU

Community Charter of the Fundamental Social Rights of Workers

THE HEADS OF STATE OR GOVERNMENT OF THE MEMBER STATES OF THE EUROPEAN COMMUNITY MEETING AT STRASBOURG ON 9 DECEMBER 1989 [1]

Whereas, under the terms of Article 117 of the EEC Treaty, the Member States have agreed on the need to promote improved living and working conditions for workers so as to make possible their harmonization while the improvement is being maintained;

Whereas following on from the conclusions of the European Councils of Hanover and Rhodes the European Council of Madrid considered that, in the context of the establishment of the single European market, the same importance must be attached to the social aspects as to the economic aspects and whereas, therefore, they must be developed in a balanced manner;

Having regard to the Resolutions of the European Parliament of 15 March 1989, 14 September 1989 and 22 November 1989, and to the Opinion of the Economic and Social Committee of 22 February 1989;

Whereas the completion of the internal market is the most effective means of creating employment and ensuring maximum well-being in the Community; whereas employment development and creation must be given first priority in the completion of the internal market; whereas it is for the Community to take up the challenges of the future with regard to economic competitiveness, taking into account, in particular, regional imbalances;

[1] Text adopted by the Heads of State or Government of 11 Member States.

Whereas the social consensus contributes to the strengthening of the competitiveness of undertakings, of the economy as a whole and to the creation of employment; whereas in this respect it is an essential condition for ensuring sustained economic development;

Whereas the completion of the internal market must favour the approximation of improvements in living and working conditions, as well as economic and social cohesion within the European Community while avoiding distortions of competition;

Whereas the completion of the internal market must offer improvements in the social field for workers of the European Community, especially in terms of freedom of movement, living and working conditions, health and safety at work, social protection, education and training;

Whereas, in order to ensure equal treatment, it is important to combat every form of discrimination, including discrimination on grounds of sex, colour, race, opinions and beliefs, and whereas, in a spirit of solidarity, it is important to combat social exclusion;

Whereas it is for Member States to guarantee that workers from non-member countries and members of their families who are legally resident in a Member State of the European Community are able to enjoy, as regards their living and working conditions, treatment comparable to that enjoyed by workers who are nationals of the Member State concerned;

Whereas inspiration should be drawn from the Conventions of the International Labour Organization and from the European Social Charter of the Council of Europe;

Whereas the Treaty, as amended by the Single European Act, contains provisions laying down the powers of the Community relating *inter alia* to the freedom of movement of workers (Articles 7, 48 to 51), the right of establishment (Articles 52 to 58), the social

field under the conditions laid down in Articles 117 to 122 — in particular as regards the improvement of health and safety in the working environment (Article 118a), the development of the dialogue between management and labour at European level (Article 118b), equal pay for men and women for equal work (Article 119) — the general principles for implementing a common vocational training policy (Article 128), economic and social cohesion (Article 130a to 130e) and, more generally, the approximation of legislation (Articles 100, 100a and 235); whereas the implementation of the Charter must not entail an extension of the Community's powers as defined by the Treaties;

Whereas the aim of the present Charter is on the one hand to consolidate the progress made in the social field, through action by the Member States, the two sides of industry and the Community;

Whereas its aim is on the other hand to declare solemnly that the implementation of the Single European Act must take full account of the social dimension of the Community and that it is necessary in this context to ensure at appropriate levels the development of the social rights of workers of the European Community, especially employed workers and self-employed persons;

Whereas, in accordance with the conclusions of the Madrid European Council, the respective roles of Community rules, national legislation and collective agreements must be clearly established;

Whereas, by virtue of the principle of subsidiarity, responsibility for the initiatives to be taken with regard to the implementation of these social rights lies with the Member States or their constituent parts and, within the limits of its powers, with the European Community; whereas such implementation may take the form of laws, collective agreements or existing practices at the various appropriate levels and whereas it requires in many spheres the active involvement of the two sides of industry;

Whereas the solemn proclamation of fundamental social rights at European Community level may not, when implemented, provide grounds for any retrogression compared with the situation currently existing in each Member State,

HAVE ADOPTED THE FOLLOWING DECLARATION CONSTITUTING THE 'COMMUNITY CHARTER OF THE FUNDAMENTAL SOCIAL RIGHTS OF WORKERS':

Title I

Fundamental social rights of workers

Freedom of movement

1. Every worker of the European Community shall have the right to freedom of movement throughout the territory of the Community, subject to restrictions justified on grounds of public order, public safety or public health.

2. The right to freedom of movement shall enable any worker to engage in any occupation or profession in the Community in accordance with the principles of equal treatment as regards access to employment, working conditions and social protection in the host country.

3. The right of freedom of movement shall also imply:

(i) harmonization of conditions of residence in all Member States, particularly those concerning family reunification;

(ii) elimination of obstacles arising from the non-recognition of diplomas or equivalent occupational qualifications;

(iii) improvement of the living and working conditions of frontier workers.

Employment and remuneration

4. Every individual shall be free to choose and engage in an occupation according to the regulations governing each occupation.

5. All employment shall be fairly remunerated.

To this end, in accordance with arrangements applying in each country:

(i) workers shall be assured of an equitable wage, i.e. a wage sufficient to enable them to have a decent standard of living;

(ii) workers subject to terms of employment other than an open-ended full-time contract shall benefit from an equitable reference wage;

(iii) wages may be withheld, seized or transferred only in accordance with national law; such provisions should entail measures enabling the worker concerned to continue to enjoy the necessary means of subsistence for him or herself and his or her family.

6. Every individual must be able to have access to public placement services free of charge.

Improvement of living and working conditions

7. The completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community. This process must result from an approximation of these conditions while the improvement is being maintained, as regards in particular the duration and organization of working time and forms of employment other than open-ended contracts, such as fixed-term contracts, part-time working, temporary work and seasonal work.

The improvement must cover, where necessary, the development of certain aspects of employment regulations such as procedures for collective redundancies and those regarding bankruptcies.

8. Every worker of the European Community shall have a right to a weekly rest period and to annual paid leave, the duration of which

must be progressively harmonized in accordance with national practices.

9. The conditions of employment of every worker of the European Community shall be stipulated in laws, a collective agreement or a contract of employment, according to arrangements applying in each country.

Social protection

According to the arrangements applying in each country:

10. Every worker of the European Community shall have a right to adequate social protection and shall, whatever his status and whatever the size of the undertaking in which he is employed, enjoy an adequate level of social security benefits.

Persons who have been unable either to enter or re-enter the labour market and have no means of subsistence must be able to receive sufficient resources and social assistance in keeping with their particular situation.

Freedom of association and collective bargaining

11. Employers and workers of the European Community shall have the right of association in order to constitute professional organizations or trade unions of their choice for the defence of their economic and social interests.

Every employer and every worker shall have the freedom to join or not to join such organizations without any personal or occupational damage being thereby suffered by him.

12. Employers or employers' organizations, on the one hand, and workers' organizations, on the other, shall have the right to

negotiate and conclude collective agreements under the conditions laid down by national legislation and practice.

The dialogue between the two sides of industry at European level which must be developed, may, if the parties deem it desirable, result in contractual relations in particular at inter-occupational and sectoral level.

13. The right to resort to collective action in the event of a conflict of interests shall include the right to strike, subject to the obligations arising under national regulations and collective agreements.

In order to facilitate the settlement of industrial disputes the establishment and utilization at the appropriate levels of conciliation, mediation and arbitration procedures should be encouraged in accordance with national practice.

14. The internal legal order of the Member States shall determine under which conditions and to what extent the rights provided for in Articles 11 to 13 apply to the armed forces, the police and the civil service.

Vocational training

15. Every worker of the European Community must be able to have access to vocational training and to benefit therefrom throughout his working life. In the conditions governing access to such training there may be no discrimination on grounds of nationality.

The competent public authorities, undertakings or the two sides of industry, each within their own sphere of competence, should set up continuing and permanent training systems enabling every person to undergo retraining more especially through leave for training purposes, to improve his skills or to acquire new skills, particularly in the light of technical developments.

Equal treatment for men and women

16. Equal treatment for men and women must be assured. Equal opportunities for men and women must be developed.

To this end, action should be intensified to ensure the implementation of the principle of equality between men and women as regards in particular access to employment, remuneration, working conditions, social protection, education, vocational training and career development.

Measures should also be developed enabling men and women to reconcile their occupational and family obligations.

Information, consultation and participation for workers

17. Information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in the various Member States.

This shall apply especially in companies or groups of companies having establishments or companies in two or more Member States of the European Community.

18. Such information, consultation and participation must be implemented in due time, particularly in the following cases:

(i) when technological changes which, from the point of view of working conditions and work organization, have major implications for the work-force, are introduced into undertakings;

(ii) in connection with restructuring operations in undertakings or in cases of mergers having an impact on the employment of workers;

(iii) in cases of collective redundancy procedures;

(iv) when transfrontier workers in particular are affected by employment policies pursued by the undertaking where they are employed.

Health protection and safety at the workplace

19. Every worker must enjoy satisfactory health and safety conditions in his working environment. Appropriate measures must be taken in order to achieve further harmonization of conditions in this area while maintaining the improvements made.

These measures shall take account, in particular, of the need for the training, information, consultation and balanced participation of workers as regards the risks incurred and the steps taken to eliminate or reduce them.

The provisions regarding implementation of the internal market shall help to ensure such protection.

Protection of children and adolescents

20. Without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training, and subject to derogations limited to certain light work, the minimum employment age must not be lower than the minimum school-leaving age and, in any case, not lower than 15 years.

21. Young people who are in gainful employment must receive equitable remuneration in accordance with national practice.

22. Appropriate measures must be taken to adjust labour regulations applicable to young workers so that their specific development and vocational training and access to employment needs are met.

The duration of work must, in particular, be limited — without it being possible to circumvent this limitation through recourse to overtime — and night work prohibited in the case of workers of under 18 years of age, save in the case of certain jobs laid down in national legislation or regulations.

23. Following the end of compulsory education, young people must be entitled to receive initial vocational training of a sufficient duration to enable them to adapt to the requirements of their future working life; for young workers, such training should take place during working hours.

Elderly persons

According to the arrangements applying in each country:

24. Every worker of the European Community must, at the time of retirement, be able to enjoy resources affording him or her a decent standard of living.

25. Any person who has reached retirement age but who is not entitled to a pension or who does not have other means of subsistence, must be entitled to sufficient resources and to medical and social assistance specifically suited to his needs.

Disabled persons

26. All disabled persons, whatever the origin and nature of their disablement, must be entitled to additional concrete measures aimed at improving their social and professional integration.

These measures must concern, in particular, according to the capacities of the beneficiaries, vocational training, ergonomics, accessibility, mobility, means of transport and housing.

Title II

Implementation of the Charter

27. It is more particularly the responsibility of the Member States, in accordance with national practices, notably through legislative measures or collective agreements, to guarantee the fundamental social rights in this Charter and to implement the social measures indispensable to the smooth operation of the internal market as part of a strategy of economic and social cohesion.

28. The European Council invites the Commission to submit as soon as possible initiatives which fall within its powers, as provided for in the Treaties, with a view to the adoption of legal instruments for the effective implementation, as and when the internal market is completed, of those rights which come within the Community's area of competence.

29. The Commission shall establish each year, during the last three months, a report on the application of the Charter by the Member States and by the European Community.

30. The report of the Commission shall be forwarded to the European Council, the European Parliament and the Economic and Social Committee.

European Communities — Commission

Community Charter of the Fundamental Social Rights of Workers

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1991 OJ C183/473
Resolution on Union Citizenship

15. 7. 91 Official Journal of the European Communities No C 183/473

Friday, 14 June 1991

— **A3-0159/91**

LEGISLATIVE RESOLUTION

embodying the opinion of the European Parliament on the Commission proposal for a Council decision on the association of the overseas countries and territories with the European Economic Community

The European Parliament,

— having regard to the Commission proposal to the Council (COM(90) 0387 [1] and COM(91) 0141 [2]),

— having been consulted by the Council (C3-0104/91 and C3-0224/91),

— having regard to the report of the Committee on Development and Cooperation and the opinion of the Committee of Budgets (A3-0159/91),

1. Approves the Commission proposal in accordance with the vote thereon;

2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;

3. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;

4. Instructs its President to forward this opinion to the Council and Commission.

(1) OJ No C 95, 11.4.1991, p. 1.
(2) OJ No C 126, 16.5.1991, p. 5.

18. Union citizenship

— **A3-0139/91**

RESOLUTION

on Union citizenship

The European Parliament,

— having regard to its resolution of 22 November 1990 on Parliament's strategy for European Union [1],

— having regard to its resolution of 12 December 1990 on the constitutional basis of European Union [2],

— having regard to its resolution of 12 April 1989 adopting the Declaration of fundamental rights and freedoms [3],

— having regard to its numerous resolutions on the matter, in particular the resolution of 16 November 1977 on special rights to be granted to citizens of the European Community [4] and that on the memorandum on adhesion to the European convention on human rights and fundamental freedoms of 29 October 1982 [5],

(1) OJ No C 324, 24.12.1990, p. 219.
(2) OJ No C 19, 28.1.1991, p. 65.
(3) OJ No C 120, 16.5.1989, p. 51.
(4) OJ No C 299, 12.12.1977, p. 26.
(5) OJ No C 304, 22.11.1982, p. 253.

No C 183/474 Official Journal of the European Communities 15. 7. 91

Friday, 14 June 1991

— having regard to the proposals put forward by the Member States and the Commission in connection with the Intergovernmental Conference on European Union, and the general report tabled by the Presidency of the Conference on Political Union,

— having regard to the motion for a resolution on Community citizenship (B3-1680/90),

— having regard to the interim report of the Committee on Institutional Affairs and the opinion of the Committee on Legal Affairs and Citizens' Rights (A3-0139/91),

A. having regard to the urgent need for Parliament to spell out and lay down the proposals it will make to the Intergovernmental Conference on Political Union on the question of citizenship and to the need to probe more deeply into this essential aspect of European integration,

B. having regard to the close link that exists between a new form of citizenship and the developing European Union and to the fact that the two must advance and be expanded in parallel,

C. whereas further progress in European integration can be brought about only on democratic bases and whereas it is therefore essential to alter the balance of power between the institutions and their relationship with the citizens of the Union to faciliate their effective participation in decision-making on matters concerning them,

D. whereas citizenship, and the bond inherent therein, must necessarily be subject to criteria for acquiring and forfeiting it and whereas those criteria may, for the time being, be made to tally with the conditions under which the nationality of the different Member States may be acquired or is forfeited,

E. whereas Community citizenship is at all events to be regarded as additional to nationality of a Member State and whereas the rights and obligations attaching to it will apply in addition to the rights and obligations existing at national level,

F. whereas, however, Community citizenship must be defined as a concept in itself and in such a way as to constitute a genuine form of status, deriving from full recognition and protection of the human rights and fundamental freedoms of all persons, as defined in the European Convention on Human Rights, both as individuals and in social units, in particular the family,

G. whereas the concept or status of citizen implies the following essential conditions:

— government must derive its legitimacy from a mandate given by citizens, and, in particular, laws must stem from institutions democratically elected by citizens,

— the human rights and fundamental freedoms of all persons must be respected and guaranteed, *inter alia* in the courts; social, economic, political and cultural rights must be recognized and properly protected,

— the banning of all discrimination on grounds of race, creed, political and trade union views, sex, nationality or any other personal situation,

— citizens must, in their own right, enjoy specific rights — including political rights — *vis-à-vis* the institutions of the Community and each of the Member States; those rights must enjoy full protection of the courts in the Member States and, by extension, at Community level,

— *vis-à-vis* third countries, citizens must be accorded full protection by the Community as a whole and each of the Member States as well as by the state of which they are nationals,

— with a view to protecting these rights *vis-à-vis* the Community institutions and each of the Member States and in relations with third countries, all citizens must have the option of lodging a complaint with a European institution,

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Friday, 14 June 1991

H. whereas in a multiracial society, as the Community is becoming to an increasing extent, resident aliens must be accorded not only fundamental rights and freedoms, but also the rights required in order to carry on an economic, occupational, or social activity under the terms of the applicable provisions and the civil and political rights and guarantees essential to enable the human personality to find fullest expression,

I. whereas Union citizenship may be based on the sense of solidarity with and belonging to a Community in which the different cultures of the peoples therein are brought together, fostered and safeguarded and the common values and interests shared by European citizens are recognized,

J. whereas while the proposals from the Spanish Government and the Commission highlight major aspects of union citizenship and are essential for European integration, they do not provide an adequate basis for establishing the status of full citizenship,

K. whereas the articles relating to citizenship contained in the general draft submitted by the Presidency of the Conference on Political Union do not in fact institute Union citizenship but simply set out a number of special rights of a partial nature, the effective exercise of which is subject to unanimous intergovernmental agreement or, in the case of the right of petition, interinstitutional agreement,

L. whereas, despite decades of well-established Community case law and the European Parliament's particular interest in this area culminating in the Declaration of April 1989, the general draft forwarded by the Presidency of the Conference on Political Union completely ignores these developments in respect of human rights and fundamental freedoms and simply refers to the European Convention and national legislation,

M. taking the view that refusal to establish Union citizenship demonstrates a political refusal to make its citizens and respect for their rights the central concern of the Union and, on the contrary, a determination to maintain and further develop an intergovernmental system with a heavy bureaucratic bias,

1. Considers it essential that a list of human rights and fundamental freedoms, based on that adopted by Parliament on 12 April 1989 (1), be enshrined in the Treaties, applied to all persons and suitably protected by law; to this end, undertakes to draw up this list, in due cooperation with the parliaments of the Member States, to be submitted for final approval by the parliaments;

2. Calls for Union citizenship to be established and enshrined in the Treaties in a separate title;

3. Calls for nationals of the Member States to be considered Union citizens in every respect and for the Treaties to make citizens directly responsible for exercising their basic rights of citizenship;

4. Considers that the Union, in pursuing its own objectives, should set itself the fundamental aim of facilitating the exercise and development of citizen's rights and fulfilment of their duties, in parallel with progress toward the achievement of European Union;

5. Points out once again the need for social rights to be fully recognized and respected on the basis of a substantial widening of the proposals contained in the Social Charter, and protected in accordance with the relevant international agreements, especially the declaration by the Council of Europe; stresses in particular the right of citizens to equal opportunities and full development of their potential within their habitual surroundings; stresses the importance of equality between men and women;

6. Stresses that attainment of this objective requires Community initiatives in the form of active policies defined and implemented in collaboration with the Member States;

(1) OJ No C 120, 16.5.1989, p. 51.

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Friday, 14 June 1991

7. Calls for citizens to be given complete freedom to take part in the political life of Member States and the Union, by joining associations, political parties, or trade unions, or in any other way compatible with respect for fundamental rights and freedoms;

8. Calls for every citizen to be granted the right to vote and stand for election in European elections in the Member State where he lives or, if he so prefers, in his country of origin, subject to conditions to be laid down in a uniform electoral law;

9. Renews its request that, subject to the appropriate conditions, citizens living in a state other than their country of origin should be granted the right to vote in local elections, as should all resident aliens;

10. Requests that no law may be imposed on citizens by the Community institutions without the consent of the appropriate elected representatives;

11. Calls for the free and unlimited right of movement and residence in the territory of the Union for all citizens, and all persons residing legally in the Community, and for the last vestiges of discrimination, in particular on grounds of nationality, to be outlawed;

12. Calls for all activities having a bearing on the freedom of citizens and persons in general, in particular those related to internal security, and entering and leaving Community territory, to be made subject to the proper degree of parliamentary control; calls in particular for the police and judicial cooperation agreements concluded to provide a counterpart to free movement, including the right of residence, to be made part of Community law and for the provisions concerned, as well as their implementation, to be governed by acts of parliament, subject to parliamentary control and suitably protected by law;

13. Calls for citizens to be guaranteed fair, transparent and efficient administration;

14. Calls for citizens to be guaranteed diplomatic protection, where appropriate, not only by their country of origin but also by the other Member States of the Union;

15. Calls for resident aliens to be granted the rights required in order to carry on a lawful economic occupational or social activity, and for any form of discrimination to be prohibited and subject to sanctions once they have been given permission to exercise such activities;

16. Calls for the concept of 'persons residing legally in the Community' to be clearly defined;

17. Calls in addition for resident aliens and citizens to be given recognition of the rights, freedoms and guarantees essential to enable the human personality to find fullest expression, as an individual or within a social, in particular, family unit;

18. Stresses the need for the rules laid down by the Community and its Member States on freedom of movement for persons to take special account of the extreme poverty affecting several million Community citizens (the 'Fourth World') and preventing them from exercising their social and political rights including freedom of movement and establishment.

19. Calls on its appropriate committee to probe more deeply into the specific questions of acquiring and forfeiting citizenship, electoral rights, and the rights and obligations of residents other than citizens;

20. Instructs its President to forward this resolution to the Council, the Commission, the Intergovernmental Conferences, and the governments and parliaments of the Member States.

1994 OJ C61/155
Resolution on the Constitution of the European Union

28. 2. 94 Official Journal of the European Communities No C 61/155

Thursday, 10 February 1994

PART II

Texts adopted by the European Parliament

1. Constitution of European Union

A3-0064/94

Resolution on the Constitution of the European Union

The European Parliament,

— having regard to its Declaration of fundamental rights and freedoms of 12 April 1989 (1),

— having regard to the result of the referendum held in Italy, on the occasion of the 1989 European elections, on the powers of the European Parliament,

— having regard to its resolution of 11 July 1990 on the European Parliament's guidelines for a draft constitution for the European Union (2),

— having regard to the Final Declaration of the Conference of Parliaments of the European Community of 30 November 1990 (3),

— having regard to its resolution of 12 December 1990 on the constitutional basis of European Union (4),

— having regard to its resolution of 20 January 1993 on the structure and strategy for the European Union with regard to its enlargement and the creation of a Europe-wide order (5),

— having regard to the motion for a resolution by Mr Luster and others on the drafting of a European constitution (B3-0015/89),

— having regard to Rule 148 of its Rules of Procedure,

— having regard to the report by the Committee on Institutional Affairs and the opinions of the Committee on Foreign Affairs and Security and the Committee on Budgets (A3-0031/94),

— having regard to the second report by the Committee on Institutional Affairs (A3-0064/94),

A. having regard to the need which has been restated on several occasions during Parliament's current term of office to provide the European Union with a democratic constitution to enable the process of European integration to continue in accordance with the needs of European citizens,

B. whereas the Treaty on European Union does not fully meet the requirements of the European Union with regard to democracy and efficacy,

C. whereas the Constitution must be readily accessible and comprehensible to the citizens of the Union,

D. whereas the abovementioned report by the Committee on Institutional Affairs makes an important contribution to the debate on democracy and transparency in the European Institutions which will be opened both within the European Parliament and within the national parliaments and public opinion,

(1) OJ C 120, 16.5.1989, p. 52.
(2) OJ C 231, 17.9.1990, p. 91.
(3) EP Bulletin 4/S-90.
(4) OJ C 19, 28.1.1991, p. 65.
(5) OJ C 42, 15.2.1993, p. 124.

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1. Notes with satisfaction the work of the Committee on Institutional Affairs which has resulted in a draft Constitution for the European Union, annexed to this resolution, and calls on the European Parliament to be elected in June 1994 to continue that work with a view to deepening the debate on the European Constitution, taking into account the contributions from the national parliaments and members of the public in the Member States and the applicant countries;

2. Proposes that a European convention bringing together the Members of the European Parliament and the parliaments of the Member States of the Union should be held prior to the Intergovernmental Conference scheduled for 1996 in order to adopt, on the basis of a draft Constitution to be submitted by the European Parliament, guidelines for the Constitution of the European Union, and to assign to the European Parliament the task of preparing a final draft;

3. Calls on the heads of state and government of the Member States to appoint a group of eminent persons who are independent but enjoy their confidence, along the lines of the Spaak/Dooge Committee and in the spirit of the proposal made by the Greek Presidency, with the task of considering this draft constitution, discussing it with Parliament and proposing it to the Intergovernmental Conference;

4. Proposes to the Commission and Council that the Intergovernmental Conference scheduled for 1996 be preceded by an interinstitutional conference on the same subject;

5. Calls on the parliaments of the Member States to inform it of their views concerning the system to be used for the preparation and adoption of the final text of the Constitution;

6. Instructs its President to forward this resolution and the draft Constitution annexed thereto to the Council, the Commission, the governments and parliaments of the Member States and the applicant countries with which the Union has commenced official accession negotiations, and to distribute the draft Constitution as widely as possible.

ANNEX

DRAFT CONSTITUTION OF THE EUROPEAN UNION

Preamble

On behalf of the peoples of Europe,

— whereas an ever closer union between the peoples of Europe and the emergence of a European political identity are in line with the continuity of the process of integration initiated in the first Community treaties and with the prospect of development towards a federal-style Union,

— stressing that membership of the European Union is based on values shared by its peoples, in particular freedom, equality, solidarity, human dignity, democracy, respect for human rights and the rule of law,

— wishing to strengthen solidarity among these peoples whilst respecting their diversity, history, culture, languages and institutional and political structures,

— aware of the need to ensure that decisions concerning them are taken at a level as close as possible to the citizens themselves, with powers being delegated to higher levels only for proven reasons of the common good,

— whereas the European Union has as its aims economic development, social progress, the strengthening of cohesion, the active participation of regional and local authorities, together with respect for the environment and the cultural heritage,

— desiring to guarantee citizens and all who reside in the European Union better living conditions and an active role in economic and social development,

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— declaring that the European Union must make an effective contribution to the security of its peoples, the inviolability of its external frontiers, the maintenance of international peace, the sustainable and equitable economic development of all peoples of the world and appropriate protection of the world's environment,

— confirming that the European Union is open to those European states wishing to take part in it which share the same values, pursue the same objectives and accept the same *acquis communautaire*,

— accepting the idea that some Member States may be able to progress faster and farther towards integration than others, provided that this process remains open at all times to each of the Member States who wish to participate and that the objectives which they pursue remain compatible with the European Union,

the Member States and the European Parliament have adopted this Constitution of the European Union in order to

— define its objectives,

increase the efficacy, transparency and democratic vocation of its institutions,

— simplify and clarify its decision-making procedures,

— guarantee in law human rights and fundamental freedoms.

Title I: Principles

Article 1: The European Union

1. The European Union (hereinafter called 'the Union') consists of the Member States and their citizens, from whom all its powers emanate.

2. The Union shall respect the historical, cultural and linguistic heritage of the Member States and their constitutional structure. It shall exercise its powers and competences in accordance with the principles of subsidiarity and proportionality.

3. The Union has legal personality.

4. The Union shall be provided with the means necessary to assume its responsibilities and achieve its objectives and shall move towards closer and more cohesive integration on the basis of the *acquis communautaire*.

5. The Member States cooperate amongst themselves and with the Institutions of the Union in order to achieve the Union's objectives. The Institutions of the Union shall carry out the tasks conferred on them by the Constitution.

6. The law of the Union takes precedence over the law of the Member States.

Article 2: Objectives of the Union

Within the framework of its competences, the main objectives of the Union shall be as follows:

— to promote throughout Europe peace, respect for democracy, economic and social progress, full employment and respect for the environment;

— to develop a legal and economic area without internal frontiers governed by the principle of a social market economy;

— to assist Member States and their citizens in adapting to internal and external changes in the economic, political and social fields;

— to foster the cultural and spiritual fulfilment of its peoples, whilst respecting their differences,

— to reaffirm its identity at international level through joint action to promote peace, security and the emergence of a free and peaceful world order based on justice, the rule of law, respect for the environment and economic and social progress.

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Article 3: Citizenship of the Union

Every person holding the nationality of a Member State shall thereby be a citizen of the Union.

Article 4: Citizens' electoral rights

Every citizen of the Union residing in a Member State of which he is not a national may vote and may stand as candidate at municipal and European elections in his place of residence under the same conditions as nationals of that Member State. The precise scope of these rights may be defined by an organic law.

The electoral rights of citizens may be extended by a constitutional law.

Article 5: Citizens' political activities

Every citizen shall have the right to engage in political activity throughout the territory of the Union.

Every citizen shall have the right to hold public office in the Union.

Every citizen of the Union shall be entitled, when outside its territory, to diplomatic and consular protection by the Union or, failing that, by the Member State represented in the foreign country where he is.

Article 6: Freedom of movement for citizens

Every citizen shall have the freedom to move, reside and stay freely on the territory of the Member States, where he may pursue the occupation of his choice on the same conditions as nationals, subject to the restrictions applying to employment in the public administration which involves the exercise of official authority.

The Union shall help to ensure equality of opportunity, in particular by endeavouring to remove obstacles to the effective entitlement and exercise of the rights conferred on citizens.

Every citizen shall be entitled to leave the Union and to return to it.

The citizens of the Union, and citizens of third countries and stateless persons residing in the Union, shall have the right, in the event of improper administration, to appeal to the Ombudsman appointed by the European Parliament or to submit a petition to the European Parliament.

Article 7: Human rights guaranteed by the Union

In areas where Union law applies, the Union and the Member States shall ensure respect for the rights set out in Title VIII. The Union shall respect fundamental rights as guaranteed by the European Convention on the Protection of Human Rights and Fundamental Freedoms, by the other applicable international instruments and as they derive from the constitutional principles shared by the Member States.

Title II: Competences of the Union

Article 8: Attribution of competences

1. The Union shall have the competences laid down by this Constitution and by the Community Treaties. It shall take over the *acquis communautaire*.

2. The Union and the Member States work together on a basis of solidarity to fulfil common tasks and objectives. They shall refrain from any measures liable to jeopardize achievement of the objectives of the Constitution.

3. The provisions of the Treaties concerning their objectives and fields of application which are not modified by this Constitution form part of the law of the Union. They may only be amended by the procedure for constitutional revision.

4. The other provisions of the Treaties shall also form part of the law of the Union in so far as they are not incompatible with the Constitution. They may only be amended by the procedure for organic laws.

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5. Acts of the European Communities and measures taken in the context of cooperation between the Member States shall continue to be effective as long as they are not incompatible with this Constitution and as long as they have not been replaced by acts or measures adopted by the Institutions of the Union in accordance with their respective competences.

6. The Union shall respect the commitments of the European Communities and in particular the agreements and conventions concluded with one or more third countries or any international organization.

Article 9: Attainment of objectives

Should action by the Union be necessary to attain one of its objectives without the Constitution or the Treaties providing the executive powers required for this purpose, such powers shall be conferred by an organic law.

Article 10: Principles of subsidiarity and proportionality

The exercise of the powers of the Union and their extension in accordance with Article 9 shall be subject to the principles of subsidiarity and proportionality.

The principle of subsidiarity means that the Union shall only take action if, and in so far as, the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Union.

In accordance with the principle of proportionality, any action taken by the Union shall not go beyond what is necessary to achieve the objectives of this Constitution.

Article 11: Cooperation between Member States

The Union shall aim to strengthen the existing forms of cooperation between Member States with a view to applying Community procedures and mechanisms to them.

With that aim in view, the Union shall act by adopting common positions and taking joint action consistent with the general guidelines laid down by the European Council and the European Parliament.

Article 12: Furtherance of action by Member States

The Union may recommend, encourage or stimulate action by Member States in areas which are inherent in or linked to the objectives pursued by the Union, without any compulsion being attached to such action.

The Union may also encourage, in these same areas, coordinated action by the Member States to which it may contribute appropriate support.

Title III: Institutional framework

Article 13: Institutions

1. The institutions of the Union are:

— the European Parliament,
— the European Council,
— the Council,
— the Commission,
— the Court of Justice.

2. The following shall carry out specific tasks provided for by the Constitution:

— the Committee of the Regions,
— the European Central Bank,
— the Court of Auditors,
— the Economic and Social Committee.

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3. Without prejudice to the provisions of the Treaties, other bodies and other agencies with legal personality and responsible for specific tasks may be established by an organic law, which shall define their statutes and, in particular, the detailed arrangements for their supervision.

Article 14: European Parliament — composition

The European Parliament consists of the representatives of the citizens of the Union, elected by direct universal suffrage and by secret ballot for a five-year period in accordance with a uniform electoral procedure.

The number of seats, the principles governing their distribution and the electoral procedure shall be established by a constitutional law.

Article 15: European Parliament — powers

The European Parliament shall:

— take part with the European Council in the definition of the general political guidelines of the Union;

— jointly with the Council, make laws, adopt the budget and give its approval to the international treaties of the Union;

— elect the President of the Commission and pass a vote of confidence in the Commission;

— exercise political supervision over the activities of the Union and may set up committees of inquiry;

— exercise the appointing powers conferred on it by the Constitution and the Community Treaties;

— exercise the other powers provided for by the Constitution and by the Community Treaties.

Article 16: European Council

The European Council consists of the heads of state or government of the Member States and the President of the Commission.

The European Council shall impart to the Union the impetus necessary for its development and shall define, with the participation of the European Parliament, the general political guidelines of the Union.

Article 17: Council — composition

The Council consists of a minister from each Member State competent to deal with the affairs of the Union. The minister shall chair a delegation appointed in accordance with national constitutional rules. Each delegation shall have a single vote.

Article 18: Council — powers

The Council shall:

— jointly with the European Parliament, make laws, adopt the budget and give its approval to the international treaties of the Union;

— coordinate the policies of the Member States where the Constitution so provides;

— exercise the appointing powers conferred on it by the Constitution and by the Community Treaties;

— exercise the other powers provided for by the Constitution and by the Treaties.

Article 19: Presidency of the Council

The President of the Council shall be elected by a non-weighted majority of five-sixths of the Member States for a period of one year. The term of office shall be renewable and may not exceed three years.

Article 20: Voting in the Council

For their adoption, Council decisions shall require the votes of a majority of the Member States representing a majority of the population.

A simple majority shall comprise the majority of the Member States representing the majority of the population.

A qualified majority shall comprise two thirds of the Member States representing two thirds of the population.

A double qualified majority shall be deemed not to have been obtained where a decision is opposed by at least one quarter of the Member States representing at least one eighth of the population of the Union or by one eighth of the Member States representing at least one quarter of the population of the Union.

Article 21: Commission — composition and independence

1. The composition of the Commission shall be determined by an organic law.

2. Members of the Commission shall, in the general interest of the Union, be completely independent in the performance of their duties. In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties. Each Member State undertakes to respect this principle and not to seek to influence the members of the Commission in the performance of their tasks.

Article 22: Commission — appointment — motion of censure

1. The Commission shall be appointed, in accordance with the procedure referred to in paragraph 2, for a period of five years.

2. At the start of each electoral period, the President of the Commission shall be elected, on a proposal from the European Council, by the European Parliament, acting by a majority of its component members.

The members of the Commission shall be selected by the President in accord with the Council acting by a qualified majority. The Commission thus constituted shall take office following a vote of confidence by the European Parliament.

3. The European Parliament may, acting by a majority of its component members, pass a motion of censure after having given notice of at least three working days; adoption of this motion shall result in the collective resignation of the members of the Commission, who shall carry out daily business until they are replaced.

Article 23: President of the Commission

The President of the Commission shall allocate its competences among the members of the Commission.

He coordinates the work of the Commission and has a casting vote in the event of a tied vote.

The President may terminate the mandate of a member of the Commission at the request of the European Parliament or the Council.

Article 24: Commission — powers

The Commission shall:

— monitor compliance with the Constitution and the acts of the Union;

— be part of the legislative authority and have the power to initiate legislation;

— implement the budget and laws of the Union and adopt implementing Regulations, in conformity with the provisions of the Constitution;

— negotiate and conclude the international treaties of the Union;

— exercise the other powers provided for by the Constitution and by the Community Treaties.

Article 25: Court of Justice

The duties of the Court of Justice are set out in Articles 36 to 39.

The Court of Justice consists of Judges and Advocates-General.

The latter, chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial office in their respective countries, or who are jurisconsults of recognized competence, shall be appointed by the European Parliament, acting by a majority of its component members, and by the Council for a non-renewable period of nine years. The arrangements for their appointment shall be laid down by an organic law.

Article 26: President of the Court of Justice

The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected.

Article 27: Organization and statute of the Court

1. An organic law, proposed by the Court of Justice, shall establish its rules of procedure, the number of its members, their statute, the constitution of chambers of the Court, and the cases in which the Court shall be required to sit in plenary session.

2. The Court of Justice shall enjoy financial and administrative autonomy within the framework of the budget of the Union.

Article 28: Other courts

One or more other courts may, on a proposal from the Court of Justice, be set up by an organic law, to be responsible for hearing certain classes of action, subject to a right of appeal to the Court of Justice limited, where appropriate, to points of law only.

Their duties, composition and rules of procedure shall be laid down in accordance with the principles set out in Articles 25, 26 and 27.

Article 29: Committee of the Regions

The Committee of the Regions shall be composed of elected representatives belonging to the regional or local authorities recognized by the Member States.

It shall be consulted in advance on all legislative initiatives concerning certain matters, of which a list shall be established by an organic law.

Article 30: European Central Bank

The European Central Bank shall issue the currency of the Union, ensure its stability and exercise the powers provided for by the Constitution.

It shall enjoy the independence necessary for the performance of its tasks. The Court of Justice shall ensure that this independence is respected.

Title IV: Functions of the Union

Chapter 1 — Principles

Article 31: Acts of the Union

1. The institutions of the Union shall make, in accordance with the Constitution:

— constitutional laws, which amend or are incorporated into the Constitution; the European Parliament acting by a majority of two thirds of its component members and the Council by a double qualified majority (1);

— organic laws, which regulate in particular the composition, tasks or activities of the institutions and organs of the Union; the European Parliament acting by a majority of its component members and the Council by a qualified majority (2);

— ordinary laws; the European Parliament acting by an absolute majority of votes cast, and the Council by a simple majority (3).

(1) Acting unanimously, for a five-year transition period.
(2) Acting by a double qualified majority, for a five-year transition period.
(3) Acting by a qualified majority, for a five-year transition period.

2. In accordance with the laws and the Constitution, the institutions of the Union shall adopt:

— implementing Regulations;

— individual decisions.

3. Laws and Regulations shall be binding in their entirety throughout the territory of the Union.

Decisions shall be binding on their addressees.

4. Laws may take the form of framework laws when they are confined to a definition of the general principles of the matter, impose an obligation on the Member States and the other authorities to produce a specific result and make the national and Union authorities responsible for their implementation. A law may contain provisions applicable in the event of failure by Member States to act on the implementation of framework laws.

Chapter 2 — Legislative function

Article 32: Legislative initiative

The laws of the Union shall be made by the European Parliament and by the Council.

The legislative initiative in respect of ordinary and organic laws shall lie with the Commission, except where the Constitution confers it on the Court of Justice.

Should the Commission fail to act, the European Parliament and the Council may by common accord submit a proposal for a law.

The legislative initiative in respect of constitutional laws shall lie with the European Parliament, the Commission, the Council or a Member State.

Article 33: Delegation of legislative power

By an organic law specifying the contents, aim, extent and duration of the authorization, the Commission may be made responsible for adopting acts which may derogate from or modify existing ordinary laws.

Chapter 3 — Executive function

Article 34: Implementation of legislation

The Member States shall implement the laws of the Union.

Without prejudice to the preceding paragraph, the Commission shall have regulatory power with a view to the implementation of the laws of the Union and may, in the cases stipulated in the Treaties or the relevant organic law, take individual measures with a view to the application of Union law. The Council may be made responsible by law for regulatory power in specific areas.

Article 35: Supervision of national implementation measures

The Commission shall supervise the implementation of the laws of the Union by the Member States. Detailed arrangements for this shall be established in an organic law.

Chapter 4 — Jurisdictional function

Article 36: Jurisdictional function

The Court of Justice and the other Community and national courts, acting in the framework of their respective terms of reference, shall ensure respect for the law in the interpretation and application of this Constitution and all the acts of the Union. Consistency of interpretation of Union law shall be ensured, in particular, by the exercise of the competence to give preliminary rulings.

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Article 37: Powers of the Court of Justice

The powers of the Court of Justice as defined in this Constitution and in the Community Treaties may only be modified by a constitutional law.

Article 38: Violation of human rights

The Court of Justice shall be competent to rule on any action brought by an individual seeking to establish that the Union has violated a human right guaranteed by the Constitution.

A constitutional law shall determine the conditions under which such actions may be brought and the penalties which the Court of Justice may impose.

Article 39: Respecting the distribution of competences

The Council, the Commission, the European Parliament or a Member State may, after its final adoption and before its entry into force, bring an action for the annulment of an act which exceeds the limits of Union competence. Detailed arrangements concerning such action shall be established in a constitutional law.

Chapter 5 — Finances

Article 40: Resources and budget

1. A law shall determine the nature and maximum amount of the Union's financial resources. This law shall require for its adoption the votes of a majority of the component members of the European Parliament and of two-thirds of those voting, and a double qualified majority in the Council (1).

2. All the annual revenue and expenditure of the Union shall be entered in the budget. The budget shall be adopted each year in accordance with the legislative procedure.

3. Any proposal for new expenditure shall be accompanied by a proposal for the corresponding revenue.

4. The Union shall be subject to the same budgetary discipline as that imposed on the Member States by virtue of the law of the Union.

Chapter 6 — Coordination of Member States' policies

Article 41: Principle

In those areas subject to coordination or cooperation between the Member States, the Council shall exercise the powers conferred on it.

The Commission and the European Parliament shall participate in the Council's action.

Title V — External relations

Article 42: Common foreign and security policy

1. The European Council shall define the general principles and guidelines of the common foreign and security policy, including common defence policy and common defence.

2. The Council shall decide the common positions and joint actions of the Union, on a proposal from the Commission or in response to a request from a Member State. Except in the most urgent cases, it shall consult the European Parliament on the basis of appropriate arrangements. It shall in all cases keep the European Parliament informed and report to it on its actions.

The Council shall take its decisions acting unanimously except in cases where, on a proposal from the Commission, it decides by a double qualified majority. After a period of five years, the Council shall decide by a qualified majority and solely on a proposal from the Commission.

(1) Acting unanimously, for a 10-year transition period.

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Article 43: Representation of the Union

The Union shall be represented internationally by the President of the Council or the President of the Commission, depending on the subject concerned. The Commission shall be responsible for the diplomatic representation of the Union, which it shall exercise in the forms agreed with the Council. In countries where the Union is not represented, the Commission and the Council may agree that the Union should be represented by the Member State best suited to this task.

Article 44: Treaties

1. The Union shall be empowered to conclude treaties.

2. The treaties negotiated by the Commission shall be submitted for approval to the European Parliament, which shall act by a majority of its component members, and the Council, which shall act by a qualified majority. The Commission shall then express the Union's consent.

3. The conditions under which approval can be given by a simplified internal procedure shall be established in an organic law.

4. The treaties thus concluded shall be binding on the institutions of the Union and on the Member States.

5. The European Parliament, the Commission, the Council or a Member State may request the opinion of the Court of Justice on the compatibility of a treaty with this Constitution. Any treaty in respect of which the Court of Justice delivers an adverse opinion may only be approved, where appropriate, by a constitutional law.

6. If an international treaty is to be concluded which involves amendment of the Constitution, the amendments shall first be adopted by a constitutional law.

7. The denunciation of treaties shall be carried out in accordance with the procedures laid down for their conclusion.

Title VI: Accession to the Union

Article 45: Accession of new members

Any European State whose institutions and system of government are founded on democratic principles and the principle of the rule of law, which respects fundamental rights, minority rights and international law and undertakes to adopt the *acquis communautaire* may apply to become a member of the Union.

The detailed arrangements for accession shall be the subject of a treaty between the Union and the applicant State. This treaty must be approved by a constitutional law.

Title VII: Final provisions

Article 46: Final provisions

Member States which so desire may adopt among themselves provisions enabling them to advance further and more quickly towards European integration, provided that this process remains open at all times to any Member State wishing to join it and that the provisions adopted remain compatible with the objectives of the Union and the principles of its Constitution.

In particular, with regard to matters coming under Titles V and VI of the Treaty on European Union, they may adopt other provisions which are binding only on themselves.

Members of the European Parliament, the Council and the Commission from the other Member States shall abstain during discussions and votes on decisions adopted under these provisions.

Article 47: Entry into force

The Constitution shall be considered adopted and shall come into force when it has been ratified by a majority of Member States representing four-fifths of the total population. Member States which have not been able to deposit the instruments of ratification within the time limit established shall be obliged to choose between leaving the Union and remaining within the Union on the new basis.

Should one of these States decide to leave the Union, specific agreements shall be concluded, designed to grant it preferential status in its relations with the Union.

Title VIII: Human rights guaranteed by the Union

1. Right to life

   Everyone has the right to life, respect for his physical integrity, freedom and security of person. No-one may be sentenced to death, or subjected to torture or to inhuman or degrading treatment or punishment.

2. Dignity

   Human dignity is inviolable: it shall include the individual's fundamental right to adequate resources and services for himself and his family.

3. Equality before the law

   (a) Everyone is equal before the law.

   (b) Any discrimination on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, membership of a national minority, property, birth or other status shall be prohibited.

   (c) Equality must be secured between men and women.

4. Freedom of thought

   Freedom of thought, conscience and religion are guaranteed.

   The right of conscientious objectors to refuse military service shall be guaranteed; the exercise of this right shall not give rise to any discrimination.

5. Freedom of opinion and information

   (a) Everyone has the right to freedom of expression. This right shall include freedom of opinion and the freedom to receive and impart information and ideas.

   (b) Art, science and research shall be free of constraint.

6. Privacy

   (a) Everyone has the right to respect and protection for his or her identity.

   (b) Respect for privacy and family life, reputation, the home and private communications shall be guaranteed.

   (c) Surveillance by public authorities of individuals and organizations may only take place if duly authorized by a competent judicial authority.

7. Protection of the family

   Everyone has the right to start a family.

   The family shall enjoy legal, economic and social protection. The rights of fathers, mothers and children shall also be protected.

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8. Freedom of assembly

Everyone has the right to organize and take part in peaceful meetings and demonstrations.

9. Freedom of association

Everyone has the right to freedom of association.

10. Right of ownership

The right of ownership is guaranteed.

No-one may be deprived of his or her possessions except where deemed necessary in the public interest, in the cases and subject to the conditions provided for by law and subject to fair compensation previously determined.

11. Freedom to choose an occupation and working conditions

(a) The Union recognizes the right to work; the Union and the Member States shall take the measures needed to make that right effective.

(b) Everyone has the right freely to choose an occupation and a place of work and freely to pursue that occupation.

(c) No-one may be arbitrarily deprived of his or her work or be forced to take up specific work.

12. Collective social rights

(a) Workers are guaranteed the right to organize collectively in defence of their rights, including that of establishing trade unions.

(b) The right of negotiation between employers and employees and the right to conclude collective agreements are guaranteed at Union level.

(c) The right to take collective action and the right to strike are guaranteed.

(d) Workers have the right to be informed regularly of the economic and financial situation of their undertaking and to be consulted on decisions likely to affect their interests.

13. Social protection

(a) Everyone has the right to benefit from measures for the good of their health.

(b) Anyone lacking sufficient resources has the right to social and medical assistance.

(c) Workers, self-employed persons and their dependants have the right to social security or an equivalent system.

(d) Those who, through no fault of their own, are unable to house themselves with dignity shall have the right to assistance in this respect from the appropriate public authorities.

14. Right to education

(a) Everyone has the right to education and vocational training appropriate to their abilities.

(b) There shall be freedom in education.

(c) Parents have the right to make provision for such education in accordance with their religious and philosophical convictions, whilst respecting the right of the child to its own development.

15. Right of access to information

Everyone has the right of access to and the right to have corrections made to administrative documents and other data concerning them.

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16. Political parties

Citizens have the right to form political parties. Such parties must be inspired by the democratic principles common to the Member States.

17. Access to the courts

(a) Everyone has the right to bring an action before a court or tribunal specified by law.

(b) Everyone is entitled to have his or her case heard fairly, publicly and within a reasonable time limit by an independent and impartial court or tribunal established beforehand by law.

(c) Access to justice must be effective. Legal aid is provided for those who lack sufficient resources otherwise to afford legal representation.

18. Non bis in idem

No-one may be tried or convicted for offences of which he has already been acquitted or convicted.

19. Non-retroactivity

No liability may be incurred for any act or omission to which no liability applied under the law applicable at the time when it was committed.

20. Right to petition

Everyone has the right to address written requests or complaints to the public authorities, who shall be required to reply.

21. Right to respect for the environment

Everyone has the right to the protection and preservation of his natural environment.

22. Limits

No derogation from the requirement to respect the rights and freedoms guaranteed by this Constitution shall be granted, save under the terms of a law consistent with their substance, within reasonable limits vital to the safeguard of a democratic society.

23. Degree of protection

No provision in this Constitution may be interpreted as restricting the protection afforded by the law of the Union, the law of the Member States and international law.

24. Abuse of rights

No provision in this Constitution may be interpreted as implying any right to engage in any activity or perform any act aimed at restricting or destroying the rights and freedoms set out therein.

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For a Europe of civic and social rights: Report by the Comité des Sages

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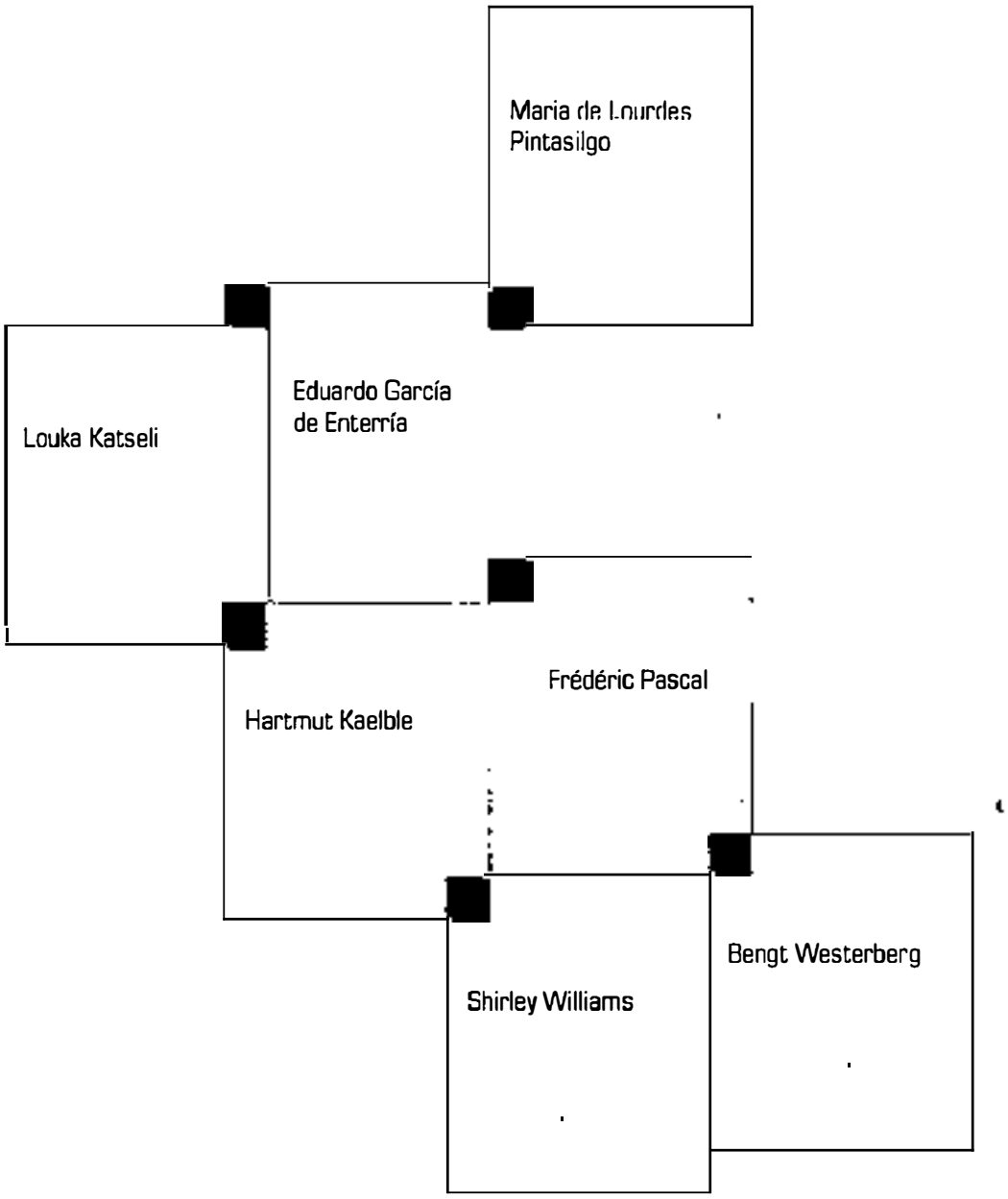
Report by the Comité des Sages

EUROPEAN COMMISSION

Social Europe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For a Europe of civic and social rights

Report by the Comité des Sages chaired by Maria de Lourdes Pintasilgo

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FOREWORD

Europe is a social entity. One of the things each of the Member States introduces into the European integration process is a sense of responsibility for the needs of its citizens. Historically, each country has found different ways of exercising this responsibility, but the end result is that in all the Member States, social rights are, to differing degrees, respected, defended and nurtured. Europe, then, already has a social dimension.

The Committee feels that the moment has come to consolidate past achievements in the social field and to set about realizing the aspirations and needs of the people of Europe. While there can be no doubt that the welfare state is under attack and in a state of crisis, the underlying principles still hold true. What we have to do now is find ways of recasting the mould. The welfare state is, after all, a reflection of the way we care for one another and the way we value human resources. It is very much the inspiration behind 'competitiveness with a human face'.

Although the 'European social model' is a living reality, it is also by pooling experience gained from the various national systems that we can find new avenues of approach. In other words, reflecting on social rights and how they can be put into practice in today's world occupies an important place in the building of the European Union.

The drive to institute the single market, culminating in economic and monetary union, was and is an objective which can mobilize and reorganize the main economic players in the Member States. In the same way, a clear signal of intent to work towards European social union will give us an objective capable of taking the building of Europe a stage further.

There is an urgent need for progress — both internally and externally. Internally, because there is a need to secure the livelihoods of the people of Europe at a time when work is becoming a scarce commodity and demographic trends are giving cause for concern. Externally, because the economic position of the European Union in the world market and the effective provision of development aid are both dependent primarily on our ability to postulate new 'models' to enable individual countries to find their own paths towards a society characterized by economic progress and social justice.

In the early part of the industrial era, the social question was primarily one of capital versus labour. Times have changed, though, with a radical shift in the constituent parts of the production process and the emergence of social rights covering practically every aspect of individuals' living conditions. Civic rights and social rights are becoming interdependent. In the European tradition, they are inseparable. 'Freedom and the conditions of freedom' are the mirror image of 'democracy and development'.

Citizenship is a prime element in the equation. In talking about social rights, we are touching on the full range of rights under the 'citizenship' umbrella. Extending the concept of citizenship within a European Union framework gives each country the opportunity to carry its own concept of citizenship a stage further.

With the development of social rights in the Member States forcing the European Union to take a decisive step in the construction of Europe, the Union's responsibility can only find expression within the framework of the Member States' powers. More so than elsewhere, social rights are coupled with the sheer variety within the European Union, and the result is that Member States' responsibilities emerge all the stronger.

The concept of citizenship has gradually been taking shape throughout the Union's history. One important legal stage is enshrined in the Maastricht Treaty, but the Union is already active in its respect for, and promotion of, the social aspect of citizenship. The European Parliament and the Commission have both been active, the former through its proposals on fundamental rights (1989 and 1996), the latter through its various social policy dossiers, and especially through the Social Charter, which was the Commission's brainchild.

These social rights, which are tending to mingle with civic rights and to inform on the concept of citizenship, can have only one logical consequence as far as the Committee is concerned: a 'bill of rights' must be made a major objective for the future of the European Union.

The Committee is therefore proposing that initially, i.e. in conjunction with the forthcoming IGC, the Treaty should incorporate certain fundamental social and civic rights and should reflect the Union's determination to formulate a bill of rights to guide us at the dawn of the 21st century. Once these proposals have been built into the Treaty, the Committee recommends that attention should turn to a second stage which it regards as being of capital importance for the future of the Union. That will be the time to look at the finer points of the embryonic bill of rights with an immediate and direct impact on people, galvanizing not just individuals but all manner of social and economic groups throughout the Member States.

As far as the Committee is concerned, then, the challenge now facing us is not just to make changes to particular articles in the Treaties, but to scale up the approach and engage in a thorough overhaul of the European Union. This — no more nor less — is what the age demands of us, to make the people of Europe aware of the fact that they are now citizens of the European Union.

Chairing this Committee has been for me an enriching experience and a practical demonstration of European citizenship. Within a very short space of time — the Committee held its first meeting in October 1995 and met for the last time in February

1996 — the members of the Committee have offered their views as citizens of Europe, not in spite of their national interests but precisely because of them and on the strength of them. Their interest in the task at hand, the skills they have made available to the Committee, and their contributions during and between the Committee's working sessions show what can be done if one really has Europe at heart.

All this would not have been possible, though, without the exceptional qualities of the rapporteur — not just his talent and interdisciplinary know-how, but also his devotion to the cause and his willingness to lend an intelligent ear to any suggestion.

The DG V Secretariat team has given able and efficient support throughout to the Committee.

To all these people, I would offer my thanks and say what a pleasure it has been to work with people of such high calibre.

Maria de Lourdes Pintasilgo

PROPOSALS FROM THE COMITÉ DES SAGES

I. Take a detailed look at our concepts of work, activity and employment in Europe to ensure that the policies we pursue enable people to take their rightful place in society.

II. Decide in what way our welfare state should be restructured to make it a more effective force for competitiveness and social cohesion and to realize each individual's full potential.

III. Facilitate practical policies to enable men and women to reconcile their family responsibilities and professional activities.

IV. Nurture the emergence of a new generation of civic and social rights, reflecting technological change, enhanced awareness of the environment and demographic change.

V. Strengthen the sense of citizenship and democracy in the Union by treating civic and social rights as indivisible.

VI. Decide how and where the Union should intervene in the social sphere, having regard to the principles of subsidiarity and proportionality.

VII. Initiate Stage 1, at the forthcoming Intergovernmental Conference, by enshrining in the Treaties a basic set of fundamental civic and social rights (in the form of a bill of rights), laying down which rights should have immediate force of law and which ones will be dealt with in more detail at a second stage (see proposal No XIII). All these rights would be available to the citizens of the European Union, while some of them might also be available to citizens of non-member countries, provided the conditions are right.

VIII. Include among the rights mentioned in proposal No VII a ban on any form of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, membership of a national minority, wealth, birth, disability or any other situation.

IX. By way of exception, postulate the principle that each Member State must set in place, subject to its own conditions, a minimum income for persons who cannot find paid work and have no other source of income.

X. Consolidate all existing texts in a single Treaty, with continuously numbered articles.

XI. Provide a sounder legal basis for the Court of Justice by extending to the international agreements signed by the Member States the legal references to which the Court refers under Article F, and removing the restrictions imposed under Article L.

XII. Rather than acceding to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, introduce special arrangements for legal remedy in respect of fundamental rights in the form of a Union-specific appeal court made up of non-permanent judges from the Member States' constitutional or supreme courts.

XIII. Make provision for an article in the new Treaty to set in motion a wide-ranging, democratic process of compiling, at Union level, a full list of civic and social rights and duties. Initiated by the European Parliament on a proposal from the Commission, this process, which must closely involve the national parliaments and which would require input both from the traditional social partners and from non-governmental organizations, should culminate in a new IGC within five years' time.

XIV. Consolidate all provisions concerning social policies, and especially the Protocol on social policy, under a single title in the Treaty.

XV. Apply qualified majority voting in the social field, with the exception of a few sensitive policy sectors (e.g. social protection and participation).

XVI. Give express recognition in the Treaty to the partnership role of the new collective players in society, in particular the NGOs.

XVII. Set in place a statute for associations under European law.

XVIII. Extend Structural Fund eligibility to measures designed to promote fundamental social rights.

XIX. Postulate the principle that all European policies must be subject to a social cohesion impact study.

XX. Include in the Treaty a chapter on employment to underpin coordinating action by the Union subject to the principles of subsidiarity and proportionality.

XXI. Make express provision for the Union to adopt a coordinating and experimental role in terms of combating social exclusion.

XXII. Extend the Community domain to include immigration and asylum policy and policy on entry, movement and residence for the citizens of non-member countries.

XXIII. Extend the Community domain to combat drug abuse and trade in illegal drugs.

XXIV. Set out the concept of public utility services in that such basic services often condition the way certain social rights can be exercised.

XXV. Initiate a programme of work in the field of European social policy and bring out the cost of not having a social Europe.

XXVI. Create uniform statistics series relating to the whole of the European Union.

SUMMARY

In its second social action programme (adopted in April 1995), the Commission undertook to set up a Comité des Sages to examine what might become of the Community Charter of the Fundamental Social Rights of Workers in connection with the review of the European Union Treaties.

To enable it to fulfil its task properly, the Committee wanted to extend the scope of its remit because it felt that Europe was in greater danger than it realized and that the 'social deficit' was fraught with menace. Europe, the Committee felt, cannot be built on unemployment and social exclusion, nor on an inadequate sense of citizenship. Europe will be a Europe for all, or it will be nothing at all.

I. Social issues now lie at the heart of the challenges facing the European venture

1. The European Union needs to proclaim its identity more clearly.

If it wishes to become an original political entity, it must have a clear statement of the citizenship it is offering its members. Inclusion of civic and social rights in the Treaties would help to nurture that citizenship and prevent Europe being perceived as a bureaucracy assembled by the technocratic elite far removed from daily concerns. It would be useful to affirm that the object of the Union is to enable every citizen to realize his/her potential in conjunction with his/her fellows, bearing in mind the necessary solidarity with future generations.

2. We will never meet the challenge of employment unless we radically change our policies — which have to be more pro-active and more effective — and our views on what constitutes work and activity.

If Europe is to refuse to countenance any exacerbation of inequalities and social marginalization and any generalization of passive assistance for 'excluded' individuals, it will have to make a considerable effort to innovate, organize and mobilize in order to build a form of development which embraces everyone. It will have to develop a pro-active approach to citizenship, where each individual accepts his/her obligations to others. We shall have to recast our public policies to a substantial degree; they must prevent rather than remedy, stimulate rather than assist.

On a more general front, it is our very notion of work which will have to change and broaden. The model of full-time work, already altered — albeit reluctantly — by unemployment and atypical work will evolve: periods of paid activity will alternate or be combined with training periods or free time devoted to other activities; there should be

continuity between the different stages with as few breaks as possible. Paid employment will no longer be the overriding, legitimate social activity; other different forms of activity, more often than not unpaid, will take on growing social importance and the community at large will come to recognize their social role and support their development. Links and ties will develop between all these forms of activity and work and they could represent a marked advancement for the good of the community if they are properly managed with effective back-up policies and do not entail instability for the persons concerned. There is still a need for an instrument combining economic security with a means of enabling individuals to take responsibility for their personal development, whereby the social flexibility which benefits the individual would act as the counterbalance to economic flexibility.

3. A renewed, original social model could become the key to European economic competitiveness.

In the global economy to which we belong, competitiveness is a fixed imperative. But competitiveness cannot be improved by dismantling the welfare state or by reducing minimum social standards. What we do have to do is change and overhaul our social system: reducing non-wage labour costs; developing social rights, such as training, to foster high value-added forms of production; rejuvenating European social dialogue and turning it into a source of competitiveness; coming up with a coordinated response to population ageing, with basic pension schemes and policies to make it possible for both men and women to reconcile family responsibilities and occupational obligations; tackling the various forms of social exclusion by way of more individualized innovative policies, in close conjunction with the non-governmental organizations; and by paying heed to environmental matters.

4. The challenges of enlargement and globalization concern social matters too.

Successful integration into the Union of the countries of Central and Eastern Europe depends not only on the appeal of our economic model, which is indisputable, but also on our social model; yet it is tending to deteriorate. A core of clear social standards should be required of these countries as soon as they become full members, which means that the core has first of all to be defined by the Union.

Globalization entails social aspects which will be coming increasingly under the spotlight, more especially the progress globalization of the labour market. Another question concerns the pace at which social standards applied in the industrialized countries should be taken on board. The Union might thus feel the need for a stronger external social policy. It would, in all events, be unable to defend the principle of universal rights unless it produces its own definition of such rights.

II. The current structure of civic and social rights and social policies in Europe is extremely complex

1. The Member States have differing constitutional systems, but all are signatory to a number of conventions and agreements, more particularly the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, which features a notable procedure for effectively guaranteeing such rights.

As regards the Treaties of the European Union, it is not possible as yet to speak of a genuine structure of social and civil rights, but rather of *ad hoc,* piecemeal measures to accompany economic integration and allow minimum social policies to be pursued: Articles 117-122 of the Treaty of Rome, as supplemented by the Single Act of 1986; the Community Charter of the Fundamental Social Rights of Workers, which was adopted in 1989 by 11 of the then 12 Member States; the new provisions of the Maastricht Treaty, more especially the Protocol on social policy, which was adopted by 14 of the 15 Member States. Generally speaking, social rights are defined outside the Treaty and mainly apply to workers only. The Treaties contain no list of fundamental social rights to which the Court of Justice could refer in order to review Community acts. The provisions need to be made more readable, simpler, more consistent and more effective.

2. However, in a policy sector which is in a permanent state of flux, there are numerous problems which have to be overcome.

Do social rights and civil, civic and even political rights form part of a whole — which is what the Committee believes — or are they to be considered separately? This first distinction to a large extent overlaps another: on the one hand, rights which limit the risk of encroachment by the State on the freedom or dignity of the individual and are mainly set out in statutory provisions; on the other, rights to specified benefits and services and which involve costs and require financial resources to be made available.

But from whom can these rights be demanded, who ensures that they can be exercised and who provides the necessary means when society confers them on individuals? The question arises in most cases, but is particularly acute in the case of positive social rights (e.g. the right to housing and employment). In such cases, the assertion of rights is inseparable from the social policies which give them effect. But it would be wrong to think that respect for rights is purely a matter for society as a whole and public policy. The practical implementation of rights also depends on interpersonal relations and a sense of individual responsibility for others: there are no rights without duties, nor democracy without civic commitment.

Finally, the list of fundamental rights is not unchangeable: first of all, because a fuller understanding of the individual is emerging; secondly, because technological progress

is creating threats to individuals. After the first generation of civil and political rights, followed by that of social rights, the possibility of further progress is emerging and has to be discussed in depth.

3. *It is essential to state clearly what should be done by the Union and what should be done by the Member States, in the field of fundamental rights as in others.*

The division of responsibilities between the Member States and the Union is a much more sensitive subject in the social field than in economic matters, and no clear solution has yet been found. It is generally recognized that in social affairs the principles of subsidiarity and proportionality must apply in full and play an essential part. Each country must retain its specific features.

So whether or not we are capable of developing a social union will depend on our ability to define areas or functions in which the Union must develop a role, either because the Member States are unable to act effectively or because action by the Union is more effective than that of the Member States and offers additional benefits. The steps to be taken are thus:

- to conduct and coordinate forward-looking discussions;
- to specify a minimum core of fundamental rights applicable to the Union and the Member States when acting in accordance with Community law;
- to recognize the social implications of the rights of citizens within the single market to move and reside freely within the territory of the Member States;
- to help correct imbalances as they arise;
- to assist with the solution of difficult problems which, while falling within the Member States' remit, require common approaches;
- to help to approximate laws and regulations in the event of excessive disparities and prescribe minimum standards if appropriate.

III. Specify immediately a minimum core of fundamental rights as a first stage

The immediate steps to be taken at the IGC are as follows.

1. *Consolidate in a single Treaty the provisions which are currently dispersed throughout the 15 treaties, with the articles continuously numbered.*

2. Create a sounder legal basis for the work of the Court of Justice of the European Communities to ensure that fundamental rights are applied in practice.

The frame of reference used by the ECJ to determine the general principles of Community law would be extended, on the one hand, to the Community Charter of the Fundamental Social Rights of Workers, which would thus be incorporated indirectly into the Treaties, and on the other, to the main international agreements signed by the Member States. They could thus be used to vet all legal acts on the part of the Union. Accordingly, the restrictions which Article L of the Maastricht Treaty imposes on Article F would have to be removed.

One of the advantages of this improvement would be to ensure more effective implementation of the Council of Europe's Human Rights Convention and could thus offer a solution to the many, hitherto underestimated (e.g. poor social rights content, need for any revision of Convention to be ratified in advance by 38 countries) problems which accession to this Convention would raise. To ensure that the Luxembourg Court is not the final arbiter on matters to do with fundamental rights, a Union-specific court of appeal could be created, comprising non-permanent judges from the Member States' constitutional or supreme courts.

3. Integrate immediately into the Treaty an initial list of fundamental rights.

This list would relate only to the Community sphere, i.e. to the acts of the Union and acts by the Member States in pursuance of Community law. It does not imply any change in the respective areas of competence of the Union and the Member States and does not affect relations in law between the Member States and their nationals.

Eight rights would be recognized and would have full and immediate effect: equality before the law; ban on any form of discrimination; equality between men and women; freedom of movement within the Union; right to choose one's occupation or profession and educational system throughout the territory of the Union; right of association and right to defend one's rights; right of collective bargaining and action.

Rights in the form of objectives to be achieved: (right to education, to work, to social security, to protection for the family, etc.) these form an integral part of the European social model; they would be set out, but any discussion on content and minimum standards would be deferred to the second phase.

Given the scale of unemployment in the Community and the need to combat poverty and social exclusion, the Committee is proposing a minimum clause in one case only: the principle should be enshrined in the Treaty, i.e. at European Union level, that each Member State must set in place a minimum income for persons who, despite their

efforts, are unable to find paid employment and have no other source of income, the level of such income being decided by each Member State.

IV. Set in motion a participatory process to formulate a modern list of civic and social rights and duties

Strengthening the Treaty to include fundamental rights is not something that can be achieved in one go. There is, at the moment, no full list of possible rights, especially if we set out to be bold and innovative: this will require an enormous interdisciplinary effort at a high level of technical detail. The point is not to grant rights from on high, but rather to adopt the kind of democratic process which is a logical consequence of active citizenship. What we have here is a unique opportunity to give free rein to European democratic action.

It is why a collective venture should be provided for in the revised Treaty, with the consultation process being launched by the European Parliament on the basis of a proposal from the European Commission and under the auspices of an *ad hoc* committee. The process would bring in the traditional social partners, but would also embrace non-governmental organizations, with an exhaustive list of such organizations being drawn up in each country as a function of the types of rights being discussed. The European Parliament would be regularly informed and consulted on the progress of the process, and the national parliaments too would be closely associated.

After four to five years, once this consultative process had been completed, the governments would draw the necessary conclusions in the form of an amendment to the existing Treaty within the context of a new IGC, the convening of which should be decided on as of now.

V. Integrate social policies into the Union's normal operations

Many fundamental rights clearly depend on specific social policies being pursued. There would be no point in incorporating fundamental rights into the Treaties without doing the same for the social policies which enable these rights to be given effect.

Since this is not central to the Committee's remit, we wish to put forward just a few proposals.

1. *General provisions*

- Group all the provisions concerning social policies under a single title in the Treaty.
- When a Union social policy is necessary in terms of subsidiarity and proportionality, apply qualified majority voting, except in a number of sensitive areas (e.g. social security, social protection and participation).
- Make express partnership provision in the Treaty for non-profit-making organizations and foundations — especially charitable institutions — active in combating exclusion and poverty and which can speak for the unemployed and the excluded.
- Make use of the Structural Funds to promote fundamental rights.
- Develop social and human sciences expertise in the field of European social policy.
- Examine systematically the impact of the various European policies on social cohesion and the risks of exclusion.

2. *Specific provisions*

- Give greater prominence in the Treaty to employment and set up an Employment Committee which would correspond to the Monetary Committee and would periodically hold joint meetings with it.
- Enable the Union to engage in coordination and experimental work in the field of combating exclusion.
- Include in the usual institutional domain (to facilitate decision-making) immigration and asylum policy and policy *vis-à-vis* people from third countries.
- Adopt a similar solution for all matters pertaining to the effects of drugs on individuals, encompassing treatment, prevention and trafficking aspects.
- Elucidate the concept of public utility services.

Report by the Comité des Sages

For a Europe of civic and social rights

INTRODUCTION

In its second social action programme, which it adopted last April, the Commission undertook to set up a Comité des Sages to review, in particular, the action that might be taken on the Community Charter of the Fundamental Social Rights of Workers in the context of the revision of the European Union treaties as provided for in the Maastricht Treaty. Should the Charter be adapted and revised, included in the Treaties, merged with the Social Protocol? Should the Social Protocol be incorporated into the Treaty itself? All these questions have now come to the top of the agenda.

And they inevitably raise an even more fundamental question: what part do and should social matters and social rights, in the broad sense, play in building the Europe of tomorrow? Only by answering that question will we be able to deal with the many detailed issues.

With the Commission's agreement, and to enable it to fulfil its task properly, the Committee sought to extend the scope of its deliberations. This was because it felt that Europe was in greater danger than it realized, with its social deficit lowering like a storm cloud overhead. Europe cannot be built on unemployment and social exclusion, nor on a shortfall in citizenship. Europe will be a Europe for everyone, for all its citizens, or it will be nothing. It will not tackle the challenges now facing it — competitiveness, the demographic situation, enlargement and globalization — if it does not strengthen its social dimension and demonstrate its ability to ensure that fundamental social rights are respected and applied. The first part of this report will be devoted to putting over this point of view.

At the same time, however, the Committee recognized the difficulties and complexities of its task. It was aware that this strengthening of the social dimension was not just a question of will, but also of understanding the obstacles and accepting the *de facto* situation. There are numerous hurdles to overcome on the road to a genuine social Europe: first, social issues are primarily the responsibility of the Member States and the principles of subsidiarity and proportionality must be adhered to in full. Then, the way that work and the employment situation have changed has made it more difficult, yet at the same time more necessary, to introduce public measures; the approach to such a crucial issue needs detailed reconsideration. Social rights evolve, they need redefining all the time, as do the terms and conditions governing their application. Lastly, and above all, sticking to the social *status quo* and hanging on to attainments is a frequent and comprehensible reaction, but it is counter-productive in many cases. Like the economy, the social institutions have to adapt constantly. To be true to its quest, the European social model has to be original, innovatory. The second part of the report will summarize the provisions which have given shape to social Europe as it now stands (for it would be unfair not to acknowledge it) and then describe a few of the factors involved in the problem as applied to social rights.

However, this return to equilibrium will not be achieved in one go; it will take time and discussion. In the third part of the report, the Committee will outline the progress it believes can and must be made in the legal field here and now, that is at the Intergovernmental Conference (IGC): incorporating into the Treaty a basic set of fundamental rights, and giving a sounder legal basis to the Court of Justice to ensure that citizens' fundamental rights become a practical reality.

At the same time, it will suggest making a collective and democratic commitment to determine within a few years, and following consultation of the people themselves, a more precise and more comprehensive declaration of the rights and obligations of citizens within the Union.

The last part will be devoted to the inevitable ties between the rights — or at least some of them — and the social policies providing for their implementation. If social rights are to form part of the daily lives of the Union's citizens, the corresponding social policies must themselves be incorporated fully into the Union's policies; they must not be a special or marginal or separate component. A few paragraphs (with no claim to being exhaustive) will be devoted to that interlinking.

PART I

SOCIAL ISSUES NOW LIE AT THE HEART OF THE CHALLENGES FACING THE EUROPEAN VENTURE

For 50 years now, the European Community has been built up by pooling efforts within a common market; it has gradually harmonized the rules applicable to the market and in many areas, has established common policies. This process, designed to meet clear political ends, has made a notable contribution to reconciliation between peoples and countries and to economic and social development. Attainment of monetary union will mark the completion of that work and at the same time a watershed.

For, in the meantime, the world has changed beyond all recognition: the communist countries have turned to the market economy and want to join the Union, causing formidable institutional problems; the economy is now global and capital markets too, so Member States' production systems are faced with ever-fiercer competition; in most countries social cohesion is breaking down, sometimes with serious consequences, ushering in a climate of pessimism and uncertainty.

In short, the compromise that Europe concluded with the Member States — the market and a modicum of social policies — has been a success, but it is no longer enough. Because of its success, Europe is now facing new and numerous challenges. And they are not only institutional, economic and monetary challenges; they are also (far more so than is generally thought) social and civic challenges. The civic and social side of the building of Europe cannot remain its poor relation for it would increasingly become a source of weakness, whereas it should and can become a source of progress, a goal to be attained. There are four underlying reasons why, and they are worthy of further explanation.

1. The European Union needs to proclaim its identity, an integral part of citizenship

Civic and social rights originated in Europe. All individuals are entitled to the same dignity and equal rights to participate in the political scene. This is our heritage and forms the basis of our concept of citizenship. If the European Union is to become, in time, an original political entity, it must have a clear definition of the citizenship it is offering its members.

Citizenship of the Union as defined at present by Articles 8 to 8e of the Treaty is lacking in substance, being limited to the right to move freely, to vote and stand as a candidate in elections to the European Parliament and municipal elections, to petition the

European Parliament, to apply to the ombudsman and to diplomatic and consular protection. It is somehow incidental, restricted to specific times and situations. It does not create any great feeling of participation or attachment to the Union, whereas, given the current circumstances, that is what is needed.

Inclusion of civic and social rights in the Treaties would help to nurture that citizenship and prevent Europe from being perceived as a bureaucracy assembled by technocratic elites far removed from daily concerns. That objective could not be attained, however, by incorporating into the Treaty a few vague principles without any real significance. On the contrary, it calls for a plain, clear, comprehensible expression of fundamental social and civic rights at EU level, with practical application being ensured by the Court of Justice. Such rights should also be refined, supplemented and broadened through a process of dialogue at both European and Member State level, taking all the time needed, not only on the basis of proposals from specialists.

There are even grounds for wondering whether we should not go further along that avenue and look at the very rationale underlying the European Union we are building today. In the 1950s, the common market in coal and steel was presented as an economic necessity, but also and above all as a means of moving towards reconciliation, peace and political union. But nowadays the means and ends have been reversed. Economic progress,[1] which is really only a means to an end, has become an end in itself — at a time when it is harder-fought yet does not benefit one and all. The Committee thinks it useful to affirm that the object of the Union is to enable every citizen to realize his/her potential in conjunction with his/her fellows, bearing in mind the necessary solidarity with future generations, and that legal rights and economic and social progress must be subordinate to that aim. Proclaiming at European level the primacy of solidarity, which is essentially what democracy is all about, could give more substance and form to the European political scheme.

2. We will never meet the challenge of employment unless we radically alter our policies and our views on work and activity

With unemployment rising, particularly long-term structural unemployment, post-industrial societies in general, and in Europe in particular, are faced with a formidable problem of social integration and justice. Post-industrial societies are finding it extremely difficult to achieve a fair distribution of employment and income: in the United States, the sound performance in terms of jobs has been accompanied by widening pay and income differentials, declining minimum social standards and greater inequality. In most of the countries of Europe, neither poverty nor inequality

[1] Article B of the Maastricht Treaty states that the Union shall set itself the objective of promoting 'economic and social progress which is balanced and sustainable'.

has increased so rapidly, but unemployment has not fallen and is still too high. Technological change, the growing importance of the tertiary sector and changes in the nature of work would appear to be giving a structural edge to these problems.

To take an example from the service sector, we are currently witnessing two quite different developments from the point of view of employment: increased income is creating a market for new services, but at the same time the slowing pace of productivity in an increasingly tertiary economy is making it more difficult to boost income, which may in turn have a negative effect on the demand for services. If the latter phenomenon proves stronger than the former, it will be difficult to increase the number of hours worked, and this will mean we shall have to find a different way of distributing time spent on remunerated work.

At the same time, the very nature of work has changed radically. Relationships play a greater role, as does the individual, while involvement, initiative and adaptability are constant and essential inputs. That is why access to employment has become more difficult, for greater demands are made in terms of vocational and social skills. The development of what is commonly called the information society can only accelerate those tendencies. So paid employment, which used to be a factor for integration, has become more selective, and society no longer automatically finds a place for everyone in economic and social life. Individualistic tendencies are reinforcing these phenomena, yet now more than ever there is a need for dedication and concern for the community.

This situation puts Europe and the societies which make it up at considerable risk. Unemployment makes people feel excluded from full participation in society. Paid employment is a way of participating in social life, recognizing the usefulness and dignity of the individual and opening the door to social intercourse. It gives people financial independence while making them full members of society. Unemployment threatens the welfare state itself, both by imposing a greater burden of public expenditure and by reducing the potential tax base from which resources can be redistributed. A high level of employment providing for full utilization of the available capacity is therefore indispensable if we are to apply effective social policies and enable everyone to benefit from the growing collective wealth. In more general terms, unemployment is just as much an economic problem as a social problem, for it exacerbates public spending deficits and prevents us from using existing resources to the full. In all these contexts, therefore, unemployment amounts to a collective failure which necessarily has a negative effect on the building of Europe.

But this situation is not preordained.

Firstly, the appropriate economic and social policies, as advocated in particular in the White Paper on growth, competitiveness and employment, have a major and decisive

role to play. But that presumes that they must be far more pro-active than at present and never lose sight of the goal of high employment.

In particular, price and currency stability are necessary objectives, as laid down in Article 105 of the Maastricht Treaty.[1] Although employment is surely the overriding aim in Europe today, we need to return to growth, by boosting investment and trade. To that end, budgetary, fiscal and monetary policies must ensure that interest rates remain low enough so that the productive forces can be exploited to the full. That, indeed, should be the outcome of monetary union.

At the same time, pro-active labour and employment policies should ensure that job vacancies are filled, that workers' skills are constantly improved and that the structural rigidities in the European labour market, which are not an essential component of our social model, are eliminated. Similarly, control of public expenditure and deficit consolidation must be accompanied by changes in statutory charges, in particular, charges on labour, so as to promote employment, particularly employment of the less skilled.

However desirable it may be to have better economic and social policies to help boost growth and increase its employment content, it is hardly likely that we will return to the full employment of the 1960s. People entering the labour market with no experience (particularly young people), and those with little or no education and training will still run a great risk of social exclusion, as will those without the necessary interpersonal skills, the disabled and older people. We must not forget that social ties have slackened, both among families and in the neighbourhood; the natural social shock absorbers no longer play the part they did in the past. The same is true of other traditional benchmarks. As a result, social exclusion may hit harder than in the past, despite the fact that society is richer. In other words, the dividends from growth are spread less widely than before, with the result that many people are not only seeing no improvement in their living conditions, but are in fact having to cope with falling standards.

All of which calls for fresh approaches. If Europe is to refuse to countenance any exacerbation of inequalities and social marginalization and the continuation and extension of passive assistance for 'excluded' individuals, it will have to make a considerable effort to innovate, organize and mobilize in order to build a form of development which embraces everyone.

[1] 'Without prejudice to the objective of price stability, the ESCB shall support the general economic policies in the Community with a view to contributing to the achievement of the objective of the Community as laid down in Article 2.' The objectives set out in Article 2 include 'a high level of employment and of social protection'.

That effort could take the following forms:

- in terms of values: promote and develop a pro-active, participative approach to citizenship, where every individual accepts that he/she has obligations towards others and also feels a personal duty to take the initiative. Deliberations on social rights may be useful in this connection (see below, Part III 3 B);

- recast our public policies to a substantial degree: they must prevent rather than remedy, stimulate rather than assist. That is particularly true of training, for its impact on employment and exclusion will become stronger than ever, but also of assistance for employment and the unemployed; such assistance must be as pro-active as possible;

- introduce and strengthen systems which, in return for the necessary adjustments expected of those in paid employment or those seeking a job, provide a measure of economic certainty in regard to employment, work and income.

On a more general front, however, it is our very notion of work which will have to change and broaden. As regards gainful activity, self-employment and work in small units will probably take over increasingly from paid employment. The model of full-time work, already altered — albeit reluctantly — by unemployment and atypical work will evolve: periods of paid activity will alternate or be combined with training periods or free time devoted to other activities; there should be continuity between the different stages with as few breaks as possible. Above all, paid employment will no longer be the overriding, legitimate social activity; other forms of activity, more often than not unpaid, will take on growing social importance. The community at large will come to recognize their social role and support their development. Links and ties will develop between all these forms of activity and work; they could represent a marked advancement for the good of the community if there are proper back-up policies and if they do not entail economic insecurity for the persons concerned. In the same way that social protection has developed hand in hand with industrialization and the rise of the consumer society, we still need to devise a scheme for economic security and individual management of personal development, with the social flexibility benefiting the individual offsetting the economic flexibility now needed to help the productive system operate properly. The social protection and employment regulatory systems will have to cope with such patterns of activity, but they are not at present in a position to do so.

Population trends will follow in the same direction and could be turned to good account. Increased life expectancy offers the opportunity of using the potential of retired people for voluntary activities for the collective good. Similarly, better management by men and women of the time they spend in paid employment — not resulting from unstable forms of work, but from proper recognition of the social usefulness of deciding how to spend one's time — makes it easier to reconcile work and family

responsibilities, giving more scope for child-rearing and boosting the birthrate, as has happened in the Nordic countries.

All in all, we will surely have to gradually revise our overall approach to work and employment.

This will of course happen empirically in each individual Member State, on the basis of national traditions and cultures. But the European Union cannot remain aloof to this endeavour: the methods and results concern it directly. It will have to facilitate exchanges of experiences, encourage innovation, coordinate motives, draw lessons for itself. In more general terms, what is at stake here is the creation of an original social model combining competitiveness and social cohesion. Some further explanation is required.

3. A revamped, original social model could become the key to European economic competitiveness

The issue of work and employment is naturally closely bound up with that of competitiveness. In the global economy to which we belong, competitiveness is a fixed imperative.

But competitiveness can be achieved in different ways and, according to circumstances, is connected in different ways with social rights and social protection systems.

The European social model, a key component of the European identity, ran into trouble in the 1970s. Europe is no longer what it was for a century, a pioneer in the field of social policy.

With rising unemployment and the slowdown in growth resulting from the two oil shocks of 1973 and 1979, the national budgets have seen their tax revenue decline while demand for social benefits has increased. Funding the welfare state has become a problem, if only on account of the numbers of jobless in Europe, twice or three times more than in the early 1970s.

There are also worrying signs that Europe could be losing its competitive edge, notably in the field of high technologies, as pointed out in the Ciampi report, 'Enhancing European competitiveness'. Productivity in Europe has grown more slowly than in the United States and Japan, not to mention the newly industrializing Asian countries. Investment in industry is well below that of Japan (see Annex, Ciampi report, graphs).

In particular, the persistently high level of unemployment, now above 10% in most Member States, bears witness to the lack of competitiveness and to structural rigidi-

ties; as a result, many people are living off unemployment benefit when they would prefer to work. In addition, regular waves of cost-cutting job-shedding inevitably fuel the unemployment figures.

The Committee does not believe that Europe can improve its competitiveness by dismantling the welfare state or by reducing minimum social standards. High quality education and training are absolutely indispensable in a modern, technologically advanced economy. An efficient, universal, primary health-care system prevents far greater health-care expenditure at a later stage, provides better protection for the sick and disabled, and improves the general health of the community. It is better to try and integrate everyone into society by way of policies designed to create jobs and, where necessary, boost low incomes by means of family benefits, ensuring a decent minimum income for each individual, rather than allowing the development of marginalized groups marked by chronic unemployment and poverty, a source of delinquency and drug abuse.

How then, in these circumstances, can we overcome the hazards of declining competitiveness and growing poverty and social exclusion? By acknowledging that we have to change. Change firstly by investing more in our infrastructures, by abolishing the remaining barriers in the single market and by simplifying Community rules and regulations and at the same time applying them to greater effect. But we also have to change by renewing our social system.

Let us consider our current arrangements for the funding of social protection. Most funding for social services and unemployment benefit now comes from work. In many countries, social charges and contributions account for between 50 and 80% of the wage bill and as a result the cost of labour per unit produced in Europe is higher than that of our competitors. Accordingly, labour-intensive industries and services become less competitive, while our companies are encouraged to replace labour by increasingly automated machinery or invest in low-wage countries. Labour will henceforth have to stop bearing such a major proportion of the burden imposed by the social benefits paid to increasing numbers of our citizens; other formulas will have to be used, for example different tax bases: capital, financial transactions, added value, taxes on rare resources or pollutants (e.g. carbon dioxide) — this latter could have significant positive knock-on effects for the environment.

A similar situation obtains by virtue of the rigidities in the Member States' social protection arrangements. Most of the rules and regulations were drawn up in post-war industrial societies when most workers belonged to trade unions and were employed full time. Retirement and pensionable ages were based on much lower life expectancies than those of today. A reformed social protection system must be more flexible, reflecting a more fragmented industrial economy, subject to rapid change, where many people work for short periods and also part-time, moving from one activity to another.

In this changing environment, the European Union and the Member States must move on four fronts:

- Invest more resources in social rights and social protection machinery to improve competitiveness and high added value production

This applies in particular to the right to basic education and lifelong learning: it should be possible to exercise the right in all countries of the Union, not only in one's country of origin; similarly, a genuine right to seek and take up employment in all the Member States of the Union, encouraging mobility to exploit the advantages of the large labour market.

Countries where the social partners have managed to build up a sound network of industrial relations are achieving greater consensus in managing adaptation with a smaller risk of social exclusion; accordingly, a revamped European social dialogue could improve competitiveness, particularly as the single currency implies Union-level social dialogue. Lastly, we know that the right to health care is available more efficiently and cheaply to all those who need it through mandatory collective schemes in which contributions are income-related and not risk-related as in private schemes, provided, however, that such schemes are managed properly.

- Coping with demographic change

Demographic change is characterized by a falling or stagnating birth rate, increased life expectancy and more elderly people as a percentage of the population (including dependent older people). This will increasingly affect both competitiveness and social cohesion in the Member States over the next 20 years. Given the extent of these problems, a coordinated response from the Member States of the Union is required in a number of areas: adjusting basic pension schemes (to prevent distortions of competition), applying family policies which make it equally possible for men and women to reconcile family life and professional responsibilities, and probably adoption of coordinated policies on immigration both for reasons of consistency and because it is a possible response (which still has to be discussed) to the demographic problem.

The whole shape of the European Union, its influence in the world, and its economic role will of course have changed in 15 or 20 years depending on what responses are found to the question of 'solidarity between generations'. We have not yet fully realized what risks could arise from the population trends (shortage of manpower, lower living standards for the working population, loss of dynamism, unchecked immigration) nor the potential gains to be made from a dynamic population balance (faster economic growth, enhanced social life, higher birth rate, managed recourse to immigration with joint development partnerships, better living standards in general, etc.).

- Tackle the question of social exclusion, one of the greatest problems of post-industrial society

What is meant by exclusion is the fact that certain people at certain times do not take part in economic and social intercourse, nor in the building of a common society, so their 'social citizenship' is curtailed. By the same token, young people find it difficult to gain a foothold in the world of work because the jobs are simply not available. Long-term unemployment is the most visible form of social exclusion; it has given a new dimension to the phenomenon of extreme poverty in industrial societies.

But that form of exclusion, which often leads to others (greater difficulty in obtaining access to health care, homelessness, breakdown of family structures, etc.) is not the only one; elderly people, above all, dependent elderly people and the disabled, are exposed to such risks. The same is true of people living in declining rural areas or run-down urban areas.

Such situations are, of course, neither inevitable nor irreversible. Their specific features have to be recognized first of all. Secondly, they require the practical implementation of innovatory policies tailored more closely to the individual and coordinated effectively with the non-governmental organizations which play a key part in the fight against social marginalization: in particular, the back-up role of voluntary workers must be recognized and respected. Lastly, it is imperative that society unites responsibly to prevent such situations from developing, for, here as elsewhere, prevention is better than cure.

- Respond to environmental concerns

Links will have to be established between the socio-productive system and the way we respond to the numerous environmental challenges. Suffice it to say that introduction by the Union of environmental standards ahead of future international standards could help to make business more competitive. Levying taxes on scarce resources and all forms of pollution could raise resources for social protection systems and thus reduce the taxes and charges on labour (labour being a factor which is in plentiful supply, but which is overtaxed and underused). In short, as was shown in the White Paper on growth, competitiveness and employment, links must be established between competitiveness, social protection and environmental standards.

4. The challenges of enlargement and globalization concern social matters too

- The challenge of enlargement of the Union, more particularly to the countries of Central and Eastern Europe, is not merely an institutional and economic challenge, as is often thought — it is also a social challenge. The former communist countries boast a very limited fundamental rights culture, but a strong egali-

tarian culture; this is feeling the pinch as they plunge into the market economy, with a rapid rise in inequalities and declining social standards. This tension is a source of political instability; we are already seeing its initial effects and they could spread throughout the Union.

Successful integration into the Union of the countries of Central and Eastern Europe depends not only on the attraction of our economic model, which is indisputable, but also on our social model; yet it is precisely this social model which is tending to deteriorate. A core of clear social standards should be required of these countries as soon as they become full members. This core therefore has to be defined by the Union for itself and these standards have to enjoy sufficient credibility to act as replacement values for the community, while transitional periods must be envisaged to reflect the resources available with a view for bringing the standards up to the required level.

- Globalization is viewed most frequently from the financial, economic and business angles. But it also entails social aspects which are coming increasingly under the spotlight: the progressive globalization of the labour market (which is increasingly jeopardizing the less-skilled workers in our countries) and competition based on socioeconomic models. The emergence of the European Union as an original political entity with a single currency will enable it to fulfil more easily than at present its role as a regulator worldwide, to encourage greater compliance with the rules and better coordination of economic and financial policies. But another necessary question concerns the pace at which social standards in the industrialized countries should be taken on board by the industrializing countries. The Union might thus feel the need for a stronger external social policy along the same lines as the instruments it adopted for its external commercial policy. Thus, trade agreements with third countries might be made conditional upon their adherence to minimum social standards and their accession to international conventions (notably the ILO conventions) which ban child labour, while the Member States of the Union should take vigorous action against their own nationals who knowingly take advantage of infringements of the rules. The Union certainly cannot champion the principle of universal rights and advocate, say, general ratification of the ILO basic conventions unless it draws up its own definition of those rights.

All in all, the deepening of the European Union's social dimension is not just an end in itself, pursued as a matter of course by people who happen to be interested in social questions; it is increasingly becoming an essential component of the success of the overall political venture which is the European Union.

PART II

THE CURRENT STRUCTURE OF CIVIC AND SOCIAL RIGHTS AND SOCIAL POLICIES IN EUROPE IS EXTREMELY COMPLEX

In this challenging situation, the way civic and social rights are organized and the way they interface with social policies is extremely complex. The issues underlying the way these rights are expressed and applied are — naturally — evolving. Account must be taken of these difficulties if proposals are to be realistic and enduring.

1. The current situation as regards fundamental social rights

Several levels may be distinguished.

Firstly, the Member States of the Union have differing constitutional arrangements in this respect. Many include in their constitutions a text describing the fundamental rights. However, this does not apply to all countries (e.g. the United Kingdom).

The more recent constitutions place greater stress on social and economic rights than do the older constitutions based on traditional fundamental rights. In addition, the legal effect of these texts varies from country to country depending on the material content of the rights and the control procedures (e.g. judicial, administrative or constitutional).

In addition, the Member States of the Union have all acceded to a number of international agreements and the like[1] which contain a list of fundamental rights, the legal impact of which varies from case to case from simple declarations to more binding texts. Even in the case of the more binding texts, the legal effects may vary in that incorporation into national law may be automatic (single-tier systems) or dependent on national incorporating legislation (two-tier systems). Generally speaking social rights tend to fall into the first category. In any case, it would be illogical for the Member States of the Union to fail to find common ground, even if the rights have to be of a

[1] To take the United Nations as an example: the Universal Declaration of Human Rights (1948), the International Agreement on Economic, Social and Cultural Rights (1966), the International Agreement on Civil and Political Rights (1966), the International Convention on the Elimination of all Forms of Racial Discrimination (1965) and the International Convention on the Elimination of Discrimination against Women (1979); as regards the International Labour Organization: Convention No 29 on Forced or Compulsory Labour (1930), Convention No 87 on Freedom of Association and Protection of the Right to Organize (1938), Convention No 98 on the Application of the Principles of the Right of Organization and Collective Bargaining (1949), Convention No 100 on Equal Pay for Men and Women for Work of Equal Value (1951) and Convention No 105 on the Abolition of Forced Labour (1957).

more binding nature, given that they have already acceded individually to so many international agreements.

This is particularly true since the States of the Council of Europe (which includes all the Member States of the Union) set out a corpus of civil rights and a remarkable procedure for effective safeguards, to be used after all means of redress available within the countries have been exhausted, in the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms. In 1961, this Convention was backed up by a European Social Charter, which is essentially concerned with the right to work and protection of the family, but is not subject to the Strasbourg Court's jurisdiction.

As regards the Treaties of the European Union, what we have at present is not a genuine framework of social and civil rights, but rather a set of *ad hoc*, piecemeal measures to accompany economic integration and allow minimum social policies to be pursued. Several stages may be distinguished.

- The Treaty of Rome allows the Council, acting by a qualified majority, to issue directives or make regulations to ensure freedom of movement for workers (Article 49). Acting unanimously, it may take coordinating social security measures for the benefit of migrant workers. Part Three of the Treaty (Policy of the Community) contains six articles, 117 to 122, under the title concerned with social policy, as well as the provisions covering the European Social Fund. Article 117 sets out the aim of promoting 'improved working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained'. Article 118 entrusts the Commission with the task of promoting close cooperation between Member States in the fields of employment, labour law, vocational training and social security. Article 119 lays down the principle of equality between men and women (strictly in the context of pay).

- The 1986 Single European Act added certain provisions to this structure. Article 100a allows the Council, acting by a qualified majority (and no longer unanimously) to adopt measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishing and functioning of the internal market. (However, this applies neither to fiscal matters nor to the rights and interests of wage earners.) Article 118a allows the Council, acting by a qualified majority, to adopt minimum requirements concerning the safety and health of workers. Article 118b lays down the principle of social dialogue and relations based on agreement at European level.

- In 1989, 11 of the 12 Member States adopted the Community Charter of the Fundamental Social Rights of Workers. As has been well demonstrated in the

report by Miguel Rodriguez-Piñero and José Luis Monereo on 'The Community Charter of the Fundamental Social Rights of Workers in the context of the revision of the Treaty on European Union', this Charter is not incorporated into the Treaties, has no direct legal effects and is not enforced by the Court of Justice. As its title indicates, it mainly covers the rights of workers, while the social rights of other groups of people (e.g. young people, the unemployed and pensioners) are paid little, if any, heed. Never the less, it is an important step forward in the recognition by the Community of the importance of work-related social issues for its own activities. Even though it has not in practice been followed up as had been hoped by negotiation between the social partners, it provided a basis for the European Commission's social action programmes and was then taken over by the Social Protocol to the Maastricht Treaty, so that it may after all be regarded as a pre-constitutional stage prior to the incorporation of social rights into the Treaty on European Union.

- The Maastricht Treaty makes provision for new elements in various fields.

  - The Union sets itself the objective of promoting economic and social progress which is balanced and sustainable, 'in particular ... through the strengthening of economic and social cohesion'. Citizenship of the Union is established (Articles 8 to 8e) and the European Convention for the Protection of Human Rights and Fundamental Freedoms is referred to (Article F).

  - The Treaty of Rome is amplified or made more specific. This is apparent in title III on social policy (Article 126 provides that the Community shall contribute to the development of quality education by encouraging cooperation between Member States) and in the insertion of title IX — Culture — and title X — Public health (Article 129: 'The Community shall contribute towards ensuring a high level of human health protection by encouraging cooperation between the Member States and, if necessary, lending support to their action').

  - A Social Protocol was adopted by 14 out of the 15 States and annexed to the Treaty. It comprises six articles. Article 1 sets out the objectives to be pursued by the Community and the Member States (employment, living and working conditions, social protection, dialogue between management and labour, combating of exclusion) and stipulates that measures shall be implemented which take account of 'the diverse forms of national practices' and 'the need to maintain the competitiveness of the Community economy'. Article 2 stipulates that the Community shall 'support and complement the activities of the Member States' in five fields (workers' health and safety, working conditions, information and consultation of workers, equality between men and women with regard to labour market opportunities, integration of per-

sons excluded from the labour market). The Council, acting by a qualified majority (Article 189c) may issue directives enacting minimum requirements; however, the unanimity requirement continues to apply in the fields of social protection, dismissals, representation and defence of workers' interests, conditions of employment of third country nationals and employment promotion. Articles 3 and 4 provide for the development of social dialogue within the Community and the possibility for agreements at Community level between the social partners. Article 6 restates the principle of equal pay for male and female workers for equal work, going beyond the terms of Article 119 (which are reproduced in the Protocol) by providing that Member States may discriminate positively in favour of women.

- Finally, the very important role of the Structural Funds — and particularly the Social Fund — in ensuring Community cohesion should be emphasized, as should the impetus given to them in recent years in the interests of financial solidarity between countries and regions.

This brief review shows how complex the existing situation is. The following points emerge.

- The Community has a corpus of social policies which is substantial despite its weaknesses.

- The social objectives underlying social policy are none the less expressed in fairly vague terms and are largely subsidiary to economic objectives.

- Social rights are defined outside the Treaty and mainly apply to workers only. The Treaties contain no list of fundamental social rights to which the Court of Justice could refer in order to review Community acts. The Court itself has the task of constructing the general principles of Community law on the basis of both the Human Rights Convention (which is not concerned to any great extent with social rights) and on the constitutional traditions common to the Member States (Article F).

- The most important provisions relate to social policies, which can be adopted by a qualified majority of 15 States in only a very small number of cases (freedom of movement, health and safety matters) and of 14 States in a somewhat wider range of fields, each of which is, however, narrowly circumscribed. Broadly speaking, unanimity is required, whether of 15 or 14 States.

This obviously no longer matches the needs and current situation of the Union. It provides no answer to the many problems which will arise from enlargement to take in

countries which have as yet no substantial experience of social action within a market economy. The provisions need to be made more readable, simpler, more consistent and more effective, but this presupposes an accurate appraisal of what difficulties will have to be overcome.

2. Fundamental rights are in a permanent state of evolution

For fundamental social rights to be better asserted and implemented, it is first necessary to seek answers to a number of questions. The following list has no pretensions to being exhaustive.

What relationship should be established between social rights and civil, civic and even political rights? Do they form part of a whole or are they to be considered separately? In other words, is it sufficient to incorporate a set of social rights in the Treaties without also incorporating a really comprehensive set of rights? Juridical practice does not provide a clear answer to this question and hesitates between the two approaches. Thus the United Nations, having affirmed (at the fifth session of the General Assembly) that civil liberties and economic, social and cultural rights are interdependent, ended up in 1966 with two separate agreements: one on economic, social and cultural rights and the other on civil and political rights. A similar distinction is to be found at the Council of Europe. Such separate consideration of two types of right is very closely connected with the Cold War. On the other hand, the constitutions of the States generally use, if at all, a single list. Europe will have to choose between the two philosophies. It would gain by taking an overall view, encompassing political, civic and social rights. These are interdependent and inseparable, and there is no dividing line between them as far as the individual's practical situation is concerned. They are not additive, but mutually interdependent. The Committee therefore advocates a declaration featuring both civic and social rights.

This first distinction between civil and social rights overlaps to a large extent with another.

- On the one hand, rights which seek to limit the risk of encroachment by the State on the freedom or dignity of the individual and are mainly set out in statutory provisions.These do not involve very considerable expenditure and are thus independent of the level of development attained (equality before the law, the right not to be subjected to discrimination, equality for men and women, freedom of speech, movement, assembly, association, collective action, etc.). They are usually the formal expression of civil and political rights.

- On the other hand, rights to specified benefits and services, which involve costs and require the provision of financial resources. These rights (to education and continuing training, health care, work and fair conditions of work and pay, a mini-

mum income in the event of unemployment, a retirement pension, etc.) often express an intention or objective (e.g. the right to work) and are often less directly applicable than the former category of rights. Provision has to be made for a succession of stages as a function of what is economically feasible, provided a minimum standard has been ensured, if only to avoid distortions (whereas civil and political rights are, in principle, not subject to compromise). Most social rights — though not all, for example, the right of association — fall into the second category.

However, we should not exaggerate the difference between these two categories of rights: formal political and civil rights also require resources to be committed if they are to be implemented in practice; freedom is restricted if the conditions applying to freedom are not met, and social rights also need to be backed up by legal provisions.

But from whom can these rights be demanded, who ensures that they can be exercised and who provides the necessary means when society confers them on individuals?

The question arises in most cases, but is particularly acute in the case of 'programmatic' social rights (the right to housing, employment, etc.). In such cases, the assertion of rights is inseparable from the social policies which give them effect. But the extent to which social policies are constrained by the existence of rights or to which they remain discretionary is difficult to determine or to have subjected to judicial review.

It would also be wrong to think that respect for rights is purely a matter for society as a whole and public policy. The practical implementation of rights also depends on interpersonal relations and a sense of individual responsibility for others: there are no rights without duties, nor democracy without civic commitment. The many problems of social exclusion today highlight this need and more generally the need for substantial commitment by the community at large to supporting, buttressing and building on social policies. It is thus not sufficient to confer rights by statute: citizens must regard them as necessary and feel a duty to play their part. The way in which rights are formulated is therefore important: a participatory approach will ensure that society is more fully permeated by the shared values which the rights express.

Practical application of rights and duties is not merely a matter between the State and the individuals who make up society. Collective players are also required to bring out these rights and responsibilities, explain and defend them and give them practical effect by way of social experiment and innovation which can subsequently be extended or placed on a general footing. The trade unions play an essential, and recognized, role in the area of industrial relations, but this role is becoming more difficult even as it becomes more necessary in a post-industrial society where increasing flexibility and

the increasing importance of service activities are accompanied by less stable labour relations. Non-governmental associations and organizations seem likely to play an increasing role in society, especially as regards the rights of the unemployed and the elderly. How they can be recognized as partners in this slow, self-transforming progress of society towards the recognition and implementation of new rights, especially those intended to prevent or end exclusion, is thus an important aspect of the fundamental rights question.[1]

The list of fundamental rights is not unchangeable but may evolve for various reasons: first of all because a fuller understanding of the individual is emerging and the rights and duties which allow him/her to play a full part in a living society are gradually being defined in a sounder and more complete manner; secondly, because technological progress, and development in itself, give rise both to threats to individuals and to possibilities for action, which have to be regulated because of their possible impact on individuals.

After the first generation of civil and political rights, followed by social rights, the possibility of further progress is emerging and needs to be discussed in depth. How can we establish the right to a high-quality environment or set out the rights of future generations? Is it possible to envisage a right to choice in working hours? If so, on what terms? And should we see this as one of the ways of redefining the right to work? Does the concept of a right of 'insertion' (meaning integration into society) have any meaning? Should it be seen as one of the attributes of a newly defined concept of citizenship? Should a special right of expression be accorded to the unemployed and the excluded, and — more generally — should people living in poverty be given opportunities to make their views known on questions which concern them?

The new technologies are creating many problems in terms of fundamental rights: thus the information society may threaten individual privacy or the moral wellbeing of children, while the field of bioethics spawns a whole range of major problems. All these subjects are interrelated, as yet insufficiently explored and thus subject to continuous evolution. They justify a broadly conceived public debate, as proposed below.

3. It is essential to state clearly what should be done by the Union and what should be done by the Member States, in the area of fundamental rights as in others

The division of responsibilities between the Member States and the Union is a much more sensitive subject in the social field than in economic matters, and no clear solution has yet been found. One reason is that there are diverging views within the Union

[1] Declaration 23 annexed to the Treaty on European Union emphasizes the importance of cooperation between the Community and charitable associations and foundations as institutions responsible for social welfare establishments and services.

on the proper place of social policies, but also, it is difficult to work out simple criteria to determine who does what in this area.

It is generally recognized that in social affairs the principles of subsidiarity and proportionality must apply in full and play an essential part. Each country must retain its specific features, and levels of pay and benefits must take account of economic trends, which are not and will not always be parallel: wage and social benefit levels, the arrangements for financing the welfare services and regulation of labour matters will thus remain prerogatives of the Member States.

That being so, whether or not we are capable of developing a social union will depend on our ability to define areas or functions in which the Union must develop a role, either because the Member States are unable to act effectively or because action by the Union is more effective than that of the Member States and offers additional benefits.

The steps to be taken are thus as follows.

Firstly, the Union's social objectives and the underlying fundamental rights or principles must be clearly defined and the institutions provided with the appropriate instruments for the tasks they have to perform. These conditions are at present satisfied neither with regard to objectives (insufficient weight is given, for example, to employment and equal opportunities) nor with regard to fundamental rights (see the discussion below of the Community Charter of workers' social rights).

Secondly, the following balance should be struck in allocating responsibilities between the Union and the Member States: the leading role in social matters should belong to the Member States, the local authorities and their deliberative bodies and to society in general, the Union being competent only when it is the only party able to act or when it can act more effectively than the Member States. However, where the Union is recognized to have responsibility in the social field, it should have at its disposal instruments and procedures which are as effective as for economic and monetary integration (in particular, qualified majority voting should apply). The level of Community action must also be proportionate to the aim pursued, the principle of subsidiarity being complemented by the principle of proportionality, so that greater stress can again be placed on coordinating or stimulating activities as opposed to legislative action, on which too much attention has been focused.

Thirdly, given that the Union is necessarily an open-ended venture of a new kind, it is not possible to list the respective responsibilities of the Union and the Member States in the social field. At this stage, all that can be done is to specify a number of areas in which action by the Union offers clear advantages.

- Conducting and coordinating forward-looking discussion on social problems in the Union, dissemination of information and experience, stimulation of thinking and action by the Member States, encouragement for cooperation among the States, alerting of public opinion to social problems of current interest.

- Specifying a minimum core of fundamental rights applicable to the Union and the Member States when acting in accordance with Community law, and facilitating the promotion and implementation of these rights.

- Recognizing the social implications of the rights of citizens within the single market to move and reside freely within the territory of Member States (Article 8a). This applies not only to workers but also to the jobless actively seeking work, to students, to the elderly, to tourists, to the disabled and to persons wishing to marry someone of another nationality.

- Helping to correct imbalances arising from economic integration or from the conduct of Union policies. This is the whole point of the Structural Funds, whose scope could be broadened to embrace civic and social rights. It would be particularly important for any new Member States during the transitional period.

- Helping to solve difficult problems which, although falling within the sphere of the Member States, require common approaches (employment, immigration, control of drug abuse) or offer scope for economies of scale (action to combat cancer or AIDS).

- Helping to approximate Member States' laws and regulations in the event of excessive disparities which might distort competition and, where appropriate, setting out minimum standards where this would seem necessary in the light of the European social model and of social progress.

PART III

IMMEDIATE SPECIFICATION, AS A FIRST STAGE, OF A MINIMUM CORE OF FUNDAMENTAL RIGHTS

Strengthening the Treaty to include fundamental rights is a major undertaking which cannot be accomplished at a stroke.

The first point to note is that there is already a consensus with respect to certain rights in that the Member States are signatories to international treaties which relate specifically to those rights. The Committee feels that the rights on which there is already reasonably broad agreement should be incorporated into the Treaty at the next IGC.

As regards the other rights, this will require a period of discussion and deliberation, particularly as regards rights and obligations which have been made necessary by changes in technology, the economy, scientific knowledge and social developments. In the fourth part of the report, the Committee calls for a major initiative in the form of a discussion and deliberation process relating to the rights and obligations of citizens of the Union. This is a process which should be conducted in conjunction with the Commission, the Council and the European Parliament over a period of four or five years, the aim being to draw up, for a future IGC, a complete and up-to-date list of such rights and obligations. This consultation process should take in not just the traditional social partners, but also the non-governmental organizations, which represent people who do not have, or who have ceased to hold, an employed position (e.g. the self-employed, retired people and the unemployed) and who make up an increasing proportion of the population.

There are several reasons for taking more time. Firstly, the governments will be preoccupied by reform of the institutions and will not be able to give as much time to fundamental rights as they deserve. Secondly, no list of potential rights is currently available, especially if it is proposed to adopt a bold and innovatory approach: a great deal of interdisciplinary work of a technical legal nature will be necessary.

Finally, it is important not to repeat the error made in the Maastricht Treaty by handing down rights from on high; rights should rather be evolved in a democratic process based on the principle of active citizenship. This would indeed be a unique opportunity to give the European democratic polity a practical task to achieve and to create a sense of European citizenship by providing it with scope for expression. It would be a pity not to seize this chance. The process by which rights evolve is almost as important as their content: rights which are jointly worked out, by a democratic process over an adequate period of time, will be more readily respected than those formulated

by experts. For all these reasons, it is proposed that the Community Charter of the Fundamental Social Rights of Workers should not be revised at the IGC, but rather that this task should form part of the process of consultation to be launched by the new Treaties.

Given that the economic and monetary construction of Europe has proceeded step by step, it would be natural for the same to apply to social Europe, even if a faster rate of progress is desirable to make up lost ground and redress the balance. The two-step approach proposed should make it possible to achieve this within a reasonable time.

1. Consolidating the text of the Treaties

The immediate steps to be taken at the IGC are as follows:

- The first priority is to consolidate in a single Treaty the provisions which are currently dispersed throughout the 15 Treaties, with the articles continuously numbered.

- Simplicity and readability are basic conditions for the effective exercise of rights. Consolidation should ultimately have the effect of giving the Union legal personality, which is currently possessed only by the European Community.

2. Creating a more solid basis for action by the Court of Justice

There should be a sounder legal basis for the work of the Court of Justice of the European Communities (ECJ) in ensuring that fundamental rights are applied in practice.

Without calling into question the present balance between the institutions, two changes could be made quickly and would allow existing rights to be exercised more effectively:

- Extend the scope of Article F and extend the frame of reference used by the ECJ to determine the general principles of Community law: on the one hand, to the Community Charter of the Fundamental Social Rights of Workers, which would thus be incorporated indirectly into the Treaties; on the other to the main international agreements signed by the Member States. The Luxembourg Court would thus have a fuller basis, particularly as regards social matters, for its jurisprudence, which would apply not only to Union citizens but also to residents.

- Article F of the Treaty could be freed from the restrictions of Article L. Article F provides that the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the consti-

tutional traditions common to the Member States, as general principles of Community law. However, Article L does not explicitly empower the Court of Justice to apply Article F to all Union action and thereby excludes such a role.

Extending the fundamental rights under the European Convention to cover all action taken by the Union would mean that, wherever the Union and the Member States were acting within the framework of Community law,[1] they would be obliged to comply with, and ensure compliance with, the following fundamental rights: the right to life; ban on torture; ban on slavery and forced labour; right to liberty and security of persons; right to a fair trial; right to the presumption of innocence; no conviction for something which is not a criminal offence; right to respect for one's private and family life; freedom of thought, conscience and religion; freedom of expression; freedom of peaceful assembly and of association with others; right to form and to join trade unions; right to marry; protection of property; right to education; right to free elections; ban on imprisonment for debt; freedom of movement and residence; ban on the expulsion of nationals; ban on the collective expulsion of foreigners; general principle of abolition of capital punishment; right of appeal; right to compensation for judicial error; right not to be judged or sentenced twice for the same misdemeanour; equal civil rights and responsibilities for spouses.

One of the advantages of such an improvement is that it would ensure more effective implementation of the Council of Europe's Human Rights Convention and could thus offer a solution to the many, hitherto underestimated, problems which accession to this Convention would raise.

European Community accession to the 1950 European Human Rights Convention has certainly been advocated by the European Parliament and the Parliamentary Assembly of the Council of Europe, on the grounds that it would allow the arrangements for review of the acts of the Member States to be extended to the acts of the Union and that it would provide a more consistent standard of freedom throughout the European area. On closer examination, however, accession might have more disadvantages than advantages.

This Convention is essentially concerned with civil rights, social rights being formulated in the 1961 European Social Charter, which is fuller than the 1989 Community Charter but is not covered by the safeguard mechanisms laid down by the Convention (the European Human Rights Commission and the Strasbourg court). In terms of fundamental social rights, accession would offer very limited benefits and would certainly not make it unnecessary for the Union to set out its own view.

[1] The respective remits of the Union and the Member States are not affected by this proposal to extend the scope of Article F; the proposal concerns only measures which fall within the Community framework.

There are also other major disadvantages in respect of civil rights themselves. Accession by the Union, which is not a State, would require revision of the Convention, since it can be signed only by members of the Council of Europe, which are States. It would thus be necessary to secure the consent of the 38 present members of the Council, which have not all ratified the Convention or accepted legally binding provisions. This would inevitably take time, even if consensus could be reached on allowing the acts of the Community to be covered by Article 6.[1]

It is true that accession to the Convention would have the merit of adding an external judicial watchdog function in respect of the judgments of the Court of Justice on matters concerning fundamental rights. But an appropriate solution to this problem could be found by establishing a special form of legal remedy for the protection of social rights: appeal to a Union-specific court of appeal made up of non-permanent judges from the Member States' constitutional or supreme courts. This would make it possible to give clearer content to Article F, which requires the Luxembourg Court to have regard to the constitutional traditions common to the Member States, and would facilitate coordination between the Court of Justice and the Member States' supreme legal entities — the kind of coordination which a number of recent judgments handed down by national constitutional courts would seem to be jeopardizing.

3. Integrating into the treaties an initial list of civic and social rights

An initial statement of fundamental rights must be incorporated straight away into the Treaties.

While it seems neither possible nor desirable, for the reasons mentioned above, to draw up a full list of fundamental social rights at present, it is essential to set out an initial list without delay.

Initiation of a wide-ranging debate on giving greater depth and focus to the civic and social rights underpinning the Union must not be used as an excuse for not establishing at once an initial list of those fundamental social rights on which agreement is possible. These are mainly rights which are recognized *de facto* but which would be more effective if enshrined in law; they would thus be an aid to finding solutions to difficult situations, would be more akin to citizens' expectations and would inform the policies formulated — or likely to be formulated — by the Union. It should also be borne in mind that several judgments of the Court of Justice recognize that the Community has a constitutional order, even if it is dispersed throughout some 15 Treaties and other acts of similar standing. This justifies the immediate inclusion by the IGC of a bill of rights in the Treaty.

[1] This article relates to the rights of the defence, civil rights and obligations and criminal charges.

The rights in question would relate only to the Community sphere, i.e. to the acts of the Union and acts by the Member States in pursuance of Community law. There should be no doubt on this point: the recognition of a right at Union level does not imply any change in the respective areas of competence of the Union and the Member States, certainly not in legislative terms, and does not affect relations in law between the Member States and their nationals. Let it be clearly understood that no attempt is being made to impose a standard model within the Union; the point is purely and simply to bring the natural diversity of social systems in the Member States within certain common principles, allied, where appropriate, with certain minimum standards, to ensure that this complex matter is governed by at least a certain degree of unity of design and inspiration.

The following list does not include political rights, which need to be strengthened, but which do not fall within the Committee's remit, but mainly social rights, together with certain civil rights which cannot be separated from them. The Committee considers that all the rights recognized by the IGC should be set out in a single text.

The list is based on two classifications: the concrete effects of affirmed rights, which may be more or less immediate, and the objectives, which have to be stated. As a result, we have two types of rights, each of them embracing three types of objective.

A. Fundamental rights which are protected by law

These fundamental rights have the common characteristic of having full and immediate effect and could thus be applied by the Court of Justice in Luxembourg even where there are no specific legislative provisions. Simply asserting them therefore, generates a right, the violation of which is punishable.

For this reason, it may be useful to provide for a safeguard clause pointing out that these rights and liberties may only be subject to restriction, within such limits as are reasonable and necessary in a democratic society, by a legal act which respects and retains their essential content.

These rights may be classified according to two objectives:

First objective: To ensure compliance with fundamental human rights

These are recognized principles which are essential to economic, social and political life and which have to be asserted as such.

(i) Within the scope of Community law, everyone is equal before the law.

(ii) There may be no discrimination on the basis of race, colour, sex, language, religion, political or any other opinion, national or social origin, membership of a national minority, wealth, birth, handicap or any other situation.

By the same token, there may be no discrimination between European citizens on the basis of nationality.

(iii) There must be equality between men and women before the law, more particularly in respect of work, education, family life, social protection and training. Positive action may be taken to further equal rights, equal opportunities and equal duties between men and women.

Second objective: To facilitate economic and social integration in the European Union

The basic point here is to lay down clearly the principle of the right to move freely within the Union and to make that right effective, i.e. to draw all the necessary conclusions, or at least enable them to be drawn, which is not always the case.

(iv) Principle of freedom of movement. The point here is to reaffirm that the citizens of the Community have the right to move freely within Community territory and to choose freely their place of residence. They are free to leave Community territory and to return to it. These rights may be restricted only where such restrictions are in conformity with the Treaties establishing the European Communities.

(v) Right to choose one's occupation or profession and to carry on a professional activity throughout the territory of the Union. This means that any remaining barriers would be denied a legal basis.

(vi) Right to choose an educational system throughout the territory of the Union. This right is not currently recognized, but it is the logical consequence of the right to free movement and the right to choose one's educational system as laid down in the European Convention of Human Rights. It is why the Committee has decided to stress this right, given the importance it attaches to education.

At the same time, rights which can have the effect of balancing or correcting the effects of the market should be recognized explicitly at Community level, namely:

(vii) At European level, citizens (and in particular employers and workers) have the right to join together to defend and promote the rights, interests and causes which concern them either directly or indirectly.

(viii) The right of collective bargaining for the social partners is guaranteed. The right to take collective action, including the right to strike, is guaranteed subject to any obligations which might arise from current laws and collective agreements.

These rights would be available to the citizens of the Union, and also to citizens of non-member countries subject to rights (v) and (vi).

B. Rights in the form of objectives to be achieved

These rights are of a different kind. They do not lend themselves to immediate application or appeal, as they constitute objectives or basic principles and cannot be set in place in the absence of legislative or financial provisions. Their aim is to provide justification for intervention by the authorities and to give guidance for the courts. Generally speaking, it is up to the Member States to ensure that these rights are put into effect, but these powers are sometimes shared with the Union in certain areas. These rights form an integral part of the European social model and the Union may not remain oblivious to the way they are applied. At the very least, the EU can help to achieve compliance by encouraging cooperation between the Member States, by promoting the necessary information and experience, by coordinating national policies, and by providing back-up where necessary. Community directives have already been adopted in such fields as working conditions, health and safety at work, information and consultation of workers, etc. Prescribing minimum clauses at Union level would be deferred to the second phase, with the exception of the minimum pay proposal set out below. These rights are concerned with a third objective: enhancing social cohesion within the Union.

Third objective: Strengthening social cohesion in the Union

(ix) Right to lifelong education and training.

(x) Right to work, or barring that, right to a minimum level of income.

(xi) Right to equitable working conditions and to protection from arbitrary dismissal.

(xii) Right to health and safety at work.

(xiii) Workers' right to be informed regularly of the economic and financial situation of their firm and to be consulted on any decisions which might affect their interests, and to participate in taking decisions which concern them.

(xiv) Right of disabled people to measures designed to facilitate their occupational and social integration.

(xv) Right to health care.

(xvi) Right to housing.

(xvii) Right to social security and social protection, including the right to a minimum level of income.

(xviii) Right to protection for the family.

Most of these rights have already been recognized in various international treaties and agreements on fundamental rights which have been signed by all the Member States of the Union. These treaties and agreements would form part of the Community law domain under the new version of Article F of the Treaty on European Union which this report is proposing (see above).

Given the scale of unemployment in the Community, the need to make a clear statement of the specific nature of the European social model and the need to combat poverty and social exclusion, the Committee is proposing a minimum clause in one case only.

The Committee feels that there is one principle which should be laid down immediately in the Treaty, i.e. at European Union level, and that is that each Member State must set in place a minimum income for persons who, despite their efforts, are unable to find paid employment and have no other source of income. The actual amount would of course depend on the particular stage of development reached in each Member State; the eligibility conditions (e.g. actively searching for work, making an effort in terms of training, etc.) would be dealt with by the individual Member States.

PART IV

THE NEED FOR A PARTICIPATORY PROCESS TO FORMULATE A MODERN LIST OF CIVIC AND SOCIAL RIGHTS AND DUTIES

The Committee considers that institutions or experts can no longer hold a monopoly of discussion on subjects such as fundamental rights, which affect the individual's day-to-day life. Europe's citizens should have as large a say as possible in questions which concern them. Moreover, citizenship is not merely a collection of rights: it is also a way of living, of recognizing one's obligations to others, of participating in society through a multiplicity of relationships with its members. A simple list of rights does not properly reflect this dimension of citizenship, whereas a sufficiently lengthy process of collective formulation of rights would make it possible to give expression to citizenship and to arrive at a more balanced view of rights and duties. Moreover, society has become more complex: democratic consultation must give due weight to the traditional social partners but cannot be restricted to them alone. It must also encompass new players, and in particular non-governmental organizations, and this will inevitably take time.

These various aspects should be taken into account in whatever procedure is adopted.

It would first of all be desirable for this process to be provided for in the revised Treaty itself, by means of a special article stipulating that an intergovernmental conference will be held in five years' time to draw conclusions from the work.

It should allow a free, open debate, so that political bodies do not have to adopt a position too early, before all relevant information has been collected and all the issues identified. In the last resort, it is of course the political bodies which will have to take a decision, but a clear distinction should be made between the preparatory and discussion phase and the more political phase of weighing up the arguments and taking a decision.

The consultation process should thus be launched by the European Parliament on the basis of a proposal from the Commission. The members of the *ad hoc* Steering Committee for the exercise should be proposed by the Council, Commission and Parliament, after consultation with the Economic and Social Committee, and be formally appointed by Parliament. The committee members should represent a wide spectrum of political, economic and social expertise and should also be geographically representative; there should be equal representation for men and women.

The Commission would provide the secretariat and financial and technical assistance. The committee would work closely with the European social policy forum. The debate

would extend over a number of years in the various countries and at Union level. It would involve the usual social partners but also non-governmental organizations, a full list of which should be drawn up in each country for the various types of right concerned. The European Parliament would be regularly informed and consulted on the progress of the process, and the national parliaments would be closely associated in the work.

Once this consultative process had been completed, the governments would draw the necessary conclusions in the form of an amendment to the existing Treaty. This amendment could be put to a referendum throughout the Union in order to ensure greater acceptance of the proposed concept of citizenship. Legal provision should therefore be made now for this eventuality.

PART V

INTEGRATION OF SOCIAL POLICIES INTO THE UNION'S NORMAL OPERATION

Many fundamental rights clearly depend on specific social policies being pursued. There would be no point in incorporating fundamental rights into the Treaties without doing the same for the social policies which enable these rights to be given effect.

Since this is not central to the Committee's remit, it is proposed to make only a few remarks, which obviously cannot deal fully with the subject, but which are important for the respect of fundamental social rights.

1. General provisions

- The desirability of having a single text for reasons of clarity and readability should logically imply grouping all the provisions concerning social policies under a single title in the Treaty. In this context, the Social Protocol should be reincorporated into the common framework with any necessary amendments and removal of certain obsolete or redundant clauses.

- When a Union social policy is necessary respecting the principles of subsidiarity and proportionality, qualified majority voting should apply, except in a number of sensitive areas (social security, social protection, participation).

- It is necessary for non-profit-making organizations and foundations, and more generally the collective representatives of the community at large, to be involved in social policy decision-taking. This should be provided for in the Treaty.

  Particular consideration should be given to the charitable institutions which combat exclusion and poverty and which can speak for the unemployed and the excluded. Social fragmentation makes it very difficult for these groups to put their point of view across, or even to be noticed, although this is very necessary, simply to ensure that they are taken into account in economic and social affairs. Imaginative solutions are needed in this area. There is room for more consultation and for making use of the network of labour and employment agencies operating on the labour market to assist job-seekers.

  Recognition of specific statutes for European associations could help in developing partnership arrangements.

- Greater use could be made of the Structural Funds, and more particularly the Social Fund, to promote fundamental rights, and especially to combat exclusion and promote equality of opportunity. The non-governmental organizations should be associated at Member State level with the management of these funds.

- Social and human sciences expertise in the field of European social policy must be developed, for example, by means of an interdisciplinary work programme for Europe's universities. The fact is that much less expertise is available in these fields than in economic or legal matters. A wide-ranging debate on the costs of failure to establish a social Europe could be a means of raising awareness, provoking reactions and mobilizing the necessary support. In this connection, it would be very useful — and have symbolic value — to produce consistent statistical series for the various countries and for the Union as a whole.

- The principle should be enunciated that the impact of the various European policies on social cohesion and the risks of exclusion should be systematically assessed (as is required by directive for any large projects which are liable to have an environmental impact).

2. Specific provisions

- Employment must be given greater prominence in the Treaty, subject of course to the principles of subsidiarity and proportionality. The following might be realistic proposals in this connection:

  - Strengthen the wording of Articles 2 and 3 of the Treaty to place greater emphasis on employment in line with the Madrid European Council's conclusions.

  - Give clearer justification for coordination and stimulation measures on the employment front.

  - Include a chapter on employment in the title of the Treaty dealing with social policy. This would consolidate the provisions which already exist and would set up an Employment Committee to correspond to the Monetary Committee; it would periodically hold joint meetings with the Monetary Committee. The Employment Committee would have several aims: to ensure that employment was more fully taken into account in implementing economic and monetary policy and to allow better coordination of the Member States' action, but also to organize a debate at European and national level, as mentioned in Part I, on what work means today, as a basis for formulating the rights concerned.

- Clauses should be included to enable the Union to engage in coordination and experimental work in the field of combating exclusion, with particular regard for long-term unemployment, housing, and the elderly or handicapped persons.

- The Committee considers that immigration and asylum policy, and policy *vis-à-vis* people from third countries, should be governed by the 'first pillar' and not the 'third pillar' Community arrangements (i.e. cooperation in the field of justice and internal affairs). Such policies would thus be removed from the intergovernmental domain and be placed instead in the usual institutional domain for decision-making purposes.

- The same applies to all matters pertaining to the abuse of drugs, encompassing treatment, prevention and trafficking aspects.

- The Committee considers that the concept of public utility services might warrant clarification, given that such basic services (e.g. water, electricity and public transport) very often have a major impact on the effective implementation of social rights.

CONCLUSION

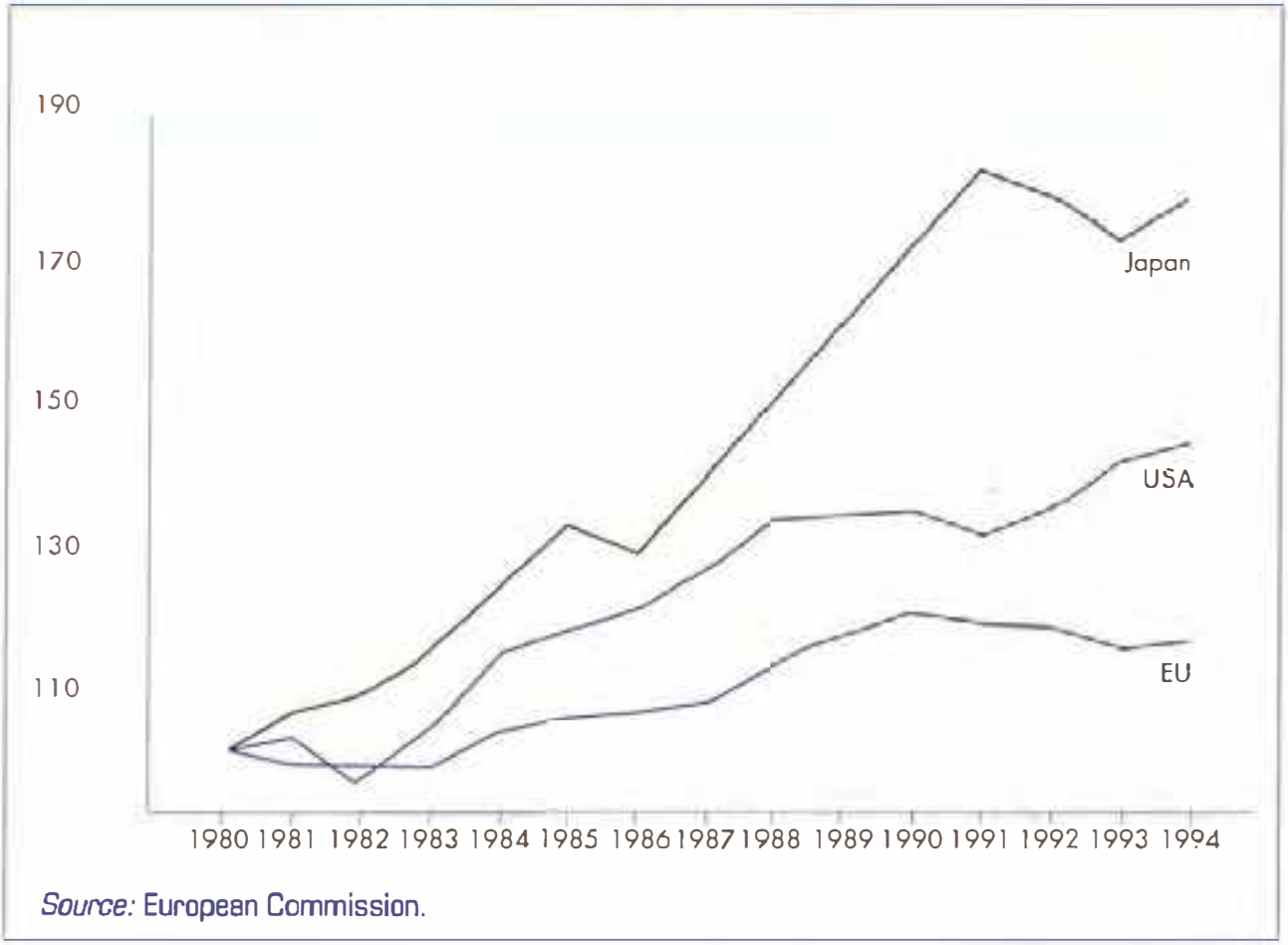
The European Union once again stands at the crossroads. It will only be able to take up the present challenge if it is prepared to give appropriate status to the social dimension. This is not something that can happen at a stroke, but neither are there any grounds for taking the easy option and continuing past practice. Europe has to innovate in terms of social policy, just as it has done in other policy sectors. The only way we shall build an attractive social model is by being prepared to make ongoing changes, reflecting the enhanced need for a competitive edge to cope with the increasing globalization of social developments — both demographic and sociological — and the basic human needs which acquire their main expression in the form of rights and duties.

It is within this frame of reference that the Comité des Sages has formulated its proposals. We have tried to be both realistic and bold, both methodical and imaginative. We hope that our message will be taken on board by those whose task it is today to build the European Union of tomorrow.

ANNEX

GRAPH 1

Output manufacturing
(gross value-added at 1985 prices, 1980 = 100)



Source: European Commission.

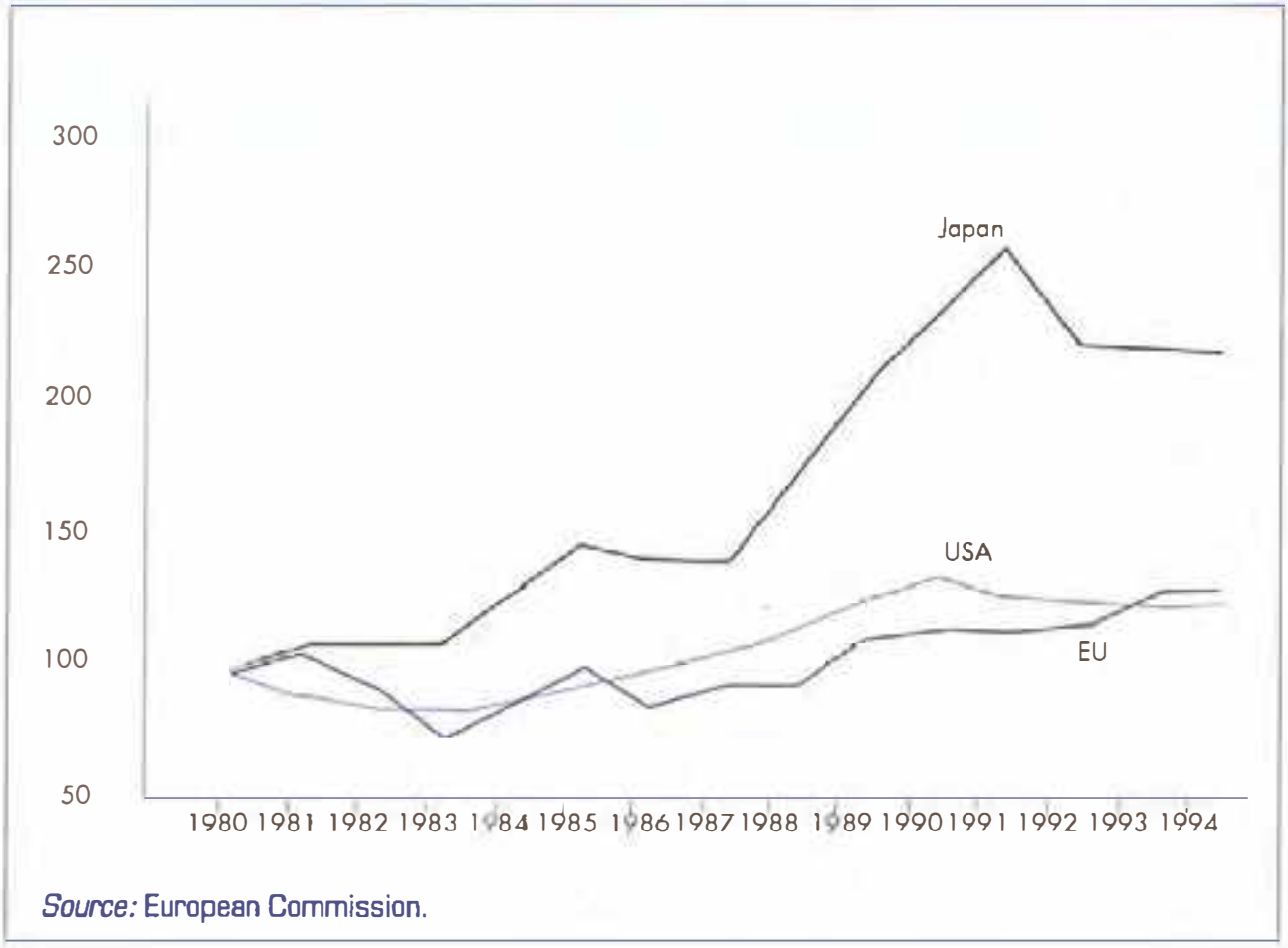
GRAPH 2

Productivity in manufacturing
(gross value-added at 1985 prices per person employed, 1980 = 100)

Source: European Commission.

GRAPH 3

Investment in manufacturing
(at 1985 prices, 1980 = 100)



Source: European Commission.

European Commission

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1997 OJ C371/99
Resolution on the Amsterdam Treaty

81. Must, therefore, insist that for the next Structural Fund programming period and indeed during the present period of implementation of current cohesion policies, efforts are intensified to promote women's participation in the labour market through educational measures, including training for higher-skilled jobs and managerial positions;

82. Recalls that more efforts should be made in support infrastructure (child-care, transport, work organization, etc.) in such a way that the lack of structures does not force women into part-time work instead of allowing women the possibility to take up part-time work of their own volition; reorganization of work should equally offer opportunities for men to take advantage of less traditional working time;

83. Points out that Community policies on agriculture and rural development are very important for women in rural areas and that it could be very important to look at the implications of Community policy for cohesion, especially its influences on women's activities in rural areas;

*
* *

84. Instructs its President to forward this resolution to the Council, the Commission, the Committee of the Regions and the Economic and Social Committee.

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20. Amsterdam Treaty

A4-0347/97

Resolution on the Amsterdam Treaty (CONF 4007/97 — C4-0538/97)

The European Parliament,

— having regard to the Amsterdam Treaty signed on 2 October 1997 and the Protocol on the institutions with the prospect of enlargement of the European Union (CONF 4007/97 — C4-0538/97),

— having regard to its resolutions of 17 May 1995 ([1]), 13 March 1996 ([2]), 16 January 1997 ([3]), 13 March 1997 ([4]) and 11 June 1997 ([5]) on the Intergovernmental Conference and of 26 June 1997 on the Amsterdam European Council ([6]),

— having regard to its resolutions of 14 February 1984 on the draft Treaty establishing the European Union ([7]) and of 7 April 1992 on the results of the Intergovernmental Conferences ([8]),

— having regard to the opinions of the non-governmental organizations which responded to the invitation from the Committee on Institutional Affairs and took part in the joint session of 7 October 1997,

— having regard to the report of the Committee on Institutional Affairs and the opinions of the Committee on Foreign Affairs, Security and Defence Policy, Committee on Agriculture and Rural Development, Committee on Budgets, Committee on Economic and Monetary Affairs and Industrial Policy, Committee on Research, Technological Development and Energy, Committee on External Economic Relations, Committee on Legal Affairs and Citizens' Rights, Committee on Employment

([1]) OJ C 151, 19.6.1995, p. 56.
([2]) OJ C 96, 1.4.1996, p. 77.
([3]) OJ C 33, 3.2.1997, p. 66.
([4]) OJ C 115, 14.4.1997, p. 165.
([5]) OJ C 200, 30.6.1997, p. 70.
([6]) OJ C 222, 21.7.1997, p. 17.
([7]) OJ C 77, 19.3.1984, p. 53.
([8]) OJ C 125, 18.5.1992, p. 81.

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and Social Affairs, Committee on Regional Policy, Committee on the Environment, Public Health and Consumer Protection, Committee on Culture, Youth, Education and the Media, Committee on Development and Cooperation, Committee on Civil Liberties and Internal Affairs, Committee on Budgetary Control, Committee on Fisheries, Committee on the Rules of Procedure, the Verification of Credentials and Immunities, Committee on Women's Rights and the Committee on Petitions (A4-0347/97),

A. whereas the peoples and the parliaments of the Member States and the bodies of the Union expect an opinion from the European Parliament on the Amsterdam Treaty,

B. whereas in view of the dual legitimation of the European Union as a union of the states and a union of the peoples of Europe, the task of the European Parliament must be to give voice, in complete independence, to the will of the peoples of the Union for integration,

C. whereas the recent Intergovernmental Conference has shown the limits of the method of diplomatic negotiation; whereas Parliament must claim a much greater role in respect of future treaty amendments, in view of the constructive role it played in the revision of the treaties and because of its function as the legitimate representative of European citizens,

D. whereas the future will demand a clearer Union identity to pursue the international interests of the EU,

E. whereas the additional political powers conferred on the Union by the Amsterdam Treaty are too limited to be a valid accompaniment to monetary union; whereas, consequently, there is a need to focus as quickly as possible on the institutional modus operandi of monetary union, in particular democratic accountability,

F. whereas the following six criteria in particular should be used to evaluate the new Treaty:

(a) any new step towards integration must enhance the democratic quality of the Union and must itself enjoy democratic legitimation,

(b) the dual nature of the Union as a union of the peoples and a union of states requires any step towards integration to strengthen the identity of the Union and to increase its ability to take action, while also respecting and protecting the identity of the Member States, the core features of the constitutional cultures of the individual states, and retaining the equal status of the Member States and the cultural diversity of their peoples,

(c) the yardstick of any step towards integration is whether, and to what extent, it presents and develops the Union not only as a common market but also as a system of values, and what improvements it facilitates in the quality of life of its citizens, their job prospects and the quality of society, in particular the exercise in practice of European citizenship,

(d) any new step towards integration must involve progress, a constructive move beyond the present *acquis*,

(e) the present move towards integration will have to be measured against the requests and expectations expressed by the European Parliament before and during the Intergovernmental Conference,

(f) the new move towards integration must be measured against the yardstick of whether it creates the institutional basis for forthcoming enlargements,

G. whereas further improvements in the interest of Union citizens are possible only if the criticism arising from application of the abovementioned criteria is translated, by all the political and social forces in the Union acting in a spirit of solidarity, into a constructive struggle with tangible pointers for the immediate future,

H. conscious that the values of peace, democracy, freedom, human rights, the rule of law, social justice, solidarity and cohesion underpinning the European Union can never be deemed to have been achieved but must always be fought for anew,

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Overall evaluation

1. Recommends that the Member States ratify the Amsterdam Treaty;

2. Considers that the Amsterdam Treaty marks a further step on the unfinished path towards the construction of a European political union; considers that it represents some not inconsiderable advances for certain institutions but leaves other issues unresolved;

3. Regrets the absence from the Amsterdam Treaty of the institutional reforms needed for the effective and democratic functioning of an enlarged Union and affirms that these reforms should be completed before enlargement and as soon as possible so as not to delay the accessions;

4. Calls on the European Council to affirm that no accession will enter into force before the completion of the institutional reforms necessary for the proper functioning of an enlarged Union, to begin its work in this connection on the basis of this resolution, and to engage, in this context, in a political dialogue with Parliament on this subject;

Principles

5. Stresses that on the one hand the Amsterdam Treaty essentially gives precedence to the Community method, and on the other hand it reduces to an acceptable level the risks of differentiated integration (which is unavoidable in some areas) through precise criteria and its exceptional nature; emphasizes, however, that more courageous and more consistent steps in the transition to the Community method would have been appropriate;

6. Regards the confirmation in the Amsterdam Treaty of the objectives of the Union and the principles of the Community as a sign of the requisite will for integration on the part of the people and the states; regrets, however, the absence of a preamble such as those used in previous treaties to express clearly a common political will amongst the contracting parties which should be directed towards belonging to a Community which is more than the sum of its parts and more than a mere interest group whose members have no other aim than striking a balance between what they put in and the advantages they derive from it;

7. Stresses that the new opportunities afforded by the Amsterdam Treaty will only lead to tangible results if a sufficient political will, lacking at present, is generated for common action in all areas of the Treaties, and a new relationship of mutual trust develops between the Member States themselves and between them and the Community institutions;

Bases of Union policies

8. Notes, with reference to the details set out in the session document A4-0347/97 [1], that the Amsterdam Treaty has, in part, significantly improved the Union's instruments for shaping policy in the interests of its citizens, in the area of Community policies, such as employment and social policy, environmental and health policies and internal security; there is a need for further improvements; calls in particular on

- the Council to take speedy decisions to ensure that the general rules of the Community method will be applied, as soon as possible, to the communitarized area of freedom, security and justice and to enable further development on Community lines of the Schengen *acquis*; calls on the governments of Denmark, Ireland and the United Kingdom to take part from the earliest stages in the Community measures in this field;
- the Commission, the Council and the Member States to show the political will to use the new opportunities resolutely in the interests of all European citizens and, in particular, to use the new Community political instruments to achieve clear and lasting improvements in the employment situation throughout the Union;
- its committees to examine, prior to entry into force of the Amsterdam Treaty, what initiatives can be used, in those areas for which they are responsible, to use the new opportunities as effectively as possible;

[1] See the Explanatory Statement in the report on which this resolution is based.

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9. Considers that although the Amsterdam Treaty contains a number of institutional, budgetary and practical improvements in the area of the Common Foreign and Security Policy, it clearly fails to satisfy expectations, and not merely in respect of the decision-making mechanisms; stresses, in particular, that

— the prospect of developing a common defence policy, in particular solidarity between the Member States in the face of threats to, and violations of, external frontiers, must be strengthened; welcomes, the inclusion of the so-called Petersberg Tasks into the Treaty as an important step in the direction of a common European security policy equipped with operational capabilities provided by the Western European Union (WEU);

— all the members of the new troika, including the Commission, must cooperate closely, in a spirit of trust and as equal partners, in order to achieve the goals of greater visibility, efficiency and coherence;

— the policy planning and early warning unit must adopt a common Union perspective in the course of its work;

— in the area of external economic relations the Community must become competent for all questions considered in the context of the World Trade Organization; until the Treaty is amended, the Commission should point out to the Member States, promptly and clearly, the risks for the Community stemming from the fragmentation of responsibilities in future negotiations, and should propose to the Council that it take a speedy decision on the requisite transfer of responsibilities; this transfer of responsibilities should not, however, weaken democratic control over the actions of the executive in external economic relations;

10. Recognizes that there has been some progress in those areas of justice and home affairs remaining subject to intergovernmental cooperation, and calls on the Council and/or the Member States

— to take decisions as soon as possible on more effective common approaches towards fighting organized and international crime;

— to establish working relations with Parliament that will allow consultations to run smoothly in this field;

— to improve the legal protection of Union citizens and, in particular, to deliver the requisite declarations so that appeals can be made to the European Court of Justice under the preliminary ruling procedure;

— to prevent loopholes in legal protection arising in the national implementation of Council acts;

Institutional matters

11. Acknowledges that the Amsterdam Treaty confirms, and in some areas further develops, the European Union as a system of values of a free, democratic, social Community based on the rule of law and solidarity and on shared fundamental freedoms and civil rights;

12. Welcomes the extension of the codecision procedure to numerous new areas and the right to approve the appointment of the Commission president; calls in addition, however, for

— any amendment of the constituent Treaties to be subject to Parliament's assent, and a new method to be introduced for preparing and adopting Treaty amendments;

— the codecision procedure to be extended to the remaining areas of legislation (in particular in the new Title IV (former IIIa) of the EC Treaty, in agricultural, fisheries, fiscal and competition policy, structural policies, tourism and water resources, the approximation of laws pursuant to Article 94 (former Article 100) EC and legislative acts under the third pillar); regrets the fact that, in four areas of particular importance for European citizenship (Article 18(2) (former 8a), Article 42 (former 51), Article 47 (former 57) and Article 151 (former 128) EC), the codecision procedure exists alongside unanimous voting in the Council, which in practice constitutes a significant reduction in the democratic legitimacy of this procedure;

— the Commission, pursuant to the declaration on commitology, to submit in June 1998 a proposal to amend the Council decision of 13 July 1987 on the understanding that the European Parliament must be involved in drafting and finalizing the definitive text, which must receive Parliament's agreement;

— the Union and the Communities to be merged into a single legal personality;

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— significant international agreements to be subject to Parliament's assent;

— an equal, functional and democratic relationship to be established between the two arms of the budgetary authority in respect of budgetary matters, including the European Development Fund, and for the system of own resources to be reformed and made subject to Parliament's assent; calls further for substance to be given to the principles of subsidiarity, proportionality and solidarity when operational policies or measures are financed at Community level;

— the democratic accountability of the future European Central Bank to be defined;

— a specific charter of fundamental rights of the Union to be drawn up;

— any 'suspension of certain rights of a Member State' (Article 7 (former F.1.) TEU) on the grounds of a serious and persistent breach by a Member State of general principles mentioned in Article 6 (former F) to be subject to control by the Court of Justice and under no circumstances affect Union citizens' rights;

— in the area of social policy, Parliament to be kept informed of negotiations between management and labour, and where agreements between the latter are implemented by a Council decision they should also be subject to Parliament's assent;

— progress in the field of equality between men and women at all levels to be implemented resolutely, and evolved further, and active promotion of women's interests to be pursued until full equality of opportunities is achieved;

— in view of the Amsterdam Treaty's new emphasis on the role of culture, qualified majority voting to be extended to this sphere; recalls the need to respect and promote the diversity of the Union's cultures;

— the mechanisms for solidarity and economic, social and territorial cohesion to be perfected with a view to an enlarged Europe;

— the treaty provisions for the further development of European political parties to be improved;

— the Euratom Treaty to be revised as a matter of urgency, in particular with a view to making up the democratic deficit in its functioning,

regrets that the Amsterdam Treaty has determined the seat of the European Parliament without the latter's involvement;

13. Recognizes that there has been progress in the area of transparency and publicity as a result of a simplification, and reduction in the number, of decision-making procedures, through rules in the Treaty on access to documents and through a simplification of the text of the Treaty; stresses, however, that the principle of public access requires the completion of these efforts with

— implementing measures to ensure that the public really have efficient access to information;

— documents which are comprehensible to Union citizens and which show who bears political responsibility;

— consolidation and simplification of the founding Treaties;

14. Regrets that the Amsterdam Treaty has failed adequately to improve the efficiency of decision-making procedures by extending qualified majority voting;

15. Stresses that in the Protocol on the institutions the Amsterdam Treaty recognizes the need for further institutional reforms before enlargement of the Union to more than 20 members; in this context unreservedly approves of the joint declaration by Belgium, France and Italy advocating such reforms as the precondition for any enlargement;

16. Calls therefore for the following steps to be taken before any enlargement:

— adjustments to be made to the weighting of votes in the Council and to the number of Commission members, with the Member States retaining equal status with each other;

qualified majority voting to become the general rule in the Council;

— the requirement of unanimity to be restricted to decisions of a constitutional nature (amendments to the Treaty, accessions, decisions on own resources, electoral procedure, application of Article 308 (former 235) EC);

— all other reforms required for enlargement to be adopted;

17. Calls on the Member States to ensure that the possibility provided for in the Amsterdam Treaty in the context of foreign policy and of 'closer cooperation' — of preventing a decision by a majority vote on the grounds of important national interests — be used as a brake only in dire emergencies;

Future strategy

18. Considers that the Amsterdam Treaty marks the end of an historical era when the work of European unification could be undertaken, stage by stage, using the methods of classic diplomacy;

19. Is convinced, instead, that politics should become the driving force behind shaping the new European Union and that the European Parliament and the parliaments of the Member States should play a full role in this respect;

20. Calls on the Commission to submit to Parliament, in good time before the European Council of December 1998, a report with proposals for a comprehensive reform of the Treaties, which is particularly needed in institutional terms and in connection with enlargement; requests that this report, in accordance with the new protocol on the role of the national parliaments in the European Union, be forwarded to the parliaments of the Member States; intends in due course as part of this process to define its own position in the light of these proposals in order to launch a dialogue between the Commission and the European Parliament; requests that, even before Article 48 (former N) is amended, Parliament should be fully involved in the next Intergovernmental Conference and that a common binding arrangement (e.g. modelled on interinstitutional agreements) will be achieved to the effect that the Treaty may enter into force only with Parliament's approval;

21. Awaits with interest the views of the parliaments of the Member States on this report; declares its intention to increase, on a systematic basis, its contacts with the parliaments of the Member States in order to conduct a political dialogue and to discuss jointly the future shape of the European Union;

22. Calls on the Commission to then take over the position of the European Parliament and to submit formal proposals for a revision of the treaties pursuant to Article 48 (former N) of the EU Treaty; calls for the European Parliament to be associated on an equal footing in the follow-up;

*
* *

23. Instructs its President to forward this resolution to the Commission, the Council and the parliaments and governments of the Member States and to ensure that, together with the session document on which it is based, it is made available to the public in Europe.

Koalitionsvereinbarung zwischen der Sozialdemokratischen Partei Deutschlands und Bündnis 90/Die GRÜNEN

Aufbruch und Erneuerung - Deutschlands Weg ins 21. Jahrhundert

Koalitionsvereinbarung

zwischen der

Sozialdemokratischen Partei Deutschlands

und

Bündnis 90/Die GRÜNEN

Bonn, 20. Oktober 1998

Präambel

Die Bundesrepublik Deutschland steht vor großen Herausforderungen. Tiefgreifende ökonomische, ökologische und soziale Veränderungen verlangen nach einer entschlossenen Reformpolitik. Die Sozialdemokratische Partei Deutschlands und Bündnis 90/Die GRÜNEN werden eine Politik gestalten, die den neuen Herausforderungen gerecht wird. Die von den Koalitionsparteien für die kommenden vier Jahre vereinbarte Regierungspolitik steht für wirtschaftliche Stabilität, soziale Gerechtigkeit, ökologische Modernisierung, außenpolitische Verläßlichkeit, innere Sicherheit und Stärkung der Bürgerrechte und die Gleichberechtigung von Frauen.

Die Handlungsbedingungen nationaler Politik haben sich in den vergangenen Jahren grundlegend gewandelt und werden sich in Zukunft weiter verändern. Zunehmende Verflechtung der Weltwirtschaft und die Internationalisierung der Finanzmärkte, die fortschreitende Integration Europas und die globalen Herausforderungen einer nachhaltigen Entwicklung, wie sie in der Agenda 21 beschrieben sind, bilden den Handlungsrahmen auch für die deutsche Politik. Die aktuellen weltwirtschaftlichen Krisentendenzen sind ein weiterer Beleg für die Notwendigkeit einer Politik, die auf verstärkte internationale Zusammenarbeit setzt. Durch die von den Koalitionsparteien vereinbarte Regierungspolitik sollen die Chancen der Globalisierung für nachhaltiges Wachstum, Innovation und neue zukunftsfähige Arbeitsplätze genutzt werden.

Der Abbau der Arbeitslosigkeit ist das oberste Ziel der neuen Bundesregierung. Hierin liegt der Schlüssel zur Lösung der wirtschaftlichen, finanziellen und sozialen Probleme in der Bundesrepublik Deutschland. Zur Bekämpfung der Arbeitslosigkeit wird die neue Bundesregierung alle gesellschaftlichen Kräfte mobilisieren und in einem Bündnis für Arbeit und Ausbildung konkrete Maßnahmen vereinbaren.

Mit der großen Steuerreform sorgen wir für mehr Gerechtigkeit sowie für eine Stärkung der Binnenkonjunktur und der Investitionskraft; mit der ökologischen Steuerreform senken wir die Lohnnebenkosten und belohnen umweltfreundliches Verhalten. Diese Reformen sind ein Beitrag für den ökologisch-sozialen Strukturwandel.

Durch gezielte Förderung von Handwerk, kleinen und mittleren Unternehmen und durch Erleichterung von Existenzgründungen schaffen die Koalitionsparteien die Voraussetzungen für nachhaltiges Wachstum und zukunftsfähige Arbeitsplätze.

Das von der Sozialdemokratischen Partei Deutschlands und Bündnis 90/Die GRÜNEN vereinbarte Regierungsprogramm orientiert sich an folgenden gemeinsamen Zielen:

- Wirtschaftskraft durch nachhaltiges Wachstum und Innovation stärken und zukunftsfähige Arbeisplätze schaffen,
- ökologische Modernisierung als Chance für Arbeit und Umwelt nutzen,
- die finanzielle Handlungsfähigkeit des Staates durch Sanierung der öffentlichen Finanzen zurückgewinnen,
- eine zukunftsorientierte Bildung und Ausbildung für alle Jugendlichen sichern und Chancengleichheit herstellen,
- den Sozialstaat sichern und erneuern und die solidarische Gesellschaft stärken,
- den Generationenvertrag erneuern und auf eine neue Grundlage stellen,
- die natürlichen Lebensgrundlagen auch für die nachfolgenden Generationen sichern und bewahren, eine kinder- und familienfreundliche Gesellschaft schaffen,
- Sicherheit für alle gewährleisten,

- Bürgerrechte und soziale Demokratie stärken und eine Kultur der Toleranz in einer solidarischen Gesellschaft neu begründen,
- die Gleichstellung von Frauen in Arbeit und Gesellschaft entscheidend voranbringen,
- die Innere Einheit Deutschlands vollenden, indem die Angleichung der Arbeits- und Lebensverhältnisse weiter vorangebracht wird,
- den Staat modernisieren, indem wir die Verwaltung bürgernäher gestalten und überflüssige Bürokratie abbauen,
- die friedliche und partnerschaftliche Zusammenarbeit mit unseren Nachbarn weiterentwickeln, die Erweiterung und Vertiefung der Europäischen Union voranbringen, die Solidarität mit den Ländern des Südens stärken und weltweit eine nachhaltige Entwicklung fördern,
- die Zusammenarbeit mit den Kirchen sowie anderen gesellschaftlichen Gruppen und Verbänden fördern.

Wir finden extrem schwierige finanzielle, wirtschaftliche und soziale Rahmenbedingungen vor. Die Sozialdemokratische Partei Deutschlands und Bündnis 90/Die GRÜNEN haben mit dieser Koalitionsvereinbarung die Grundlage für eine stabile, berechenbare und verläßliche Regierungspolitik in den nächsten vier Jahren geschaffen.

XI. Europäische Einigung, internationale Partnerschaft, Sicherheit und Frieden

1. Ziele und Werte

Deutsche Außenpolitik ist Friedenspolitik.

Die neue Bundesregierung wird die Grundlinien bisheriger deutscher Außenpolitik weiterentwickeln: die friedliche und partnerschaftliche Zusammenarbeit mit den Nachbarn, die Pflege der transatlantischen Partnerschaft, die Vertiefung und Erweiterung der Europäischen Union, die gesamteuropäische Zusammenarbeit in der OSZE, die besondere Verantwortung für Demokratie und Stabilität in Mittel,- Ost- und Südosteuropa und die Förderung nachhaltiger Entwicklung in allen Ländern des Südens. Grundlagen sind dabei die Beachtung des Völkerrechts und das Eintreten für Menschenrechte, Dialogbereitschaft, Gewaltverzicht und Vertrauensbildung. Die neue Bundesregierung begreift die internationale Zusammenarbeit als Politik der globalen Zukunftssicherung.

Die neue Bundesregierung wird den notwendigen Wandel der internationalen Beziehungen mit eigenen Vorschlägen und Impulsen mitgestalten. Angesichts der neuen ökonomischen, technologischen, sozialen und ökologischen Herausforderungen wird sie ihre Außen- und Sicherheitspolitik als Beitrag zur globalen Zukunftssicherung entwickeln. Sie wird sich mit aller Kraft um die Entwicklung und Anwendung von wirksamen Strategien und Instrumenten der Krisenprävention und der friedlichen Konfliktregelung bemühen. Sie wird sich dabei von der Verpflichtung zur weiteren Zivilisierung und Verrechtlichung der internationalen Beziehungen, zur Rüstungsbegrenzung und Abrüstung, zu einem ökonomischen, ökologischen und sozial gerechten Interessenausgleich der Weltregionen und zur weltweiten Einhaltung der Menschenrechte leiten lassen.

2. Europäische Einigung

Die Einbindung Deutschlands in die Europäische Union ist von zentraler Bedeutung für die deutsche Politik. Die neue Bundesregierung wird den europäischen Integrationsprozeß deshalb mit neuen Initiativen vorantreiben und die deutsche Ratspräsidentschaft im 1. Halbjahr 1999 nutzen, um der Vertiefung und Erweiterung der Europäischen Union neue Impulse zu verleihen. Besonderes Augenmerk wird sie darauf legen, Reforminitiativen auf nationaler und europäischer Ebene miteinander zu verknüpfen. Nur durch die Weiterentwicklung zu einer Politischen Union sowie einer Sozial- und Umweltunion wird es gelingen, den Menschen Europa wieder näher zu bringen und die Europäische Union bürgernah zu gestalten.

Die neue Bundesregierung wird die Bekämpfung der Arbeitslosigkeit in den Mittelpunkt der europäischen Politik stellen. Ihr Ziel ist ein europäischer Beschäftigungspakt. In die beschäftigungspolitischen Leitlinien sollen verbindliche und nachprüfbare Ziele, vor allem zum Abbau der Jugend- und Langzeitarbeitslosigkeit sowie zur Überwindung der Diskriminierung von Frauen auf dem Arbeitsmarkt, aufgenommen werden. Um zukunftsfähige Arbeitsplätze zu schaffen, muß die Europäische Union eine Politik der ökologischen Modernisierung verfolgen, ihre Anstrengungen bei Forschung und bei der Entwicklung neuer Technologien verstärken und eine moderne Infrastruktur durch transeuropäische Netze aufbauen.

Die neue Bundesregierung will die gemeinsame europäische Währung zum Erfolg führen. Deshalb wird sie die europäische Koordinierung der Wirtschafts-, Finanz- und Sozialpolitik aktiv vorantreiben. Gemeinsame und verbindliche Regelungen gegen Steuer-, Sozial- und Umweltdumping sind dazu unverzichtbar, insbesondere zur effektiven Mindestbesteuerung von Unternehmen und zur Beseitigung von Steueroasen.

Die neue Bundesregierung wird in der europäischen Umweltpolitik eine Vorreiterrolle übernehmen. Schon während der deutschen Ratspräsidentschaft wird sie ihre Bemühungen intensivieren, dem Prinzip der Nachhaltigkeit im Binnenmarkt durch Initiativen zur Stärkung des grenzübergreifenden Umweltschutzes und des Integrationsprinzips Geltung zu verschaffen. Beim neuen Welthandelsabkommen müssen allgemeine sozial- und umweltpolitische Standards wie auch Regelungen zum Schutz des geistigen Eigentums festgeschrieben werden.

Die neue Bundesregierung wird auch auf europäischer Ebene für eine aktive Gleichstellungspolitik stehen. Sie wird auf geschlechtsspezifische Auswirkungen ihrer Politik und die Absicherung positiver Fördermaßnahmen achten.

Die neue Bundesregierung wird sich für mehr Demokratie in der Europäischen Union und die Stärkung des Europäischen Parlaments einsetzen. Sie wird dafür eintreten, daß die Entscheidungsprozesse in der Europäischen Union verständlicher und durchschaubarer werden. Das Transparenzgebot des Amsterdamer Vertrages muß konsequent umgesetzt werden. Sie wird der Überreglementierung und Bürokratisierung entgegenwirken. Bei der Ausübung ihrer Kompetenzen muß die Europäische Union das Subsidiaritätsprinzip wahren.

Die neue Bundesregierung wird die Initiative ergreifen, um den europäischen Verträgen eine Grundrechtscharta voranzustellen. In den Prozeß der Diskussion und Ausarbeitung will die neue Bundesregierung das Europäische Parlament, die nationalen Parlamente und möglichst viele gesellschaftliche Gruppen einbeziehen. Sie wird anregen, den Jugendaustausch, insbesondere den europäischen Freiwilligendienst, in Europa stärker zu fördern.

Die historische Chance der Erweiterung der Europäischen Union nach Mittel- und Osteuropa muß entschlossen genutzt werden. Die neue Bundesregierung wird die Europäische Union aktiv dabei unterstützen, durch eine wirksame Heranführungsstrategie und solidarische Hilfen zur ökonomischen und demokratischen Stabilisierung der mittel- und osteuropäischen Länder beizutragen. Die Europäische Union muß durch interne Reformen zügig erweiterungsfähig werden. Dazu gehört insbesondere der Abschluß der institutionellen Reformen im Vorfeld der Erweiterung. Um beitrittsbedingte wirtschaftliche oder soziale Brüche zu vermeiden, sind angemessene Übergangsfristen, z.B. bei der Arbeitnehmerfreizügigkeit, erforderlich.

Eine Hauptaufgabe der deutschen Ratspräsidentschaft wird die Verabschiedung der Agenda 2000 sein. Die neue Bundesregierung wird daher ihre Kräfte auf eine fristgerechte Beschlußfassung unter Wahrung des Gesamtzusammenhangs konzentrieren.

Die neue Bundesregierung tritt für eine grundlegende Reform der Gemeinsamen Agrarpolitik ein. Die europäische Landwirtschaft muß wettbewerbsfähiger und umweltverträglicher werden. Dazu müssen die öffentlichen Mittel stärker auf ökologische und beschäftigungspolitische Kriterien und so effizient wie möglich auf diese Ziele ausgerichtet werden. Dabei ist darauf zu achten, daß die Ausgaben der Europäischen Union für die Gemeinsame Agrarpolitik im Zeitablauf zurückgeführt werden. Bei den anstehenden WTO-Verhandlungen müssen in der internationalen Agrarpolitik ökologische und soziale Mindeststandards durchgesetzt werden. Soweit dies nicht erreicht wird, sind die Wettbewerbsnachteile der europäischen Landwirtschaft auszugleichen.

Um alternative Beschäftigungsmöglichkeiten in den ländlichen Räumen zu schaffen und die Landwirtschaft ökologisch zu reformieren, wird die neue Bundesregierung eine integrierte regional- und strukturpolitische Anpassungsstrategie erarbeiten. Insbesondere strukturschwache ländliche Regionen müssen dazu integrierte regionale Entwicklungskonzepte erarbeiten. Die neue Bundesregierung ist bereit, besonders betroffene Regionen im Rahmen von Modellprojekten bei der Problembewältigung zu unterstützen.

Die neue Bundesregierung unterstützt die Konzentration der Förderung im Rahmen der europäischen Strukturfonds auf die strukturschwächsten und förderbedürftigsten Regionen. Die Förderung muß vereinfacht, dezentralisiert und stärker an ökologischen Kriterien ausgerichtet sowie beschäftigungswirksamer ausgestaltet werden. Bei der Planung und Durchführung vor Ort müssen die relevanten regionalen Akteure stärker einbezogen werden. Die räumlichen und sachlichen Schwerpunkte der Förderung müssen auch künftig von den dafür politisch verantwortlichen Ländern gesetzt werden können. Die Beihilfenkontrolle der Europäischen Union muß Bund und Ländern mehr Spielraum in der Regionalpolitik geben.

Die neue Bundesregierung wird sich für eine zügige Umsetzung der innen- und rechtspolitischen Vorhaben im Vertrag von Amsterdam einsetzen. Sie wird für eine weitestgehende Integration des Schengen-Bestandes in das europäische Gemeinschaftsrecht eintreten. Die polizeiliche und justizielle Zusammenarbeit soll auf der Grundlage rechtsstaatlicher Grundsätze und in Bindung an völkerrechtliche Prinzipien intensiviert werden.

Die neue Bundesregierung setzt sich dafür ein, daß die Europäische Kommission die in Protokollen zum Vertrag von Amsterdam festgelegten Zusagen zum öffentlich-rechtlichen Rundfunk und zu öffentlich-rechtlichen Kreditinstituten entsprechend den Verhandlungsabsprachen einhält, d.h. den geltenden Rechtsstatus beihilferechtlich nicht beanstandet.

Deutschland wird auch künftig einen angemessenen Beitrag zur Finanzierung der Europäischen Union und damit zu einem solidarischen Lastenausgleich leisten. Für den Finanzplanungszeitraum von 2000 bis 2006 muß die bisher geltende Obergrenze für den EU-Haushalt in Höhe von 1,27 % des BSP unter Einschluß der Kosten der Osterweiterung beibehalten und möglichst unterschritten werden. Die anstehende Neuregelung der EU-Finanzen muß insbesondere durch Reformen auf der Ausgabenseite zu mehr Beitragsgerechtigkeit unter den Mitgliedstaaten führen. Sofern dieses Ziel durch andere Instrumente nicht ebenso gut erreicht werden kann, sollten ab dem Jahr 2000 auf der Basis einer Regelung der Europäischen Union die direkten Einkommensbeihilfen der Gemeinsamen Agrarpolitik durch die Mitgliedstaaten kofinanziert werden, damit die Nettobelastung Deutschlands vermindert werden kann. Die neue Bundesregierung wird in diesem Fall den nationalen Kofinanzierungsanteil für die gemeinsame Agrarpolitik aus Bundesmitteln bereitstellen.

3. Europäische Außen- und Sicherheitspolitik

Die im Amsterdamer Vertrag geschaffenen Instrumente und Mechanismen der GASP wird die neue Bundesregierung nutzen, um die Europäische Union auf dem Feld der internationalen Politik handlungsfähig zu machen und die gemeinsame Vertretung europäischer Interessen voranzutreiben. Die neue Bundesregierung wird sich bemühen, die GASP im Sinne von mehr Vergemeinschaftung der Außen- und Sicherheitspolitik weiter zu entwickeln. Sie wird sich deshalb für Mehrheitsentscheidungen, mehr außenpolitische Zuständigkeiten und die Verstärkung der Europäischen Sicherheits- und Verteidigungsidentität einsetzen.

Die neue Bundesregierung wird sich bemühen, die WEU auf der Basis des Amsterdamer Vertrages weiterzuentwickeln.

Die GASP soll in ihrer weiteren Entwicklung verstärkt dazu genutzt werden, die Fähigkeit der EU zur zivilen Konfliktprävention und friedlichen Konfliktregelung zu steigern. Die neue Bundesregierung wird darauf hinwirken, daß die EU ihrer Verantwortung vor allem gegenüber den Ländern des Südens besser gerecht wird und durch gemeinsames Auftreten zur Stärkung von OSZE und VN beiträgt.

4. NATO / Atlantische Partnerschaft

Die neue Bundesregierung betrachtet das Atlantische Bündnis als unverzichtbares Instrument für die Stabilität und Sicherheit Europas sowie für den Aufbau einer dauerhaften europäischen Friedensordnung. Die durch die Allianz gewährleistete Mitwirkung der Vereinigten Staaten von Amerika und ihre Präsenz in Europa bleiben Voraussetzungen für Sicherheit auf dem Kontinent.

Die Partnerschaft mit Rußland, die im NATO-Rußland-Rat institutionell verankert ist, soll im Interesse der europäischen Sicherheit weiterentwickelt und gestärkt werden. Die Zusammenarbeit mit der Ukraine und den übrigen Teilnehmern der Partnerschaft für den Frieden soll ausgebaut werden. Die Tür des Bündnisses bleibt gegenüber weiteren Demokratien offen.

Die neue Bundesregierung verfolgt das Ziel einer stabilen gesamteuropäischen Friedensordnung. Sie fördert deshalb enge Zusammenarbeit, wirksame Koordinierung und sinnvolle Arbeitsteilung zwischen der NATO und den anderen Institutionen, die für die europäische Sicherheit verantwortlich sind. Die neue Bundesregierung wird im Rahmen der anstehenden NATO-Reform darauf hinwirken, die Aufgaben der NATO jenseits der Bündnisverteidigung an die Normen und Standards von VN und OSZE zu binden.

Die USA sind der wichtigste außereuropäische Partner Deutschlands. Die enge und freundschaftliche Beziehung zu den USA beruht auf gemeinsamen Werten und gemeinsamen Interessen. Sie bleibt eine unverzichtbare Konstante der deutschen Außenpolitik. Pflege und Ausbau der deutsch-amerikanischen und der europäisch-amerikanischen Beziehungen sind Voraussetzungen für eine Politik, mit der die neuen globalen Herausforderungen friedlich bewältigt werden können.

5. OSZE

Die OSZE ist die einzige gesamteuropäische Sicherheitsorganisation. Das macht sie unersetzlich. Die neue Bundesregierung wird deshalb Initiativen ergreifen, um die rechtliche Basis der OSZE zu stärken und die obligatorische friedliche Streitschlichtung im OSZE-Raum durchzusetzen. Instrumente und Kompetenzen sind durch bessere personelle und finanzielle Ausstattung zu stärken und ihre Handlungsfähigkeit auf dem Feld der Krisenprävention und Konfliktregelung zu verbessern.

Im Rahmen der Friedenskonsolidierung soll zur Schaffung einer stabilen Ordnung das Instrument nicht-militärische internationale Polizeieinsätze entwickelt und genutzt werden. Eine besondere Bedeutung kommt der Zusammenarbeit mit Nichtregierungsorganisationen zu. Die neue Bundesregierung setzt sich für den Aufbau einer Infrastruktur zur Krisenprävention und zivilen Konfliktbearbeitung ein. Hierzu gehört neben der finanziellen Förderung der Friedens- und Konfliktforschung und der Vernetzung bestehender Initiativen, die Verbesserung der juristischen, finanziellen und organisatorischen Voraussetzungen für die Ausbildung und den Einsatz von Friedensfachkräften und -diensten (z. B. ziviler Friedensdienst). Die neue Bundesregierung wird für die Aufgaben im Bereich von Peacekeeping und Peacebuilding Ausbildungsmöglichkeiten schaffen.

6. Abrüstung und Rüstungskontrolle

Die kontrollierte Abrüstung von atomaren, chemischen und biologischen Massenvernichtungswaffen bleibt eine der wichtigsten Aufgaben globaler Friedenssicherung. Die neue Bundesregierung hält an dem Ziel der vollständigen Abschaffung aller Massenvernichtungswaffen fest und wird sich in Zusammenarbeit mit den Partnern und Verbündeten Deutschlands an Initiativen zur Umsetzung dieses Ziels beteiligen. In bestimmten Situationen kann ein einsei-

tiger Abrüstungsschritt verantwortbar sein und eine sinnvolle Abrüstungsdynamik in Gang setzen. Eine wesentliche Aufgabe sieht die neue Bundesregierung in der präventiven Rüstungskontrolle.

Sie ergreift Initiativen, um im Rahmen der KSE-Verhandlungen die Rüstungsobergrenzen deutlich unter das heutige Niveau zu senken. Sie macht ihren Einfluß geltend, um den internationalen Regimes zur Nichtverbreitung von Massenvernichtungswaffen Geltung zu verschaffen, besonders grausame Waffen wie Landminen weltweit zu verbieten und die weitere Reduktion strategischer Atomwaffen zu befördern. Zur Umsetzung der Verpflichtungen zur atomaren Abrüstung aus dem Atomwaffensperrvertrag wird sich die neue Bundesregierung für die Absenkung des Alarmstatus der Atomwaffen, sowie für den Verzicht auf den Ersteinsatz von Atomwaffen einsetzen.

Die neue Bundesregierung unterstützt Bemühungen zur Schaffung atomwaffenfreier Zonen. Sie wird eine Initiative zur Kontrolle und Begrenzung von Kleinwaffen ergreifen.

7. Vereinte Nationen

Die Vereinten Nationen sind die wichtigste Ebene zur Lösung globaler Probleme. Deshalb sieht es die neue Bundesregierung als besondere Aufgabe an, sie politisch und finanziell zu stärken, sie zu reformieren und zu einer handlungsfähigen Instanz für die Lösung internationaler Probleme auszubauen. In diesem Sinne ergreift sie Initiativen, um die Kompetenz und Mittelausstattung der Vereinten Nationen zu verbessern. Die neue Bundesregierung wird dafür sorgen, daß Frauen gleichberechtigt in internationalen Organisationen und Gremien vertreten sind.

Ein zunehmend wichtiger Bereich der Tätigkeit der Vereinten Nationen sind Missionen mit dem Ziel, den Frieden zu sichern. Den Vereinten Nationen werden eigenständige Einheiten für friedenserhaltende Maßnahmen (peacekeeping) als "stand by forces" angeboten.

Die Beteiligung deutscher Streitkräfte an Maßnahmen zur Wahrung des Weltfriedens und der internationalen Sicherheit ist an die Beachtung des Völkerrechts und des deutschen Verfassungsrechts gebunden. Die neue Bundesregierung wird sich aktiv dafür einsetzen, das Gewaltmonopol der Vereinten Nationen zu bewahren und die Rolle des Generalsekretärs der Vereinten Nationen zu stärken.

Deutschland wird die Möglichkeit nutzen, ständiges Mitglied des Sicherheitsrates der Vereinten Nationen zu werden, wenn die Reform des Sicherheitsrates unter dem Gesichtspunkt größerer regionaler Ausgewogenheit abgeschlossen ist und bis dahin der grundsätzlich bevorzugte europäische Sitz im Sicherheitsrat nicht erreicht werden kann.

Die neue Bundesregierung setzt sich dafür ein, daß das Instrumentarium zur Durchsetzung von Wirtschaftssanktionen ausgebaut und durch einen Sanktionshilfefonds untermauert wird.

8. Menschenrechtspolitik

Achtung und Verwirklichung der in der Allgemeinen Erklärung der Menschenrechte proklamierten und in den Menschenrechtsverträgen festgeschriebenen Menschenrechte sind Leitlinien für die gesamte internationale Politik der Bundesregierung. Die neue Bundesregierung wird sich auch hier mit Nachdruck um international abgestimmte Strategien zur Bekämpfung von Menschenrechtsverletzungen und ihrer Ursachen sowie ihrer Prävention bemühen. Sie wird die bestehenden nationalen Instrumente des Menschrechtsschutzes verbessern und um wirkungsvolle internationale Instrumente bemüht sein. Sie unterstützt die Einrichtung eines unabhängigen Menschenrechtsinstitutes in Deutschland.

9. Bundeswehr/Rüstungsexporte

Die Bundeswehr dient der Stabilität und dem Frieden in Europa. Als fest in das atlantische Bündnis integrierte Armee ist sie im Sinne von Risikovorsorge weiterhin zur Landes- und Bündnisverteidigung zu befähigen.

Eine vom Bundesminister der Verteidigung für die neue Bundesregierung zu berufende Wehrstrukturkommission wird auf der Grundlage einer aktualisierten Bedrohungsanalyse und eines erweiterten Sicherheitsbegriffs Auftrag, Umfang, Wehrform, Ausbildung und Ausrüstung der Streitkräfte überprüfen und Optionen einer zukünftigen Bundeswehrstruktur bis zur Mitte der Legislaturperiode vorlegen. Vor Abschluß der Arbeit der Wehrstrukturkommission werden unbeschadet des allgemeinen Haushaltsvorbehalts keine Sach- und Haushaltsentscheidungen getroffen, die die zu untersuchenden Bereiche wesentlich verändern oder neue Fakten schaffen.

Die neue Bundesregierung wird dem Bundessicherheitsrat seine ursprünglich vorgesehene Rolle als Organ der Koordinierung der deutschen Sicherheitspolitik zurückgeben und hierfür die notwendigen Voraussetzungen schaffen.

Die neue Bundesregierung wird die bestehenden Programme der militärischen Ausstattungshilfe überprüfen und grundsätzlich keine neuen Verträge in diesem Bereich abschließen. Statt dessen wird sie verstärkt Maßnahmen der Demokratisierungshilfe fördern und dafür zusätzliche Mittel bereitstellen.

Die Koalition unterstützt aktiv die Bemühungen um den Zusammenschluß der europäischen Luft- und Raumfahrtindustrie. Die transnationale europäische Rüstungsindustrie wird für ihre Exporttätigkeit einem verpflichtenden europäischen Verhaltenskodex unterworfen. Die neue Bundesregierung wirkt darauf hin, daß ein Transparenzgebot und der Menschenrechtsstatus möglicher Empfängerländer dabei als Kriterien enthalten sein sollen.

Der nationale deutsche Rüstungsexport außerhalb der NATO und der EU wird restriktiv gehandhabt. Bei Rüstungsexportentscheidungen wird der Menschenrechtsstatus möglicher Empfängerländer als zusätzliches Entscheidungskriterium eingeführt.

Die neue Bundesregierung wird jährlich dem Deutschen Bundestag einen Rüstungsexportbericht vorlegen. Rüstungskonversion wird auch als bundespolitische Aufgabe und Element regionaler Strukturpolitik begriffen.

10. Gute Nachbarschaft und historische Verantwortung

Die neue Bundesregierung wird sich intensiv um die Pflege der Beziehungen zu allen Nachbarn Deutschland bemühen. Sie wird der deutsch-französischen Freundschaft neue Impulse geben und die enge Zusammenarbeit mit Frankreich auf eine breite, die Gesellschaften durchdringende Grundlage stellen. Sie wird besonders um mehr kulturellen Austausch bemüht sein.

Gegenüber Polen besteht eine besondere historische Verantwortung, der die neue Bundesregierung mit dem Angebot einer immer engeren Partnerschaft zwischen Polen und Deutschland gerecht werden wird. Sie wird die Zusammenarbeit zwischen Deutschland, Frankreich und Polen im Rahmen des Weimarer Dreiecks verstärken.

Die neue Bundesregierung wird zügig daran arbeiten, auf der Grundlage der Deutsch-Tschechischen Erklärung noch bestehende Probleme im Verhältnis zwischen Deutschland und der Tschechischen Republik abzubauen.

Israel gegenüber bleibt Deutschland in einer besonderen Verpflichtung. Die neue Bundesregierung wird daher nach Kräften daran mitwirken, die Sicherheit Israels zu bewahren und die Konflikte in der Region friedlich zu lösen.

Die neue Bundesregierung wird die guten Beziehungen zu Rußland und der Ukraine weiterentwickeln und auf eine breite Grundlage stellen. Es ist ihr Ziel, die Stabilität in diesem Raum durch Unterstützung demokratischer, rechtsstaatlicher, sozialer und marktwirtschaftlicher Reformen zu sichern.

11. Entwicklungspolitik

Entwicklungspolitik ist heute globale Strukturpolitik, deren Ziel es ist, die wirtschaftlichen, sozialen, ökologischen und politischen Verhältnisse in Entwicklungsländern zu verbessern. Sie orientiert sich u.a. an dem Leitbild einer globalen nachhaltigen Entwicklung.

Die neue Bundesregierung wird die Entwicklungspolitik entlang diesen Leitzielen reformieren, weiterentwickeln und effizienter gestalten und die entwicklungspolitische Kohärenz mit anderen Ressorts sicherstellen. Die derzeitige Zersplitterung entwicklungspolitischer Aufgaben der alten Bundesregierung in unterschiedliche Ressorts wird aufgehoben und im Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (BMZ) konzentriert. Das BMZ wird im Sinne der Förderung internationaler Strukturpolitik zukünftig die Federführung in Fragen der EU-Entwicklungspolitik erhalten. Das BMZ wird Mitglied im Bundessicherheitsrat.

Um dem international vereinbarten 0,7 % Ziel näher zu kommen, wird die Koalition den Abwärtstrend des Entwicklungshaushaltes umkehren und vor allem die Verpflichtungsermächtigungen kontinuierlich maßvoll erhöhen. Die neue Bundesregierung wird eine Reform der Außenwirtschaftsförderung, insbesondere der Gewährung von Exportbürgschaften (Hermes) nach ökologischen, sozialen und entwicklungsverträglichen Gesichtspunkten in die Wege leiten. Internationale Entschuldungsinitiativen für die ärmsten und höchstverschuldeten Länder werden unterstützt.

Um das Bewußtsein für internationale Zusammenhänge zu stärken, legt die neue Bundesregierung ein besonderes Gewicht auf die entwicklungspolitische Arbeit von Nichtregierungsorganisationen und wird deren Arbeit verstärkt fördern.

Die neue Bundesregierung wird die Zusammenarbeit im Rahmen des Lomé-Abkommens fortsetzen und sich für einen erfolgreichen Abschluß der Folgeverhandlungen einsetzen. Sie wird ihre Aufgaben in der europäischen Entwicklungspolitik wirkungsvoller wahrnehmen und besser koordinieren.

Die neue Bundesregierung setzt sich für die Neuausrichtung der Strukturanpassungspolitik von IWF und Weltbank nach Kriterien der Entwicklungsverträglichkeit und ökologischen Nachhaltigkeit ein. Internationale Wirtschaftsregime, wie die WTO oder das geplante Multilaterale Investitionsabkommen (MAI), müssen nach ökologischen und sozialen Kriterien neu gestaltet werden. Die Möglichkeit nationaler Gesetzgeber, ökologische und soziale Standards bei Investitionen und Handel einzuführen, muß beibehalten werden.

Wir treten für eine Reform und Stärkung der Entwicklungsprogramme der Vereinten Nationen sowie für leistungsfähige internationale Finanzierungsorganisationen ein und werden hier mehr Verantwortung übernehmen. Die im BMZ verankerten zentralen Finanzierungsinstitutionen und Eckpfeiler der multilateralen Entwicklungspolitik, nämlich Weltbank, Internationale Entwicklungsorganisation (IDA) und die Regionalbanken, finanzieren langfristige Entwicklungsprogramme und Projekte. Das BMZ wird die Effizienz der multilateralen Finanzierungsmaßnahmen durch entwicklungs- und sozialverträgliche Strukturanpassungsprogramme und durch eine bessere Verzahnung mit den bilateralen Programmen erhöhen.

Frauen sind wichtige Trägerinnen des Entwicklungsprozesses. Wir werden daher die wirtschaftliche Unabhängigkeit und insbesondere die Grundbildung und Ausbildung sowie die primäre Gesundheitsversorgung von Mädchen und Frauen verstärkt fördern.

Die neue Bundesregierung wird die staatliche Entwicklungszusammenarbeit straffen und die Zusammenlegung verschiedener Durchführungsorganisationen prüfen. Sie wird Erfolgskontrollverfahren bei Projekten der EZ verbessern.

12. Dialog der Kulturen

Gemeinsames weltweites Handeln erfordert Verständigung über kulturelle Unterschiede hinweg. Die neue Bundesregierung wird sich für einen offenen interkulturellen Dialog auf breiter Grundlage einsetzen mit dem Ziel, Feindbilder zurückzudrängen. Sie wird die Möglichkeiten der auswärtigen Kulturpolitik, des Auslandsrundfunks und der wirtschaftlichen und wissenschaftlichen Beziehungen zur Förderung des interkulturellen Dialogs einsetzen.

XII. Kooperation der Parteien

1. Allgemeines

Diese Koalitionsvereinbarung gilt für die Dauer der 14. Wahlperiode. Die Koalitionspartner verpflichten sich, diese Vereinbarung in Regierungshandeln umzusetzen. Beide Partner tragen für die gesamte Politik der Koalition gemeinsam Verantwortung.

Die Koalitionspartner werden ihre Arbeit in Parlament und Regierung laufend und umfassend miteinander abstimmen und zu Verfahrens-, Sach- und Personalfragen Konsens herstellen.

Die Koalitionspartner bilden einen Koalitionsausschuß. Er berät Angelegenheiten von grundsätzlicher Bedeutung, die zwischen den Koalitionspartnern abgestimmt werden müssen, und führt in Konfliktfällen Konsens herbei. Ihm gehören 8 Mitglieder je Koalitionspartner an. Er tritt auf Wunsch eines Koalitionspartners zusammen.

2. Arbeit im Bundestag

Im Bundestag und in allen von ihm beschickten Gremien stimmen die Koalitionsfraktionen einheitlich ab. Das gilt auch für Fragen, die nicht Gegenstand der vereinbarten Politik sind. Wechselnde Mehrheiten sind ausgeschlossen.

Über das Verfahren und die Arbeit im Parlament wird Einvernehmen zwischen den Koalitionsfraktionen hergestellt. Anträge, Gesetzesinitiativen und Anfragen auf Fraktionsebene werden gemeinsam oder, im Ausnahmefall, im gegenseitigen Einvernehmen eingebracht. Die Koalitionsfraktionen werden darüber eine Vereinbarung treffen.

3. Arbeit im Kabinett

Im Kabinett wird in Fragen, die für einen Koalitionspartner von grundsätzlicher Bedeutung sind, keine Seite überstimmt. Ein abgestimmtes Verhalten in Gremien der EU wird sichergestellt.

In allen Ausschüssen des Kabinetts und in allen vom Kabinett beschickten Gremien sind beide Koalitionspartner vertreten, sofern es die Anzahl der Vertreter des Bundes zuläßt. Die Besetzung von Kommissionen, Beiräten usw. beim Kabinett erfolgt im gegenseitigen Einvernehmen, wobei dem Stärkeverhältnis der Partner Rechnung getragen wird.

4. Zuschnitt des Kabinetts

Dem Bundeskanzler obliegt die Organisationsgewalt. Größere Änderungen des Ressortszuschnitts innerhalb der Wahlperiode werden zwischen den Koalitionspartnern einvernehmlich geregelt.

5. Personelle Vereinbarungen

Die Koalitionspartner vereinbaren, Gerhard Schröder (SPD) zum Bundeskanzler zu wählen.

Das Amt des Vizekanzlers wird durch Joschka Fischer (Bündnis 90/Die GRÜNEN) ausgeübt.

Die SPD stellt die Leitung folgender Ministerien:

Bundesministerium des Innern
Bundesministerium der Justiz
Bundesministerium der Finanzen
Bundesministerium für Wirtschaft
Bundesministerium für Ernährung, Landwirtschaft und Forsten
Bundesministerium für Arbeit und Sozialordnung
Bundesministerium der Verteidigung
Bundesministerium für Familie, Senioren, Frauen und Jugend
Bundesministerium für Raumordnung, Bauwesen, Städtebau und Verkehr
Bundesministerium für Bildung, Wissenschaft, Forschung und Technologie
Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung

Das Bündnis 90/Die GRÜNEN stellt die Leitung folgender Ministerien:

Auswärtiges Amt
Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit
Bundesministerium für Gesundheit

Das Vorschlagsrecht für beamtete und Parlamentarische Staatssekretäre sowie Staatsminister liegt bei den jeweiligen Bundesministern. Die SPD hat das Vorschlagsrecht für einen Staatsminister im Auswärtigen Amt, Bündnis 90 /Die GRÜNEN für den Parlamentarischen Staatssekretär im Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung.

Das Vorschlagsrecht für die 1999 vakant werdende deutsche Position in der EU-Kommission liegt bei Bündnis 90/Die GRÜNEN.

Die Koalitionspartner werden mit einem gemeinsamen Personalvorschlag in die Bundespräsidentenwahl 1999 gehen. Das Vorschlagsrecht liegt bei der SPD.

Bonn, den 20. Oktober 1998

Für die sche Partei Bündnis 90/Die GRÜNEN Deutschlands

Für Sozialdemokrati-

Gerhard Schröder

Joschka Fischer

Oskar Lafontaine

Jürgen Trittin

Christine Bergmann

Gunda Röstel

Heidemarie Wieczorek-Zeul

Kerstin Müller

P4_CRE(1999)01-12(1)
Speech by the President of the Council of the European Union Joschka Fischer, Federal Minister for Foreign Affairs on the Priorities of the German Council Presidency

Speech by the President of the Council of the European Union Joschka Fischer, Federal Minister for Foreign Affairs, in the European Parliament in Strasbourg on 12 January 1999

Translation of advance text

Mr President,
Members of the European Parliament,

On 1 January 1999 with the introduction of the euro, the common currency by eleven member states, Europe has taken a historic, or perhaps even a revolutionary step which will lend a new dimension to the project of European integration. For the first time in the history of the European integration process, that all but miraculous answer of the people of Europe to centuries of a precarious balance of power on this continent and of violent hegemony and terrible wars, an important part of national sovereignty, to wit monetary sovereignty, was passed over to a European institution. This action creates in fact a new political quality. Currency, Security and Constitution, those are the three essential areas of sovereignty of modern nation states, and the introduction of the euro constitutes the first move towards their communitarization. The real significance of this step for Europe and international politics will probably only be understood at a later date.

The introduction of a common currency is not primarily an economic, but rather a sovereign and thus eminently political act. With the communitarization of its money, Europe has also opted for an autonomous path in the future and, in close collaboration with our transatlantic partners, for an autonomous role in tomorrow's world. However, the EU resembles only partly a political subject and therefore the contrast between the communitarization of currencies and the still lacking political and democratic structures of the community will create tension the momentum of which will undermine the current status quo in the not too distant future. I agree with those who pointed out at the time of the euro launch that the common currency was a great opportunity but also just as great a risk for the EU, depending on the member states' attitude to the process of further political communitarization. They expected the opportunities to be predominant if the momentum from the introduction of the euro was used for further substantial communitarization measures leading to complete political union. The introduction would, however, turn out to be a huge risk if in the logic of this bold step on the part of the EU, other bold steps to complete integration - including the fastest possible enlargement of the EU to include Central and Eastern Europe - did not follow.

Political wisdom, but also the national interests of all member states, demand that we do not let this alternative happen. Rather, we must energetically and jointly use the opportunities afforded by the successful introduction of the euro. We must therefore strengthen the EU's ability for political action and gear its internal structures to the new tasks. Political union, including new member states, must be our lodestar from now on; it is the logical follow-on from Economic and Monetary Union.

The main task of the German Presidency is to prepare the Union's structures and procedures to turn it from a western European Union into a Union for the whole of Europe capable of global action. There are four focal points for the next six months:

Firstly, we want to bring the Agenda 2000 negotiations to a successful conclusion by 24/25 March. That is not a random date. If we do not reach agreement by then, the Union will call its ability to reform, central to the enlargement process, very much into question.

There are no two ways about it. The negotiations will be very difficult. A solution will only be found through comprehensive balancing out of interests. The German Presidency will ensure that a balanced solution is found at the European Council at the end of March, not one that is at the expense of the weakest EU partners.

Even if there is still considerable distance between our positions on key questions, I am optimistic that we can agree. During my exploratory trip before Christmas, I felt all partner countries were ready to play a constructive role in the negotiations and strive for agreement by March. Everyone knows that we will only be successful if we consider Agenda 2000 as a single package and if everyone makes compromises. There must be no winners or losers. All that will require a difficult balancing act on the part of the Presidency. To succeed we are counting als on the support and understanding of the European Parliament, with which we intend to cooperate closely.

Now we must set about the questions of substance as quickly as possible. In the field of structural policy, I consider it essential to concentrate first and foremost on the regions with the weakest structures which are most in need of support. Aid must become simpler, less centralized, more environmentally friendly and create more jobs.

The future viability and legitimacy of the EU depend on fair burden-sharing. Let me say quite clearly at this point: As the strongest EU member state economically speaking, Germany will continue to bear its responsibility and remain the greatest net contributor. But imbalances have crept into the burden-sharing process which must be evened out. This concern, which Germany shares with other member states, has been recognized as legitimate by the Commission and in the meantime also by many partners.

The enlargement, as well as the next round of WTO talks, necessitate root and branch reform of the Common Agricultural Policy and a reduction in agricultural spending. If we want to admit countries in Central and Eastern Europe which are still mainly agriculture-based, we cannot carry on with European agricultural policy as it stands. European agriculture must be made more competitive and environmentally sustainable; at the same time farmers' interests must be protected.

Secondly we want to make clear progress on an effective employment policy. The fight against unemployment is the greatest worry of people in Europe. They expect, quite rightly, not just national governments to take action against unemployment, but also efforts to be made at European level. Therefore, we want to conclude a European Employment Pact at the Cologne European Council. The pact should be the expression of an active labour market policy, which focuses more on prevention: on reducing youth and long-term unemployment and discrimina-tion against women on the job market.

Thirdly, we want and have to make progress on the enlargement of the EU as quickly as possible. After the end of the Cold War, Europe cannot be restricted to Western Europe, rather the very idea of European integration aims at the whole of Europe. Furthermore, the geo-political reality leaves no real alternative. If this is true, then the events of 1989/90 have al-ready decided the "if" question of Eastern enlargement, only the "how" and "when" must be identified and decided upon.

The southern enlargement of the EU was a great economic but also political and democratic success. Economic prosperity and democratic stability were the fruits of southern enlargement for the countries which joined at that time, and the EU must repeat this success with eastern enlargement. Prosperity, peace and stability can only be guaranteed for the whole of Europe in the long-term through the accession of the Central and Eastern European partners. And only with the opening up towards the East can the EU claim to speak as a cultural area and com-munity of values for the whole of Europe. In Germany, we have not forgotten the invaluable contribution of the people of Central and Eastern Europe in ending the division of Germany and Europe.

To allow a zone of instability to emerge beyond the current EU border would be, given our experience in the Balkans, irresponsible politically. In addition, it would be a breach of promise to the new democracies with fatal consequences for Europe. Thus every wilful delay, let alone preclusion of EU enlargement, amounts to a politically and economically dangerous and expensive detour, at the end of which enlargement would come all the same, brought about by the realities and risks.

For all these reasons there is no alternative to the enlargement of the EU to include the next candidates.

We need strategic vision for the enlargement process, but also a great deal of pragmatism. We must bring the enlargement negotiations to a successful and workable conclusion as quickly as possible. Hence we ought to forget about purely academic debates about deadlines now. If we now concentrate on making EU structures ready for enlargement - and the successful conclu-sion of Agenda 2000 is essential for this - that does not mean postponing enlargement. The exact opposite is true. Our ability to enlarge must go hand in hand with other countries' ability to accede. The sooner the EU tackles the necessary reforms and the more intensively the applicant states continue their internal reforms, the quicker and smoother the progress of the enlargement process.

Hence, Germany remains a strong advocate of early eastern enlargement of the European Union. We want to push ahead with the accession negotiations. The candidate countries which have still to enter negotia-tions must be given a fair chance to catch up with the others. The fast lane must stay open. It is still too early to fix a date for accession. But if we can see light at the end of the negotiating tunnel, probably towards the end of 1999 or in 2000, following the envisaged progress of negotiations and the successful conclusion of Agenda 2000 in March, it may become meaning-ful or even inevitable to set a definite date to bring the negotiations to an early conclusion.

Fourthly, we want to increase the EU's ability to act in the foreign policy domain. Only a Union with an effective foreign policy can safeguard peace in Europe and bring its increasing weight to bear on the world stage. Even the large member states of the EU will be less and less able to assert their interests and protect peace in the ever more globalized world. In the multipolar world of the 21st century, the EU must therefore become an autonomous player capable of political action. We must prepare ourselves for this task by creating a Common Foreign and Security Policy worthy of the name in good time.

When the Amsterdam Treaty enters into force, by June 1 at the latest according to the current progress of the ratification process, we want to ensure that it will be applied in all areas immediately. In the field of the Common Foreign and Security Policy, the Treaty contains a package of new instruments which will increase the Union's ability to act in foreign policy matters. The nomination of the CFSP High Representative will hopefully bring significant progress. But this will only be the case if it is a man or woman with political weight who can get things done. During our Presidency, also the policy planning and early warning unit is to be set up and the new "Common Strategy" instrument introduced and with it majority decisions in the CFSP. We want to apply this new instrument first to the EU's neighbouring regions and adopt the first common strategy on Russia at the Cologne European Council. The creation of a prosperous civil society in Russia in the long term is crucial to the stability of the whole of Europe. At the present time, what we need is as much joint action as possible and maximum use of the new instruments. It is important to identify fields of common European interest better. This is also necessary to heighten the public's awareness of European consensus in foreign and security policy issues.

In the next six months we have to turn political vision into tangible progress. But we must not narrow our view to operational day to day affairs. Europe has always drawn its strength from a constructive mixture of vision and its implementation. Particularly in the next six months, it will be important to keep an eye on the wider picture.

The next target area after the conclusion of Agenda 2000 will be the EU's institutional reform. This reform is urgent with a view to enlargement to avoid institutional collapse. If the Euro-pean Union is to maintain its ability to act with 21 or more members, appropriate reforms must be carried out. The key question here is the Union's readiness to accept majority decisions in as many areas as possible. The new Federal Government advocates limiting the need for unanim-ity in the EU in the longer term to questions of fundamental importance such as treaty amend-ments.

At the Vienna European Council, it was agreed that the Cologne European Council should decide on how to deal with the institutional questions not resolved in Amsterdam. I would imagine that we will give the green light to a new intergovernmental conference which could meet around the year 2001.

In the long-term we have to face the question of the aims and methods of further integration. We have followed the "Monnet method" in the European Union for more than 40 years: a step-by-step approach towards integration with no blueprint of the ultimate goal. This method was extremely successful. The goals of "no more wars" and economic redevelopment which were formulated in the 50s have been achieved. War within the European Union is now impossible from both political and military standpoints. This is the greatest achievement of the European integration process on our "continent of wars" and we should never forget this.

Economic and monetary integration is largely completed with the introduction of the euro. Only a few areas are still lacking, such as closer harmonization of tax policies as advocated by Germany. So why do we want to carry on with integration? I see two central reasons for doing so:
Firstly, because in the age of globalization no European nation state, not even the larger ones, will be able to act on their own. Europeans can only meet the challenges of globalization when we are united; and
secondly, because exporting stability to neighbouring regions is not just a historic and moral responsibility for Europe but it also lies in our own best interests. Preventive crisis manage-ment is always better, cheaper and above all more humane than acute crisis management.

The greatest shortfalls within the EU are to be found today in the fields of political integration and democracy. How can we make headway in these areas? I believe that after Maastricht and Amsterdam, the call for a European constitution will be louder than before. Such a debate will give new impetus to political integration.

For me, it is initially more a question of substance and aims than an analysis of the legal basis. The idea of a common European future, the "finality" of Europe, is hazy at present. A debate on the state of affairs in Europe could provide both direction and clarity in this area. Important questions about the future remain unanswered. What notion can rally people in favour of Europe? What balance of power should there be between Europe, nations and regions? Where do we need more or perhaps less Europe? Where are Europe's external borders? How can we further the development of a European public and strengthen the democratic legitimacy of the EU? People are right to look for answers to these questions which none of us can avoid.

If we want to turn the European Union into a strong and assertive political subject, then we need to strengthen it in four key policy areas:

1. Europe needs more democracy. The decision-making processes in the Union need to be more transparent and comprehensible for the people. The citizens need to understand at long last who is deciding what in Brussels and with what authority.

The Amsterdam Treaty has bestowed new and important rights and powers upon the European Parliament. This can only be an interim step, however. The greater the Union's ability to act, the greater the democratic legitimacy of its actions must be. The rights of the European Parliament must therefore be further extended, and that should also be a focus of the next intergovernmental conference. Wider legitimacy means that the European Parliament enjoys equal co-decision rights in all areas where the Council currently adopts legislation with major-ity voting. Greater involvement of the European Parliament in the election of the Commission than is prescribed in the Amsterdam Treaty is also conceivable. Increased collaboration with national parliaments, as already laid down in the Amsterdam Treaty, should also be considered.

In order to increase the citizen's rights, Germany is proposing the long-term

development of a European Charter of Basic Rights. We want to take the initiative here during our Presidency. For us, it is a question of consolidating the legitimacy and identity of the EU. The European Parliament which has already provided the groundwork with its 1994 draft should be involved in the drawing up of a Charter of Basic Rights, as well as national parliaments and as many social groups as possible.

2. The Common Foreign and Security Policy must be geared to the European values of peace and human rights and be capable of efficient crisis management. In the age of globalization, human rights have political and economic importance, above and beyond the humanitarian aspect, as demonstrated by the Asian crisis. Emerging markets can acquire investment security only by embracing ecological sustainability and human rights, not by suppressing them. The development of free markets can only last if it is embedded in a wide culture of freedom based on human rights, the separation of powers, the rule of law, democratic parties, independent unions, a free press and a critical public. During our Presidency, we will work towards strengthening the EU's human rights profile. The new EU human rights report aims to increase transparency and at the same time to provide impetus for action in the community and the member states.

The key to efficient preventive and operational conflict resolution lies in greater use of majority decisions and presenting a united front to the outside world - in the G8, the international financial institutions and the United Nations. Amsterdam can only be one step along the way towards an enlarged Union if that Union is to be capable of taking action in the foreign policy domain.

3. We need a European Security and Defence Identity to complete the Common Foreign and Security Policy. In recent times, a problematic trend to unilateralism and a turn away from multilateralism has been noticeable in international affairs. This tendency has already led to very negative consequences at United Nations level and must be cause for concern. Also global peace-keeping needs to be legitimized by multilateral organizations. But this also necessitates political subjects who are willing and in a position to use their influence to shape the inter-national political system as an order of peace through multilateral action based on international law and in conjunction with other partners. This is another central challenge for the Europe of the future. Collective defence will remain NATO's remit. But the EU must also develop its own capabilities for military crisis management whenever the EU/WEU see a need for action and the North American partners do not wish to be involved. This issue has received fresh impetus following Tony Blair's initiative in Pörtschach and the Franco-British meeting in St. Malo.

After the single market and Economic and Monetary Union, the creation of a European Secu-rity and Defence Identity ESDI could be of great importance for the further deepening of the EU. In our double Presidency of the EU and the WEU, we will make every effort to harness the new momentum. By the time of the Cologne European Council, we want to draw up a report on possible further developments of the ESDI.

4. In the field of justice and home affairs, the Amsterdam Treaty aims to create an area of freedom, security and justice. We want to attain this goal step by step. The special meeting of the European Council in Tampere in October ought to take stock of the situation and establish further guidelines. During our Presidency we also want to discuss asylum policy burden-sharing as well as the humane handling of refugee flows.

A more effective fight against international organized crime is crucial for Europe's ability to act and its acceptance amongst the people. We need to step up cross-border cooperation between police forces and increase Europol's operational capabilities. The issues just mentioned, however, point out the urgent need for the entry into force of a European Charter of Basic Rights.

During my Presidential trip before Christmas, I met my Spanish colleague in the conference centre in Madrid in which the Peace Implementation Conference for Bosnia was also being held. While we, the Spanish and German Foreign Ministers and delegations prepared important EU decisions about the Europe of the 21st century, the

Europe of integration, the conference had to focus on solutions to the Europe of the past, the Europe of nationalism and war. The historical disunity of Europe was glaringly obvious in Madrid on that day, but at the same time the historical challenge which lies before us was also made clear. Both alternatives make up the current reality of Europe, but we, the Europe of integration, must not give the Europe of the past any chance for the future because that would be a disaster for our continent. Only the Europe of integration is viable and only this Europe will peacefully put to rest the discord on our continent and be able to make the EU into a political subject able to help shape the future of a dramatically changing world. Several generations have worked on making the European house, the EU, a political success. Our generation has the challenge of completing this Europe of integration.-

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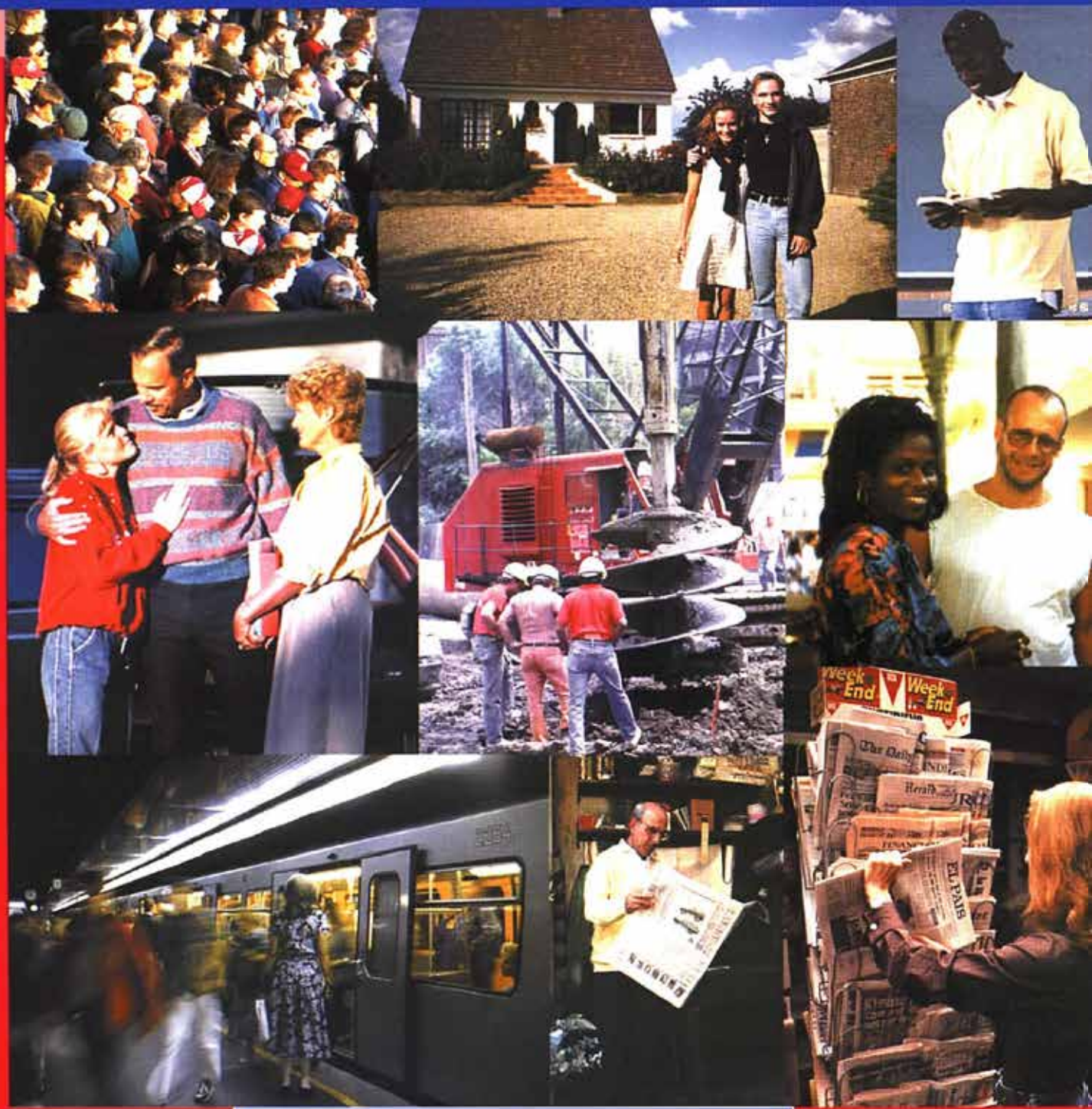
Affirming fundamental rights in the European Union: time to act (Simitis Report)

Affirming fundamental rights in the European Union

Report of the Expert Group on Fundamental Rights

Fundamental rights & anti-discrimination



Employment & social affairs

European Commission

Affirming fundamental rights in the European Union

Time to act

Report of the Expert Group on Fundamental Rights

Employment & social affairs

Fundamental rights and anti-discrimination

European Commission
Directorate-General for Employment, Industrial Relations
and Social Affairs
Unit V/D.2

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Foreword

In its social action programme 1998-2000, the Commission has announced its intention of carrying forward the debate on the question of fundamental rights in the European Union.

This debate was launched by the report of the 'Comité des Sages' presented at the first Social Policy Forum in March 1996. In 1997 a follow-up process took place to advance the debate on the conclusions of this report and promote civil dialogue on fundamental rights. One theme which emerged strongly from this was the possible establishment of the fundamental social rights as a constitutional element of the European Union.

The Commission believes that it is worth having this question studied in greater detail. Therefore, DG V established an independent expert group on fundamental rights to consider this area further. The group was composed of eight academic experts in the field, chaired by Professor S. Simitis.

The group was asked to review the status of fundamental social rights in the treaties, in particular in the new Treaty of Amsterdam, possible lacunae and related legal and constitutional matters. Special consideration should also be given to the possible inclusion of a Bill of Rights in the next revision of the Treaties. The expert group's report has put forward 10 recommendations to achieve an explicit recognition of fundamental rights in the European Union.

I should like to thank the members of the expert group for their excellent work which will contribute to broadening the debate on this issue within the European Union in the coming months.

Odile Quintin
Acting Deputy Director-General
DG V

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Executive summary

The arguments demonstrating the need for a reformulation of fundamental rights have been exhaustively discussed. What is now needed is not new deliberation but a clear decision.

A comprehensive approach to the guarantee of fundamental rights is urgently required. Fundamental rights must be visible. Therefore, an express guarantee should be included in the Treaties.

While judicial protection is undoubtedly a crucial element in the effective safeguarding of fundamental rights, it is by no means its only prerequisite. It is vital to establish rights which are genuinely justiciable, and which entail more than a passive obligation of non-violation.

The recognition of fundamental rights should be based, in particular, on the European Convention on Human Rights (ECHR), which has become, through the case law of its organs, a common European Bill of Rights.

The rights of ECHR, including those in its Protocols, should be incorporated in their entirety into Union/Community law. At the same time, clauses detailing and complementing the ECHR must be added.

As imperative as an explicit recognition of fundamental rights is, attention must also be paid to furthering the protection of rights through policies and related organisational changes.

The guarantee of rights must be seen as an open process, based on dialogue within civil society, and capable of responding to new challenges. This process should include both civil and social rights.

The text enumerating the rights should be inserted into a special part or a particular title of the Treaties. The place chosen should clearly illustrate the paramount importance of fundamental rights.

I. Remit

In March 1996 a 'Comité des Sages' appointed by the European Commission presented its report on the need to recognise a series of fundamental civil and social rights, and incorporate them into the Amsterdam Treaty. The Comité suggested that the European Union should first include in the Treaty a minimum core of rights and at a later stage set in motion a consultation process which would update and complete the list of civil, political and social rights and duties. The Comité complemented these more general objectives by 26 specific recommendations. They stressed the need to strengthen the sense of citizenship and democracy in the European Union by treating civil and social rights as indivisible, as well as the importance of formulating rights that reflect technological change, the growing awareness of the environment, and the demographic developments.

The Comité's proposals were intensively discussed in the course of 1997 in numerous meetings organised in particular by non-governmental organisations (NGOs) dealing with human rights and social problems in the various Member States. The result was a clear approval of the Comité's position, especially with regard to the incorporation of social and civil rights in the Treaties.

More recently, the European University Institute presented, together with a report on its 'Project on the European Union and human rights', a 'human rights agenda for the European Union for the year 2000'. Both documents re-emphasise the urgency of explicit recognition of fundamental rights by the European Union. However, neither stops at general consideration of the significance of such a decision. They also insist on the need to place all further efforts in an institutional and administrative framework which would secure the persistent promotion of fundamental rights and their consistent integration into the ongoing activities and policies of the European Union.

Despite the appeal of the Comité de Sages and the wide support it was given, the Amsterdam Treaty, notwithstanding its intention to consolidate and advance the unification process, does not contain a basic set of fundamental civil and social rights in the form of a Bill of Rights. Nor does it fulfil the expectations articulated in the report of the Comité des Sages, by clearly detailing and expanding the recognition of fundamental rights.

The quest for explicit recognition of fundamental rights is therefore still of immediate importance. In fact, the very adoption of the Amsterdam Treaty has made the need even more apparent. The enlargement of the European Union's tasks demonstrates that recognition of fundamental rights is not a long-term policy but a short-term necessity.

This is especially illustrated by the increasing relevance of issues such as a judicial cooperation in criminal matters, police cooperation for the purposes of preventing and combating serious international crimes, or a common policy with regard to immigration and nationals of third countries. In addition, concerns

raised by the structural changes of the labour market and the ensuing reflection on common activities have drawn fresh attention to the acute need for fundamental social rights. Finally, the globalisation of the economy, and in particular its consequences for the external relations of the European Union, has accentuated the significance of efforts to protect fundamental rights, already exemplified by the clauses inserted in numerous agreements concluded between the Community and third countries. It has further underlined the need to clarify and specify within the European Union the rights upon which such actions are based.

It is against this background that the Commission decided to entrust a new Group of Experts to analyse and assess the opportunities and constraints of an explicit recognition of fundamental rights. The Commission pointed to a series of questions that in its view merited particular consideration: evaluation of the provisions concerning fundamental rights included in the Amsterdam Treaty; the implications of the indivisibility principle; the possible content of new rights mirroring the challenges of an information society; the justiciability of fundamental rights; the relation to the protection of fundamental rights provided by the Council of Europe; and the role of fundamental rights in the development of the European Union.

The Group of Experts debated these questions in six meetings held since March 1998 and presented its report in February 1999. In the course of these meetings, the Group discussed issues concerning the recognition of fundamental rights with representatives of the Platform of European Social NGOs and of the European social partners.

The report deals first with the Amsterdam Treaty and its consequences. It then addresses the factors and conditions that ought to be considered by any future attempt to promote the explicit recognition of fundamental rights. Finally, the report makes a series of recommendations for achieving an express recognition, and for the improvement of fundamental rights protection.

II. The Amsterdam Treaty

The Amsterdam Treaty may not have led to an explicit recognition of particular fundamental rights. It nevertheless marked a decisive step on the way to an ever clearer recognition of the principle of fundamental rights protection by the European Union. The Treaty affirms the European Union's commitment to human rights and fundamental freedoms (Art. 6 (1)) and explicitly confirms the Union's attachment to fundamental social rights (Preamble, fourth recital). It does this, however, by maintaining the previously adopted system of references. Thus, the Treaty stresses the respect of the fundamental rights guaranteed by the 1950 European Convention on Human Rights (ECHR) and as determined by the common constitutional traditions of the Member States and hence by the general principles of Community law (Art. 6 (2)). Similarly, both the Preamble and Art. 136 of the EC Treaty refer to the fundamental social rights by pointing to the 1961 European Social Charter (Council of Europe) and the 1989 Community Charter.

Rather than listing fundamental rights, the Amsterdam Treaty establishes procedures intended to secure their protection. Art. 13 of the EC Treaty, for instance, empowers the Council to take appropriate action to combat discrimination, after consultation of the European Parliament. The possible grounds of intervention are explicitly indicated in Art. 13 and range from discrimination concerning sex, racial or ethnic origin to discrimination regarding religion, belief, disability, age or sexual orientation. The Community is therefore given the opportunity to develop policies and proposals intended to prevent these discriminations. Moreover, provisions such as Art. 3 (2) and 141 (4) of the EC Treaty lay the grounds for measures designed to achieve an effective equality of men and women including positive action.

In a far more general way but still along the same lines, Art. 136 of the EC Treaty qualifies the fundamental social rights, as determined by the European Social Charter and the Community Charter, as guidelines for activities of both the Community and the Member States. These are intended to promote employment, improve living and working conditions in order to make possible their harmonisation while the improvement is being maintained, ensure proper social protection, secure a dialogue between management and labour and develop human resources in a way permitting to obtain a lasting high employment and to eliminate social exclusion.

Finally, Art. 7 provides that the Council may, in the event of a serious and persistent breach of the principles mentioned in Art. 6 (1), suspend a Member State from its Treaty rights.

The Amsterdam Treaty has also led to changes in the jurisdiction of the European Court of Justice (ECJ) that in turn affect the protection of fundamental rights. Thus, according to Art. 46 of the EU Treaty it is now within the Court's powers to ensure that Art. 6 (2) is observed by the institutions of the European Union. However, the Court's jurisdiction is in principle restricted to Community law. As

a result, with the exceptions of Articles 35 and 40 of the EU Treaty, the Court's jurisdiction does not cover actions regarding the second and third pillars.

Another equally relevant but no less limited expansion of the Court's jurisdiction occurs in connection with 'common actions' of the Member States as specified in Title VI of the EU Treaty. The activities referred to concern the prevention, detection and investigation of crime as well as extradition and are intended to achieve, in the interest of the citizens, 'a high level of safety within an area of freedom, security and justice' (Art. 29). According to Art. 46 lit. b of the EU Treaty the Court has jurisdiction in these cases as long as the conditions of Art. 35 are fulfilled. The Court can, therefore, at the request of national courts or tribunals, give preliminary rulings on the validity or the interpretation of Council instruments adopted in the context of Art. 29, provided the Member State concerned has declared that it accepts such jurisdiction. The Court can also review the legality of Council decisions and rule on any dispute between Member States concerning the interpretation or application of acts adopted under Art. 34 (2).

III. Deficits and inconsistencies

As important as the changes brought about by the Amsterdam Treaty are, none of them offers a lasting and satisfactory answer to the issues addressed, both in the report of the Comité des Sages, and the ensuing discussion.

1. There is increasing uneasiness and confusion due to the differences and contradictions in the perception and application of the European Union's commitment to the fundamental rights across the three pillars.

The Amsterdam Treaty and especially the modifications of the EC Treaty undoubtedly have far-reaching effects in the first pillar through the impact of Community law. The second (common foreign and security policy) and third (justice and home affairs) pillars are, however, based on traditional intergovernmental relations. Thus, the manifest effort of the Community law to develop and implement the protection of fundamental rights corresponds to equally manifest attempts to limit their influence in the second and third pillars.

A characteristic example is the reaction to the quest for improvement of the protection of personal data in the various pillars. While Parliament, Council and Commission, in connection with the adoption of the 1995 data protection directive, unanimously pointed to the direct link between data protection and fundamental rights, the Member States followed a restrictive policy in the two other pillars. The very principles and measures that had been accepted in the case of the directive in order to respect fundamental rights were thus questioned and to a large extent abandoned in agreements such as the Europol Treaty.

If the European Union's commitment to the fundamental rights, as expressed in the Amsterdam Treaty, is to be taken seriously, both the Member States and the European Union's institutions must act under the same premises in all three pillars. In other words, fundamental rights should remain the primary and decisive criteria of the compatibility of the activities of all institutions and bodies with the European Union's guiding principles.

2. The actual system of references is confusing and counter-productive. While, for instance, the ECHR is cited twice in the EU Treaty, there is not a single mention in the EC Treaty. In contrast, both the European Social Charter and the Community Charter are quoted in each of these documents. But their explicit mention in the Preamble of the EU Treaty is not followed by an equally outspoken reference in Art. 6 where only the ECHR is cited. The opposite is the case in Art. 136 of the EC Treaty. It cites the European Social Charter and the Community Charter but not the ECHR, despite the impact of fundamental rights, such as freedom of association, respect for private and family life, or freedom of expression, on employment relationships.

Moreover, the general references suggest that fundamental rights are put on the same level irrespective of the document they are defined in. But the main sources

of fundamental social rights, the European Social Charter and the Community Charter, are in fact only seen as a basis of Community policies. The result is, inevitably, the impression of a selective approach to fundamental rights implying an equally selective significance. Some of the rights are guaranteed the highest possible degree of protection, in part due to their justiciable character. Others, however, such as social rights, risk being relegated to the status of mere aspirations of both the European Union institutions and its Member States.

Although Art. 136 expressly and emphatically refers to the European Social Charter and to the Community Charter, one article later (Art. 137 (6)) the EC Treaty explicitly excludes the right of association, as well as the right to strike and the right to impose lock-outs, from the duty to support and complete the efforts of the Member States designed to implement the social policy aims defined in Art. 136.

In other words, the European Union is prevented from acting on its own to protect better those rights that traditionally belong to the core of social rights, and that over and again have been affirmed by both national laws and international treaties. The seemingly general inclusion of social rights into the principles governing the policies and activities of the European Union is in fact only partial.

Finally, the restriction of the references to a few international documents raises questions as to the exact status of other Conventions, in particular those of the International Labour Organisation (ILO). While their importance in abstract terms may be undisputed, as long as they are not mentioned, both their role and their impact remain uncertain. This is all the more so given that the ECJ seems to distinguish between the ECHR and other Conventions. Whereas the first 'forms part' of Community law, the latter operate merely as guidelines for the interpretation and application of Community law.

In sum, the references may at first suggest a clear commitment to a set of specific rules. In reality, they neither delimit the applicable rules in a sufficiently precise way, nor do they secure an equal respect for all fundamental rights.

3. Fundamental rights are dealt with in a way that complicates and even imperils the role of the ECJ. The Court has not only stressed the importance of the ECHR but also repeatedly confirmed that the Convention is an essential element of Community law. The least that under these circumstances could have been expected at Amsterdam was therefore an amendment of the EC Treaty affirming the Court's position and simultaneously substituting the Court's abstract system of references by provisions permitting better discernment and delimitation of the rules that have to be considered in order to make certain the respect of fundamental rights.

Furthermore, the Court's role in the second and third pillars has not been sufficiently clarified. It could be argued that the predominantly intergovernmental character of the rules governing these two pillars implies that they do not directly impact on EU citizens. But as the example of Europol demonstrates, regulations adopted in the frame of both pillars do indeed profoundly impinge on the fundamental rights of individuals. To disregard the interplay of national and

supranational jurisdiction and, in particular, to deny the ECJ jurisdiction, not only hinders efficient protection in fields in which the ECJ must secure the respect of fundamental rights, as, for instance, in the case of the rules determining the use of personal data; it also counteracts the development of a common constitutional order of an 'ever closer union' of European peoples. Hence, if the European Union, in the interest of both its citizens and other persons within its jurisdiction, wants to ensure consistent application of the principles guiding its activities, the jurisdiction of the Court has to be defined in a way which guarantees rather than undermines this consistency.

IV. Recommendations

The role of the Amsterdam Treaty should certainly not be underestimated. It reiterates the commitment of the European Union to fundamental rights and invigorates the obligation to develop and implement policies securing protection of these rights. However, deficiencies and inconsistencies such as those just described cannot be ignored. On the contrary, their existence should intensify efforts to achieve explicit and unequivocal recognition of fundamental rights.

1. A comprehensive approach

Future reflections on fundamental rights should focus on their double function. Fundamental rights delineate the foundations of a society based on the elements mentioned in both the Preamble and Art. 6 (2) of the EU Treaty and, at the same time, guarantee the individuals' self-determination and chances of participation. The degree to which the European Union will be able to contribute to the establishment of a society corresponding to its aspirations depends essentially on the ability of its citizens to realise and exercise their fundamental rights. Therefore, the obligation to respect and implement fundamental rights, as already mentioned, cannot be split up. It is not only a primary duty of the European Union, but also a common responsibility of the Member States together with the Union, to make certain that fundamental rights are safeguarded irrespective of which matter or pillar is at stake.

In short, while the objectives pursued by the European Union may vary, the protection of fundamental rights must nevertheless be guaranteed. The European Union should therefore move to correct the present situation.

2. Range of application

Furthermore, the extension of the European Union's activities, as sanctioned by the Amsterdam Treaty, draws attention to the range of application of fundamental rights. Rights which were obviously connected with traditional EC issues, such as equality of sexes or the free movement of workers, were often perceived as rights of the EC citizens and therefore were addressed as an essential element of an EC citizenship. But, as the case of third country nationals illustrates, such a restriction is inconsistent with the universality of at least a substantial number of fundamental rights. Similarly, asylum-seekers cannot be exempted from the European Union's duty to respect fundamental rights.

The urgency of a clear reaction is underscored by the decisions of both the ECJ and the European Court of Human Rights. In this context, it can be noted that in 1997 the Commission proposed to extend some provisions of Regulation (EEC) 1408/71 on social security for migrant workers to nationals of third countries. Any further reflection on fundamental rights must address their scope of application as far as non-citizens of the EU are concerned.

The issue of 'range of application' also implicates the European Union's external relations. A union that claims to be bound and guided in its internal policies by the duty to respect fundamental rights must, if its credibility is not to be challenged, consider those same rights as a leading principle in its external relations. This is a matter in which action has, of course, already taken place. Thus, for example, Art. 177 (2) of the EC Treaty explicitly states that Community policies in the area of development cooperation must contribute to respect of human rights. Also, a human rights clause is now a common element of agreements concluded between the Community and third countries.

3. Visibility

Fundamental rights can only fulfil their function if citizens are aware of their existence and conscious of the ability to enforce them. It is, consequently, crucial to express and present fundamental rights in a way that permits the individual to know and access them: fundamental rights must be visible.

Their current lack of visibility not only violates the principle of transparency, it also discredits the effort to create a 'Europe of citizens'. Clearly ascertainable fundamental rights stimulate the readiness to accept the European Union and to identify with its growing intensification and expanding remits.

It could be argued that most fundamental rights can be found in national constitutions and international treaties, and that an explicit enumeration of these rights by the European Union would therefore add very little. This, however, does not justify a system of citations that conceals the fundamental rights and makes them thus incomprehensible to the individuals. Where rights are concerned, ways and means must be found to make them as visible as possible. This involves spelling rights out at the risk of repetition, rather than merely referring to them in general terms as contained in other documents.

4. Justiciability

Clear statements determining the fundamental rights are, however, not sufficient. In order for rights to have any real impact, those seeking to assert them within the European Union have to know who is exactly covered and whether the right is justiciable. Efficient safeguard of fundamental rights as a rule presupposes judicial protection. It is, however, important to note that justiciability can have different meanings in different contexts, as the example of 'social rights' demonstrates. Social rights can involve straightforward justiciable rights, as the case of non-discrimination illustrates, both in general and specifically with regard to the equality of sexes. Or, they can involve 'rights' that are in fact 'fundamental policy purposes', as, for instance, the demand for a life-long education, vocational guidance and training or the quest for health and safety in the working environment.

Both justiciable rights and fundamental policy purposes require the European Union, as well as national legislators, to provide the necessary framework for their implementation. This is certainly obvious where the EC Treaty, as in Art. 136 and 137 (1), expressly names policy objectives such as the information and

consultation of the workers, the improvement of the working environment to protect workers' health and safety, or the integration of persons excluded from the labour market. In each of these cases the significance of particular measures has, over and over again, been demonstrated by the adoption of relevant directives which transform abstract policy ends into concrete duties of legislators.

The same applies to the areas of discrimination referred to in Art. 13 of the EC Treaty. Once again the Treaty empowers the Community to seek and adopt rules to combat discrimination. Concrete measures, legislative or otherwise are now required to implement Article 13.

While judicial protection is undoubtedly a crucial element in safeguarding fundamental rights, it is by no means its only prerequisite. Legal remedies have to be complemented by legislative or administrative activities intended to implement and secure individual rights. As, for example, experience in the field of sex discrimination shows, equality of men and women can be achieved only by specific policies eliminating, in particular, the conditions of structural discrimination. Judicial protection and corrective action must be seen as part of one regulatory system which integrates both approaches. To dissociate them is to reduce the individual's chance of exercising his or her rights.

It is therefore vital to establish genuine justiciable rights that entail more than a passive obligation of non-violation. Therefore, both the justiciability and the obligation to ensure specific rights by supporting their application through a series of regulatory actions should be underscored. The best way of achieving this is probably to choose a wording that places a duty on the European Union to guarantee a given right.

5. Competence of the European Union and its Member States

As helpful as a rule affirming the obligation to guarantee fundamental rights is, it also exemplifies the limits of the European Union's efforts to recognise and safeguard these rights. It cannot be disputed that the European Union is perfectly competent to secure fundamental rights within the limits of its jurisdiction. To the extent that the European Union addresses matters covered by Community law it may hence use its regulatory powers to affirm and implement fundamental rights. In both the equality and the data protection field the Community linked its regulatory framework to the need to ensure the respect of fundamental rights.

Restricting the European Union's competence as regards fundamental rights contrasts with the paramount relevance of these rights. To combine their recognition with a proviso expressly restricting their application impairs the credibility of the commitment to fundamental rights. The readiness to respect and implement them risks remaining unconvincing as long as an equal degree of acceptance in fields not subject to Community law – either in the European Union's or the Member States' area – is not secured.

However, convincing as such an aspiration may appear, it should also be clear that a consistent protection of fundamental rights can be achieved only through a long and surely cumbersome process marked by the parallel existence of regu-

latory systems at the Union and the Member States level. The emphasis must therefore primarily lie in careful and persistent coordination with the help of common standards such as those developed in the context of the ECHR.

6. Role of the European Court of Justice – Relationship to the European Court of Human Rights

The quest for provisions explicitly defining fundamental rights must not obscure the role of the ECJ. It was the Court which first integrated the ECHR into Community law and it is also the Court which, regardless of the means chosen to articulate and affirm fundamental rights, will exert paramount influence on their future interpretation and application.

A text enabling individuals to ascertain their rights is imperative for affirming fundamental rights in the European Union. However, the living law will ultimately be determined by the decisions of the ECJ. The actual fragmented and partially unclear rules delineating its jurisdiction are deemed to prevent the ECJ from fully fulfilling its functions. Any attempt, however, to extend its competence must take into account the Court's relationship to the European Court of Human Rights.

In addressing this question, the context in which the ECJ renders its decisions should not be overlooked. It is outlined by the EU and the EC Treaties. The ECJ has against this background strengthened the protection of fundamental rights step by step. A coherent and efficient protection can be best achieved with full knowledge of the expectations and demands expressed in the Treaties.

Moreover, as the European Union undergoes far-reaching structural changes that underscore the significance of its commitment to fundamental rights, the more the need to secure protection consistent with the European Union's principles and aspirations will become evident. The growing impact of the second and third pillar and the example of Europol demonstrate how crucial the role of the ECJ is.

Therefore, the clearly independent jurisdictions of the ECJ and the ECHR should be maintained. As in the past, it must be up to the ECJ to carefully consider and integrate the decisions of the European Court of Human Rights into the law of the European Union, a practice which will assume increased importance after fundamental rights have been recognised in a more explicit and detailed way by the European Union.

There may, of course, be other ways to safeguard a coherent application of the principles developed by both Courts, and to ensure consistency in the development of fundamental rights at European level. One of the possible options is a system of references by which the ECJ could, similarly to the mechanism under Art. 234 of the EC Treaty, refer questions of interpretation to the European Court of Human Rights. A final appeal to the European Court of Human Rights could also be considered. Further discussion of either of these approaches would, at least for the moment, be inappropriate, not only in view of the considerable changes of the existing procedural structures which they would require, on the part of both the European Union and the Council of Europe, but primarily be-

cause of the particular context which determines the judicial resolution of conflicts concerning fundamental rights within the European Union. Informal cooperation between the ECJ and the ECHR jurisdictions, which has existed for many years, should, nevertheless, be continued and strengthened.

7. Organisational measures

As significant as the role of the ECJ is, efficient implementation of fundamental rights also depends on the establishment of other mechanisms designed to ensure the coherence of the European Union's fundamental rights policies and to control their application. The Amsterdam Treaty has already taken a first step in this direction. According to Art. 286 (2) of the EC Treaty, the processing of personal data by the various institutions and bodies of the European Union must be supervised by an independent control agency. The European Union has, in a field that directly implicates fundamental rights, acknowledged the need to install procedures which will enable the impact of rules securing these rights to be monitored and to detect and correct possible deficiencies in a timely fashion.

Art. 286 of the EC Treaty also demonstrates the fact that the European Union's commitment to fundamental rights does not concern any one institution or body. It impacts on all its activities. Mechanisms securing an internal coordination of fundamental rights' policies must therefore be provided for.

Experience shows, however, that the development of both credible and efficient fundamental rights policies depends to a decisive extent on continuous dialogue with those whose rights are to be guaranteed. Traditional interlocutors such as the social partners together with non-governmental organisations can, particularly in the area of fundamental rights, offer critical advice and also help to locate and identify areas of conflict.

For precisely the same reason, such a dialogue should not be confined to preliminary reflections only, but continued and intensified once fundamental rights have been expressly recognised and specific policies worked out. In other words, internal coordination must be complemented by procedures intended to establish a regular exchange of views and experiences with the social partners and non-governmental organisations.

8. Indivisibility

Any attempt to explicitly recognise fundamental rights must include both civil and social rights. To ignore their interdependence questions the protection of both. It is in this sense that their indivisibility has over and again been affirmed. Their separation in part has historical reasons. It reflects the late 'discovery' of social rights, as compared to civil and political rights. The more the attention concentrated on specific aspects of social rights, the more they were perceived as a different type of right, that had to be treated differently.

As important as it was, especially in the early years of discussions on social rights, to understand and stress their special character, the separation from civil and political rights led increasingly to a binary classification of fundamental rights and legitimated long-standing attempts to grant social rights a distinct and clearly inferior status. The history of the European Communities offers many examples of the efforts to regard social rights as a group of rights with less relevance than traditional civil and political rights. The quest for 'indivisibility' counters all attempts to maintain the separation and to deny social rights the rank conceded to civil and political rights.

It should nevertheless be clear that 'indivisibility' does not imply a simple juxtaposition of social and civil rights. Equality of sexes or non-discrimination on grounds of age may have acquired a particular significance in the case of labour relationships. But both originated from the general equality principle and must, if their meaning and range are to be correctly appreciated, be seen and discussed against the background of the reflections and aspirations that guided the application of the equality principle. Similarly, the relevance of rules restricting the use of employee data and guaranteeing employees' privacy may be obvious, but they can be accurately formulated only in connection with an explicit recognition of individuals' right to determine the processing of their data. In short, there is, in the words of the European Court of Human Rights, no 'water-tight division' between civil and social rights.

'Indivisibility' therefore demands, first and foremost, a meticulous review of civil rights in order to address and incorporate matters traditionally dealt with in a closed category of social rights. Where adaptation and completion of civil rights is not possible, formulation of new rights will be needed, as is particularly the case with collective rights, such as the right to resort to collective actions.

Irrespective, however, of whether the recognition of social rights is effected by reinterpreting traditional civil rights, or by enlarging the list of fundamental rights, the inclusion of social rights does not fully cover fundamental social policies. All such policies must therefore, as in the past, be separately addressed as essential elements of the European Union's general policy goals.

9. The explicit recognition of fundamental rights: an open process

A comprehensive and thorough review of fundamental rights, so as to secure their best possible integration into the law of the European Union and take into account their function in a modern society would seem to be the most appropriate reaction to the foregoing considerations. The risk, however, of formulating a new and genuine Community-specific set of fundamental rights is considerable. Such an attempt would in fact reopen and prolong a debate that has already lasted far too long.

Both the arguments for a reformulation, and the possible content of the rights to be recognised, have by now been exhaustively discussed. Moreover, the far-reaching changes of the European Union, the expansion of its activities and not the least its growing international role in a globalised society, as stressed at the

beginning of this report, speak strongly against further adjournment of an explicit recognition of fundamental rights.

What, more than ever, is needed, is not new deliberation but a clear decision. Instead of concentrating all efforts on the formulation of a new Bill of Rights, the recognition of rights should build in particular on the ECHR, which has become, through the case law of its organs, a common European Bill of Rights.

This should, however, not be understood as an incitement to pick and choose only those rights that seem especially relevant to the European Union's own history and tasks. On the contrary, the acceptance of the ECHR must be guided by the fact that the European Union is in a process of structural modifications, as particularly illustrated by the increasing importance of the second and third pillar. Rights which, therefore, may at first appear to be perfectly alien to the European Union, may become increasingly significant, as more attention focuses on new aspects of the European Union, such as judicial and police cooperation in criminal matters.

The rights provided in Articles 2 to 13 of the ECHR should hence be incorporated in their entirety into Community law, together with the relevant rights in the Protocols to the ECHR. These are:

- the right to life;
- the prohibition of torture, inhuman or degrading treatment or punishment;
- the prohibition of slavery, servitude and forced or compulsory labour;
- the right to liberty and security;
- the right to a fair and public hearing by an independent and impartial tribunal;
- the right not to be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed;
- the right to respect for private and family life;
- the right to freedom of thought, conscience and religion;
- the right to freedom of expression;
- the right to freedom of peaceful assembly and to freedom of association;
- the right to marry and to found a family;
- the right to have an effective remedy in case of a violation of any of these rights and freedoms;
- the right to property;
- the right to vote; and
- the right to free movement.

Secondly, clauses detailing and complementing the ECHR must be added as it appears necessary. Among the most obvious examples are:

- the right to equality of opportunity and treatment, without any distinction such as race, colour, ethnic, national or social origin, culture or language, religion, conscience, belief, political opinion, sex, marital status, family responsibilities, sexual orientation, age or disability;
- the freedom of choice of occupation;
- the right to determine the use of personal data;
- the right to family reunion;
- the right to bargain collectively, and to resort to collective action in the event of a conflict of interests; and
- the right to information, consultation and participation, in respect of decisions affecting the interests of workers.

In some cases, this latter list extends rights already included in the ECHR or in the Protocols to the ECHR, for example non-discrimination and freedom of association. In other cases it enshrines rights long accepted as fundamental social rights.

In defining fundamental rights, other international human rights treaties should also be taken into consideration. Particular attention should also, in view of the social rights, be given to the conventions of the ILO, especially those on the freedom of association (Nos 87 and 98) and on the discrimination in employment relationships (No 111) as well as to the tripartite ILO Declaration on fundamental principles and rights at work adopted in June 1998.

The specification of fundamental rights is, however, only an intermediary act. It reflects the status quo but at the same time paves the way for further completion: the inclusion of rights addressing in particular, protection of the environment and the effects of a rapidly developing biotechnology on the individual's personal integrity and self-determination. Here the European Union should use the procedure followed in the case of the information and communication technology field, where broad discussion of the characteristics and consequences of the 'information society' took place in a special forum established by the Commission. This raised awareness for the need for rules safeguarding fundamental rights, and promoted a readiness to adopt required measures. Similarly, an equally intensive debate on the relevance and the repercussions of biotechnology should be initiated in order to discern and formulate the appropriate additions to the list of fundamental rights.

In sum, the recognition of fundamental rights must be understood as a process that in its first phase should lead to the enumeration of a set of rights incorporating and expanding the ECHR, but which, in particular against the background of the decisions of the ECJ and the European Court of Human Rights, should ultimately result in a reformulation of fundamental rights adapted to the experiences

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2000 OJ C54/93
Resolution on the Establishment of the Charter of Fundamental Rights

Thursday 16 September 1999

10. Area of freedom, security and justice

(a) B5-0110/1999

Resolution on the establishment of the Charter of Fundamental Rights

The European Parliament,

— having regard to the conclusions of the Cologne European Council,

— having regard to its proposals contained in its resolutions on the Constitution of the European Union in particular, and in its other resolutions of a general nature on institutional matters adopted in the course of its 1994-1999 term of office [1],

1. Welcomes the decision taken at the Cologne European Council to proceed with drawing up a draft European Union Charter of Fundamental Rights in good time for the December 2000 European Council;

2. Considers that the commitment to establishing that Charter represents one of its constitutional priorities and entails the joint responsibilities of the two Institutions on which the Union's legitimacy is founded, viz: the Council (as regards the Member States) and the European Parliament (as regards the peoples of Europe);

3. Draws attention to the need for an open and innovative approach to shaping the Charter, the nature of the rights to be featured in it, and the part it will play and the status it will command in the constitutional development of the Union;

4. Calls, as regards the membership of the drafting authority and the organisation of its work;

— for the number of the Members of the European Parliament to be equal to the number of the representatives of Member-State Heads of State and Government, in order to confer an equally high public profile on each side and to provide for adequate representation of the different political tendencies and sensitivities represented in the European Parliament;

— for the essential role and contribution of national parliaments to be ensured by the most effective means possible, to be determined in the light of appropriate consultations with speakers of national parliaments;

— for the powers of the President and the Bureau to be determined by the drafting authority;

— for the latter to be empowered to decide on the option of convening a drafting committee and working parties;

— for appropriate steps to be taken to ensure transparency of activities; for contributions from NGOs and the general public also to be ensured, and for public hearings to be held;

— for the authority's secretariat to be the responsibility of the participating bodies;

5. Instructs its President to forward this resolution to the Commission, the Council, the other Community Institutions and the governments and parliaments of the Member States.

[1] OJ C 120, 16.5.1989, p. 51; OJ C 324, 24.12.1990, p. 219 ; OJ C 61, 28.2.1994, p. 155.

(b) B5-0116/1999

Resolution on the extraordinary European Council meeting on the area of freedom, security and justice (Tampere, 15-16 October 1999)

The European Parliament,

— having regard to the EU and EC Treaties, and in particular the provisions regarding the development of the Union as an area of freedom, security and justice (AFSJ),

— having regard to its previous resolutions on this subject [1],

[1] OJ C 219, 30.7.1999, pp. 5 and 6; OJ C 175, 21.6.1999, p. 4.

II.2. The Second Path – Accession to the European Convention on Human Rights

1979 OJ C127/70
Resolution on the accession of the European Community to the European Convention on Human Rights

21. 5. 79 Official Journal of the European Communities No C 127/69

MINUTES OF PROCEEDINGS OF THE SITTING OF FRIDAY, 27 APRIL 1979

IN THE CHAIR: MR MEINTZ

Vice-President

The sitting was opened at 9 a.m.

Approval of minutes

The minutes of the previous day's sitting were approved.

Procedure without report

Since no member had asked leave to speak and no amendments had been tabled to them, the President declared approved under the procedure without report laid down in Rule 27A of the Rules of Procedure the following Commission proposals, which had been announced at the sitting of Monday, 23 April 1979:

— proposal from the Commission of the European Communities to the Council for a Directive supplementing the Annex to Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (Doc. 16/79);

— proposal from the Commission of the European Communities to the Council for a Regulation opening, allocating and providing for the administration of Community tariff quotas for certain wines having a registered designation of origin, falling within subheading ex 22.05 C of the Common Customs Tariff and originating in Algeria (1979 to 1980) — (Doc. 41/79);

— proposal from the Commission of the European Communities to the Council for a Directive amending for the second time the Annex to Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (Doc. 49/79).

Accession by the Community to the European Convention on Human Rights (vote)

Parliament then voted on the motion for a resolution contained in the report by Mr Scelba (Doc. 80/79); the preamble and paragraph 1 were adopted.

On paragraph 2, Mr Scott-Hopkins had tabled amendment No 1 seeking to replace this paragraph by a new text.

Mr Santer, deputizing for the rapporteur, spoke.

Amendment No 1 was adopted.

Paragraphs 3 to 5 were adopted.

Parliament adopted the following resolution:

RESOLUTION

on the accession of the European Community to the European Convention on Human Rights

The European Parliament,

— having regard to its resolution of 13 April 1978 on the legal policy of the European Community (1),

— having regard to the progress achieved at the round table convened by it from 26 to 28 October 1978 in Florence,

— having regard to the need, in the run-up to the elections to the European Parliament by direct universal suffrage, to make clear to the Community citizen that his rights in the Community must be strengthened and in what way this is to be done,

(1) OJ No C 108, 8. 5. 1978, p. 42.

— having regard to the resolution it adopted on 16 November 1977 in which it called for the Convention in question to be implemented under Community law (1),

— having regard to the motion for a resolution tabled by Mr Bayerl, Mr Calewaert, Mr Pisani, Mr Dondelinger, Mr Albertini, Mr Sieglerschmidt, Mr Holst and Lord Ardwick on behalf of the Socialist Group and Mr Bangemann on behalf of the Liberal and Democratic Group on the accession of the European Community to the European Convention on Human Rights (Doc. 509/78),

— having regard to the report of the Political Affairs Committee (Doc. 80/79), and the opinion of the Legal Affairs Committee,

1. Is in favour of the accession of the European Community to the European Convention on Human Rights;

2. Envisages the establishment of a Committee of Experts with a view to drafting a European Charter of Civil Rights;

3. Calls on the Council and Commission, in close cooperation with the European Parliament:

(a) to make immediate preparations for the accession of the European Community to the European Convention on Human Rights,

(b) to enshrine the citizen's right of petition in the Community Treaties, and

(c) to guarantee in the Treaties the individual's right of direct appeal to the Court of Justice of the European Community;

4. Instructs its appropriate committees to submit a report on this matter as soon as possible;

5. Requests its President to forward this resolution to the Council and Commission.

(1) OJ No C 299, 12. 12. 1977, p. 26.

Expulsion from Malta of Mr von Hassel (vote)

Parliament then voted on the motion for a resolution contained in the Johnston report (Doc. 584/78); the first indent of the preamble was adopted.

On the second indent of the preamble, Mr Radoux, Mr Seefeld and Mr Cunningham had tabled on behalf of the Socialist Group amendment No 1 seeking to modify this indent.

Amendment No 1 was adopted.

Parliament adopted the second indent thus amended and then the third indent of the preamble.

On paragraph 1, Mr Radoux, Mr Seefeld and Mr Cunningham had tabled on behalf of the Socialist Group amendment No 2 seeking to replace this paragraph by four new paragraphs.

Amendment No 2 was adopted.

On paragraph 2, Mr Radoux, Mr Seefeld and Mr Cunningham had tabled on behalf of the Socialist Group amendment No 3 seeking to amend this paragraph.

Amendment No 3 was adopted.

Parliament adopted paragraph 2 thus modified and then paragraph 3.

Since the result of the show of hands was doubtful, Parliament took a fresh vote by sitting and standing and rejected the motion for a resolution.

Decision introducing a Community system of information on accidents (vote)

Parliament adopted the resolution contained in the Cassanmagnago Ceretti report (Doc. 40/79):

COM (79) 210
Memorandum on the accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms

Bulletin
OF THE EUROPEAN COMMUNITIES

Supplement 2/79

Accession of the Communities to the European Convention on Human Rights

Commission Memorandum

Commission
of the European Communities

Bulletin
of the European Communities

Supplement 2/79

Memorandum on the accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms

(adopted by the Commission on 4 April 1979)

COM (79) 210 final
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Commission

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contents

Introduction

The European Community has an increasing number of direct legal relations with individuals. Its activities no longer only concern a certain number of economic categories — such as farmers or professional importers and exporters — but also each individual citizen. It is, therefore, not surprising to see today a demand expressed for the powers which belong to the Community to be counterbalanced by their formal subjection to clear and well-defined fundamental rights.

The Commission believes that the best way of replying to the need to reinforce the protection of fundamental rights at Community level, at the present stage, consists in the Community formally adhering to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (hereafter referred to as 'the European Convention on Human Rights' or 'ECHR'). The Commission in proposing this, does not disregard the fact that, in the longer term, the Community should endeavour to complete the Treaties by a catalogue of fundamental rights specially adapted to the exercise of its powers. It does not, however, appear possible to achieve this objective in the short term because of the differences of opinion which exist between the Member States on the definition of economic and social rights. In order to reinforce the legal protection of the citizens of the Community immediately and in the most efficient manner possible, one should rely, in the first place, on the fundamental rights inscribed in the ECHR. In other words, the Community should adhere as soon as possible to this Convention and to the protection mechanisms which it contains. The elaboration of a catalogue for the Community itself would in no way be held up. Accession to the ECHR would constitute on the contrary a first step in the direction of that objective.

The memorandum reaches the conclusion that the accession of the European Community to the ECHR seems desirable for a whole series of reasons. None of the difficulties which have appeared in this context seems insurmountable. Given the dimension of the action to be undertaken and its complexity, the Commission considers it necessary, before setting in motion the appropriate institutional mechanisms, to encourage as profound a discussion as possible with all interested bodies on the basis of this memorandum.

Part One

General remarks

The protection of human rights and the Member States

1. For more than two centuries the history of Europe has been characterized by constant efforts to improve the protection of fundamental rights. Founded on the human and civil rights declarations of the eighteenth century, all European constitutions today contain an established body of inviolable fundamental rights and freedoms. This is particularly true of the Member States of the European Communities. In contrast to the constitutions of some East European countries, the constitutional orders of all Member States not only recognize essentially the same body of fundamental freedoms, but also provide for the judicial enforcement of such rights in the event of violations. All Member States, aware of their common heritage of ideas and political traditions, have, moreover, become parties to international conventions on human rights; in particular, they have without exception become parties to the European Convention on Human Rights.

The question of the protection of human rights has become increasingly topical in the last few years. High-level national and European Courts have delivered important judgments on the safeguarding of these rights. In France, the Cour de Cassation recently recognized, in a fundamental judgment, the validity in national law of the European Convention on Human Rights. [1] In the United Kingdom, a Bill of Rights is envisaged and in Belgium and the Netherlands also consideration is being given to improving the protection of fundamental rights against violations by the legislature. At the Helsinki Conference, the protection of human rights was the most important demand made by the Western States; the final act of that conference has awakened expectations in the Eastern bloc countries with regard to the granting of greater freedom.

2. As far as the European Communities in particular are concerned, their Member States already declared when concluding the Treaty establishing the European Economic Community that the ultimate aim of the pooling of their economic resources was to preserve peace and liberty. The guarantee of a body of fundamental rights and the existence of a democratic pluralist regime are among the essential features of the declaration of the Nine on 'European Identity' adopted in Copenhagen in 1973 and according to which 'they are determined to defend the principles of representative democracy, the rule of law, social justice — the ultimate goal of economic progress — and respect for human rights. All of these constitute fundamental elements of European Identity'. Both elements also played a central role in determining the attitude of the Community towards European countries wishing to become members. The Heads of State or Government solemnly declared at the European Council meeting of 8 April 1978 'that respect for and maintenance of representative democracy and human rights in each Member State are essential elements of membership of the European Communities'. [2]

The protection of human rights and the Community

3. The Treaties of Paris and Rome are designed primarily as instruments of economic integration, and probably for this reason, but perhaps also on account of the restricted powers accorded to the Community institutions, do not include for the Community its own catalogue of fundamental rights. Nevertheless, the Court of Justice had to deal at a relatively early stage with complaints in which it was maintained that a particular Community act violated a fundamental right guaranteed by the constitution of a Member State. In its desire for uniform application of Community law, the Court of Justice contented itself in the initial stages of its case law by declaring in regard to such complaints that it was not one of its tasks to ensure that national rules of a Member State were observed, even where such rules were of a

[1] Cour de Cassation, Judgment of 5 December 1978 in criminal proceedings against Chérif Baroum.
[2] Bull. EC 3-1978, Preliminary Chapter.

constitutional nature. [1] Only from the end of the 1960s could an evolution be discerned in the decisions of the Court. In two judgments of principle, in 1969 and 1970, it ruled that respect for fundamental rights formed an integral part of the general principles of law, the observance of which the Court had to ensure. The protection of these rights, while inspired by the constitutional traditions common to the Member States, had nevertheless to be ensured within the framework of the Community's structure and objectives. [2]

In subsequent decisions the Court of Justice has specified the criteria according to which it intends to ensure the protection of fundamental rights at Community level, declaring that 'it could not accept measures incompatible with fundamental rights recognized and protected by the constitutions' of Member States.

4. The Court of Justice also stated that 'similarly, international treaties for the protection of human rights, on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law'. [3]

This case law of the Court, through which a whole series of fundamental rights and general principles of law have been subsequently recognized as essential elements of the Community legal order,[4] has been highly praised throughout the Community. The political institutions of the Community supported it in their Joint Declaration on fundamental rights of 5 April 1977 [5] and have repeatedly stressed the prime importance they attach to the method adopted by the Court for developing a means of protection of fundamental rights which is specifically adapted to the requirements of the Community.

5. Nonetheless, however satisfactory and worthy of approval the method developed by the Court may be, it cannot rectify at least one of the shortcomings affecting the legal order of the Communities through the lack of a written catalogue of fundamental rights: the impossibility of knowing in advance which are the liberties which may not be infringed by the Community institutions under any circumstances. The European citizen has a legitimate interest in having his rights *vis-à-vis* the Community laid down in advance. He must be able to assess the prospects of any possible legal dispute from the outset and therefore have at his disposal clearly defined criteria. The fact that judgments which operate only *ex post facto* cannot fully satisfy this requirement of legal certainty is inevitable in the nature of things and in no way implies criticism of the Court's approach.

The decision by the German Federal Constitutional Court, in its judgment of 29 May 1974, [6] that, so long as there existed no Community catalogue of fundamental rights corresponding to the German Constitution, it was entitled to decide upon the validity of legal acts of the Community — even where these had previously been declared lawful by the Court of Justice — in the light of the fundamental rights laid down in the German Constitution, is certainly incompatible with the principle of exclusive power of review by the Court of Justice and of the unity of Community law, but also demonstrates that at least some of the highest courts in the Member States consider it necessary to bind the Community to a written text.

The Italian Constitutional Court did not go quite so far in its Judgment No 183/1973 [7] but did none the less suggest a similar concern.

The European Parliament and a majority of writers on the subject have, like the Commission, criticized the decision of the German Federal Constitutional Court. Nevertheless, there has recently been increasing support for the idea of a written

[1] CJEC 4. 2. 1959 (Case 1/58 Stork v High Authority [1959] ECR 17); CJEC 17. 5. 1960 (Cases 36-38 and 40/59 Ruhrkohlenverkaufsgesellschaften v High Authority [1960] ECR 423).
[2] CJEC 12. 11. 1969 (Case 29/69 Stauder v City of Ulm [1969] ECR 419); CJEC 17. 12. 1970 (Case 11/70 Internationale Handelsgesellschaft [1970] ECR 1125).
[3] CJEC 14. 5. 1974 (Case 4/73 Nold v Commission [1974] ECR 491); CJEC 28. 10. 1975 (Case 36/75 Rutili v French Minister of the Interior [1975] ECR 1219).
[4] Commission report of 4 February 1976 on the protection of fundamental rights in the European Community — Supplement 5/76 — Bull. EC.
[5] OJ C 103 of 27. 3. 1977.
[6] BVerfGE 37, 271.
[7] Judgment of 27 December 1973 — Case 183/73 — Frontini and associates, Giurisprudenza Costituzionale, 1973, 2406; Foro Italiano, 1974, I, 315; Giurisprudenza Italiana, 1974, I, 1, 865.

catalogue of fundamental rights for the Community.

The advantages of such a catalogue are not contested by the Commission, but it is clear that the process of drawing it up will be a long and exacting task. If it were undertaken too hastily, there is the fear that it would bring to light differences between the Member States particularly with regard to economic and social rights, and that agreement would be possible only on the basis of the lowest common denominator. [1] This would represent a retrograde step compared with the level guaranteed by the Court of Justice of the European Communities.

6. As a way out of these difficulties, the suggestion of accession to the ECHR has been put forward from various sides, and in particular on the occasion of a symposium organized by the European Parliament in October 1978 in Florence. [2]

In its Report of 4 February 1976 to the European Parliament, the Commission declared that in its view the Community was already obliged to observe the human rights embodied in the ECHR on the basis of the decisions of the Court, but it did not consider it necessary for the Community formally to accede to this Convention. [3] Closer consideration has recently revealed more clearly to the Commission the disadvantages which arise from the lack of a written catalogue both for the image of the Community in general and for the protection of the rights of the European citizen. As a result, the Commission has reconsidered its position. It has considered the legal and technical problems which would be posed by the accession of the Community to the ECHR and it has come to the conclusion that there are no obstacles to such a step that cannot be overcome.

7. After a thorough examination of all the arguments, the Commission now recommends the formal accession of the Community to the ECHR. The decisive factor in its view is that the ECHR and the protection of fundamental rights ensured by the Court of Justice of the European Communities essentially have the same aim, namely the protection of a heritage of fundamental and human rights considered inalienable by those European States organized on a democratic basis. The protection of this Western European heritage should ultimately be uniform and accordingly assigned, as regards the Community also, to those bodies set up specifically for this purpose.

The Commission is aware that the accession of the European Communities to the ECHR will give rise to not inconsiderable difficulties on account of the Communities' particular structure. Before it submits appropriate proposals to the Council, therefore, it has considered it expedient to launch a discussion on the results of its examination by means of this memorandum in accordance with the announcement made by its President to the European Parliament on 16 November 1978.

8. It should be clearly stated from the outset that accession of the European Communities to the ECHR does not form an obstacle to the preparation of a special Community catalogue, nor does it prevent in any way the Court of Justice of the European Communities from further developing its exemplary case law on the protection of fundamental rights, which has always been welcomed by the Commission. As Article 60 thereof clearly shows, the ECHR is only a minimum code and thus in no way prevents its contracting parties from developing a more extensive protection of fundamental rights. The Court of Justice will therefore remain free not only to apply the method which it has developed for the Community with a view to defining economic and social fundamental rights, which are barely touched upon in the ECHR, but also where specific needs dictate, to go beyond the rights contained in the ECHR.

It should also be pointed out that accession to the ECHR does not imply any extension of the powers of the Community with regard to the protection of fundamental rights, and that it is in no way the intention of this memorandum to advocate the extension of the powers of the Community

[1] It should be pointed out in this connection that the first attempts to incorporate economic and social rights in the European Convention on Human Rights were not a striking success.

[2] See Resolution of the European Parliament of 27. 4. 1979; OJ C 127 of 21. 5. 1979.

[3] Supplement 5/76 — Bull. EC, point 28.

vis-à-vis the Member States to cover fundamental rights which are not within the scope of the Community.

The European Convention on Human Rights and its mode of operation

9. Drawn up within the Council of Europe, the European Convention on Human Rights was signed on 4 November 1950 and came into force on 3 September 1953. Five protocols were adopted later.

The ECHR has been signed by all members of the Council of Europe, that is to say all nine Member States of the Community, plus Austria, Cyprus, Greece, Iceland, Malta, Norway, Portugal, Sweden, Switzerland and Turkey and recently Spain and Liechtenstein also. With the exception of Spain and Liechtenstein, all these States have also ratified the Convention. [1]

The European Convention on Human Rights represents a collective guarantee at a European level of a number of principles set out in the Universal Declaration of Human Rights, supported by international judicial machinery making decisions which must be respected by contracting States. This collective and international guarantee is not a substitute for national guarantees of fundamental rights, but is supplementary to them. Proceedings under the Convention involve three bodies: the European Commission of Human Rights, the European Court of Human Rights and the Committee of Ministers of the Council of Europe.

• The European Commission of Human Rights has mainly a mission of inquiry and conciliation. If no friendly settlement has been reached on the basis of respect for human rights, the Commission formulates a legal opinion. The Commission consists of a number of members equal to the number of contracting parties. These members are elected by the Committee of Ministers by absolute majority from a list of names drawn up by the Bureau of the Consultative Assembly of the Council of Europe; the election is based on proposals made by each group of representatives in the Consultative Assembly. The members, who are elected for a period of six years, sit in the Commission in their individual capacity, which ensures genuine independence. The Commission may deal both with applications submitted by a contracting party (Article 24) and with complaints made by a person, non-governmental organization or group of individuals (Article 25); the latter provision applies, however, only in so far as the State complained of has expressly recognized the right of individuals to submit applications. [2]

The Commission decides first on the admissibility of applications. If an application is declared admissible and no friendly settlement can be achieved between the parties, the Commission draws up a report which includes in particular its opinion as to whether there is a breach of the ECHR. The case may then be referred to the Court within three months, although only the State making the application or the State complained of, the State of whom the person concerned is a national or the Commission of Human Rights itself are empowered to do this. If the case is not referred to the Court, the Committee of Ministers has to take a decision.

• The European Court of Human Rights is competent to take a judicial decision which is binding on the parties to the action on whether in a given case the Convention has or has not been violated by a contracting State. The Court consists of a number of independent judges equal to that of the Members of the Council of Europe. They are elected by the Consultative Assembly from a list of candidates submitted by the Member States; each Member State may nominate three candidates, of whom two at least must be its own nationals. The judges are elected for a period of nine years.

The Court is competent only if its jurisdiction has been recognized by the contracting parties concerned (Article 46). [3] The Commission or one of the contracting parties may refer a case to the

[1] It should be noted however that France has not signed the additional Protocol No 2 and that Italy and the United Kingdom have not yet ratified Protocol No 4.

[2] France, Cyprus, Greece, Malta and Turkey have not so far permitted individual applications.

[3] With the exception of Malta and Turkey all members of the Council of Europe have accepted the compulsory jurisdiction of the Court. Spain and Liechtenstein have not yet adopted a position on this point.

Court, but not an individual applicant (Articles 44 and 48). It decides on the case in question by means of a judgment which is final and may award compensation to the injured party.

• If the case has not been referred to the Court within three months of the submission of the Commission's Report, the Committee of Ministers decides by a two-thirds majority whether there has been a violation of the ECHR; at the same time it prescribes a period during which the State concerned must take the necessary measures. If that State does not take satisfactory measures, the Committee of Ministers has to decide 'what effect shall be given' to its original decision. The ECHR contains no provisions on how this should be done; it mentions as a form of sanction only publication of the Commission's report (Article 32 (3)). Many observers consider these quasi-judicial powers to be extremely unsatisfactory on account of the political nature of the Committee of Ministers.

The relationship of the Community to the Convention on Human Rights on the basis of the present legal position

10. Since 1974, all the Member States of the Community have been contracting parties to the ECHR, which has led the Court of Justice of the European Communities to derive guidelines for the constitutional traditions common to the Member States from the fundamental rights embodied in the ECHR; in other words to use the ECHR indirectly as an indicator of the standard existing at Community level in the field of fundamental rights. Although the Court has hitherto avoided speaking of the Community being directly bound by the catalogue in the ECHR, there are good reasons for considering this already to be the case. On the one hand the ECHR represents a minimum standard of the 'general principles of law' protected by the Court of Justice. On the other, it is arguable that the Community, in so far as powers have been assigned to it by the Member States, is already bound, on the basis of the principle of substitution, by the substantive provisions of the Convention on Human Rights by reason of the original obligation of the Member States.

11. Since the Community is not a contracting party to the ECHR, it seems impossible for it to be made the direct object of an application by a State or individual. Nevertheless, the possibility that certain legal acts of the Community could be made the subject of proceedings before the Commission of Human Rights or the Court of Human Rights cannot be dismissed *a priori*. Applicants might be above all non-member countries, which have no access to the Court of Justice of the European Communities and natural or legal persons who have lost their case in proceedings before the latter. This last possibility materialized recently; an employees' association sought to incriminate all the Member States together concerning a decision of the Council refusing it the right to be represented in the Consultative Committee set up by the ECSC Treaty. Admittedly this application was dismissed by the Commission of Human Rights on 10 July 1978 as inadmissible, but only on grounds relating to the particular circumstances of that case. At this stage the possibility cannot be excluded that the European Commission of Human Rights or the Court in Strasbourg will one day take a different view of the question of the collective responsibility of the Member States, having regard in particular to the consequences which the transfer of powers of the Member States to the Community implies.

12. The danger that Community acts will be made subject to control by the Strasbourg authorities without the Community having appropriate means to defend itself is evident particularly in those cases in which the Member States incorporate into national law obligations under Community law without having any discretionary powers of their own. A human rights complaint would be directed in such cases against a specific Member State and as such would therefore be perfectly admissible. The object of the complaint would then be, however, disregarding the possibility of any additional provisions not specifically required under Community law, the Community rule behind the national act. The situation with such implementing acts is particularly unsatisfactory inasmuch as the Member State would certainly be unable to rely on the defence that it was merely fulfilling an obligation under Community law, while the Community, the party ultimately responsible,

would, for its part, have no opportunity to reply to the complaints against it.

13. Thus, the Community runs the risk under the present legal position that its legal acts could be controlled by the Strasbourg authorities as to their compatibility with the ECHR, without having appropriate means to defend the Community position, while the Member States could possibly be prevented from applying those acts.

Part Two

Pros and cons

Arguments in favour of accession

The arguments in favour of the Community becoming a party to the ECHR may be summarized as follows:

Improving the image of Europe as an area of freedom and democracy

14. Accession to the ECHR would make a substantial contribution to the strengthening of democratic beliefs and freedom both within and beyond the free world. Even more than the Joint Declaration by the three political institutions [1] of 5 April 1977 on the protection of fundamental rights, [2] it would make clear to the whole world that the Community does not merely make political declarations of intent but is determined to improve in real terms the protection of human rights by binding itself to a written catalogue of fundamental freedoms.

The accession of the Community to the ECHR is completely in line with the declaration made by the European Council on democracy on 8 April 1978; in this declaration is was solemnly stated 'that respect for and maintenance of representative democracy and human rights in each Member State are essential elements of membership of the European Communities'. If respect for human rights is for a State an essential condition of membership of the Community, then it is only logical to bind the Communities themselves to respect such rights.

The accession of the Community to the ECHR would give increased significance to the Copenhagen declaration and would allow the Community to ensure the respect of the legal, political and moral values to which it is attached.

[1] Parliament, Council and Commission.
[2] OJ C 103 of 27. 4. 1977.

Strengthening the protection of fundamental rights in the Community

15. Accession of the Community to the ECHR would clarify the position of its legal acts in relation to the ECHR and give them a satisfactory status; for it is more logical to enable a complaint for violation of fundamental rights to be made directly against such acts under the conditions laid down in the ECHR rather than merely by means of an attack upon the relevant implementing measures taken by the Member States; this would then make possible genuine adversary proceedings in which the Community itself could participate. The accession of the Community to the ECHR would moreover restore the legal position in which the nationals of Member States found themselves before the transfer of certain powers to the Community.

Accession would at least partly satisfy the demand, voiced for some time, that a written catalogue of fundamental rights, binding on the Community, should be established. It is true that the rights contained in the Convention and in the additional Protocols do not cover all the fundamental rights which might possibly be pertinent to the activities of the Community. The majority of these rights are nevertheless important for the Community also. These rights will be guaranteed by a written legal act providing clear criteria known beforehand by individuals and the institutions.

Strengthening of institutions

16. Accession of the Community to an international mechanism of legal control would underline its own personality.

Accession to the Convention would enable the Community, when confronted with criticism concerning the gaps which exist as regards fundamental rights, to point not only to the very progressive case law of the Court of Justice, but also to its formal commitments within the ECHR. The Community would show its willingness to meet all objections calling into question the compatibility of its acts with fundamental rights.

Finally, accession would reduce the risk of national courts using the absence of a written catalogue of fundamental rights formally binding upon the Community as justification for reviewing acts of the Council or the Commission by reference to their national constitutions, and possibly declaring them inapplicable in the light of those constitutions, thus violating the principle of the uniformity of Community law.

Arguments against accession

Need for own catalogue of rights

17. It has been contended that the fundamental rights contained in the ECHR are not relevant for the Community and that, accordingly, the idea of accession can serve only as an alibi for failure to tackle the real problem: the preparation and adoption of a catalogue specially adapted to the requirements of the Community.

The catalogue in the ECHR is by no means irrelevant to the Community's needs [1] but at the same time it cannot be said to be adapted to the requirements of the Community on all points. On this matter, however, it has already been pointed out in the introduction that the chances of agreeing, within a reasonable period of time, on a catalogue specifically designed for the Community, in particular as regards economic and social rights, remain slight. The Community should therefore adhere to the Convention with the intention of working actively to enlarge and reinforce the human rights enshrined therein.

As has already been pointed out above, the accession of the Community to the ECHR in no way precludes the eventual preparation of a specific Community catalogue going beyond what is required by the Convention.

The Community and the rights set out in the Convention

18. It is correct that the ECHR is concerned more with the traditional freedoms than with the economic and social rights which are more

[1] Point 18.

relevant to the Community. Nevertheless, the traditional freedoms are also important for the Community and, furthermore, the Convention and its additional protocols do contain a number of economic and social rights. In terms of potential significance, the most important probably are the right to respect for private and family life, home and correspondence (Article 8). These rights could be of significance not only in connection with rules on competition and prices, but also in relation to provisions which restrict unreasonably the right of migrant workers and members of their family to live together. As regards freedom of religion and association, there are already pertinent examples in the case law of the Court [1] and not much imagination is needed to see that problems could also arise with regard to the general freedom to hold opinions and to receive and impart information and ideas (Article 10). Article 10 could play a role in connection with both competition law and rules on the movement of goods; moreover, it has a not inconsiderable bearing on the relationship of the Community and its employees.

The procedural guarantees provided for in Article 6 could be relevant to the procedures by which the Community imposes sanctions. Moreover, just as it has already been faced with the *ne bis in idem* [2] problem, the Community could equally one day find itself confronted with the *nulla poena sine lege* rule embodied in Article 7 of the ECHR.

The right to form any type of peaceful association or trade union (Article 11) is without doubt an economic fundamental right of considerable significance. The first Additional Protocol concerns the protection of property and the right to education; the latter has become of concern to the Community in Cases 9/74 [3] and 68/74 [4] in connection with the equal treatment of the children of migrant workers. Finally, there are embodied in the fourth Additional Protocol rights concerning the free movement of persons which are of particular significance for the activities of the Community.

The often heard claim that the ECHR is only of marginal interest for the activities of the Community therefore appears, all things considered, to be incorrect. Moreover, in the future, it cannot be excluded that initiatives may be taken to strengthen the position of the European citizen in the field of economic and social rights.

Problems involved in fulfilling the obligations arising from the Convention

19. It has also been maintained that, from the point of view both of the substance of the rights it contains and of the procedures it provides for, the ECHR is clearly intended for participation by sovereign States and that certain of the obligations which it imposes could not be fulfilled by the Community in its present form.

20. It is true that both in the way that it is drafted and in its origins, the ECHR is intended for participation only by sovereign States. Provisions such as Articles 10, 11, 17, 28, 30, 31 or 64, which use the term 'State' (which, however, is used in the Convention merely as a synonym for the term 'High Contracting Party') cannot be applied directly to international organizations. From a legal and political point of view, however, the Commission considers that this is no more of an obstacle than the terms 'national security' or 'economic well-being of the country', which are used in Articles 8 to 11 as a criterion for the limitation of certain freedoms by the legislature. The need to restrict certain fundamental rights on grounds of a superior common interest applies in principle to the Community just as it does to the contracting States. Therefore it should be sufficient to lay down in an accession protocol (still to be negotiated) that the Convention, when it uses terms relating specifically to States, also applies *mutatis mutandis* to the European Communities.

21. One must take into account the objection that the Community is not a sovereign State and

[1] CJEC 27. 10. 1976 (Case 130/75 Prais v Council [1976] ECR 1589); CJEC 28. 10. 1975 (Case 36/75 Rutili v French Minister for the Interior [1975] ECR 1219.

[2] CJEC 14. 2. 1972 (Case 7/79 Boehringer v Commission [1972] ECR 1281.

[3] CJEC 3. 7. 1974 (Case 9/74 Casagrande v Landeshauptstadt München [1974] ECR 773).

[4] CJEC 29. 1. 1975 (Case 68/74 Alaimo v Préfet du Rhône [1975] ECR 109).

for this reason could not fully exercise the procedural rights embodied in the ECHR. In view of the necessarily limited powers of the Community in comparison with those of States, it must indeed be asked whether it is right for the Community to seek full and equal membership in all respects. In the Commission's view, accession must serve to extend the range of legal remedies available in the event of violations of fundamental rights by the Community. In other words, any person who, under the ECHR, has a right to bring proceedings before one of the organs of the Convention should also be entitled, under the conditions laid down in the Convention, to have legal acts of the Community examined as to their compatibility with the fundamental rights embodied therein.

As regards the active right to refer cases in accordance with Articles 24 and 48 b, c, d, of the ECHR, however, one must ask whether the Community should acquire these rights. One should at least admit that the Community should be able to exercise such rights in those cases concerning violations of fundamental rights by a State which is not a member of the Community and where the violation has a specific connection with the powers transferred to the Community. Where it is a question of violations of fundamental rights by its Member States which are specifically related to Community law, the Community in any event possesses adequate means of action, under the Treaties' infringement procedures.

Another question is whether the Community should also refrain from participating in the work of the organs of the Convention where the matter in question is of a non-Community nature. [1]

22. It has also been claimed that the Community in its present constitutional form could not execute various obligations arising from the ECHR, for example, the effective remedy requirements of Article 13 and the holding of elections at reasonable intervals with a view to the choice of the legislature (Article 3 of the first Additional Protocol).

• It is true that the Treaties provide for no direct remedies against legal acts which are addressed to an unspecified number of persons. Nevertheless, Article 13 of the ECHR has never previously been interpreted as meaning that in the event of a violation of one of the rights embodied in the ECHR a judicial remedy must exist against every act, including legislative acts. The wording of Article 13 requires an effective remedy before a national authority. As the Court of Human Rights decided in the Golder [2] and Klass [3] cases, among others, it need not necessarily be a judicial authority.

The possibility of an effective remedy is sufficient, particularly, in the form of the possibility of presenting counter arguments either to the same authority or to a supervisory one. One must, of course, rely on the totality of the remedies available.

If in this connection one takes into consideration the indirect remedies available to any citizen affected by a legislative act of the Community, such as the examination of such acts by means of proceedings under Articles 177 and 184 of the EEC Treaty and by way of the claim for compensation under Article 178 and the second paragraph of Article 215 of the EEC Treaty, no obstacles to accession should arise from Article 13 of the ECHR. It should moreover be pointed out that the legal orders of a considerable number of States which have signed the ECHR do not provide for direct remedies against legislative acts. Nevertheless, none of those States has considered it necessary to enter a reservation in relation to Article 13.

• As regards Article 3 of the first Additional Protocol, according to which the contracting parties are obliged 'to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature', one may question whether this provision is satisfied by the Community. In this respect, it must be pointed out that the text of Article 3 does not require the election of the legislative body by direct universal suffrage.

[1] Point 33.
[2] Judgment of 21. 2. 1975, Yearbook of the European Convention on Human Rights 1975, p. 291 *et seq.*
[3] Judgment of 6. 9. 1978.

Moreover, apart from the special nature of the legislative process in the Community, there is no doubt that the choice of the Members of the Council of the Communities reflects the results of free elections ensuring the free expression of the opinions of the citizens of the Member States. In any case, if there are doubts, it would be possible to enter a reservation in this respect, on signing the accession protocol or at the moment of depositing the instrument of ratification, to the effect that the accession of the Community to the ECHR does not affect its present institutional structure. Such reservations are possible under Article 64 of the ECHR and have been made with regard to various provisions of the Convention by almost all signatory States.

• Finally, reference should be made to the problems which, in this context, might arise for the Community from Article 14 of the ECHR. Under this provision the enjoyment of the rights and freedoms set forth in the Convention must be 'secured without discrimination', in particular discrimination on grounds of national origin. In order to avoid possible objections against the preferential treatment which is accorded to nationals of the Member States and which is inherent to the nature of the Community, a clarification would probably be necessary in respect of Article 14 of the ECHR.

Risk of disrupting the jurisdictional system

23. It is sometimes argued that it would be unacceptable for the decisions of the Court of Justice of the Communities to be subject to review by some other international body. Moreover, legal procedures, which are already lengthy as a result of the combination of national and Community remedies, would be made subject to further delay.

24. On closer examination, there is nothing unusual in the idea that the decisions of an 'international court' should be subject to review by other international bodies. The Community is after all the smaller entity in relation to the Council of Europe. Its legal system may in this respect be considered an internal legal system. It is therefore only logical that decisions of the Court of Justice of the European Communities should be treated in the framework of the ECHR as decisions of a national court.

25. The fact that access to additional remedies lengthens the proceedings is only natural and should be accepted as a lesser evil in view of the resulting improvement in the protection of fundamental rights. There is no reason to fear a delay in the execution of Community decisions, since neither the lodging of applications with the Commission of Human Rights nor the bringing of cases before the Court of Human Rights has suspensory effect.

Individual right of petition and reservations

26. It has been contended that accession to the ECHR would lead to a real improvement of the legal protection of the citizen only if the Community was also to allow individual right of petition against all its legal acts; it is at present not certain that such a decision will be taken. The Community ought, moreover, to state whether it intends to take refuge behind the reservations its Member States have made regarding this or that provision and if need be add new ones, or whether it is prepared to accept the Convention as it stands.

27. If accession is to bring about a substantial improvement in the protection of fundamental rights, it would be desirable, if not entirely indispensable, for the Community to recognize not only the competence of the Court of Human Rights but also to allow the individual right of petition provided for in Article 25 of the ECHR. Without the possibility of the individual right of petition accession to the ECHR would primarily benefit those States which are not members of the Community. Applications introduced by a Member State against the Community under Article 24 of the ECHR are hardly conceivable. One should, moreover, exclude them as Articles 87 ECSC, 219 EEC, and 193 EAEC forbid the Member States to settle disputes concerning the application and interpretation of Community law in a different manner from that laid down in the Treaties.

Accession to the Human Rights Convention should signify, as far as possible, that the individual right

of petition in Article 25 ECHR be allowed. The Commission recommends this approach for both political and legal reasons. It is of the opinion, however, that for a transitional period accession might be envisaged without this possibility, should the agreement of all Member States to the allowing of individual petitions not be immediately forthcoming. Even if the Community could not immediately accept the individual right of petition, accession would remain an important step forward from the political point of view, especially if it were declared on that occasion that the Community plans to recognize the individual right of petition eventually. For the citizen seeking justice, there would be an advantage in this at least in that the ECHR would then no longer have to be regarded only as an indicator as to the general legal principles of the Member States, but as a legal instrument formally binding on the Community. This would doubtless encourage the courts of Member States to refer to the Court of Justice of the European Communities more frequently than before questions concerning the compatibility of certain Community acts with the ECHR.

It should also be pointed out that the negotiations over accession and the subsequent ratification procedures will, in any case, take a considerable amount of time. The possibility cannot be ruled out that during this period the Member States might reach agreement on the question of the right of individual petition.

28. Because of the various reservations which the Member States have made regarding individual provisions, upon signature or when depositing the instrument of ratification, the obligations imposed on them by the ECHR are not uniform. This might result in certain Member States not needing to comply with the ECHR when fulfilling an obligation under Community law, while others do. Depending on the type and extent of the Community's reservations, the situation might even arise where the citizen concerned cannot plead the incompatibility with the Convention of a national implementing measure, but can successfully attack the Community act underlying the measure.

29. In the Commission's opinion, such divergences ought not to encourage the Community to enter reservations which go beyond the extent which is absolutely necessary having regard to its internal structure. If the Community confines itself to making the few reservations justified by its specific nature, there would be no fear of a conflict between the reservations made by the Member States and the position of the former. In the example given, the reservation expressed by the Member State would, on the one hand, be fully respected, while on the other hand the citizen would be given an opportunity to attack the Community act directly on the grounds that it conflicts with his fundamental rights. The Commission therefore advocates that the Community's reservations in the event of accession be limited to matters specific to the Community.

Part Three

Institutional and technical aspects

Participation by the Community in the organs of the Convention

30. The preceding considerations have shown that adoption of the fundamental rights contained in the Convention — apart from certain clarifying statements as regards Article 14 of the ECHR and Article 3 of the first Additional Protocol — pose no problems for the Community. Difficulties do arise, however, over the question of how the Community would actually participate in the work of the organs of the ECHR. Even these difficulties nevertheless appear upon closer inspection to be surmountable.

The Commission of Human Rights and the Court of Human Rights

31. Unlike the Committee of Ministers, members of the Commission and the Court of Human Rights do not represent the contracting parties and are not instructed by their Governments; the members of the Commission and the judges act only in their individual capacity.

Those States which are parties to the ECHR but not members of the Community therefore have no need to fear that, in cases concerning the Community, those members of the Commission or judges who are nationals of the Member States of the Community will unite in favour of the 'Community' argument by forming a blocking minority or even the majority. [1] For the same reason, they would not be able to make accusations of 'over-representation' if a member of the Commission and a judge were added in the name of the Community as such.

There are therefore two possible solutions which may be envisaged for the Commission and the Court of Human Rights.

32. The first solution would leave untouched the present composition of the Commission and the Court in Strasbourg. It can be argued in favour of this arrangement that the addition of a member of the Commission and a judge in the name of the Community is not indispensable because of the independent status of the members of the Commission and the Court. In cases brought before the Court, the judge sitting *ex officio* in the name of the Community could, for example, be the national of the Member State currently chairing the Council of the Communities.

One may ask, however, whether such a solution would not be in contradiction with the affirmation of the international personality of the Community. Does not the international legal capacity of the Community, in fact, require that, when the interests and, *a fortiori,* the responsibilities of the Community are being dealt with in the organs of the ECHR, an additional commissioner and judge be appointed in the name of the Community?

One can observe, in fact, that although the judges of the Court of Human Rights sit in their individual capacity and not as representatives of their States, a national judge, that is to say a judge of the country concerned, must sit as a member of the Chamber.

It would therefore seem unacceptable to opt for a solution whereby the Community as such is not represented within the Commission and the Court. It must be remembered that the members of the organs in Strasbourg are not necessarily familiar with the Community legal system.

33. The only acceptable solution is therefore the second one, whereby a commissioner and a judge, both appointed in the name of the Community, would respectively be part of the Commission and the Court of Human Rights. Their presence would underline the autonomy of the Community. It would be justified on the same grounds as the presence of a national from each country party to the ECHR. It is essential that every legal system be represented within the two organs.

As the members of the Commission and the Court of Human Rights act in a purely personal capacity,

[1] The Nine figure today among the nineteen States which have ratified the Convention; on the completion of the present negotiations on the enlargement of the Community as well as the ratification procedures to the ECHR in progress, the relation would be twelve to twenty-one.

the participation of the personalities, appointed to the two organs in the name of the Community, in the work of those organs should in principle extend to all cases before them. It would, of course, also be possible to restrict such participation to proceedings relating to complaints directed at the Community. This would be tantamount, however, to creating two categories of members of the Commission and the Court of Human Rights, which would, no doubt, not only pose personnel and administrative problems but might also jeopardize the continuity of the case-law. At all events, the participation of the 'representatives' of the Community must be ensured in the case of applications directed at measures taken by Member States to implement binding Community rules.

The appointment of these personalities would require a derogation from Articles 20 and 38 of the Convention, which lay down that no two members of the Commission or the Court of Human Rights may be nationals of the same State.

The Committee of Ministers

34. Although its functions are quasi-judicial, the Committee of Ministers is a political body whose members are bound by instructions from their respective Governments. In view of this dependence and the allegiance owed by the Member States to the Community, it is hardly conceivable that the Community and the Member States would hold divergent viewpoints within the Committee of Ministers, not only when the lawfulness of an act of the Council is at issue, but also in respect of all acts of the Community.

For this reason, those contracting parties to the ECHR which are not members of the Community might therefore see the Member States of the Community blocking decisions calling into question Community acts. Since, under Article 32 of the ECHR, the Committee of Ministers adopts decisions by a two-thirds majority, there is already a blocking minority with seven votes on the basis of the present number of States members of the Council of Europe.

These difficulties could be overcome if the Member States of the Community and the Community itself had only one representative on the Committee of the Ministers during proceedings relating to Community matters (e.g. the current President of the Council), i.e. if the Member States were legally obliged to withdraw from proceedings of this sort. This solution would, however, reduce to an abnormal extent the participation of the Member States. It would also set a dangerous precedent for the exercise of mixed powers within other international organizations.

In these circumstances, it would seem appropriate to exclude totally the Committee of Ministers from proceedings relating to Community matters. This solution may appear radical at first sight, but it would in no way prejudice the objective pursued by means of accession.

It should be remembered, also, that the proceedings before the Committee of Ministers were conceived for the case of a Member State which has not recognized the jurisdiction of the Strasbourg Court. The problem of the representation of the Community within the Committee of Ministers loses all practical importance the moment the Community recognizes the compulsory jurisdiction of the Court of Human Rights. Such recognition will, in the view of the Commission, be a matter of course. It would even welcome it if the Commission of Human Rights, in every case where it declares admissible an application against a Community act, always referred the case to the Court on the basis of Article 48(a) of the ECHR.

The Convention on Human Rights and the Council of Europe

35. The ECHR is in the formal sense not a legal act of the Council of Europe. It was, of course, drafted within the Council of Europe, and it is also true that the Convention makes use of some of the organs of the Council. From the legal point of view, however, it is an independent mechanism. It ought therefore to be possible to agree to a derogation from Article 66 of the ECHR, which provides that the Convention is open only to members of the Council of Europe.

There is no need for the Community to become a member of the Council of Europe itself. The cooperation between both organizations is satisfactory and it is becoming increasingly close. The Community has already acceded to several conventions of the Council of Europe with a content relevant to the Community. Experience has shown that the members of the Council of Europe are as a rule prepared to facilitate Community participation in such conventions, even if this calls for certain changes to existing conventions.

Election procedures

The Commission of Human Rights

36. Pursuant to Article 21 of the ECHR, the members of the Commission of Human Rights are elected by the Committee of Ministers by an absolute majority of votes. Unlike the exercise by the Committee of its judical functions which may pose problems, there are no objections of principle to allowing the Committee of Ministers to elect the 'representative' of the Community. [1] To prevent the Member States of the Community from systematically overruling the other contracting parties during such elections (which could happen especially after the forthcoming enlargement of the Community), it would appear advisable to provide for unanimous agreement on the appointment to the Commission of Human Rights of the member in the name of the Community ; in fact the elections of members of the Commission of Human Rights already follow that practice.

As regards the preparation of the list of candidates provided for in Article 21 of the ECHR, it should be considered whether this should be left to the Consultative Assembly of the Council of Europe or whether a formula should be sought which, while maintaining by and large the existing procedures, guarantees an appropriate degree of participation by the European Parliament in the nomination of the 'Community candidates'.

The Court of Human Rights

37. Pursuant to Article 39 of the ECHR, the members of the Court are elected by the Consultative Assembly by a majority of the votes cast from a list of persons nominated by the members of the Council of Europe. This procedure could be followed without any particular difficulty for the appointment of a Community judge. A derogation would nevertheless have to be made from Article 39, so that the Community, as soon as it becomes a Contracting Party to the Convention, could propose its candidates without being a member of the Council of Europe.

Preparation of the list of candidates for the position of Community judge is an internal Community matter. There would therefore be no need to include a special provision in the protocol of accession.

The defence of the Community's viewpoint

38. This, too, is an internal matter which the Community institutions must settle among themselves. In the Commission's view, the Community institutions should be guided by Article 211 of the EEC Treaty.

Special problems

39. Of the numerous problems to which accession by the Community to the ECHR gives rise, three deserve special mention : the status of the ECHR within the Community legal order, the effects of accession on the operation of the ECHR within the legal orders of the Member States, and the question of how to proceed in cases in which national courts have failed to fulfil their obligations to make a reference to the Court of Justice of the European Communities.

40. Under Article 228(2) of the EEC Treaty, accession by the Community to the ECHR would mean that the obligations contained in the ECHR would be directly binding on the Community institutions. Only the Court of Justice can in the last analysis rule on the status of the ECHR within the Community's legal order. It is clear from the

[1] Point 33.

previous case-law of the Court of Justice [1] that one must start from the principle that the ECHR is higher-ranking within the Community than secondary Community legislation.

41. Since the effects of the ECHR in national law are at present still very varied (they range from the completely insignificant to a position of primacy over national law and even, in the case of Austria to the position of a constitutional norm), one must ask whether the formal incorporation of the ECHR into Community law would involve changes as regards its effect within the national law of the Member States. In the Commission's opinion, this would not be the case. Accession by the Community to the ECHR can have implications only for Community law as such. Additional obligations would arise only with regard to the freedom of action of the Community institutions and their legislative and administrative functions. The position of Member States while exercising their own powers would, therefore not be affected by accession, despite the primacy of Community law over national law.

42. Under Article 26 of the ECHR, the Commission of Human Rights may deal with applications concerning an infringement of the ECHR only after all domestic remedies have been exhausted. Since the means of defence against unlawful Community acts often consist of a combination of national and Community judicial remedies, the question should be cleared up of how to proceed in cases in which national courts of last instance have failed to fulfil their obligation to refer the matter to the Court of Justice under the third paragraph of Article 177 of the EEC Treaty. The party concerned cannot himself compel the court to make such a reference. Consequently, Article 26 of the ECHR could not be used against him personally. The essence and purpose of Article 26 is, however, to prevent a matter from being brought before the Strasbourg authorities which has not yet been exhaustively investigated by the competent national courts. In other words, steps must be taken to ensure that the Court of Justice in Luxembourg is able to perform fully the supervisory functions vested in it by the Treaties.

Since it can hardly be envisaged that the Strasbourg organs would themselves refer questions to the Court of Justice, it would appear appropriate to introduce a procedure whereby the Community is obliged, in cases where the compatibility of a Community act with the ECHR is in question, to ask the Court of Justice for an opinion before it submits its own conclusions and to transmit this opinion together with its observations to the Strasbourg organs. This procedure should be employed both in the case of clear failure by national courts of last instance to comply with the third paragraph of Article 177 of the EEC Treaty and in the case of applications by non-member countries, which, for their part, when they are in doubt as to the conformity of a Community act with fundamental rights do not have the opportunity to make a reference to the Court of Justice.

Technical aspects of accession

43. As already indicated above, [2] accession by the Community to the Convention necessitates derogation from Article 66 of the ECHR. This derogation could be included in the accession protocol, i.e. be agreed at the same time as the other amendments which will be necessary as a result of accession (e.g. to Articles 20, 38 and 39).

44. The legal basis for accession could be provided by Article 235 of the EEC Treaty, Article 203 of the EuratomTreaty and Article 95 of the ECSC Treaty, which enable appropriate provisions to be adopted if an action appears necessary to achieve one of the objectives of the Community. It is the objectives of the Community as a whole that the proposed action is intended to achieve ; the activities undertaken by the Community institutions under the Treaties could only with difficulty be brought to a successful conclusion — given the demands made by public opinion, certain supreme courts and leading authorities — without effective protection of fundamental rights at Community level, in conformity with the constitutional principles of all the Member States of the Community. Such action is moreover in line

[1] CJEC 12. 12. 1972 (Cases 21-24/72 International Fruit Company v Produktschap voor Groenten [1972] 1219).
[2] Point 35.

with the last part of the Preamble to the EEC Treaty and with the solemn declarations of 5 April 1977 and 8 April 1978.

45. The negotiations with the contracting States to the European Convention should take place on the basis of directives laid down by the Council of Ministers on a proposal from the Commission. The European Parliament would naturally be consulted after the conclusion of the negotiations. In view of the matter's importance, however, it would be advisable also to consult Parliament at the start of negotiations, since it has shown a particular interest in this question all along.

46. As already indicated, the negotiations concerning accession by the Community to the Convention will certainly take several years. The necessary amendments to the Convention will at all events become effective only after they have been approved by the current Members of the Convention in accordance with their national constitutional rules. This means that accession by the Community to the ECHR will be possible only if all the signatory States, including the Member States of the Community, agree to it.

European Communities — Commission

Accession of the Communities to the European Convention on Human Rights — Commission Memorandum

Supplement 2/79 of Bulletin of the EC

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The Commission has adopted a Memorandum on the possible accession of the European Communities to the European Convention on the Protection of Human Rights and Fundamental Freedoms in the hope that it will provoke wide discussion with all the parties concerned. The Memorandum has been forwarded to the other institutions, and to the Economic and Social Committee and the ECSC Consultative Committee.

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1982 OJ C304/253
Resolution embodying the opinion of the European Parliament on the memorandum on adhesion to the European convention on human rights and fundamental freedoms

Paragraph 2:

— amendment No 2 by Mr Forth: rejected.

Paragraph 2 was adopted.

Paragraph 3:

— amendment No 3 by Mr Forth: rejected.

Paragraph 3 was adopted.

Paragraph 4:

— amendment No 4 by Mr Forth: rejected.

Paragraph 4 was adopted.

Paragraph 5:

— amendment No 5 by Mr Forth:

The President declared this amendment rejected.

Mr Forth requested an electronic check.

The result was confirmed.

Paragraph 5 was adopted.

Paragraphs 6 and 7: adopted.

After paragraph 7:

— amendment No 1 by Mr Sieglerschmidt, on behalf of the Socialist Group:

Mr Sieglerschmidt asked that the words: 'and are already covered by legislation in most Member States of the Council of Europe' be deleted from the amendment.

Parliament therefore took a split vote on the amendment.

First part: adopted.

Second part: rejected.

Paragraphs 8 and 9: adopted.

Explanations of vote :

The following spoke: Mr Plaskovitis, Mr Ferri, on behalf of the Socialist Group, Mrs Pery, Mr Haagerup, the latter on a point of procedure.

Parliament adopted the following resolution:

RESOLUTION

embodying the opinion of the European Parliament on the memorandum from the Commission of the European Communities on the accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms

The European Parliament,

— having been consulted by the Commission (Doc. 160/79),

— having regard to its resolution of 4 April 1973 on the protection of the fundamental rights of Member States' citizens when Community law is drafted (1),

— having regard to its resolution of 12 October 1976 on the protection of fundamental rights (2),

— having regard to its resolution of 27 April 1979 on the accession of the European Community to the European Convention on Human Rights (3),

— having regard to the Declaration on the European identity made by the Heads of State or of Government of the Community Member States in Copenhagen in December 1973,

— having regard to the Joint Declaration by Parliament, the Council and the Commission of 5 April 1977 on respect for fundamental rights (4),

— having regard to the Declaration on democracy made by the European Council in Copenhagen in April 1978,

having regard to the report of the Legal Affairs Committee and the opinion of the Political Affairs Committee (Doc. 1-547/82),

1. Reaffirms its determination to strengthen and increase the protection of the rights of the individual in the formulation and development of Community law;

2. Stresses that the accession of the Community to the European Convention on Human Rights will demonstrate to the outside world and to public opinion in the Community

(1) OJ No C 26, 30. 4. 1973, p. 7; Jozeau-Marigné report Doc. 197/72.
(2) OJ No C 259, 4. 11. 1976, p. 11; Jozeau-Marigné report Doc. 321/76.
(3) OJ No C 127, 21. 5. 1979, p. 69; Scelby report Doc. 80/79.
(4) OJ No C 103, 27. 4. 1977.

No C 304/254 Official Journal of the European Communities 22. 11. 82

Friday, 29 October 1982

Member States the determination of the Community institutions increasingly to reinforce the role of the Community as a Community founded on the rule of law;

3. Expresses the conviction that accession will consolidate the principles of parliamentary democracy and will strengthen the protection of fundamental rights in the Community;

4. Considers it essential, in connection with the accession of the Community to the European Convention on Human Rights, that all Member States should allow individual actions to be brought before the Commission of Human Rights;

5. Considers Article 235 of the EEC Treaty to be the appropriate legal basis for accession;

6. Realizes that accession will involve considerable constitutional, political, legal and technical difficulties, but expresses its confidence that the Commission will strive to overcome these difficulties in practice;

7. Requests the Commission to submit at the earliest opportunity to the Council a formal proposal on the accession of the Community to the European Convention on Human Rights, after duly consulting the Court of Justice of the Community and in the light of developments in the situation, and to give a formal undertaking to consult the European Parliament again before opening negotiations on accession;

8. Requests the bodies of the Council of Europe, on the occasion of the accession of the European Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms, to include specifically in the area covered by protection under the Convention the legally enforceable rights which are listed in parts I and II of the social charter;

9. Further requests the Commission to ask to take part in the current discussions within the Council of Europe on the incorporation into the Convention of other fundamental social, economic and cultural rights;

10. Instructs its President to forward this resolution to the Council and Commission of the European Communities, the Council of Europe and, for information, to the Court of Justice of the Community and the Parliaments of the Member States.

— *Motion for a resolution (Doc. 1-483/82/rev.):*

Preamble and recitals A and B: adopted.

Recital C:

— amendment No 1 by Mrs Viehoff: rejected by electronic vote after the rapporteur had spoken.

Recital C was adopted.

Recital D and paragraphs 1 and 2: adopted.

Paragraph 3:

— amendment No 2 by Mrs Viehoff: rejected by electronic vote after Mrs Viehoff and the rapporteur had spoken,

— amendment No 3 by Mr Bord: adopted.

Paragraph 3 was adopted as amended.

Paragraph 4: adopted.

Explanations of vote:

The following spoke: Mr Simmonds, Mr Prag, Mrs Duport, Mr Plaskovitis, on behalf of the Greek members of the Socialist Group, and Mr Eisma.

Mr Israël, rapporteur, spoke.

The EPP Group had requested a roll-call vote on the motion for a resolution as a whole:

Result of vote:

Members voting: 91 (1).

For: 79.

Against: 5.

Abstentions: 7.

Parliament thus adopted the following resolution:

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(1) See Annex.

SEC (90) 2087
Commission Communication on Community accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms and some of its Protocols

COMMISSION OF THE EUROPEAN COMMUNITIES

SEC(90) 2087 final

Brussels, 19 November 1990

Commission Communication on Community accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms and some of its Protocols

Commission Communication on Community accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms and some of its Protocols

1. There is a conspicuous gap in the Community legal system. All legal acts of the Community Member States are subject to review by the Commission of Human Rights and the Court of Human Rights, which were set up by the European Convention on Human rights (ECHR) of 1950, to ensure that human rights are respected. The Community, however, while proclaiming its commitment to respecting democratic values and human rights, is not subject to this control mechanism and the acts promulgated by its institutions enjoy a sort of "immunity" from the Convention.

   This gap can be filled by having the Community accede to the ECHR. Accession in no way precludes the conferring of any additional fundamental rights which may be considered appropriate in connection with plans for European citizenship.

   Although it is drawing up its own catalogue of rights and obligations of European citizens, which will refer to the ECHR but will have broaden scope, the Community will have to have its acts reviewed by the Strasbourg Commission and Court.

   The idea of accession to the ECHR is a response to a long-felt need to ensure full respect for human rights in the interpretation and application of Community law.

   On 4 April 1979 the Commission sent the Council a memorandum designed to stimulate in-depth discussion with all the authorities concerned on the question of accession to the ECHR. The Economic and Social Committee endorsed the memorandum in 1980; Parliament delivered a favourable opinion in 1982 and confirmed this opinion in 1989 and again in 1990.

   At a meeting on 21 and 22 April 1986 the Council discussed whether the Community should accede to the ECHR as proposed by the Commission in its memorandum of April 1979, supplemented by a working document of 9 April 1986. At the end of the exchange of views the Presidency agreed to reflect on what action should be taken on this dossier in the light of the various arguments put forward.

2. The Commission argued in favour of subjecting the legal acts of the institutions to the review mechanisms set up by the 1950 Convention (Commission of Human Rights and Court of Human Rights). The Community would thus be subject to the same review mechanisms as all its Member States, so that respect for fundamental rights would be guaranteed in its acts in the same way as in the acts of its Member States. This seems all the more desirable in that the Community legal system, which has primacy over national law and has direct effect, constitutes a separate legal system from that of national law.

In this context acknowledgement of the priority role of the ECHR in protecting fundamental rights should be seen as a key factor in providing this protection with due regard for the principle of subsidiarity.

The time has come to make a formal request for Community accession to the ECHR, given the new developments over the last four years both at political level and in the more technical aspects.

3. Recent political developments have given human rights such a high profile that it is becoming increasingly difficult to separate the issue from Community activities:

(a) The third paragraph of the preamble to the Single Act says that the Community Member States are "determined to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice".[1]

These undertakings are given shape in Community acts concerning freedom of movement for persons and protection of the environment and consumers.

Moreover, there are references to respect for human rights and fundamental rights not only in the preambles to agreements with third countries but also, more recently, in the substantive part of the agreements themselves.

(b) The development of Community activities with a view to achieving the objectives of the Single Market makes it increasingly necessary for Community activities to be subject to the review mechanisms of the Convention in the same way as the Member States' activities.

Thus, no matter how closely the Luxembourg Court monitors human rights, it is not the same as scrutiny by the Strasbourg Court, which is outside the Community legal system and to which the constitutional courts and the supreme courts of the Members States are subject.

The fact that the Community has not acceded to the Convention raises a special problem when a Member State enforces a Community legal act. As has already been pointed out, the Community is responsible for the contested act and is not subject to the review mechanism of the Strasbourg Convention.

The legal arguments in favour of accession and the replies to the criticisms made against it can be summed up as follows:

1 The Court of Justice referred to this paragraph in the preamble to the judgment delivered in Case 249/86 Commission v Federal Republic of Germany: Judgment of 18 May 1989.

(1) The legal acts of the institutions could be made subject to the review mechanisms set up by the 1950 Convention, which would enable the Strasbourg Court to review judgments of the Luxembourg Court for compliance with the Convention in the same way as it does judgments of the constitutional courts and supreme courts of the Member States.

(2) Accession would afford citizens better protection of their fundamental rights against Community measures, particularly when these measures are implemented by national authorities, without unduly extending the time involved, since an application, which does not have suspensory effect, would be lodged at the initiative of an individual and in his own interest.

(3) Accession would concern only the areas covered by Community law. It would affect the legal systems of the Member States only as regards this scope and would therefore not mean giving the Community general powers in the area of human rights.

(4) Community accession to the ECHR is a complementary rather than an alternative measure to the production of a catalogue of fundamental rights specific to the Community, in connection with the current work on European citizenship.

These arguments and the objections which have been raised to accession are expanded in Annex II.

(c) Moreover, the ECHR and the rights and values which the contracting parties to this Convention undertake to protect and promote become a common reference, both for the countries of Western Europe and for those of Eastern and Central Europe. Hungary's accession to the Council of Europe and the requests for accession by Poland, Yugoslavia and Czechoslovakia, prior to accession to the Convention itself, are proof of this.

At a time when public opinion is becoming increasingly aware of the human rights issue, as can clearly be seen at the level of the CSCE, it is hard to imagine the Community sitting on the sidelines, particularly as the Community will be taking an active part in the development of the CSCE, which must include the development of pluralist democracy, the rule of law, human rights, better protection of minorities, and human contacts.

The Dublin European Council on 28 April 1990 asked the Community and its Member States to assume a leading role in all proceedings and discussions within the CSCE process and in efforts to establish new political structures or new agreements based on the principles of the Helsinki Final Act.

(d) In this connection it is important for the Community as such to demonstrate in a solemn and tangible way for the citizens of Europe its attachment to the principles contained in the Convention.

4. Accession to the Convention and its procedures should be the subject of an additional Protocol to be negotiated with the competent organs of the Council of Europe.

In view of the autonomy of the Community legal system in relation to national legal systems, it is important for the Community to have the same rights and obligations within the organs of the Convention as the Member States of the Council of Europe.

For this, the Community must ask to be represented within the Community of Human Rights and the Court of Human Rights on the same terms as the Member States. Ad hoc solutions could be sought for Community participation in the interventions of the Committee of Ministers of the Council of Europe.

The solutions to be envisaged are set out in point 6 of Annex II.

5. The Commission considers that on the basis of the arguments set out above and given all the legitimate interests at stake and the lack of major legal obstacles, the Community should accede to the ECHR.

The Member States, as members of the Council of Europe, should lend their full support in that body to the Community during the accession negotiations.

In view of the political nature of the matter, it should be discussed at the appropriate level and with the necessary priority.

6. The Commission accordingly requests that the Council:

(I) approve the request for the Community's accession to the ECHR:

(II) authorize the Commission to negotiate the details of this accession in accordance with the directives set out in Annex I, the aim being to make the necessary adjustments to the Convention to make possible this accession (notably to provide for Community representation in the Commission of Human Rights and the Court of Human Rights).

Annexes

ANNEX I

Negotiating directives

1. The purpose of the negotiations is to draw up an additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, enabling the Community to become a party to the Convention and some of its Protocols.

2. In order to ensure that the Community participates fully in the organs of the Convention, the Community will have to be represented as such in the Commission of Human Rights and the Court of Human Rights. An ad hoc solution will have to be envisaged for its representation in the Committee of Ministers.

3. The negotiating directives will be defined, where necessary, by the usual procedures.

ANNEX II

Community accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

1. In its Memorandum of 1979 (Bulletin Supplement 2/79) the Commission argued in favour of having the legal acts of the institutions made subject to the review mechanisms set up by the 1950 Convention (Commission of Human Rights and Court of Human Rights). The Community would thus be subject to the same review mechanism as all its Member States.

   At the present time, the powers of the Commission of Human Rights and the Court of Human Rights affect only the Member States of the Council of Europe. They are free to accept the powers of the European Commission of Human Rights for individual claims and to agree to be bound by the judgments of the European Court of Human Rights. (All the Community Member States have done so.) Community acts are not covered by this mechanism.[1]

   The Community is not formally bound by the 1950 Convention. Under the Community legal system, the Convention is applied indirectly only as a source of inspiration to the Court of Justice of the European Communities when drawing up the general principles of law on which Community law is founded.[2] Neither the Commission of Human Rights nor the Court of Human Rights can exercise any control over Community activities, unless the Community accepts the review mechanism set up by the 1950 Convention.

2. It has been claimed that because there exists a large volume of case law of the Court of Justice of the European Communities on fundamental rights, the Community does not need to accede to the ECHR. Although this case law plays a very important part in protecting human rights in the Community, it can provide criteria for the protection of human rights only as and when relevant cases are brought before the Court of Justice of the European Communities. Moreover, it does not comply with the objective of the 1950 Convention, which is to subject the acts of the Member States of the Council of Europe to review outside their own legal systems.

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1 Decision of the European Commission of Human Rights of 10 July 1978; CFDT v Community No 8030/77 DR 13, 231.

2 Case 4/73 Nold v Commission [1974] ECR 491, 508.

Thus, no matter how much attention the Luxembourg Court pays to respect for human rights, it is not the same as external scrutiny by the Strasbourg Court, to which even the constitutional courts and supreme courts of the Member States are subject. It has also been objected that Community accession to the Convention would mean that it would take longer for the individual concerned to obtain redress, since the application to the Strasbourg authorities would be in addition to the Community procedure. The application does not, however, have suspensory effect. It is lodged only in the interests of the individual, and on his own initiative.

3. From another point of view, it has been argued that consequent on accession the Community would have powers in the field of human rights and could monitor all the activities of the Member States in this respect. On the contrary, accession would affect only the Community's field of competence, where the Member States are already subject to scrutiny by the Court of Justice of the European Communities. Accession to the 1950 Convention would not mean any new obligations for them, but would afford their citizens better protection against any Community measures which might infringe fundamental rights.

4. It has also been contended that if the Community acceded to the Convention, the resulting transposition of the ECHR into Community law would give the Convention direct effect in the legal systems of the Member States, whereas a number of Member States, although submitting themselves to the review mechanisms of the Convention, have not in fact transposed it into domestic law.

However, in so far as the Court of Justice of the European Communities refers to the Convention as a source of the general principles of law on which the Community legal system is founded, some of the standards of protection conferred by the Convention have already been established by the Court as general principles of Community law. These standards therefore rank as Community law in the law of the Member States in the areas in which Community law is applicable.
Community accession to the Convention would not change this situation in any way.

In any case, Community accession to the 1950 Convention would affect the legal systems of the Member States only as regards the scope of a Community legal act; it would have no bearing on the effects of the Convention in areas outside this scope. Developments in Community law and the corresponding case law of the Court of Justice of the European Communities have led to a much clearer definition of the dividing line.[3]

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3 Joined Cases 60 and 61/84 Cinéthèque v Féd. nat. des cinémas [1985] ECR 2605, 2627; Case 12/86 Demirel v Stadt Schwäb. Gmünd [1987] ECR 3747, 3754.

5. The fact that the Community has not acceded to the Convention raises a special problem when a Member State implements a Community legal instrument:

(I) the Community, which is responsible for the contested act, is not subject to the review mechanism of the Strasbourg Convention;

(II) if the Member State, which is subject to the review mechanism, has been involved only to implement faithfully the strict obligations imposed on it by Community law, its action is outside the jurisdiction of the European Commission of Human Rights and the European Court of Human Rights.[4]

There is, therefore, a gap and an inconsistency in the protection of the rights of citizens and economic operators with respect to an instrument of Community law.

Similarly, Member States are not released from their responsibility, in respect of the guarantees offered by the Convention, for the powers transferred to the Community, as the Commission of Human Rights has confirmed.[5] It would therefore be normal for the Member States to remove a possible source of conflict by allowing direct action against the Community for acts emanating from the Community.

6. It has also been claimed that some of the provisions of the 1950 Convention are suitable for application only by States and not by an organization such as the Community.
As already pointed out in the 1979 Memorandum, the additional protocol to the Convention to be negotiated with the competent authorities of the Council of Europe should include the necessary adjustments to the provisions of the Convention to allow the Community to accede to the Convention and to submit to the review mechanism set up by the Convention. The full participation of the Community in the organs which ensure that the Convention is respected should also be organized.
This participation raises a number of problems, particularly as regards the Committee of Ministers. These problems have already been discussed in the 1979 Memorandum. It would seem that they can be solved more easily today than in 1979 in view of the consolidation of the Community legal system and the bigger role played by the Community in international relations.

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4 Decision of the European Commission of Human Rights of 9 February 1990 in C.M. and Co. v the Federal Republic of Germany Case No 13258/87. Enforcement of a fine imposed under Article 85 of the EEC Treaty

5. See abovementioned Decision.

As in the case of a State which is party to the Convention, it would seem quite appropriate to request that a judge of the Court and a member of the Commission of Human Rights be appointed to represent the Community in accordance with the normal procedures of the Convention (Articles 39 and 21), to bring to the deliberations of these two organs their knowledge of Community law and their awareness of the requirements inherent in the Community legal system. An exception will have to be allowed to the rules in the 1950 Convention stipulating that the two organs cannot include more than one national per Member State (Articles 38 and 20 of the Convention). This should be acceptable in view of the fact that the Community legal system is independent of the systems in each of the Member States against which a complaint may be lodged before the Strasbourg bodies.

At the moment the situation is more difficult as regards Community participation in the Committee of Ministers. This political organ of the Council of Europe plays a dual role in the control procedures regarding human rights. It takes decisions in cases accepted by the Commission of Human Rights which are not referred to the Court (Article 32 of the Convention) and it supervises execution of the Court's judgments (Article 54 of the Convention).

The involvement of the Committee under Article 32 of the Convention does not seem to be necessary for the aims pursued by the accession of the Community to the Convention, since a higher degree of protection is offered by a judgment of the Court, and provision can be made for all the cases accepted by the Commission concerning the Community to be brought before the Court in accordance with Article 48.

On the other hand, the Committee should be able to play its role in supervising execution of judgments of the Court of Human Rights concerning the Community. Solutions ensuring full participation by the Community can, however, be envisaged when the enforcement of judgments is discussed.

There are therefore sufficient grounds for considering that satisfactory solutions could be negotiated as regards all the organs responsible for ensuring that the 1950 Convention is observed.

7. In its 1979 Memorandum the Commission suggested using Article 235 of the EEC Treaty, Article 203 of the Euratom Treaty and Article 95 of the ECSC Treaty as the legal basis for accession to the 1950 Convention, on the grounds that fundamental rights must be respected in all Community activities. Accession to the Convention is one way of achieving this horizontal objective for Community activities by introducing effective external control through the mechanism of the Strasbourg Convention.

It is not a case of giving the Community new powers, but of ensuring that fundamental rights are observed in the measures taken by the Community within the framework of its powers.

The preamble to the EEC Treaty and the preamble to the Single Act, in so far as it concerns Community action, offer the possibility of interpreting and specifying the objectives of the Community as the European Court of Justice has in fact done in its judgments.[6] The Court has, for instance, already given practical effect to the part of the preamble to the Single Act relating to fundamental rights.[7] The choice of Article 235 of the EEC Treaty, Article 203 of the Euratom Treaty and Article 95 of the ECSC Treaty as the legal basis for the act of accession to the Convention therefore seems fully justified.

8. The accession of the Community to the ECHR does not exclude the option of a catalogue of fundamental rights specific to the Community.[8]

All that is involved is the application of review mechanisms to acts of the Community institutions to ensure that the human rights guarantees contained in the Strasbourg Convention, which are generally considered perfectible standards, are observed.

The Commission has argued that the two approaches are complementary. Parliament also acknowledged this in the preamble to its declaration of fundamental rights and freedoms of 12 April 1989, where it referred to its favourable opinion on the suggestion for accession made by the Commission in its 1979 Memorandum.

6 Case 43/75 Defrenne v Sabena, [1976] ECR 455, 473.

7 Case 249/88 Commission v Federal Republic of Germany: Judgment of 18 May 1989.

8 A People's Europe, Communication from the Commission to Parliament. COM(88) 331 final of 24 June 1988.

Opinion 2/94
Opinion 2/94 - Accesion of the Community to the ECHR

OPINION PURSUANT TO ARTICLE 228 OF THE EC TREATY

Opinion of the Court

Admissibility of the request for an Opinion

1 Ireland and the United Kingdom, as well as the Danish and Swedish Governments, submit that the request for an Opinion is inadmissible or is, at any rate, premature. They argue that there is no agreement framed in sufficiently precise terms to enable the Court to examine the compatibility of accession with the Treaty. In the opinion of those Governments an agreement cannot be said to be envisaged at a stage where the Council has as yet not even adopted a decision in principle to open negotiations on the agreement.

2 Article 228(6) of the Treaty provides that the Council, the Commission or a Member State may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of the Treaty.

3 As the Court has stated, most recently in paragraph 16 of Opinion 3/94 of 13 December 1995 (not yet published in the ECR), the purpose of that provision is to forestall complications which would result from legal disputes concerning the compatibility with the Treaty of international agreements binding upon the Community.

4 The Court also stated in that Opinion (at paragraph 17) that a possible decision of the Court to the effect that such an agreement is, by reason either of its content or of the procedure adopted for its conclusion, incompatible with the provisions of the Treaty could not fail to provoke, not only in a Community context but also in that of international relations, serious difficulties and might give rise to adverse consequences for all interested parties, including third countries.

5 In order to avoid such complications, the Treaty has established the special procedure of a prior reference to the Court of Justice for the purpose of ascertaining, before the conclusion of the agreement, whether the latter is compatible with the Treaty.

6 That procedure is a special procedure of collaboration between the Court of Justice on the one hand and the other Community institutions and the Member States on the other whereby, at a stage prior to conclusion of an agreement which is capable of giving rise to a dispute concerning the legality of a Community act which concludes, implements or applies it, the Court is called upon to ensure, in accordance with Article 164 of the Treaty, that in the interpretation and application of the Treaty the law is observed.

7 As regards the existence of a draft agreement, there can be no doubt that, in this particular case, no negotiations had been commenced nor had the precise terms of the agreement for accession of the Community to the Convention been determined when the request for an Opinion was lodged. Nor will they be so when the Opinion is delivered.

8 In order to assess the extent to which the lack of firm information regarding the terms of the agreement affects the admissibility of the request, the purposes of the request must be distinguished.

9 As is clear from the observations submitted by the Governments of the Member States and by the Community institutions, accession by the Community to the Convention presents two main problems: (i) the competence of the Community to conclude such an agreement and (ii) its compatibility with the provisions of the Treaty, in particular those relating to the jurisdiction of the Court.

10 As regards the question of competence, in paragraph 35 of Opinion 1/78 of 4 October 1979 ([1979] ECR 2871) the Court held that, where a question of competence has to be decided, it is in the interests of the Community institutions and

of the States concerned, including non-member countries, to have that question clarified from the outset of negotiations and even before the main points of the agreement are negotiated.

11 The only condition which the Court referred to in that Opinion is that the purpose of the envisaged agreement be known before negotiations are commenced.

12 There can be no doubt that, as far as this request for an Opinion is concerned, the purpose of the envisaged agreement is known. Irrespective of the mechanism by which the Community might accede to the Convention, the general purpose and subject-matter of the Convention and the institutional significance of such accession for the Community are perfectly well known.

13 The admissibility of the request for an Opinion cannot be challenged on the ground that the Council has not yet adopted a decision to open negotiations and that no agreement is therefore envisaged within the meaning of Article 228(6) of the Treaty.

14 While it is true that no such decision has yet been taken, accession by the Community to the Convention has been the subject of various Commission studies and proposals and was on the Council's agenda at the time when the request for an Opinion was lodged. The fact that the Council has set the Article 228(6) procedure in motion presupposes that it envisaged the possibility of negotiating and concluding such an agreement. The request for an Opinion thus appears to be prompted by the Council's legitimate concern to know the exact extent of its powers before taking any decision on the opening of negotiations.

15 Furthermore, in so far as the request for an Opinion concerns the question of Community competence, its import is sufficiently clear and a formal Council decision to open negotiations was not indispensable in order further to define its purpose.

16 Finally, if the Article 228(6) procedure is to be effective it must be possible for the question of competence to be referred to the Court not only as soon as negotiations are commenced (Opinion 1/78, paragraph 35) but also before negotiations have formally begun.

17 In those circumstances, the question of Community competence to proceed to accession having been raised as a preliminary issue within the Council, it is in the interests of the Community, the Member States and other States party to the Convention to have that question settled before negotiations begin.

18 It follows that the request for an Opinion is admissible in so far as it concerns the competence of the Community to conclude an agreement of the kind envisaged.

19 However, the same is not true as regards the question of the compatibility of the agreement with the Treaty.

20 In order fully to answer the question whether accession by the Community to the Convention would be compatible with the rules of the Treaty, in particular with Articles 164 and 219 relating to the jurisdiction of the Court, the Court must have sufficient information regarding the arrangements by which the Community envisages submitting to the present and future judicial control machinery established by the Convention.

21 As it is, the Court has been given no detailed information as to the solutions that are envisaged to give effect in practice to such submission of the Community to the jurisdiction of an international court.

22 It follows that the Court is not in a position to give its opinion on the compatibility of Community accession to the Convention with the rules of the Treaty.

Competence of the Community to accede to the Convention

23 It follows from Article 3b of the Treaty, which states that the Community is to act within the limits of the powers conferred upon it by the Treaty and of the objectives assigned to it therein, that it has only those powers which have been conferred upon it.

24 That principle of conferred powers must be respected in both the internal action and the international action of the Community.

25 The Community acts ordinarily on the basis of specific powers which, as the Court has held, are not necessarily the express consequence of specific provisions of the Treaty but may also be implied from them.

26 Thus, in the field of international relations, at issue in this request for an Opinion, it is settled case-law that the competence of the Community to enter into international commitments may not only flow from express provisions of the Treaty but also be implied from those provisions. The Court has held, in particular, that, whenever Community law has created for the institutions of the Community powers within its internal system for the purpose of attaining a specific objective, the Community is empowered to enter into the international commitments necessary for attainment of that objective even in the absence of an express provision to that effect (see Opinion 2/91 of 19 March 1993 [1993] ECR I-1061, paragraph 7).

27 No Treaty provision confers on the Community institutions any general power to enact rules on human rights or to conclude international conventions in this field.

28 In the absence of express or implied powers for this purpose, it is necessary to consider whether Article 235 of the Treaty may constitute a legal basis for accession.

29 Article 235 is designed to fill the gap where no specific provisions of the Treaty confer on the Community institutions express or implied powers to act, if such powers appear none the less to be necessary to enable the Community to carry out its functions with a view to attaining one of the objectives laid down by the Treaty.

30 That provision, being an integral part of an institutional system based on the principle of conferred powers, cannot serve as a basis for widening the scope of Community powers beyond the general framework created by the provisions of the Treaty as a whole and, in particular, by those that define the tasks and the activities of the Community. On any view, Article 235 cannot be used as a basis for the adoption of provisions whose effect would, in substance, be to amend the Treaty without following the procedure which it provides for that purpose.

31 It is in the light of those considerations that the question whether accession by the Community to the Convention may be based on Article 235 must be examined.

32 It should first be noted that the importance of respect for human rights has been emphasized in various declarations of the Member States and of the Community institutions (cited in point III.5 of the first part of this Opinion). Reference is also made to respect for human rights in the preamble to the Single European Act and in the preamble to, and in Article F(2), the fifth indent of Article J.1(2) and Article K.2(1) of, the Treaty on European Union. Article F provides that the Union is to respect fundamental rights, as guaranteed, in particular, by the Convention.

Article 130u(2) of the EU Treaty provides that Community policy in the area of development cooperation is to contribute to the objective of respecting human rights and fundamental freedoms.

33 Furthermore, it is well settled that fundamental rights form an integral part of the general principles of law whose observance the Court ensures. For that purpose, the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories. In that regard, the Court has stated that the Convention has special significance (see, in particular, the judgment in Case C-260/89 *ERT* [1991] ECR I-2925, paragraph 41).

34 Respect for human rights is therefore a condition of the lawfulness of Community acts. Accession to the Convention would, however, entail a substantial change in the present Community system for the protection of human rights in that it would entail the entry of the Community into a distinct international institutional system as well as integration of all the provisions of the Convention into the Community legal order.

35 Such a modification of the system for the protection of human rights in the Community, with equally fundamental institutional implications for the Community and for the Member States, would be of constitutional significance and would therefore be such as to go beyond the scope of Article 235. It could be brought about only by way of Treaty amendment.

36 It must therefore be held that, as Community law now stands, the Community has no competence to accede to the Convention.

In conclusion,

THE COURT

composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris, D. A. O. Edward, J.-P. Puissochet and G. Hirsch, Presidents of Chambers, G. F. Mancini, F. A. Schockweiler (Rapporteur), J. C. Moitinho de Almeida, P. J. G. Kapteyn, C. Gulmann, J. L. Murray, P. Jann, H. Ragnemalm, L. Sevón and M. Wathelet, Judges,

after hearing the views of First Advocate General Tesauro and Advocates General Lenz, Jacobs, La Pergola, Cosmas, Léger, Elmer, Fennelly and Ruiz-Jarabo Colomer,

gives the following opinion:

As Community law now stands, the Community has no competence to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Rodríguez Iglesias Kakouris Edward Puissochet

Hirsch Mancini Schockweiler Moitinho de Almeida

Kapteyn Gulmann Murray Jann

Ragnemalm Sevón Wathelet

Luxembourg, 28 March 1996.

R. Grass G. C. Rodríguez Iglesias

Registrar President

I - 1790

II.3. The Judicial Origins of the Charter of Fundamental Rights

ECLI:EU:C:1969:57
Judgment of 12 November 1969, C-29/69, Erich Stauder v City of Ulm-Sozialamt

JUDGMENT OF THE COURT
12 NOVEMBER 1969[1]

Erich Stauder
v City of Ulm, Sozialamt[2]
(Reference for a preliminary ruling by the Verwaltungsgericht Stuttgart)

Case 29/69

Summary

1. *Measures adopted by an institution — Decision addressed to all Member States — Interpretation — Criteria — Consideration of different language versions of the measure in question*
(EEC Treaty, Article 189)

2. *Community law — General principles — Fundamental human rights included — Respect for these ensured by the Court*

1. When a single decision is addressed to all the Member States the necessity for uniform application and accordingly for uniform interpretation makes it impossible to consider one version of the text in isolation but requires that it be interpreted on the basis of both the real intention of its author and the aim he seeks to achieve, and in the light in particular of the versions in all four languages.
2. The provision at issue contains nothing capable of prejudicing the fundamental human rights enshrined in the general principles of Community law and protected by the Court.

In Case 29/69

Reference to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht Stuttgart for a preliminary ruling in the action pending before that court between

ERICH STAUDER, 15 Marienweg, 79 Ulm,

and

CITY OF ULM, SOZIALAMT (Social Welfare Office),

on the following question:

'Can the fact that the Decision of the Commission of the European Communities of 12 February 1969 (69/71/EEC) makes the sale of butter at a

1 — Language of the Case: German.
2 — CMLR.

reduced price to beneficiaries under certain welfare schemes dependent on revealing the name of the beneficiary to the sellers be considered compatible with the general principles of Community law in force?,'

THE COURT

composed of: R. Lecourt, President, R. Monaco and P. Pescatore, Presidents of Chambers, A. M. Donner, W. Strauß, A. Trabucchi and J. Mertens de Wilmars (Rapporteur), Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The decision by the Commission of 12 February 1969 on measures to allow certain categories of consumers to buy butter at a reduced price (Official Journal 1969 L 52/9) authorizes Member States to make butter available at a reduced price to certain categories of consumers who are beneficiaries under a social welfare scheme and whose income does not enable them to buy butter at normal prices.

Article 4 of this decision provides in the German version that:

> 'Die Mitgliedstaaten treffen alle erforderlichen Maßnahmen damit . . . die Begünstigten der in Artikel 1 vorgesehenen Maßnahmen Butter nur gegen einen *auf ihren Namen ausgestellten Gutschein* erhalten können.' ('Member States shall take all measures necessary to ensure that . . . those entitled to benefit from the measures laid down in Article 1 may only receive butter in exchange for *a coupon issued in their names.*')

The French version states that the butter may only be obtained in exchange for a '*bon individualisé*', the Dutch version states that it may only be obtained in exchange for an '*op naam gestelde bon*', and the Italian version, lastly, says that it may only be obtained in exchange for a '*buono individualizzato*'.

The Federal Republic of Germany made use of this authorization and issued cards in accordance with the 'Richtlinien für die Abgabe verbilligter Butter an Empfänger bestimmter sozialen Hilfen' ('Directives regarding the issue of cheap butter to persons in receipt of certain welfare benefits') of 11 March 1969 (Bundesanzeiger No 52 of 15 March 1969, p. 3). The cards consisted of detachable coupons with a stub which had, in order to be valid, to bear the name and address of the beneficiary.

According to Chapter V of the above directives, the retailer may only accept when selling the butter at a reduced price coupons which are still attached to the stub, on which must appear, among other things, the name of the beneficiary.

STAUDER v ULM

The plaintiff in the main action is entitled to buy butter at reduced prices because he is a beneficiary of the welfare scheme for those disabled in the war. However, he considers it illegal to make the appearance of the *name* of the beneficiary on the stub mentioned above a condition for buying the butter.
On those grounds:

1. He lodged by letter of 22 April 1969 a constitutional complaint with the Bundesverfassungsgericht (Federal Constitutional Court) on the grounds of infringement of, *inter alia*, Articles 1 and 3 of the Grundgesetz (Basic Law) of the Federal Republic of Germany;
2. He brought an action by letter of 22 May 1969 in the Verwaltungsgericht Stuttgart (Stuttgart Administrative Court) against the City of Ulm in which he sought an interim order for the removal of this requirement.

On 18 June the Verwaltungsgericht Stuttgart made the order for reference containing the question now before the Court. On 9 August 1969, that is, after the order making the reference had been lodged, there appeared in the Official Journal of the European Communities a Decision of the Commission of 29 July 1969 (69/244/EEC, Official Journal L 200, p. 29), Article 2 of which provides as follows:

'1. In the German version of Article 4, second indent, of the said Decision (of 12 February 1969) the words "auf ihren Namen ausgestellten" shall with effect from 17 February 1969 be replaced by the word "individualisierten";
2. In the Dutch version of Article 4, second indent, of the said Decision the words "op naam gestelde" shall with effect from 17 February 1969 be replaced by the word "geïndividualiseerde".'

According to the order making the reference a strict interpretation of the wording of Article 4 of the Decision of 12 February 1969 makes it impossible to avoid revealing the name of the beneficiary to retailers, who do not normally have a role to play in the provision of social welfare to the underprivileged. The Verwaltungsgericht doubts whether such a condition accords with the law, and considers it in any case contrary to the German concept of social welfare and to the German system of protection of fundamental rights which must, at least in part, be guaranteed equally by the Community institutions as part of the protection afforded by the provisions of a Community law which has a superior status.
The order making the reference was lodged at the Court Registry on 26 June 1969.
Written observations were lodged by the Commission of the European Communities under Article 20 of the Protocol on the Statute of the Court of Justice.
The Commission of the European Communities made its oral observations at the hearing on 14 October 1969.
The Advocate-General delivered his opinion at the hearing on 29 October 1969.

II — Observations submitted to the Court under Article 20 of the Statute

Only the Commission presented observations, and these may be summarized as follows:

A — *Admissibility*

The Commission considers that the question of interpretation referred by the Verwaltungsgericht comprises a question concerning the validity of the Decision of 12 February 1969. Both the text of the question put, which mentions the issue of compatibility with Community law, and the reasons given for making

the reference, which are concerned with the lawfulness and validity of the obligation to state the name, point to this.
The question concerning the compatibility with the general principles of Community law only indicates the reason why the provision concerning the indication of name might be void.
The Commission considers that although it is badly formulated, the admissibility of the question is not in doubt.

B — *The validity of Article 4 of the Decision of 12 February 1969*

Principally, the Commission contests the claim that the decision in question makes the sale of butter at a reduced price conditional on revealing to retailers the name of the beneficiary. It claims that although such an indication is carried in the wording of the German and Dutch texts, unlike the French and Italian texts which only mention the requirement that coupons shall refer to the person concerned, the provision in the second paragraph of Article 4 can have only one meaning in all four official versions and this is proved by the fact that the decision constitutes, in substance, a uniform measure and by its purpose and origins.
The version to be preferred is the French version if the origin of the decision is borne in mind. In fact the Management Committee expressly decided at its meeting of 29 January 1969 to modify, in the draft decision drawn up by the Commission, the clause to the effect that beneficiaries could only obtain butter in exchange for a coupon referring to the person concerned, '*détaché d'une carte portant l'identité de l'acheteur*' ('detached from a card indicating the buyer's identity'). Those last words were removed from the draft approved by the Management Committee. When the final versions of the texts were drawn up the rectification of Article 4 in the Dutch and German versions was overlooked.
However, if the Commision had wished to depart from the text approved by the Management Committee it should, in accordance with Article 30(3) of EEC Regulation No 804/68, have notified the Council and this it did not do.
In any event, in order to avoid all doubt the Commission has expressly amended the German and Dutch versions of Article 4, second indent, by Article 2 of its Decision of 29 July 1969 with effect from 17 February 1969 (Official Journal 1969 L 200/29).
The Commission concludes that the Decision of 12 February 1969 did not at any time make the authorization to purchase butter at a reduced price dependent on presentation of a coupon mentioning the beneficiary by name. Since the objection of the Stuttgart Court was directed solely against the obligation to state the name, its question is deprived of substance.
Secondarily, should the Court judge it necessary to reply to the question whether the requirement that a coupon be presented stating the name of the beneficiary is contrary to Community law, the Commission makes the following observations:
1. The question put to the Court concerns the compatibility of the contested measure with the general principles of *Community law* in force.
That is in fact the only law with which it could be concerned because Community institutions are subject only to that law and the Court of Justice can only examine regulations adopted by those institutions in the light of that law.
The protection guaranteed by fundamental rights is, as regards Community law, assured by various provisions in the Treaty, such as Articles 7 and 40(3); this is written law supplemented in its turn by unwritten Community law, derived from the general principles of law in force in Member States.
2. As regards the *written* law, the only relevant provision can be the prohibition of any kind of discrimination expressed as a general principle in Article 7 and

more specifically in the second subparagraph of Article 40(3) of the EEC Treaty, according to which a common organization of agricultural markets shall exclude any discrimination between producers or consumers within the Community.

But there is no question of discrimination in the present case because, although the persons entitled to purchase butter at a reduced price are not treated in the same manner as those who buy butter at the normal price, the circumstances of these two categories of persons are objectively distinguishable (cf. judgment of 17 July 1963, *Government of the Italian Republic* v *Commission of the EEC*, Case 13/63 [1963] E.C.R. 165).

Moreover, Article 40(3) is not applicable during the transitional period.

As far as Article 7 of the EEC Treaty is concerned it has no effect where the more specific prohibition of Article 40 applies; furthermore, it cannot apply in the absence of discrimination, and in any case this means in the absence of discrimination based on grounds of nationality.

3. As regards unwritten Community law, the Commission observes that the substantive constitutionality of the obligation to reveal identity can only be placed in doubt, under German constitutional law, by the principle that the means must be proportionate to the end. This results from the principle of the State founded on the rule of law.

The Court of Justice has repeatedly applied this principle in its judgments to certain aspects of the acts of Community institutions without however, holding that it applies to all the activities of the Communities or in particular to the legislative measures of the Council and of the Commission.

However that may be, this rule has not been violated in this case.

In fact the principal aim of selling butter at a reduced price is to reduce the stocks of butter by selling to customers whose income is not normally sufficient to enable them to purchase butter at the normal price.

It is therefore in no way a public welfare measure and it was necessary to prevent the butter from being purchased by persons with higher incomes or its benefit from being converted by beneficiaries by using it to produce other goods; in both cases the economic aim of the measure—to increase consumption—would not have been achieved.

The best method—which is impracticable because of the cost—would have been for the authorities in Member States to sell the butter themselves. As that was impossible, the butter had to be sold through the trade. In order to make it possible to check that supplies were being properly used at the time of sale, it was considered necessary to mark each coupon (for instance by numbering) so as to make it possible to discover to whom the butter had been delivered.

It is easier to identify the beneficiary if his name is on the coupon. The removal of anonymity from the coupon also constitutes a psychological deterrent against abuse. The means used was therefore proportionate to the ends pursued.

Furthermore, there is no question of there having been a breach of the principle of proportionality because the Decision of 12 February 1969 does not *necessarily* entail any legal disadvantage for the person concerned. The reduced price is a concession which the beneficiary can refuse to take up. There is therefore no real *encroachment* on his rights in the classical sense of the word.

Lastly, regard for the principle of proportionality need not entail substitution of a judicial assessment for the discretion allowed to the institution having the power to issue the contested measure. One can only consider that the principle has been violated if the means decided upon as suitable for achievement of the end in view can in no way be justified,

whatever the objective criteria used in assessing it, and that is not so in the present case.

Accordingly the Commission proposes in the first place a reply in the following terms:

—Examination of the question referred to the Court by the Verwaltungsgericht Stuttgart has revealed no ground for holding that the Decision of the Commission of 12 February 1969 is void to the extent to which it makes 'purchase of butter at a reduced price dependent on the presentation of a coupon referring to the person concerned.'

Alternatively, it proposes that the question should be answered in the negative.

Grounds of judgment

1 By an order of 18 June 1969 received by the Court Registry on 26 June 1969 the Verwaltungsgericht Stuttgart has referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty the question whether the requirement in Article 4 of Decision No 69/71 EEC of the Commission of the European Communities that the sale of butter at reduced prices to beneficiaries under certain social welfare schemes shall be subject to the condition that the name of beneficiaries shall be divulged to retailers can be considered compatible with the general principles of Community law in force.

2 The abovementioned decision is addressed to all the Member States and authorizes them, with a view to stimulating the sale of surplus quantities of butter on the Common Market, to make butter available at a lower price than normal to certain categories of consumers who are in receipt of certain social assistance. This authorization is subject to certain conditions designed, *inter alia*, to ensure that the product, when marketed in this way, is not prevented from reaching its proper destination. To that end Article 4 of Decision No 69/71 stipulates in two of its versions, one being the German version, that the States must take all necessary measures to ensure that beneficiaries can only purchase the product in question on presentation of a 'coupon indicating their names', whilst in the other versions, however, it is only stated that a 'coupon referring to the person concerned' must be shown, thus making it possible to employ other methods of checking in addition to naming the beneficiary. It is therefore necessary in the first place to ascertain exactly what methods the provision at issue prescribes.

3 When a single decision is addressed to all the Member States the necessity for uniform application and accordingly for uniform interpretation makes it impossible to consider one version of the text in isolation but requires that it be interpreted on the basis of both the real intention of its author and the aim he seeks to achieve, in the light in particular of the versions in all four languages.

4 In a case like the present one, the most liberal interpretation must prevail, provided that it is sufficient to achieve the objectives pursued by the decision in question. It cannot, moreover, be accepted that the authors of the decision intended to impose stricter obligations in some Member States than in others.

5 This interpretation is, moreover, confirmed by the Commission's declaration that an amendment designed to remove the requirement that a name shall appear on the coupon was proposed by the Management Committee to which the draft of Decision No 69/71 was submitted for its opinion. The last recital of the preamble to this decision shows that the Commission intended to adopt the proposed amendment.

6 It follows that the provision in question must be interpreted as not requiring—although it does not prohibit—the identification of beneficiaries by name. The Commission was thus able to publish on 29 July 1969 an amending decision to this effect. Each of the Member States is accordingly now able to choose from a number of methods by which the coupons may refer to the person concerned.

7 Interpreted in this way the provision at issue contains nothing capable of prejudicing the fundamental human rights enshrined in the general principles of Community law and protected by the Court.

Costs

8 The costs incurred by the Commission of the European Communities, which has submitted its observations to the Court, are not recoverable, and as these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the Verwaltungsgericht Stuttgart the decision on costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the observations of the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 7, 40 and 177;
Having regard to Regulation (EEC) No 804/68 of the Council of 27 June 1968;
Having regard to the Decisions of the Commission of the European Communities Nos 69/71 of 12 February 1969 and 69/244 of 29 July 1969;

Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the question referred to it by the Verwaltungsgericht Stuttgart by order of that court of 18 June 1969 hereby rules:

1. **The second indent of Article 4 of Decision No 69/71/(EEC) of 12 February 1969, as rectified by Decision No 69/244/(EEC), is to be interpreted as only requiring the identification of those benefiting from the measures for which it provides; it does not, however, require or prohibit their identification by name so as to enable checks to be made;**

2. **Examination of the question referred to the Court by the Verwaltungsgericht Stuttgart reveals nothing capable of affecting the validity of the said Decision.**

Lecourt Monaco Pescatore

Donner Trabucchi Strauß Mertens de Wilmars

Delivered in open court in Luxembourg on 12 November 1969.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 29 OCTOBER 1969[1]

Mr President,
Members of the Court,

The excess butter production in the Community and the failure until now to produce effective measures to prevent increases in production has made it ever more imperative to attempt to reduce the butter surplus with the aid of measures designed to increase consumption.
This was the intention behind the Decision of the Commission of 12 February 1969 (Official Journal L 52 69) taken in pursuance of Articles 28 and 35 of Regulation No 804/68 of the Council

1 — Translated from the German.

ECLI:EU:C:1970:114
Judgment of 17 December 1970, C-11/70, Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel

an integral part of the general principles of law protected by the Court of Justice. The protection of such rights, whilst inspired by the constitutional traditions common to the Member States, must be ensured within the framework of the structure and objectives of the Community.
(Judgment of 12 November 1969, Case 29/69, Rec. 1969, p. 425)

3. The requirement by the agricultural regulations of the Community of import and export licences involving for the licensees an undertaking to effect the proposed transactions under the guarantee of a deposit constitutes a method which is both necessary and appropriate, for the purposes of Articles 40 (3) and 43 of the EEC Treaty, to enable the competent authorities to determine in the most effective manner their interventions on the market in cereals. The system of deposits violates no fundamental right.

4. The concept of *force majeure* adopted by the agricultural regulations is not limited to absolute impossibility but must be understood in the sense of unusual circumstances, outside the control of the importer or exporter, the consequences of which, in spite of the exercise of all due care, could not have been avoided except at the cost of excessive sacrifice.
(Judgment of 11 July 1968, Case 4/68, Rec. 1968, p. 563)

5. By limiting the cancellation of the undertaking to export and the release of the deposit to cases of *force majeure* the Community legislature adopted a provision which, without imposing an undue burden on importers or exporters, is appropriate for ensuring the normal functioning of the organization of the market in cereals, in the general interest as defined in Article 39 of the Treaty.

In Case 11/70

Reference to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht (Administrative Court) Frankfurt-am-Main, for a preliminary ruling in the case pending before that court between

INTERNATIONALE HANDELSGESELLSCHAFT MBH, the registered office of which is at Frankfurt-am-Main,

and

EINFUHR- UND VORRATSSTELLE FÜR GETREIDE UND FUTTERMITTEL, Frankfurt-am-Main,

on the validity of the third subparagraph of Article 12 (1) of Regulation No 120/67/EEC of the Council of 13 June 1967 on the common organization of the market in cereals and Article 9 of Regulation No 473/67/EEC of the Commission of 21 August 1967 on import and export licences for cereals and processed cereal products, rice, broken rice and processed rice products,

INTERNATIONALE HANDELSGESELLSCHAFT v EINFUHR- UND VORRATSSTELLE GETREIDE

THE COURT

composed of: R. Lecourt, President, A. M. Donner and A. Trabucchi, Presidents of Chambers, R. Monaco, J. Mertens de Wilmars, P. Pescatore (Rapporteur) and H. Kutscher, Judges.

Advocate-General: A. Dutheillet de Lamothe
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

On 7 August 1967 Internationale Handelsgesellschaft mbH, an import-export undertaking based at Frankfurt-am-Main, obtained an export licence in respect of 20 000 metric tons of maize meal, the validity of which expired on 31 December 1967.
In accordance with the third subparagraph of Article 12 (1) of Regulation No 120/67/EEC of the Council of 13 June 1967 on the common organization of the market in cereals (OJ Special Edition 1967, p. 33) the issue of the licence was conditional on the lodging of a deposit, amounting to 0.5 units of account per metric ton, guaranteeing that exportation would be effected during the period of validity of the licence. As exportation was only partially effected (11 486.764 metric tons) during the period of validity of the said licence, the Einfuhr- und Vorratsstelle für Getreide und Futtermittel declared DM 17 026.47 of the deposit to be forfeited, in accordance with Regulation No 473/67/EEC of the Commission of 21 August 1967 on import and export licences for cereals and processed cereal products, rice, broken rice and processed rice products (OJ 1967, No 204, p. 16).

On the Einfuhr- und Vorratsstelle's failure to come to a decision on the objections of Internationale Handelsgesellschaft mbH, that undertaking on 18 November 1969 brought an action before the Verwaltungsgericht (Administrative Court) Frankfurt-am-Main.
By order of 18 March 1970, received at the Court Registry on 26 March, the VerwaltungsgerichtFrankfurt-am-Main, asked the Court under Article 177 of the EEC Treaty for a preliminary ruling on the following questions:

1. Are the obligation to export, laid down in the third subparagraph of Article 12 (1) of Regulation No 120/67/EEC of the Council of 13 June 1967, the lodging of a deposit, upon which such obligation is made conditional, and forfeiture of the deposit, where exportation is not effected during the period of validity of the export licence, legal?

2. In the event of the Court's confirming the legal validity of the said provision, is Article 9 of Regulation No 473/67/EEC of the Commission of 21 August 1967, adopted in implementation of Regulation No 120/67, legal in that it excludes forfeiture of the deposit only in cases of *force majeure*?

In its order the *Verwaltungsgericht* emphasized the following considerations in particular:

As the court has refused, by reason of established case-law, to accept the legality of the provisions cited, it appears to it essential to put an end to the resultant legal uncertainty.

Although Community regulations are not German national laws, but legal rules pertaining to the Community, they must respect the elementary, fundamental rights guaranteed by the German Constitution and the essential structural principles of national law. In the event of contradiction with those principles, the primacy of supranational law conflicts with the principles of the German Basic Law.

The system of deposits instituted by Regulation No 120/67 is contrary to the principles of freedom of action and disposition, of economic liberty and of proportionality stemming in particular from Articles 2 (1) and 14 of the German Basic Law. More particularly, the adverse effects of the system of deposits on the interests of trade appear disproportionate to the objective sought by the regulation, which is to ensure for the competent authorities as precise and comprehensive a view as possible of market trends. The same result could in fact be obtained by less radical means.

Even if the Court of Justice were to confirm the validity of the system of deposits, the court of reference still has doubts as to the validity of Article 9 of Regulation No 473/67, by reason of the fact that forfeiture of the deposit is excluded only in cases of *force majeure* and not in other cases in which exportation has not been effected without nevertheless any fault being attributable to the persons concerned.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted on 15 June 1970 by the Government of the Kingdom of The Netherlands, the defendant in the main action and the Commission of the European Communities, on 17 June by the plaintiff in the main action and on 18 June by the Government of the Federal Republic of Germany.

After hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

The plaintiff in the main action and the Commission submitted their oral observations at the hearing on 11 November 1970.

The Advocate-General delivered his opinion at the hearing on 2 December 1970.

For the procedure before the Court Fritz Modest, Advocate, of Hamburg, appeared for the plaintiff in the main action, Albrecht Stockburger, Advocate, of Frankfurt-am-Main, for the defendant in the main action, W. Riphagen, Legal Adviser to the Ministry for Foreign Affairs, for the Government of the Kingdom of The Netherlands, Rudolf Morawitz, Ministerialrat to the Ministry for Economic Affairs, for the Government of the Federal Republic of Germany and Claus-Dieter Ehlermann, the Commission's Legal Adviser, for the Commission of the European Communities.

II — Observations submitted to the Court

The written and oral observations submitted to the Court may be summarized as follows:

Internationale Handelsgesellschaft mbH, the plaintiff in the main action, after pointing out the factual reasons for which it did not during the period of its validity fully utilize the export licence granted to it, disputes the validity of the system of deposits as instituted by the third subparagraph of Article 12 (1) of Regulation No 120/67 and Article 9 of Regulation No 473/67, for the following reasons:

(a) Forfeiture of the deposit, which is the consequence of failure to carry out the obligation to import or export, in reality constitutes a fine or a penalty. The provisions of the Treaty concerning the organization of the agricultural markets contain no provision enabling the Council or the Commission to impose sanctions of a penal nature.

(b) The system of deposits, as it is instituted by the provisions criticized, is contrary to the principle of proportionality which

forms part of the general principles of law, recognition of which is essential in the framework of any structure based on respect for the law. As these principles are recognized by all the Member States, the principle of proportionality forms an integral part of the EEC Treaty.

The plaintiff in the main action points out more particularly in this connexion that the agricultural regulations of the Community, in particular Regulation No 120/67, are limited in principle to the formation of market policy by means of prices. The regulation of prices has an automatic sluice-gate effect on quantitative movements in the Community market and avoids any disturbance to it. Consequently, the point of prime importance in the assessment of the market and market trends is the observance and checking first, of the prices on the internal market and, secondly, of the situation on the world market. On the other hand, a quantitative check, such as arises from the system of import and export licences, the implementation of which must be guaranteed by means of a deposit, is only of secondary importance.

It appears therefore that the system of deposits is ineffectual in attaining the objective sought by the regulation and is therefore contrary to the scheme of the regulation.

Moreover, it is also ineffectual in view of the fact that it can neither guarantee that the obligation to import or export is actually carried out, nor enable the competent authorities in good time to have a sure view of the state of the market, much less future market trends.

This is all the more true as the Commission's deparments are not technically in a position to exploit the information provided by the system criticized.

Lastly, the amount of the deposit, particularly in cases of advance fixing of levies or refunds, is excessive when compared to trade profit margins.

It follows from these findings that a substantial charge is imposed without any necessity on importers and exporters. Any measure constituting a charge, whether or not it is in itself tolerable, infringes the principle between the charge and the result which it may or must endeavour to achieve, when that objective cannot be attained by the method employed or when, in order to attain it, there are other methods which may be more conveniently applied.

(c) The plaintiff in the main action casts doubt on the validity of Article 9 of Regulation No 473/67, which allows importers and exporters to be relieved of their obligations and of forfeiture of the deposit in cases of *force majeure*, for the following reasons:

— the system of Article 9 infringes the principle of proportionality in that it refuses, otherwise than in cases of *force majeure*, to take into consideration situations in which the authorization to import or export has not been utilized for justifiable commercial reasons;

— the provision in dispute does not take into account the peculiarities of the inward processing trade, a system to which the goods concerned in the main action are subject;

— the whole of Regulation No 473/67, including Article 9 thereof, was adopted, by virtue of Article 26 of Regulation No 120/67, according to the 'Management Committee' procedure; the application of that procedure is incompatible with the institutional structure laid down by the EEC Treaty.

The *Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, the defendant in the main action, first of all observes that the Court of Justice of the Communities cannot assess the validity of measures taken by Community institutions with regard to the rules of national law, even constitutional law, or to the fundamental rights enshrined therein. However, the fundamental right to free expression and free choice in commercial decisions, enounced by the Basic Law of the Federal Republic, constitutes an element of that common fund of fundamental values which form part of Community law; as to the principle of proportionality, it is recognized by several provisions of the EEC Treaty, in particular Article 40, and the Court of Justice has already had recourse to it in assessing various measures adopted by Community institutions.

But both in Community law and in national law there is violation of the principle of proportionality only where no objectively defensible consideration can justify recourse to a specific method intended to attain a given objective. In this instance, therefore, it is merely a question of establishing whether or not the economic assessment on which the legislature of the EEC based the regulations in dispute is vitiated by obvious errors.

(a) With regard to the first question submitted to the Court, the defendant in the main action considers that the significance and objective of the system of licences and deposits is to enable the agencies entrusted with the organization of the market to have a permanent, sure and comprehensive view of future imports and exports and to put them in a position to check market activities. Such a permanent check is indispensable, not to establish statistics, but to enable the powers with regard to market guidance to be exercised to the correct degree, to facilitate intervention without delay in case of crisis and to enable any precautionary measures to be taken. The available information must continuously provide a *prospective*, comprehensive view of the market.
However, the informatory value of licences can only be trusted when they are actually made use of, when, in other words, there is an obligation to import or export, sanctioned by a penalty which consists precisely in the forfeiture of the deposit. This system alone is equally capable of preventing with sufficient certainty speculations which, when made in the context of import and export licences and of levies and refunds, have a decisive effect on the informatory value of the unused licences. The absence of such a system would in all probability lead to an unlimited number of import and export licences being renounced and it would no longer be possible effectively to keep watch over the market.
The system of deposits is perfectly capable of fulfilling the function accorded it: the penalty constituted by the risk of forfeiture of the deposit in the event of non-utilization of the licence is sufficient guarantee that the intended transaction is effected and the competent authorities are informed in good time of the utilization or otherwise of the licence.
It is impossible to substitute for the system of deposits other methods imposing lesser charges on the persons concerned. Neither the system whereby exporters report exports actually effected nor that consisting in the obligation to report non-exportation is capable of providing the Commission and the competent national administration with the necessary comprehensive view over the market and to prevent speculation. The result of both procedures, taking into account the long period of validity of the licences, is that it is impossible at any given moment to determine, even approximately, the actual quantities which are expected to be imported or exported. Moreover, the duration of the validity of the licences cannot be reduced, as they have been fixed by reference to periods usual in the commercial world.
The amount of the deposit does not impose an excessive burden on the exporter; it is in particular very much less than the normal profit margin for this type of transaction. In the case of export licences with the refund fixed in advance, it was obviously necessary to fix the amount of the deposit at a higher figure, as the deposit must forestall the risk of more serious speculation on the fixed rate of refund, which could lead to the non-utilization of the licence.

(b) With regard to the second question, the defendant in the main action denies that the principle of proportionality is violated by the fact that Article 9 of Regulation No 473/67 excludes the obligation to utilize the licence within the prescribed period only in circumstances which may be considered to amount to *force majeure*.
The cases of *force majeure* provided for by this provision are not exhaustively listed, since the competent agencies are enabled to countenance circumstances other than those expressly referred to therein. The list of additional circumstances to be considered as cases of *force majeure*, as drawn up and intimated by the Federal Republic of Germany, is so complete that it takes into account all serious cases capable of justifying the non-application of forfeiture of

the deposit. The Court of Justice itself, in its judgment of 11 July 1968 in Case 4/68, has to a remarkable extent taken into account the interests of importers and exporters, by defining the meaning of the expression '*force majeure*' by reference to general criteria and leaving the application of that concept to the administration and the courts.

(c) In conclusion, the defendant in the main action is of the opinion that if the scope of the system of deposits is considered in its true light it cannot seriously be maintained that the provisions referred to the Court violate the principle of proportionality or that of freedom of trade.

The *Government of the Federal Republic of Germany* is of the opinion that in order to reply to the questions put it is unnecessary to examine whether there may be deduced from the EEC Treaty an unwritten reservation in favour of the constitutions of the Member States and, more particularly, of fundamental rights recognized by those constitutions or whether the Community Treaties provide individual rights analogous or equivalent to the fundamental rights generally recognized in the Member States or stipulated by the European Convention on Human Rights.

The Court of Justice has in fact accepted on various occasions that the principle of proportionality is equally valid in the context of the Community. This principle is not put in issue by the provisions in dispute.

The functioning of all the mechanisms instituted by Regulation No 120/67 is only ensured by a prospective comprehensive view of the market. The issue of licences by itself cannot guarantee it. Certain information on imports and exports can only be obtained if the transactions to which the licences relate are actually effected. Such is the object of the lodging and possible forfeiture of the deposit; they also avoid speculation.

The *Government of the Kingdom of The Netherlands* considers that the obligation to effect within a certain period the import or export transactions to which the licences relate, the lodging of a deposit to this end and the forfeiture of that deposit when the obligation is not fulfilled are in accordance with the objective sought by Regulation No 120/67 and cannot be considered to be illegal.

The objective of these measures is to enable a common policy for the market in cereals to be established; this presupposes a correct view of the state of the market in that sector and a valid prospective study of market trends. These conditions are not satisfied if certain data relating to expected imports and exports remain uncertain.

The obligation to export and the lodging of a deposit have other than purely statistical functions; they form an integral part of the system established by the common organizations of the agricultural markets. Export refunds vary in accordance with the estimated size of stocks, assessed on the basis of predicted exports; the spreading of those stocks over the whole marketing year is one of the objectives of the policy of the markets; the determination of the number of exports and the quantities intended for other uses, for denaturing for example, are particularly important in a surplus situation. A notice of non-exportation or non-importation cannot be substituted for the system in force. Such notification is incompatible with the necessity to fix in advance the amount of the imports and exports which will be effected during given periods. Moreover, the policy of the markets would find itself paralysed by it, as it would be several months behind events Finally, such a solution would promote speculation.

The *Commission of the European Communities* makes the preliminary observation that the Community institutions are bound by Community law alone and that in their regard the protection conferred by the fundamental rights of national constitutions flows only from Community law, written or unwritten. Further, even according to German constitutional law, the system of deposits is only capable of infringing the provisions concerning free development of the person, freedom of action and economic freedom if, at the same time, it runs counter to the principle of proportionality.

This principle is in no way put in issue by the system in dispute, as that system is indispensable to the proper functioning of

the common organization of the market in cereals.

(a) The common organization of the market in cereals involves essentially the regulation of prices, the object of which is to stabilize the price of cereals in the Community at a level higher than that on the world markets. Such regulation protects the internal market from falls in prices provoked either by over-production by the Community or by imports from third countries. It can only function if the regulatory mechanisms are used in a rational manner; it is therefore essential that data be available indicating not only the imports and exports already effected but also enabling a valid assessment of *future* market trends to be made. This *prospective* comprehensive view of the market is essential not only for the possible application of protective measures in the face of a threat of serious disturbances to the market but also for the fixing of export refunds and denaturing premiums.

The system of deposits is a necessary instrument for such a prospective comprehensive view of the market.

Such a view requires sure data on future imports and exports; the licence only provides such information if it can be expected with sufficient certainty that the issue of the licence will actually lead to importation or exportation. This is only the case if non-utilization of the licence involves some disadvantage for the licensee; such is the object of the deposit which is forfeited in cases where the licence is not used. The obligation to import or export involves no disadvantage for the licensee other than forfeiture of the deposit; thus it in no way has a particularly adverse effect on the rights of the individual.

In the absence of a deposit, the licence is not capable of providing sure data as to future imports or exports. In fact, there are several reasons for a trader to apply for more licences than he needs.

It is not possible to obtain a valid comprehensive view of the market by obliging the licensee to report non-utilization of his licence and by penalizing any failure to fulfil that obligation by the imposition of a fine; in fact, in order to acquire a prospective comprehensive view of the market it is necessary that at the time when the licence is issued there should be sufficient certainty that the quantity mentioned in the licence will be imported or exported during the period of its validity. Notice of non-utilization would merely lead to piecemeal correction of the initially false image of the future state of the market.

A reduction in the duration of the validity of licences is not an adequate solution: it runs counter to the objectives of the common organization of the market in cereals and is incompatible with the principle that trade must be taxed as lightly as possible. The cases in which the licences remain unused are the exception and do not prevent the system of deposits from attaining its objective.

The complaint that the system of deposits transforms the economy of the market into a planned or directed economy is not justified. The common organization of the market in cereals cannot dispense with all intervention on the market; it is characterized, however, by the concern to make such intervention conform as much as possible to the rules of the market and to allow the widest scope for competition.

To sum up, the Commission considers that with regard to the first question posed by the Verwaltungsgericht Frankfurt it should be held that the functioning of the common organization of the market in cereals requires a prospective comprehensive view of the market and therefore demands sufficiently certain knowledge of future imports and exports; only a licence subject to the risk of forfeiture of the deposit is capable of giving such knowledge. The system complained of not only conforms to the objective sought but is necessary to its attainment; thus it does not run counter to the principle of proportionality of the method to the objective sought.

(b) With regard to the second question, the Commission repeats that the system of deposits must ensure that utilization of the licence remains the general rule and its non-utilization the exception; this is only possible if, where the licence is not used, the deposit is forfeited as a general rule and the release of the deposit is limited to exceptional cases.

Limitation by Article 9 of Regulation No 473/67 of the release of the deposit to cases of *force majeure* runs counter neither to the principle of proportionality nor to the theory of the rule of law.

In fact, it follows from the case-law of the Court that the existence of a case of *force majeure* must be recognized when the application of strictly objective criteria indicates that the failure to effect importation or exportation is not due to negligence and that, in such examination, the principle of proportionality must be respected; furthermore, the fact that a trader has to bear an excessive loss may constitute a case of *force majeure* capable of releasing him from the obligation to effect the intended transaction.

In conclusion on the second question, the Commission maintains that, in order to attain its objective, the system of deposits must include a strict definition of the conditions which, if satisfied, justify the release of the deposit. Such is the concept of *force majeure*. Limitation to cases of *force majeure*, in the interpretation given to this concept by the Court, runs counter neither to the principle of proportionality nor to any other legal principle.

Grounds of judgment

1 By order of 18 March 1970 received at the Court on 26 March 1970, the Verwaltungsgericht Frankfurt-am-Main, pursuant to Article 177 of the EEC Treaty, has referred to the Court of Justice two questions on the validity of the system of export licences and of the deposit attaching to them—hereinafter referred to as 'the system of deposits'—provided for by Regulation No 120/67/EEC of the Council of 13 June 1967 on the common organization of the market in cereals (OJ Special Edition 1967, p. 33) and Regulation No 473/67/EEC of the Commission of 21 August 1967 on import and export licences (OJ 1967, No 204, p. 16).

2 It appears from the grounds of the order referring the matter that the Verwaltungsgericht has until now refused to accept the validity of the provisions in question and that for this reason it considers it to be essential to put an end to the existing legal uncertainty. According to the evaluation of the Verwaltungsgericht, the system of deposits is contrary to certain structural principles of national constitutional law which must be protected within the framework of Community law, with the result that the primacy of supranational law must yield before the principles of the German Basic Law. More particularly, the system of deposits runs counter to the principles of freedom of action and of disposition, of economic liberty and of proportionality arising in particular from Articles 2 (1) and 14 of the Basic Law. The obligation to import or export resulting from the issue of the licences, together with the deposit attaching thereto, constitutes an excessive intervention in the freedom of disposition in trade, as the objective of the regulations could have been attained by methods of intervention having less serious consequences.

The protection of fundamental rights in the Community legal system

3 Recourse to the legal rules or concepts of national law in order to judge the validity of measures adopted by the institutions of the Community would have an adverse effect on the uniformity and efficacy of Community law. The validity of such measures can only be judged in the light of Community law. In fact, the law stemming from the Treaty, an independent source of law, cannot because of its very nature be overridden by rules of national law, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called in question. Therefore the validity of a Community measure or its effect within a Member State cannot be affected by allegations that it runs counter to either fundamental rights as formulated by the constitution of that State or the principles of a national constitutional structure.

4 However, an examination should be made as to whether or not any analogous guarantee inherent in Community law has been disregarded. In fact, respect for fundamental rights forms an integral part of the general principles of law protected by the Court of Justice. The protection of such rights, whilst inspired by the constitutional traditions common to the Member States, must be ensured within the framework of the structure and objectives of the Community. It must therefore be ascertained, in the light of the doubts expressed by the Verwaltungsgericht, whether the system of deposits has infringed rights of a fundamental nature, respect for which must be ensured in the Community legal system.

The first question (legality of the system of deposits)

5 By the first question the Verwaltungsgericht asks whether the undertaking to export based on the third subparagraph of Article 12 (1) of Regulation No 120/67, the lodging of a deposit which accompanies that undertaking and forfeiture of the deposit should exportation not occur during the period of validity of the export licence comply with the law.

6 According to the terms of the thirteenth recital of the preamble to Regulation No 120/67, 'the competent authorities must be in a position constantly to follow trade movements in order to assess market trends and to apply the measures ... as necessary' and 'to that end, provision should be made for the issue of import and export licences accompanied by the lodging of a deposit guaranteeing that the transactions for which such licensec are requested are effected'. It follows from these considerations and from the general scheme of the regulation that the system of deposits is intended to guarantee that the imports and exports for which the

licences are requested are actually effected in order to ensure both for the Community and for the Member States precise knowledge of the intended transactions.

7 This knowledge, together with other available information on the state of the market, is essential to enable the competent authorities to make judicious use of the instruments of intervention, both ordinary and exceptional, which are at their disposal for guaranteeing the functioning of the system of prices instituted by the regulation, such as purchasing, storing and distributing, fixing denaturing premiums and export refunds, applying protective measures and choosing measures intended to avoid deflections of trade. This is all the more imperative in that the implementation of the common agricultural policy involves heavy financial responsibilities for the Community and the Member States.

8 It is necessary, therefore, for the competent authorities to have available not only statistical information on the state of the market but also precise forecasts on future imports and exports. Since the Member States are obliged by Article 12 of Regulation No 120/67 to issue import and export licences to any applicant, a forecast would lose all significance if the licences did not involve the recipients in an undertaking to act on them. And the undertaking would be ineffectual if observance of it were not ensured by appropriate means.

9 The choice for that purpose by the Community legislature of the deposit cannot be criticized in view of the fact that that machinery is adapted to the voluntary nature of requests for licences and that it has the dual advantage over other possible systems of simplicity and efficacy.

10 A system of mere declaration of exports effected and of unused licences, as proposed by the plaintiff in the main action, would, by reason of its retrospective nature and lack of any guarantee of application, be incapable of providing the competent authorities with sure data on trends in the movement of goods.

11 Likewise, a system of fines imposed *a posteriori* would involve considerable adminstrative and legal complications at the stage of decision and of execution, aggravated by the fact that the traders concerned may be beyond the reach of the intervention agencies by reason of their residence in another Member State, since Article 12 of the regulation imposes on Member States the obligation to issue the licences to any applicant 'irrespective of the place of his establishment in the Community.'

12 It therefore appears that the requirement of import and export licences involving for the licensees an undertaking to effect the proposed transactions under the

guarantee of a deposit constitutes a method which is both necessary and appropriate to enable the competent authorities to determine in the most effective manner their interventions on the market in cereals.

13 The principle of the system of deposits cannot therefore be disputed.

14 However, examination should be made as to whether or not certain detailed rules of the system of deposits might be contested in the light of the principles enounced by the Verwaltungsgericht, especially in view of the allegation of the plaintiff in the main action that the burden of the deposit is excessive for trade, to the extent of violating fundamental rights.

15 In order to assess the real burden of the deposit on trade, account should be taken not so much of the amount of the deposit which is repayable—namely 0.5 unit of account per 1 000 kg—as of the costs and charges involved in lodging it. In assessing this burden, account cannot be taken of forfeiture of the deposit itself, since traders are adequately protected by the provisions of the regulation relating to circumstances recognized as constituting *force majeure*.

16 The costs involved in the deposit do not constitute an amount disproportionate to the total value of the goods in question and of the other trading costs. It appears therefore that the burdens resulting from the system of deposits are not excessive and are the normal consequence of a system of organization of the markets conceived to meet the requirements of the general interest, defined in Article 39 of the Treaty, which aims at ensuring a fair standard of living for the agricultural community while ensuring that supplies reach consumers at reasonable prices.

17 The plaintiff in the main action also points out that forfeiture of the deposit in the event of the undertaking to import or export not being fulfilled really constitutes a fine or a penalty which the Treaty has not authorized the Council and the Commission to institute.

18 This argument is based on a false analysis of the system of deposits which cannot be equated with a penal sanction, since it is merely the guarantee that an undertaking voluntarily assumed will be carried out.

19 Finally, the arguments relied upon by the plaintiff in the main action based first on the fact that the departments of the Commission are not technically in a position to exploit the information supplied by the system criticized, so that it is devoid of all practical usefulness, and secondly on the fact that the goods with which the dispute

is concerned are subject to the system of inward processing are irrelevant. These arguments cannot put in issue the actual principle of the system of deposits.

20 It follows from all these considerations that the fact that the system of licences involving an undertaking, by those who apply for them, to import or export, guaranteed by a deposit, does not violate any right of a fundamental nature. The machinery of deposits constitutes an appropriate method, for the purposes of Article 40 (3) of the Treaty, for carrying out the common organization of the agricultural markets and also conforms to the requirements of Article 43.

The second question (concept of 'force majeure')

21 By the second question the Verwaltungsgericht asks whether, in the event of the Court's confirming the validity of the disputed provision of Regulation No 120/67, Article 9 of Regulation No 473/67 of the Commission, adopted in implementation of the first regulation, is in conformity with the law, in that it only excludes forfeiture of the deposit in cases of *force majeure*.

22 It appears from the grounds of the order referring the matter that the court considers excessive and contrary to the abovementioned principles the provision in Article 1 [sic] of Regulation No 473/67, the effect of which is to limit the cancellation of the obligation to import or export and release of the deposit only to 'circumstances which may be considered to be a case of *force majeure*'. In the light of its experience, the Verwaltungsgericht considers that provision to be too narrow, leaving exporters open to forfeiture of the deposit in circumstances in which exportation would not have taken place for reasons which were justifiable but not assimilable to a case of *force majeure* in the strict meaning of the term. For its part, the plaintiff in the main action considers this provision to be too severe because it limits the release of the deposit to cases of *force majeure* without taking into account the arrangements of importers or exporters which are justified by considerations of a commercial nature.

23 The concept of *force majeure* adopted by the agricultural regulations takes into account the particular nature of the relationships in public law between traders and the national administration, as well as the objectives of those regulations. It follows from those objectives as well as from the positive provisions of the regulations in question that the concept of *force majeure* is not limited to absolute impossibility but must be understood in the sense of unusual circumstances, outside the control of the importer or exporter, the consequences of which, in spite of the

exercise of all due care, could not have been avoided except at the cost of excessive sacrifice. This concept implies a sufficient flexibility regarding not only the nature of the occurrence relied upon but also the care which the exporter should have exercised in order to meet it and the extent of the sacrifices which he should have accepted to that end.

24 The cases of forfeiture cited by the court as imposing an unjustified and excessive burden on the exporter appear to concern situations in which exportation has not taken place either through the fault of the exporter himself or as a result of an error on his part or for purely commercial considerations. The criticisms made against Article 9 of Regulation No 473/67 lead therefore in reality to the substitution of considerations based solely on the interest and behaviour of certain traders for a system laid down in the public interest of the Community. The system established, under the principles of Regulation No 120/67, by implementing Regulation No 473/67 is intended to release traders from their undertaking only in cases in which the import or export transaction was not able to be carried out during the period of validity of the licence as a result of the occurrences referred to by the said provisions. Beyond such occurrences, for which they cannot be held responsible, importers and exporters are obliged to comply with the provisions of the agricultural regulations and may not substitute for them considerations based upon their own interests.

25 It therefore appears that by limiting the cancellation of the undertaking to export and the release of the deposit to cases of *force majeure* the Community legislature adopted a provision which, without imposing an undue burden on importers or exporters, is appropriate for ensuring the normal functioning of the organization of the market in cereals, in the general interest as defined in Article 39 of the Treaty. It follows that no argument against the validity of the system of deposits can be based on the provisions limiting release of the deposit to cases of *force majeure*.

Costs

26 The costs incurred by the Government of the Kingdom of The Netherlands, the Government of the Federal Republic of Germany and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

27 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 Verwaltungsgericht Frankfurt-am-Main, the decision as to costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the oral observations of the plaintiff in the main action and the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 2, 39, 40, 43 and 177;
Having regard to Regulation No 120/67/EEC of the Council of 13 June 1967 and Regulation No 473/67/EEC of the Commission of 21 August 1967;
Having regard to the Protocol on the Statute of the Court of Justice of the European Community, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the questions referred to it by the Verwaltungsgericht Frankfurt-am-Main, by order of that court of 18 March 1970, hereby rules:

Examination of the questions put reveals no factor capable of affecting the validity of:

(1) the third subparagraph of Article 12 (1) of Regulation No 120/67/EEC of the Council of 13 June 1967 making the issue of import and export licences conditional on the lodging of a deposit guaranteeing performance of the undertaking to import or export during the period of validity of the licence;

(2) Article 9 of Regulation No 473/67/EEC of the Commission of 21 August 1967, the effect of which is to limit the cancellation of the undertaking to import or export and the release of the deposit only to circumstances which may be considered to be a case of 'force majeure'.

Lecourt Donner Trabucchi

Monaco Mertens de Wilmars Pescatore Kutscher

Delivered in open court in Luxembourg on 17 December 1970.

A. Van Houtte R. Lecourt

Registrar President

ECLI:EU:C:1974:51
Judgment of 14 May 1974, C-4/73, J. Nold, Kohlen- und Baustoffgroßhandlung v Commission of the European Communities

to restrictions laid down in accordance with the public interest. Within the Community legal order it likewise seems legitimate that these rights should, if necessary, be subject to certain limits justified by the overall objectives pursued by the Community, on condition that the substance of these rights is left untouched. The above guarantees can in no respect be extended to protect mere commercial interests or opportunities, the uncertainties of which are part of the very essence of economic activity.

In Case 4/73

J. NOLD, KOHLEN- UND BAUSTOFFGROSSHANDLUNG, a limited partnership governed by German law, having its registered office in Darmstadt, represented by Manfred Lütkehaus, advocate of the Essen Bar, with an address for service in Luxembourg at the chambers of André Elvinger, 84 Grand-Rue

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Dieter Oldekop, acting as agent, with an address for service in Luxembourg at the offices of its Legal Adviser, Pierre Lamoureux, 4 boulevard Royal

defendant,

supported by

RUHRKOHLE AKTIENGESELLSCHAFT, a limited company having its registered office in Essen

and

RUHRKOHLE VERKAUFS-GESELLSCHAFT MBH, a private limited company having its registered office in Essen, represented by Otfried Lieberknecht, advocate of the Düsseldorf Bar, with an address for service in Luxembourg at the chambers of Alex Bonn, 22, côte d'Eich,

interveners

Application for annulment of the Decision of the Commission of 21 December 1972, authorizing new terms of business of Ruhrkohle AG,

THE COURT

composed of: R. Lecourt, President, A. M. Donner and M. Sørensen, Presidents of Chambers, P. Pescatore (Rapporteur), H. Kutscher, C. Ó Dálaigh and A. J. Mackenzie Stuart, Judges,

Advocate-General: A. Trabucchi
Registrar: A. Van Houtte

gives the following

NOLD v COMMISSION

JUDGMENT

Facts

The facts and the arguments developed by the parties in the course of the written procedure may be summarized as follows:

I — The facts

In pursuance of paragraph (2) of Article 12 of the Convention on the Transitional Provisions annexed to the ECSC Treaty and of Article 3 of the Decision of the High Authority No 37/53 of 11 July 1953 on the date of implementation of the prohibitions relating to agreements laid down by Article 65 of the Treaty (OJ, p. 153), the High Authority informed the mining companies of the Ruhr Basin, in May 1954, that it could not authorize the continued existence of the 'Gemeinschaftsorganisation Ruhrkohle GmbH' (GEORG), the central organization for the coal, set up before the establishment of the common market in coal.

On 15 February 1956, by Decisions Nos 5/56 (OJ, p. 29), 6/56 (OJ, p. 43) and 7/56 (OJ, p. 56), the High Authority authorized, subject to certain conditions, the joint sale of fuels by the mining companies of the Ruhr Basin associated to form the three selling agencies 'Geitling', 'Präsident' and 'Mausegatt'.

The trading rules authorized on that occasion by the High Authority fixed, in particular, the conditions required for acquisition of the status of direct wholesaler, with the right to direct purchase from a selling agency. For direct purchase from an agency, the dealer had to meet not only the conditions ordinarily required of a wholesaler (creditworthiness, establishment within a sales area, storage capacity, knowledge of the market and the products, extensive custom, wide range of categories and sorts for sale), but also to have sold, during the preceding coal industry year,

(a) within the common market, at least 75 000 metric tons of fuels originating from Community coalfields,

(b) of which at least 40 000 metric tons were to have been sold in the sales area where he wished to acquire the right to operate as a dealer,

(c) of which at least 12 500 metric tons were to have been bought from the selling agency concerned.

By way of derogation from these conditions, the right of direct purchase from selling agencies was also granted, for a transitional period originally limited to 31 March 1957 and extended to 1 July 1957 by Decisions of the High Authority Nos 10/57 (OJ, p. 159), 11/57 (OJ, p. 160) and 12/57 (OJ, p. 161), of 1 April 1957, to wholesalers who, even though failing to satisfy the quantitative criteria imposed, had been supplied as direct wholesalers during the preceding coal industry year or who could establish that they fulfilled the conditions required during that year for supply as direct wholesalers (sale of 6 000 metric tons per annum of Ruhr coal).

An action for annulment of Decision No 5/56, brought by the selling agency 'Geitling', was dismissed by the Court in its Judgment of 20 March 1957 (Case 2/56, Rec. 1957, p. 11).

By Decisions Nos 16/57 (OJ, p. 319), 17/57 (OJ, p. 330) and 18/57 (OJ, p. 341) of 26 July 1957 the High Authority supplemented and amended Decisions Nos 5/56, 6/56 and 7/56 of 15 February 1956 authorizing the joint sale of fuels by the mining companies of the Ruhr Basin.

As regards qualification as a coal wholesaler with the right of direct purchase, the respective quantitative minima were reduced from 75 000 to 60 000 metric tons, from 40 000 to 30 000 metric tons and from 12 500 to 9 000 metric tons.

The Decisions of the High Authority Nos 16/57, 17/57 and 18/57 did not maintain the derogations provided for the benefit of 'former' wholesalers. Accordingly, in September 1957, the three selling agencies for Ruhr coal informed the Nold company that they could no longer supply it as a direct wholesaler as from 1 October 1957.

In an action brought by Nold the Court, in its Judgment of 20 March 1959 (Case 18/57, Rec. 1959, p. 89), annulled, by reason of insufficient grounds, the provisions of Decisions Nos 16, 17 and 18/57 relating to the conditions for qualification as a direct wholesaler.

By Decision No 17/59 of 18 February 1959 extending the authorizations relating to the marketing organizations of the Ruhr Basin (OJ, p. 279) and Decision No 36/59 of 17 June 1959 rescinding and supplementing part of Decision No 17/59 concerning the trading rules for the Ruhr coal selling agencies (OJ, p. 736), the High Authority, abolished in respect of the conditions for qualification as direct coal dealer, the criterion of sales of 60 000 metric tons of Community coal within the common market and reduced respectively from 30 000 to 20 000 metric tons per annum the criterion of sales of Community coal within a particular sales area and from 9 000 to 6 000 metric tons the criterion of sales within that same area of coal from a specific selling agency.

The essential provisions of Decision No 36/59 were annulled in an action brought by the three selling agencies, by the mining companies of the Ruhr Basin and by Firma Nold, by Judgment of the Court of 15 July 1960 (Joined Cases 36, 37, 38 and 40/59, Rec. 1960, p. 857).

By Decision No 16/60 of 22 June 1960 on the refusal to authorize a joint marketing organization of mining companies of the Ruhr Basin (OJ, p. 1014), the High Authority opposed the substitution for the system of sale by three independent agencies, of a single sales organization embracing almost all the mining companies of the Ruhr Basin.

An action brought against this Decision by the selling agencies was dismissed by Judgment of the Court of 18 May 1962 (Case 13/60, Rec. 1962, p. 165).

On 8 February 1961, by Decision No 3/61 amending Decision No 17/59 (amended by Decision No 36/59) as regards trading rules for the coal selling agencies of the Ruhr (OJ, p. 413), the High Authority authorized the Ruhr coal selling agencies to render direct supplies to coal wholesalers subject to a single quantitative criterion, namely the sale, within the common market, during the preceding coal industry year, of at least 6 000 metric tons of fuels originating from the selling agency supplying the accredited dealer.

By Decisions Nos 5/63 (OJ, p. 1173) and 6/63 (OJ, p. 1191) of 20 March 1963, the High Authority authorized the joint selling of fuels by the mining companies of the Ruhr Basin organized into the two selling agencies 'Geitling' and 'Präsident', while maintaining in force, with regard to the trading rules, the conditions for admitting coal wholesalers to the right of direct supply.

The principal grounds of the action brought against these Decisions by the Government of the Kingdom of the Netherlands were dismissed by the Court in its Judgment of 15 July 1964 (Case 66/63, Rec. 1964, p. 1049).

By Decision of 27 November 1969 authorizing the merger of the mining companies of the Ruhr Basin by the transfer of colliery assets to the company Ruhrkohle AG, the Commission of the European Communities, applying Article 66 (2) of the ECSC Treaty, authorized the merger of the mining companies of

the Ruhr Basin into a single company, Ruhrkohle AG, and obliged the latter to submit for its authorization any amendment to its terms of business.

Also on 27 November 1969, the Commission took two Decisions (OJ, L 304, pp. 11 and 12) revoking, as from 31 December 1969, its Decisions Nos 5/63 and 6/63.

The Commission, by a Decision of 21 December 1972 authorizing new terms of business of Ruhrkohle AG (OJ 1973, L 120, p. 14), authorized trading rules which, by comparison with those in force included, in particular, the following changes:

(a) the entitlement of a wholesaler to buy direct is now subject, not to his having sold not less than 6 000 metric tons of Ruhr coal in the preceding coal year, but to the conclusion of a two-year contract to purchase not less than 6 000 metric tons a year from Ruhrkohle AG for the supply of domestic and small consumers;

(b) before a dealer is entitled to supply industrial consumers he must first be admitted to supply domestic and small consumers;

(c) the qualification required of admitted direct buying dealers for the supply of large industrial concerns is not, as heretofore, a minimal annual consumption of 30 000 metric tons of solid fuels of any provenance, but the taking of that tonnage of Ruhr products; dealers may sell to consumers beyond this limit only if they render special services.

However, provisionally, in the first year following the entry into force of the new terms of business, Ruhrkohle AG had to allow wholesalers contracting for the stipulated minimum amount of 6 000 metric tons a year of products for domestic and small consumers to take up to 15 % less than that amount.

On 10 January 1973, Ruhrkohle-Verkauf GmbH, the marketing agency for Ruhrkohle AG, sent to direct coal wholesalers and in particular to the Nold undertaking, the text of the new trading rules authorized by the Commission's Decision of 21 December 1972 and applicable as from 1 January 1973, and informed them that as from that date commercial transactions between them would be carried out on that basis.

II — Procedure

On 31 January 1973 the Nold undertaking brought an action for the annulment of the Commission's Decision of 21 December 1972. The action was directed against both the European Economic Community, represented by Ruhrkohle-Verkauf GmbH.

An application to suspend the operation of the Commission's Decision of 21 December 1972, brought by the Nold undertaking on 13 February 1973, was removed from the Register of the Court by Order of the President of 14 March 1973 at the request of the applicant. This Order reserved the costs.

In its reply, the applicant informed the Court that it was withdrawing its action in respect of Ruhrkohle AG and Ruhrkohle-Verkauf GmbH. By Order of 21 June 1973 the Court decided to remove the case from the Register in so far as it concerned these two companies and ordered the applicant to bear the costs incurred by the said companies in the main action and in the interim procedure.

The written procedure in the dispute between the Nold undertaking and the Commission alone followed the normal course.

By application made on 29 October 1973 Ruhrkohle AG and Ruhrkohle-Verkauf GmbH asked to be allowed to intervene in the main action in support of the conclusions of the Commission. Having heard the opinion of the Advocate-

General, the Court, by Order of 21 November 1973, allowed this application and reserved the costs.

On 28 December 1973, the interveners stated in writing the grounds for their conclusions. The applicant gave its reply to these conclusions on 16 January and 8 February and the defendant did likewise on 8 February 1974.

Having heard the report of the Judge-Rapporteur and the opinion of the Advocate-General the Court decided to open the oral procedure without any preparatory inquiry.

III — Submissions and arguments of the parties

A — As to admissibility

The *interveners* plead the inadmissibility of the action on the grounds of lack of any legal interest.

In their opinion, the applicant can be considered as justifying a legally protected interest only if its action could have the effect of obliging the interveners to continue to supply it directly. That is clearly not the case.

The terms of business authorized by the Decision in dispute replace the rules in force up till then; in the case of annulment, therefore, the interveners can sell only in accordance with the rules previously in force. The latter rules made the direct supplying of coal wholesalers subject to the condition of annual sales, within the common market, of at least 6 000 metric tons of fuels, a condition which, on its own admission, the applicant is very far from satisfying. Thus, it has in any case no right to direct supply.

In respect of 1973, the applicant can derive no rights from the fact that it continued to obtain direct supplies in 1972 when already during the preceding year it had not satisfied the quantitative criteria laid down with regard to this matter. That the applicant obtained direct supplies in 1972 is explained by the fact that the interveners, because of doubts as to whether the terms of business in force up till then related to the coal marketing year or the year for civil purposes, waited, for the benefit of the undertakings concerned, for the situation to become clearer during the following year before applying the terms of business relating to direct supply. The applicant, although it continued to obtain direct supplies, had, in 1972, sold only 700 metric tons. In these circumstances, direct supply could not have been envisaged for the future even if the terms of business in force up to that time had continued to apply.

The *applicant* refutes the contention that the action is inadmissible on the grounds of lack of any legally protected interest.

During the interim procedure the applicant obtained the assurance that it would continue to be supplied as a direct wholesaler until this case was settled; it has therefore never ceased to be supplied on that basis. Consequently, it is of little importance to determine whether, accepting, for the sake of argument, the validity of the old terms of business, it had a right which it could assert in this connexion.

In its opinion, under the former terms of business of Ruhrkohle AG, no dealer automatically lost its status of wholesaler by reason of the fact that it did not sell an annual minimum of 6 000 metric tons. It is of little importance to determine whether the mining companies had the right to withhold supplies to the applicant as a direct wholesaler since, in any case, they did not make use of any such possible right.

B — As to the substance

1. Violation of the principle of non-discrimination

The *applicant* points out that, as from 1 January 1973, it can no longer, in

accordance with the new terms of business of Ruhrkohle AG, be considered as a direct wholesaler in the coal trade. It is therefore a victim of serious discrimination.

(a) The terms of business of Ruhrkohle AG make deliveries on wholesale-market terms subject to a clause obliging the dealer to acquire at least 6 000 metric tons per annum of fuels for the domestic and small consumer sector; during the last two years the applicant has been unable to reach the minimum quota henceforth required.

However, it cannot be reproached for this. In fact, fundamental changes have been apparent in the energy sector over the past few years: coal sales have dropped continuously and it is therefore natural that not only the mining industries but also the wholesale and retail trade should suffer the consequences. But, in the last analysis, the responsibility for the fact that the applicant can no longer sell even 6 000 metric tons per annum lies with Ruhrkohle AG and Ruhrkohle-Verkauf GmbH or the former coal distribution companies of the Ruhr. In fact, Ruhrkohle AG concludes direct contracts for annual deliveries of more than 30 000 metric tons. This is the reason why, because it has suffered discrimination, the applicant has been unable to supply an important and long-standing customer, the undertaking Adam Opel AG of Rüsselheim, with the quantities which it desired. Ruhrkohle AG is also in direct competition with the applicant and other wholesalers through its subsidiaries. In addition, Ruhrkohle AG and Ruhrkohle-Verkauf GmbH offer fuels for sale at prices very much lower than the list prices, and companies controlled by Ruhrkohle AG supply national purchasers, within the Federal Republic of Germany, with 'Belgian coke' at a free-at-frontier price of around 90 DM per metric ton; this product is also sold directly to domestic and small consumers at prices which obviate all competition.

(b) In the case of the applicant, the loss of the status of wholesaler and of the means of obtaining direct supplies involves lasting consequences especially if there should be a change in the demand for coal. In this connexion account should be taken of the fact that the drop in sales of coal to domestic consumers over the last few years is largely due to fairly exceptional climatic conditions and, moreover, that the sales situation could change dramatically if there were difficulties — of a political nature — in the supply of petroleum or natural gas. If it accepts the new terms of business the applicant will probably never again have the opportunity to buy greater quantities, for, as a retailer, it will not in any case be able to offer conditions similar to those of wholesalers and undertakings which obtain direct supplies or those of the subsidiaries of Ruhrkohle AG and Ruhrkohle-Verkauf GmbH. That is the reason why in the second heading of its conclusions the applicant asks that, at the very least, it should be exempt from the new terms of business.

(c) The applicant cannot be obliged to enter into an association with other wholesalers who may be in a similar position and to combine its purchases with theirs. It does not see any reason to limit its independence in order to protect itself from the discriminatory consequences of the terms of business of Ruhrkohle AG.

Moreover, there is no evidence in these terms of business that Ruhrkohle AG is obliged to aggregate the turnovers of dealers who decide to combine, nor do they contain any definition of the concept of 'combination'.

The *defendant* points out that there can be discrimination only if dealers in a similar position to that of the applicant are treated differently in respect of admission to direct purchase; that is not the case, as the criteria adopted are equally valid for all dealers in the Community, including subsidiaries of Ruhrkohle AG. The fact that the

applicant must compete with dealers associated with Ruhrkohle AG does not therefore constitute discrimination against it.

(a) The complaint that Ruhrkohle AG and Ruhrkohle-Verkauf GmbH are responsible for the fact that the applicant is no longer in a position, by reason of alleged discrimination on the part of those two companies, to purchase 6 000 metric tons of coal per annum is not based on concrete data; in any case, the objection does not in the defendant's opinion, cast doubt on the validity of the new terms of business of Ruhrkohle AG or their authorization by the Commission.

However that may be, it is not true that subsidiaries of Ruhrkohle AG and Ruhrkohle-Verkauf GmbH or dealers associated with the shareholders of Ruhrkohle AG have offered coal for sale at prices below list prices. There is no denying that before the implementation of the new terms of business Ruhrkohle AG granted a special contractual discount ('Vertragsrabatt') to dealers who undertook by contract to buy a specific quantity of coal; but there was mention of this discount in the price list of Ruhrkohle-Verkauf GmbH and it was granted to all dealers, without distinction, for purchases of similar amounts.

The prices of imported fuels, fixed by the producers, range in practice from 95 to 110 DM; but imports of fuels from other Member States are independent of the influence of Ruhrkohle AG, with the result that the latter's marketing companies are in competition with other wholesalers. As imports from other Member States can have a considerable effect on sales of Ruhr coal it is natural that the marketing companies of Ruhrkohle AG should participate in this trade in order to compensate their losses. As for direct transactions between Ruhrkohle-Verkauf GmbH and customers in industry whose consumption exceeds 30 000 metric tons per annum, it should be recalled that these purchasers have had, since the end of 1963, the choice between supply through a dealer or direct from the selling agencies. The exclusion of dealers from transactions with the railways and certain other industrial consumers applies to all dealers without distinction and is, moreover, objectively justified by the particular circumstances with regard to these categories of consumer. The new provision in the terms of business, according to which deliveries by wholesalers to industrial consumers who purchase annually more than 30 000 metric tons of Ruhr coal are subject to the rendering of certain special services, also applies in an identical manner to all wholesalers qualifying for direct purchase.

The drop in the volume of sales by the applicant to a mere 700 metric tons in 1972 is not the result of discrimination but is due to a general reduction in coal consumption and, above all, to the way in which the applicant conducts its business.

(b) In this connexion, it should be remembered that the applicant can retain its right to direct purchase by combining its purchases with those of other wholesalers in a similar position. This possibility is made clear by the fact that the new terms of business merely require the conclusion of a two-year contract to take 6 000 metric tons a year for the domestic and small consumer sector, but do not oblige one dealer alone to sell this quantity. The details of cooperation are left to the discretion of dealers. The slight blow to their independence to which they may have to consent, appears, considering the present state of the coal market, to constitute an insignificant evil.

(c) The second heading of the conclusions, directed at an annulment — in favour of the applicant alone — of part of the contested Decision, is incompatible with the necessarily general nature of the latter. The criteria laid down by the new terms of business must

apply, in a like manner, to all Community dealers. In any case, the applicant does not put forward any factor capable of justifying his contention that the treatment he receives should differ from that received by all other wholesalers.

2. *Lack of substantial improvement in the distribution of fuels*

The *applicant* considers that the new terms of business, far from contributing to a substantial improvement in the distribution of fuels, render such distribution more difficult.

(a) In the applicant's opinion, the effect of the new terms of business is to favour the concentration of this distribution into the hands of a small number of major dealers. On the Commission's own admission, the new trading rules, which make a dealer's qualification for direct wholesaler status dependent no longer upon the sale of a minimum 6 000 metric tons of Ruhr coal within the common market but upon the conclusion of a two-year contract for the supply of a fixed quantity of at least 6 000 metric tons per annum to domestic and small consumers, have the effect of withdrawing the entitlement of a certain number of dealers to buy direct from Ruhrkohle AG. Although in its opinion 'it is clearly reasonable that Ruhrkohle AG should wish to take account of the major decline in coal sales in its distribution arrangements and to adjust its terms of business to the altered state of affairs in such a way as to do business direct only with dealers operating on a sufficient scale' the Commission, in its contested Decision, does not put forward any grounds in support of this alleged justification.

(b) In fact, Ruhrkohle AG enjoys a real monopoly position, as sales of Ruhr coal are henceforth organized on the basis of Ruhrkohle-Verkauf GmbH alone.

(c) Nor is it possible to claim an improvement in the distribution of fuels on the basis of the fact that a wholesaler's industrial transactions must henceforth be dependent upon his obtaining dealer status in the domestic and small consumer sector, so as to concentrate his activity on this latter market.

(d) Therefore, there is no real evidence contained in the Commission's Decision of 21 December 1972 modifying the conditions for obtaining direct wholesaler status to show that it is likely substantially to improve the distribution of fuels.

The *defendant* makes the point that this submission disregards the legal basis in accordance with which the Decision in dispute must be judged. In fact, the criterion of substantial improvement in distribution is only valid where, applying Article 65 (2) of the ECSC Treaty, authorization is granted to joint-selling agreements concluded between several undertakings. The Decision of 21 December 1972 derives from the Commission's Decision of 27 November 1969 authorizing, on the basis of Article 66 (2), the merger of the mining companies of the Ruhr Basin by transfer of their colliery assets to Ruhrkohle AG. Its legal basis is the obligation under Article 2 of the Decision of 27 November 1969, to submit to the Commission for its authorization any new trading rules. For the purposes of appraisal of the contested Decision one must therefore consider not the criteria laid down in Article 65 (2) of the ECSC Treaty but the purpose of the obligation imposed by Article 2 of the Decision of 27 November 1969. That purpose is to prevent, in consideration of Ruhrkohle AG's strong position on the market, undue restriction of competition among dealers or the growth of discrimination between wholesalers and consumers in respect of the right of access to the products of Ruhrkohle AG.

(a) In the Commission's opinion, the new terms of business of Ruhrkohle AG, authorized by the disputed Decision, are

completely compatible with this purpose, bearing in mind in particular the current state of the market in coal.

Since 1959, this market has been characterized, particularly in the Ruhr, by an almost continuous fall in coal sales, especially in the domestic sector. This recession is essentially due to the increasing restructuring of the energy market and, especially, to the substitution for coal of other types of energy, in particular of domestic fuel oil. Ruhrkohle AG is obliged to attempt to limit, at least in some degree, the heavy financial losses which it has suffered by reason of inadequate profitability, by modifying its marketing organization since in practice the structure of production costs prevents the application of an effective stimulus to sales through price reductions.

The principal feature of the new terms of business, namely the conclusion of a two-year contract for the purchase of at least 6 000 metric tons per annum of coal produced by Ruhrkohle AG for resale to domestic and small consumers, this being the condition for entitlement to direct purchase and sale to industrial consumers, is bound up with two factors which play an important rôle in the sale of coal: on the one hand, the structure of sales through dealers and, on the other hand, the efficiency of and interest for dealers having the right of access to direct supplies.

The activity of dealers in the domestic and small consumer sector is particularly effective for the sale of coal, as the producers exercise only a relatively limited influence on sales in this sector; on the other hand, the possibilities for dealers are restricted as regards sales to industry.

Subjecting the right to qualify as a direct wholesaler to the sale of a minimum quantity to domestic and small consumers is thus intended to encourage dealers to concentrate their efforts on this category of customer, on whom their marketing influence is greatest. The requirement of a two-year contract can lead to a degree of stabilization of the level of coal sales and it can help Ruhrkohle AG to plan its production. Moreover, the two-year contract gives those wholesalers whose sales the preceding year did not quite reach the stipulated level the possibility, through increased effort, of obtaining their entitlement to direct purchase; the transitional period of one year, in conjunction with the tolerance of 15 % below the stipulated mimimum, is intended to give them the opportunity of attaining this objective.

The new quantitative criterion tends to restrict the right of direct purchase to dealers who really strive to sell the products of Ruhrkohle AG. Dealers whose sales fall on or below the tonnage qualification will be tempted, in order to ensure the full use of their labour force and the potential of their undertaking, to sell other fuels instead, in particular fuel oil, or to carry out other commercial operations. The obligation to sell a minimum quantity of 6 000 metric tons of coal per annum to domestic and small consumers, which is also the condition for the right to supply industrial consumers, should induce dealers to make the necessary commercial effort to sell Ruhr coal, so as effectively to combat the fall in sales.

(b) When the Commission took the contested Decision, it was conscious of the fact that the adoption of the new terms of business by Ruhrkohle AG would have the effect, in Germany, of excluding from direct supply about sixty 'independent' wholesalers who do not hold, directly or indirectly, any shares in Ruhrkohle AG. However, one must take account of the fact that, among the latter, there were already about thirty who no longer satisfied the criteria laid down by the terms of business previously in force; this is the position of the applicant company, which in 1971 and 1972 sold only 3 100 and 700 metric tons of coal respectively. The decrease in the number of direct wholesalers is not however, in itself, a development which

must be resisted. It is at least in part a natural consequence of the constant and rapid fall in sales leading, of necessity, to changes in the structure of the coal trade. The Commission did not consider that the fact that these changes will tend to reduce the number of direct wholesalers constitutes a ground for opposing the adoption of the new terms of business of Ruhrkohle AG, which are an effective means of combatting the decline in sales of coal. Moreover, these terms of business do not jeopardize the existence of effective competition in the coal trade: the number of wholesalers who will retain the right of direct purchase is sufficient to ensure, in the present circumstances, the maintenance of effective competition.

(c) There is no question of Ruhrkohle AG holding a monopoly. On the contrary, it has to face very strong competition, in particular from other sources of energy, and this applies especially in the domestic and small consumer sector, as well as in that of industrial consumption.

3. *Failure to respect certain conditions of the authorization*

The *applicant* maintains, in respect of the three sales areas provided by the contested Decision apart from the Federal Republic of Germany, that Ruhrkohle AG supplies coke for export at a price of 80 DM per metric ton whereas its price in Germany, according to list prices, is around 140 DM.

The *defendant* refutes this assertion. Moreover, a distinction must be made between exports to third countries and exports to other Member States of the Community. The latter — the only exports which can possibly be relevant in this case — are carried out under two-year contracts which are also concluded on the basis of list prices. In any case, even if the applicant's assertions were correct, they do not affect the validity of the contested Decision. Such practices can only induce the Commission to impose the penalties laid down in Article 64 of the ECSC Treaty.

4. *Violation of fundamental rights*

The *applicant* raises the objection that the terms of business of Ruhrkohle AG and their application violate certain fundamental rights enshrined by the national Constitutions and 'received' into Community law. This is the case in respect of the right of property ownership, the protection of which is ensured in particular by Article 14 of the 'Grundgesetz' of the Federal Republic of Germany and the Constitution of the Land of Hesse. The applicant's exclusion from the coal trade is equivalent to expropriation, because it deprives it of 'actual possession'. The following rights are also at issue in this case: the right to free development of the personality, the right to freedom of economic action and the principle of proportionality.

The *defendant* points out that it is not for the Court of Justice to interpret and apply rules of domestic law of a Member State, even those appertaining to the Constitution. Moreover, the ECSC Treaty contains no general principle of law, written or unwritten, guaranteeing the maintenance of acquired positions.

IV — Conclusions of the parties

The *applicant,* having amended its first conclusions, claims that the Court should

(a) declare that the Decision of the Commission of the European Communities of 21 December 1972 ('Handelsregelung Ruhr') on changes in the distribution network of Ruhrkohle AG within the Common Market, applicable as from 1 January 1973, is void;

(b) as a subsidiary matter: declare that the said Decision of the Commission is void and inapplicable insofar as it relates to the applicant;

(c) order the defendant to bear the costs of the dispute, including the costs incurred or to be incurred by the applicant and declare the judgment provisionally enforceable in respect of the costs.

The *Commission* contends that the Court should

(a) dismiss the whole action as unfounded;

(b) order the applicant to bear the costs of the action.

The *interveners* contend that the Court should

(a) dismiss the action as inadmissible;

(b) in any case, order the applicant to bear part of the costs.

The oral observations of the parties and their replies to certain questions put by the Court were heard on 14 March 1974. During the above hearing the parties put forward new facts and arguments which may be summarized as follows:

The *applicant* points out that since its establishment more than a century ago it has never been able to sell 6 000 metric tons of fuels per annum to domestic and small consumers. On the other hand, it has supplied far greater quantities to industry. If this has not been the case during the last few years the reason is Ruhrkohle AG's refusal to supply it. That is why it was unable, in 1970, to meet an important order from Rheinstahl AG.

Furthermore, the fundamental changes which have recently occurred in the energy sector, in particular as regards competition between coal and petroleum, raise doubts as to whether the disputed trading rules are justified. In contrast to what the Commission permitted when it authorized the merger of the mining companies of the Ruhr Basin by the transfer of colliery assets to Ruhrkohle AG, the latter is now in a position to determine prices, to control or restrict production or distribution or to hinder effective competition in a substantial part of the market.

It could be accepted that in this case the provisions of Article 65 of the ECSC Treaty are applicable by analogy. Under this provision a joint-selling agreement can only be authorized by the Commission if it makes for a substantial improvement in the distribution of particular products. This condition, which applies to an agreement between several undertakings, applies *a fortiori* to the case where terms of business are established by a single undertaking formed by the merger of several others and whose position in the market is particularly strong.

The contested Decision violates several fundamental rights recognized by the Constitution of the Federal Republic of Germany, in particular, the right of free development of the personality, the free choice and pursuit of employment and the guarantee of property ownership, proclaimed by Article 14. These rights are also recognized by the Constitutions of other Member States of the Community, by international Conventions and by the ECSC Treaty itself, in particular at Articles 4, 65 and 66. The Decision of the Commission directly and illegally interferes with the exercise of these rights.

The *defendant* maintains that the instances of refusal to supply and the discrimination which the applicant claims to have suffered through the action of Ruhrkohle AG have no relevance to the question — the only matter at issue in this case — of the legality of the contested Decision. The same applies to the consequences, as yet unforeseeable, of the recent energy crisis. Subsequent events cannot cast doubt upon the legality of a Community act.

As for the question of fundamental rights, the protection of property ownership constitutes without any doubt one of the guarantees recognized by Community law which, in this connexion, is based on the constitutional traditions of Member States and on acts of public international law, such as the Convention for the Protection of

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Human Rights and Fundamental Freedoms. As the concept of effective protection of the right of property ownership varies from one Member State to another, its practical application must take account of that national norm which affords the greatest protection; that is the reason why German constitutional law must in particular be taken into account. In this connexion, it should be stated, first, that the right of a wholesaler to qualify for direct supplies is not a right covered by the guarantee of property ownership, and secondly, that in any case the Community has not interfered with any such right.

The protection of the proprietary rights of commercial and industrial undertakings extend to those elements which as a whole make up the economic value of the undertaking or represent a legal interest; but it does not cover all the factual circumstances or existing rules favourable to the undertaking or, in particular, the interests, opportunities for gain, hopes or expectations of profit of that undertaking.

Moreover, the Commission does not directly intervene in relation to any possible proprietary right: the terms of business of which the applicant complains have not lost their character of acts of private law by reason of the fact that the Commission has authorized them.

The *interveners* point out that, far from holding a monopoly position, they must be satisfied with a 50 % to 60 % share of the market in fuels for domestic and small consumers. In this market, despite the recent energy crisis, few changes are foreseeable in the coming years.

The new terms of business authorized by the contested Decision are justified by the consideration that Ruhrkohle AG, in order to reduce its losses as much as possible, has a major interest in ensuring the continued sale of fuels and for this purpose it must have partners who have the necessary storage capacity and who in fact perform the wholesaler's marketing functions by concluding long-term contracts for specific quantities of fuels.

The Advocate-General delivered his opinion on 28 March 1974.

Law

1 By application lodged on 31 January 1973, the undertaking J. Nold, a limited partnership carrying on a wholesale coal and construction materials' business in Darmstadt, requested — in the final version of its conclusions — that the Court should annul the Commission's Decision of 21 December 1972 authorizing new terms of business of Ruhrkohle AG (OJ 1973, L 120, p. 14) and, as a subsidiary matter, that it should declare that Decision null and inapplicable insofar as it relates to the applicant.

The applicant objects essentially to the fact that the Decision authorized the Ruhr coal selling agency to render direct supplies of coal subject to the conclusion of fixed two-year contracts stipulating the purchase of at least 6000 metric tons per annum for the domestic and small-consumer sector, a quantity which greatly exceeds its annual sales in this sector, and that the Decision thereby withdrew its status of direct wholesaler.

As to admissibility

2 The Commission has not contested the admissibility of the application.

On the other hand, Ruhrkohle AG and Ruhrkohle-Verkauf GmbH, the interveners, have contended that the action is inadmissible on the gound that the applicant lacks a legal interest.

They consider in fact that if the applicant wins its case and obtains the annulment of the Decision of 21 December 1972, the Court's judgment would have the effect of reviving the trading rules in force before those which constitute the subject-matter of the Decision in issue.

The applicant does not satisfy the requirements of the previous rules, so that it would, whatever the outcome of the action, lose its status of direct wholesaler.

3 This plea cannot be accepted.

In fact, if the contested Decision is annulled on the grounds of the objections raised, the Commission would, in all likelihood, have to replace the authorized trading rules by new provisions more in keeping with the applicant's position.

Accordingly, it cannot be denied that the latter has an interest in seeking the annulment of the Decision in issue.

On the substance

4 The applicant has not specified, with regard to the grounds for annulment set out in Article 33 of the ECSC Treaty, those upon which it is basing its action against the contested Decision.

5 In any case, an appreciable part of its argument must be dismissed directly, to the extent that the objections raised therein do not relate to the

provisions of the disputed Decision of the Commission but to the applicant's relationship with the interveners.

6 To the extent that the objections do concern the Commission's Decision, the applicant's written and oral arguments invoke in substance the grounds of infringement of an essential procedural requirement and infringement of the Treaty or of any rule of law relating to its application.

These grounds are adduced, more particularly, as regards the new conditions laid down for the right to direct supplies from the collieries, from the lack of reasoning of the contested Decision, from discrimination against the applicant, and from alleged breaches of its fundamental rights.

1. As to the objections of lack of reasoning and discrimination

7 By a Decision of 27 November 1969 the Commission authorized, on the basis of Article 66 (1) and (2) of the ECSC Treaty, the merger of most of the mining companies of the Ruhr into a single company, Ruhrkohle AG.

Under Article 2 (1) of this Decision the new company was obliged to submit to the Commission for authorization any change in its terms of business.

An application to this effect was submitted by Ruhrkohle AG to the Commission on 30 June 1972.

The Commission's authorization was granted by the Decision of 21 December 1972, which is the object of the dispute.

The rules approved by that Decision laid down new conditions stipulating the minimum quantities that dealers must undertake to purchase in order to acquire entitlement to direct supply from the producer.

In particular, direct deliveries are subject to the condition that a dealer shall conclude a two-year contract to take not less than 6000 metric tons per annum for the domestic and small consumer sector.

8 It is objected that the Commission allowed Ruhrkohle AG arbitrarily to fix this requirement so that, having regard to the quantity and nature of its annual sales, the applicant has lost its entitlement to direct supplies and is relegated to the position of having to deal through an intermediary, with all the commercial disadvantages which this involves.

Firstly, the applicant considers it to be discriminatory that, unlike other undertakings, it should lose its entitlement to direct supplies from the producer and should thereby be in a more unfavourable position than other dealers who continue to enjoy this advantage.

Secondly, it invokes Article 65 (2) which in a similar case to that envisaged under Article 66 authorizes joint-selling agreements only if such arrangements will make for 'a substantial improvement in the production or distribution' of the products concerned.

9 In the reasoning given in its Decision the Commission emphasized that it was aware that the introduction of the new terms of business would mean that a number of dealers would lose their entitlement to buy direct from the producer, due to their inability to undertake the obligations specified above.

It justifies this measure by the need for Ruhrkohle AG, in view of the major decline in coal sales, to rationalize its marketing system in such a way as to limit direct business association to dealers operating on a sufficient scale.

The requirement that dealers contract for an annual minimum quantity is in fact intended to ensure that the collieries can market their products on a regular basis and in quantities suited to their production capacity.

10 It emerges from the explanations given by the Commission and the interveners that the imposition of the criteria indicated above can be justified on the grounds not only of the technical conditions appertaining to coal mining but also of the particular economic difficulties created by the recession in coal production.

It therefore appears that these criteria, established by an administrative act of general application, cannot be considered discriminatory and, for the purposes of law, were sufficiently well-reasoned in the Decision of 21 December 1972.

As regards the application of these criteria, it is not alleged that the applicant is treated differently from other undertakings which, having failed to meet the requirements laid down under the new rules, have likewise lost the advantage of their entitlement to purchase direct from the producer.

11 These submissions must therefore be dismissed.

2. As to the objection based on an alleged violation of fundamental rights

12 The applicant asserts finally that certain of its fundamental rights have been violated, in that the restrictions introduced by the new trading rules authorized by the Commission have the effect, by depriving it of direct supplies, of jeopardizing both the profitability of the undertaking and the free development of its business activity, to the point of endangering its very existence.

In this way, the Decision is said to violate, in respect of the applicant, a right akin to a proprietary right, as well as its right to the free pursuit of business activity, as protected by the Grundgesetz of the Federal Republic of Germany and by the Constitutions of other Member States and various international treaties, including in particular the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Protocol to that Convention of 20 March 1952.

13 As the Court has already stated, fundamental rights form an integral part of the general principles of law, the observance of which it ensures.

In safeguarding these rights, the Court is bound to draw inspiration from constitutional traditions common to the Member States, and it cannot therefore uphold measures which are incompatible with fundamental rights recognized and protected by the Constitutions of those States.

Similarly, international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law.

The submissions of the applicant must be examined in the light of these principles.

14 If rights of ownership are protected by the constitutional laws of all the Member States and if similar guarantees are given in respect of their right freely to choose and practice their trade or profession, the rights thereby guaranteed, far from constituting unfettered prerogatives, must be viewed in the light of the social function of the property and activities protected thereunder.

For this reason, rights of this nature are protected by law subject always to limitations laid down in accordance with the public interest.

Within the Community legal order it likewise seems legitimate that these rights should, if necessary, be subject to certain limits justified by the overall objectives pursued by the Community, on condition that the substance of these rights is left untouched.

As regards the guarantees accorded to a particular undertaking, they can in no respect be extended to protect mere commercial interests or opportunities, the uncertainties of which are part of the very essence of economic activity.

15 The disadvantages claimed by the applicant are in fact the result of economic change and not of the contested Decision.

It was for the applicant, confronted by the economic changes brought about by the recession in coal production, to acknowledge the situation and itself carry out the necessary adaptations.

16 This submission must be dismissed for all the reasons outlined above.

17 The action must accordingly be dismissed.

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Costs

Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

The applicant has failed in its pleas.

The Order of the President of 14 March 1973 and the Order of the Court of 21 November 1973 reserved the costs relating to the application to suspend the operation of the contested Decision and the application to intervene.

By the Order of 21 June 1973 the Court ordered the applicant to bear the costs incurred, at that date, by the companies Ruhrkohle AG and Ruhrkohle-Verkauf GmbH in the main action and in the interim procedure.

On those grounds

THE COURT

hereby:

1. **Dismisses the action as unfounded;**
2. **Orders the applicant to bear the costs of the action including the costs reserved by the Orders of 13 February and 21 November 1973 and those awarded by the Order of 21 June 1973.**

Lecourt Donner Sørensen

Pescatore Kutscher Ó Dálaigh Mackenzie Stuart

Delivered in open court in Luxembourg on 14 May 1974.

A. Van Houtte
Registrar

R Lecourt
President

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BVerfGE 37, 271-305
BVerfG, Beschluss vom 29. Mai 1974 ("Solange I") – 2 BvL 52/71 –, BVerfGE 37, 271-305

BVerfGE 37, 271 - Solange I

Bundesverfassungsgericht

Beschluß

29. Mai 1974

Solange der Integrationsprozeß der Gemeinschaft nicht so weit fortgeschritten ist, daß das Gemeinschaftsrecht auch einen von einem Parlament beschlossenen und in Geltung stehenden formulierten Katalog von Grundrechten enthält, der dem Grundrechtskatalog des Grundgesetzes adäquat ist, ist nach Einholung der in Art. 177 EWGV geforderten Entscheidung des Europäischen Gerichtshofes die Vorlage eines Gerichts der Bundesrepublik Deutschland an das Bundesverfassungsgericht im Normenkontrollverfahren zulässig und geboten, wenn das Gericht die für es entscheidungserhebliche Vorschrift des Gemeinschaftsrechts in der vom Europäischen Gerichtshof gegebenen Auslegung für unanwendbar hält, weil und soweit sie mit einem der Grundrechte des Grundgesetzes kollidiert.

Beschluß

des Zweiten Senats vom 29. Mai 1974

– BvL 52/71 –

in dem Verfahren zur Prüfung der Verfassungsmäßigkeit a) der in Art. 12 Abs. 1 Unterabsatz 3 Verordung Nr. 120/67/EWG des rates vom 13. Juni 1967 begründeten Verpflichtung zur Ausfuhr, der daran anknüpfenden Gestellung einer Kaution und deren Verfall bei Nichtdurchführung der Ausfuhr im Gültigkeitszeitraum, b) des Artikels 9 der zur Verordnung Nr. 120/67/EWG ergangenen Verordnung Nr. 473/67/EWG der Kommission vom 21. August 1967 - Aussetzungs- und Vorlagebeschluß des Verwaltungsgerichts Frankfurt/Main vom 24. November 1971 (II/2-E228/69)-.

Entscheidungsformel:

Der Anwendung des Artikels 12 Absatz 1 Unterabsatz 3 der Verordnung Nr. 120/67/EWG des rates vom 13. Juni 1967 und des Artikels 9 der Verordnung Nr. 473/67/EWG der Kommission vom 21. August 1967 in der Auslegung, die sich durch den Europäischen Gerichtshof erhalten haben, durch Behörden und Gerichte der Bundesrepublik Deutschland steht ein Grundrecht des Grundgesetzes nicht entgegen.

Gründe:

A.

Vor dem Verwaltungsgericht Frankfurt/Main klagt ein deutsches Import- und Exportunternehmen auf Aufhebung eines Bescheides der Einfuhr- und Vorratsstelle

für Getreide- und Futtermittel, in dem eine Kaution in Höhe von 17 026,47 DM für verfallen erklärt worden ist, nachdem die Firma eine ihr erteilte Ausfuhrlizenz über 20 000 Tonnen Maisgrieß nur teilweise ausgenutzt hatte.

1. Der Bescheid ist auf Art. 12 Abs. 1 Unterabsatz 3 der Verordnung Nr. 120/67/EWG des Rates der Europäischen Wirtschaftsgemeinschaft vom 13. Juni 1967 (Amtsbl. der Europäischen Gemeinschaften S. 2269) und auf Art. 9 der Verordnung Nr. 473/67/EWG der Kommission der Europäischen Wirtschaftsgemeinschaft vom 21. August 1967 (Amtsbl. der Europäischen Gemeinschaften Nr. 204, S. 16) gestützt:

Art. 12 Abs. 1 VO Nr. 120/67/EWG lautet:

> *"(1) Für alle Einfuhren der in Artikel 1 genannten Erzeugnisse in die Gemeinschaft sowie für alle Ausfuhren dieser Erzeugnisse aus der Gemeinschaft ist die Vorlage einer Einfuhr- bzw. Ausfuhrlizenz erforderlich, die von den Mitgliedstaaten jedem Antragsteller unabhängig vom Ort seiner Niederlassung in der Gemeinschaft erteilt wird. ...*
>
> *Die Erteilung dieser Lizenzen hängt von der Stellung einer Kaution ab, die die Erfüllung der Verpflichtung sichern soll, die Einfuhr oder Ausfuhr während der Gültigkeitsdauer der Lizenz durchzuführen; die Kaution verfällt ganz oder teilweise, wenn die Ein- bzw. Ausfuhr innerhalb dieser Frist nicht oder nur teilweise erfolgt ist."*

Art. 8 Abs. 2 der Verordnung Nr. 473/67/EWG lautet:

> *"(2) Wenn die Verpflichtung zur Einfuhr oder Ausfuhr während der Gültigkeitsdauer der Lizenz nicht erfüllt worden ist, verfällt vorbehaltlich von Art. 9 die Kaution ..."*

Art. 9 der Verordnung Nr. 473/67/EWG lautet:

> *"(1) Wird die Einfuhr oder Ausfuhr innerhalb der Gültigkeitsdauer der Lizenz durch einen als höhere Gewalt anzusehenden Umstand verhindert, und wenn die Berücksichtigung dieser Umstände beantragt wird:*
>
> *a) so ist in den in Absatz (2) Buchstaben a) bis d) genannten Fällen die Verpflichtung zur Einfuhr oder Ausfuhr erloschen, und die Kaution verfällt nicht. ...*
>
> *b) so wird in den in Absatz (2) Buchstaben e) bis h) genannten Fällen die Gültigkeitsdauer der Lizenz um die Frist verlängert, die die zuständige Stelle infolge dieses Umstands als notwendig erachtet.*
>
> *Auf Antrag kann die zuständige Stelle jedoch bestimmen, daß die Verpflichtung zur Einfuhr oder Ausfuhr erlischt und die Kaution nicht verfällt. ...*
>
> *(2) Folgende Umstände sind als höhere Gewalt im Sinne des Absatzes*
>
> *(1) anzusehen, und zwar in dem Maße, als sie der Grund für die Nichterfüllung der Verpflichtung des Ein- oder Ausführers sind:*
>
> *a) Krieg und Unruhen;*
>
> *b) staatliche Einfuhr- oder Ausfuhrverbote;*
>
> *c) Behinderung der Schiffahrt durch hoheitliche Maßnahmen;*
>
> *d) Schiffsuntergang;*
>
> *e) Havarie des Schiffes oder der Ware;*
>
> *f) Streik;*

g) Unterbrechung der Schiffahrt wegen Eisgangs oder wegen Niedrigwassers;

h) Maschinenschaden.

Nicht als höhere Gewalt im Sinne des Absatzes (1) ist die Anwendung der "extension clause" anzusehen.

(3) Erkennen die zuständigen Stellen andere Umstände als die in Absatz (2) genannten als höhere Gewalt im Sinne des Absatzes (1) an, so teilen sie diese unverzüglich der Kommission mit. Dabei ist anzugeben, ob Absatz (1) Buchstabe a) oder Buchstabe b) angewandt wird.

(4) ...

(5) Der Importeur oder Exporteur weist die als höhere Gewalt angesehenen Umstände durch amtliche Unterlagen nach."

2. Das Verwaltungsgericht hat zunächst eine Vorabentscheidung des Gerichtshofs der Europäischen Gemeinschaften gemäß Art. 177 des Vertrags zur Gründung der Europäischen Wirtschaftsgemeinschaft (im folgenden kurz: Vertrag) eingeholt, ob die zitierten Vorschriften der genannten Verordnungen nach dem Recht der Europäischen Wirtschaftsgemeinschaft rechtens sind. Im Urteil dieses Gerichtshofs vom 17. Dezember 1970 - Rechtssache 11/70 - wird die Rechtmäßigkeit der umstrittenen Verordnungen bestätigt (ebenso im Urteil vom 10. März 1971 - Rechtssache 38/70 -).

Dazu wird ausgeführt: Innerstaatliche Rechtsvorschriften könnten wegen der Eigenständigkeit des Gemeinschaftsrechts diesem nicht vorgehen. Die in ihrer Gültigkeit angezweifelten Vorschriften des Gemeinschaftsrechts seien ein notwendiges und angemessenes Mittel, um den Behörden die unentbehrliche Intervention auf dem Getreidemarkt zu ermöglichen. Die Kautionsregelung trage der Tatsache Rechnung, daß die Lizenzanträge aus freier Entscheidung des Unternehmens gestellt würden, und daß sie gegenüber anderen denkbaren Systemen den doppelten Vorzug der Einfachheit und Wirksamkeit habe. Gegenüber einer im öffentlichen Interesse der Gemeinschaft eingeführten Regelung müsse das ausschließlich auf das Interesse bestimmter Unternehmer abgestellte Verhalten zurücktreten. Der Kautionsverfall sei weder eine Geldbuße noch eine Strafe, sondern eine Sicherung für die Erfüllung einer freiwillig übernommenen Verpflichtung. Die Ausnahmeregelung für den Fall höherer Gewalt sei eine Bestimmung, die geeignet sei, das normale Funktionieren der Getreidemarktordnung zu gewährleisten, ohne die Importeure und Exporteure über Gebühr zu belasten. Der Begriff der höheren Gewalt sei elastisch, da er sich nicht auf die Fälle der absoluten Unmöglichkeit beschränke, sondern auch Fälle einer ungewöhnlichen, vom Willen des Lizenzinhabers unabhängigen Lage umfasse, deren Folgen trotz aller aufgewandten Sorgfalt nur um den Preis unverhältnismäßiger Opfer vermieden werden könnten.

3. Das Verwaltungsgericht hat dann mit Beschluß vom 24. November 1971 sein Verfahren ausgesetzt und gemäß Art. 100 Abs. 1 GG die Entscheidung des Bundesverfassungsgerichts begehrt, ob die nach dem Europäischen Gemeinschaftsrecht bestehende Ausfuhrverpflichtung und die damit verbundene Pflicht zur Kautionshinterlegung mit dem Grundgesetz vereinbar sei, und ob bei Bejahung dieser Frage die Regelung, daß nur bei höherer Gewalt die Kaution freizugeben sei, mit dem Grundgesetz vereinbar sei.

Es ist der Auffassung, die von ihm angegriffenen Vorschriften des Gemeinschaftsrechts seien auch in der Auslegung des Europäischen Gerichtshofs mit dem Grundgesetz unvereinbar. Sei der Auffassung des Europäischen Gerichtshofs zu folgen, müsse die Klage abgewiesen werden, weil ein Fall höherer Gewalt nicht vorliege; sei die Auffassung des vorlegenden Gerichts zutreffend, müsse die Klage Erfolg haben. Die Entscheidung des Bundesverfassungsgerichts sei also entscheidungserheblich.

Das Europäische Gemeinschaftsrecht könne auf seine Vereinbarkeit mit dem Grundgesetz überprüft werden; ihm gebühre nicht der Vorrang vor allem innerstaatlichen Recht. Zuständig für die Kontrolle sei das Bundesverfassungsgericht. Zwar handle es sich bei den von Organen der Gemeinschaft erlassenen Verordnungen um Normen einer autonomen Rechtsordnung, auf die Art. 100 Abs. 1 GG seinem Wortlaut nach nicht anwendbar sei. Die Zuständigkeit des Bundesverfassungsgerichts ergebe sich jedoch zum einen aus der unmittelbaren innerstaatlichen Wirkung der Verordnungen gemäß Art. 189 Abs. 2 des Vertrags und zum anderen aus der Erwägung, daß es eine nationale Instanz für die Normenkontrolle geben müsse, wenn man die Überprüfung des Gemeinschaftsrechts an den Strukturprinzipien des nationalen Verfassungsrechts für zulässig halte. Die Entscheidung des Europäischen Gerichtshofs stehe einer Prüfung der in Frage stehenden Bestimmungen durch das Bundesverfassungsgericht nicht entgegen; der vom Europäischen Gerichtshof angewandte Grundsatz der Verhältnismäßigkeit sei nicht in allen Punkten mit dem für das deutsche Verfassungsrecht entwickelten Grundsatz identisch.

Die in Frage stehende Kautionsregelung taste die wirtschaftliche Freiheit der Exporteure in ihrem Wesensgehalt an. Hier werde ein Mittel der Marktlenkung zur statistischen Erfassung der Marktlage eingesetzt. Das angestrebte Ziel könne auch mit weniger einschneidenden Mitteln erreicht werden.

Verfassungswidrig sei außerdem, daß die Kaution selbst dann verfalle, wenn den Exporteur an der Nichtausnutzung der Lizenz kein Verschulden treffe.

4. Der Bundesminister der Justiz, der sich für die Bundesregierung geäußert hat, hält die Vorlage für unzulässig, weil Art. 100 Abs. 1 GG auf Verordnungen der Europäischen Wirtschaftsgemeinschaft weder unmittelbar noch analog anwendbar sei.

Ergänzend hat der Bundesminister der Justiz folgende Erwägungen vorgetragen: Die Unzulässigkeit der Normenkontrolle nach Art. 100 Abs. 1 GG bedeute nicht, daß jedes Gericht der Bundesrepublik Deutschland über die Unanwendbarkeit von Bestimmungen des Gemeinschaftsrechts, die es für mit dem Grundgesetz unvereinbar halte, selbst entscheiden dürfe. Vielmehr müsse das Gericht in einem solchen Fall gemäß Art. 100 Abs. 1 GG dem Bundesverfassungsgericht die Frage vorlegen, ob Art. 1 des Vertragsgesetzes zum EWG-Vertrag in Verbindung mit den Kompetenznormen des Vertrags mit dem Inhalt, mit dem die Gemeinschaftsorgane durch die in Frage stehende Verordnung von ihnen Gebrauch gemacht hätten, mit dem Grundgesetz vereinbar seien. Das Verwaltungsgericht hätte dem Bundesverfassungsgericht somit die Frage der Verfassungsmäßigkeit des Vertragsgesetzes zum EWG-Vertrag in Verbindung mit den bei Erlaß der Verordnungen Nr. 120/67/EWG und Nr. 473/67/EWG in Anspruch genommenen Kompetenznormen des Vertrags vorlegen können und müssen. Gegen eine

Umdeutung des Vorlagebeschlusses in diesem Sinne bestünden jedoch erhebliche Bedenken, weil das Verwaltungsgericht erkennbar das Zustimmungsgesetz für verfassungsmäßig halte und bewußt nicht das Vertragsgesetz, sondern die Bestimmungen des Gemeinschaftsrechts selbst zur Prüfung vorgelegt habe.

5. Der VII. Senat des Bundesverwaltungsgerichts hat mitgeteilt, daß er in seiner bisherigen Rechtsprechung zu der Verfassungsmäßigkeit der in Rede stehenden Vorschriften noch nicht Stellung genommen habe. In einem Fall, der die gleichlautenden Bestimmungen der Verordnung Nr. 19/1962 betroffen habe, sei das Gericht stillschweigend von der Rechtmäßigkeit dieser Vorschrift ausgegangen.

6. Die Klägerin des Ausgangsverfahrens hatte Gelegenheit zur Äußerung.

B. – I.

Die Vorlage ist zulässig.

1. Für diese Entscheidung ist vorgreiflich die nähere, wenn auch noch nicht abschließende Bestimmung des Verhältnisses von Verfassungsrecht der Bundesrepublik Deutschland und Europäischem Gemeinschaftsrecht, das auf der Grundlage des Vertrags zur Gründung der Europäischen Wirtschaftsgemeinschaft entstanden ist (im folgenden kurz: Gemeinschaftsrecht). Der vorliegende Fall zwingt nur zur Klärung des Verhältnisses zwischen den Grundrechtsgarantien des Grundgesetzes und den Vorschriften des sekundären Gemeinschaftsrechts der Europäischen Wirtschaftsgemeinschaft, deren Vollzug in der Hand von Verwaltungsbehörden der Bundesrepublik Deutschland liegt. Denn dafür, daß Vorschriften des Vertrags zur Gründung der Europäischen Wirtschaftsgemeinschaft, also primäres Gemeinschaftsrecht, mit Bestimmungen des Grundgesetzes der Bundesrepublik Deutschland kollidieren könnten, gibt es im Augenblick keinen Anhalt. Ebenso kann offenbleiben, ob für das Verhältnis des Rechts des Grundgesetzes außerhalb seines Grundrechtskatalogs zum Gemeinschaftsrecht dasselbe gilt, was nach den folgenden Darlegungen für das Verhältnis zwischen den Grundrechtsgarantien des Grundgesetzes und dem sekundären Gemeinschaftsrecht gilt.

2. Der Senat hält - insoweit in Übereinstimmung mit der Rechtsprechung des Europäischen Gerichtshofs - an seiner Rechtsprechung fest, daß das Gemeinschaftsrecht weder Bestandteil der nationalen Rechtsordnung noch Völkerrecht ist, sondern eine eigenständige Rechtsordnung bildet, die aus einer autonomen Rechtsquelle fließt (BVerfGE 22, 293 [296]; 31, 145 [173 f.]); denn die Gemeinschaft ist kein Staat, insbesondere kein Bundesstaat, sondern "eine im Prozeß fortschreitender Integration stehende Gemeinschaft eigener Art", eine "zwischenstaatliche Einrichtung" im Sinne des Art. 24 Abs. 1 GG.

Daraus folgt, daß grundsätzlich die beiden Rechtskreise unabhängig voneinander und nebeneinander in Geltung stehen und daß insbesondere die zuständigen Gemeinschaftsorgane einschließlich des Europäischen Gerichtshofs über die Verbindlichkeit, Auslegung und Beachtung des Gemeinschaftsrechts und die zuständigen nationalen Organe über die Verbindlichkeit, Auslegung und Beachtung des Verfassungsrechts der Bundesrepublik Deutschland zu befinden haben. Weder kann der Europäische Gerichtshof verbindlich entscheiden, ob eine Regel des

Gemeinschaftsrechts mit dem Grundgesetz vereinbar ist, noch das Bundesverfassungsgericht, ob und mit welchem Inhalt eine Regel des sekundären Gemeinschaftsrechts mit dem primären Gemeinschaftsrecht vereinbar ist. Das führt zu keinerlei Schwierigkeiten, solange beide Rechtsordnungen inhaltlich nicht miteinander in Konflikt geraten. Deshalb erwächst aus dem besonderen Verhältnis, das zwischen der Gemeinschaft und ihren Mitgliedern durch die Gründung der Gemeinschaft entstanden ist, für die zuständigen Organe, insbesondere für die beiden zur Rechtskontrolle berufenen Gerichte - den Europäischen Gerichtshof und das Bundesverfassungsgericht - zunächst die Pflicht, sich um die Konkordanz beider Rechtsordnungen in ihrer Rechtsprechung zu bemühen. Nur soweit das nicht gelingt, kann überhaupt der Konflikt entstehen, der zwingt, die Konsequenzen aus dem dargelegten grundsätzlichen Verhältnis zwischen den beiden Rechtskreisen zu ziehen.

Für diesen Fall genügt es nicht, einfach vom "Vorrang" des Gemeinschaftsrechts gegenüber dem nationalen Verfassungsrecht zu sprechen, um das Ergebnis zu rechtfertigen, daß sich Gemeinschaftsrecht stets gegen das nationale Verfassungsrecht durchsetzen müsse, weil andernfalls die Gemeinschaft in Frage gestellt würde. So wenig das Völkerrecht durch Art. 25 GG in Frage gestellt wird, wenn er bestimmt, daß die allgemeinen Vorschriften des Völkerrechts nur dem einfachen Bundesrecht vorgehen, und so wenig eine andere (fremde) Rechtsordnung in Frage gestellt wird, wenn sie durch den ordre public der Bundesrepublik Deutschland verdrängt wird, so wenig wird das Gemeinschaftsrecht in Frage gestellt, wenn ausnahmsweise das Gemeinschaftsrecht sich gegenüber zwingendem Verfassungsrecht nicht durchsetzen läßt. Die Bindung der Bundesrepublik Deutschland (und aller Mitgliedstaaten) durch den Vertrag ist nach Sinn und Geist der Verträge nicht einseitig, sondern bindet auch die durch sie geschaffene Gemeinschaft, das ihre zu tun, um den hier unterstellten Konflikt zu lösen, also nach einer Regelung zu suchen, die sich mit einem zwingenden Gebot des Verfassungsrechts der Bundesrepublik Deutschland verträgt. Die Berufung auf einen solchen Konflikt ist also nicht schon eine Vertragsverletzung, sondern setzt den Vertragsmechanismus innerhalb der europäischen Organe in Gang, der den Konflikt politisch löst.

3. Art. 24 GG spricht von der Übertragung von Hoheitsrechten auf zwischenstaatliche Einrichtungen. Das kann nicht wörtlich genommen werden. Art. 24 GG muß wie jede Verfassungsbestimmung ähnlich grundsätzlicher Art im Kontext der Gesamtverfassung verstanden und ausgelegt werden. Das heißt, er eröffnet nicht den Weg, die Grundstruktur der Verfassung, auf der ihre Identität beruht, ohne Verfassungsänderung, nämlich durch die Gesetzgebung der zwischenstaatlichen Einrichtung zu ändern. Gewiß können die zuständigen Gemeinschaftsorgane Recht setzen, das die deutschen zuständigen Verfassungsorgane nach dem Recht des Grundgesetzes nicht setzen könnten und das gleichwohl unmittelbar in der Bundesrepublik Deutschland gilt und anzuwenden ist. Aber Art. 24 GG begrenzt diese Möglichkeit, indem an ihm eine Änderung des Vertrags scheitert, die die Identität der geltenden Verfassung der Bundesrepublik Deutschland durch Einbruch in die sie konstituierenden Strukturen aufheben würde. Und dasselbe würde für Regelungen des sekundären Gemeinschaftsrechts gelten, die aufgrund einer entsprechenden Interpretation des geltenden Vertrags getroffen und in derselben Weise die dem Grundgesetz wesentlichen Strukturen berühren würden. Art. 24 GG ermächtigt nicht eigentlich zur Übertragung von Hoheitsrechten, sondern öffnet die nationale Rechtsordnung (in der angegebenen Begrenzung) derart, daß der

ausschließliche Herrschaftsanspruch der Bundesrepublik Deutschland im Geltungsbereich des Grundgesetzes zurückgenommen und der unmittelbaren Geltung und Anwendbarkeit eines Rechts aus anderer Quelle innerhalb des staatlichen Herrschaftsbereichs Raum gelassen wird.

4. Ein unaufgebbares, zur Verfassungsstruktur des Grundgesetzes gehörendes Essentiale der geltenden Verfassung der Bundesrepublik Deutschland ist der Grundrechtsteil des Grundgesetzes. Ihn zu relativieren, gestattet Art. 24 GG nicht vorbehaltlos. Dabei ist der gegenwärtige Stand der Integration der Gemeinschaft von entscheidender Bedeutung. Sie entbehrt noch eines unmittelbar demokratisch legitimierten, aus allgemeinen Wahlen hervorgegangenen Parlaments, das Gesetzgebungsbefugnisse besitzt und dem die zur Gesetzgebung zuständigen Gemeinschaftsorgane politisch voll verantwortlich sind; sie entbehrt insbesondere noch eines kodifizierten Grundrechtskatalogs, dessen Inhalt ebenso zuverlässig und für die Zukunft unzweideutig feststeht wie der des Grundgesetzes und deshalb einen Vergleich und eine Entscheidung gestattet, ob derzeit der in der Gemeinschaft allgemein verbindliche Grundrechtsstandard des Gemeinschaftsrechts auf die Dauer dem Grundrechtsstandard des Grundgesetzes, unbeschadet möglicher Modifikationen, derart adäquat ist, daß die angegebene Grenze, die Art. 24 GG zieht, nicht überschritten wird. Solange diese Rechtsgewißheit, die allein durch die anerkanntermaßen bisher grundrechtsfreundliche Rechtsprechung des Europäischen Gerichtshofs nicht gewährleistet ist, im Zuge der weiteren Integration der Gemeinschaft nicht erreicht ist, gilt der aus Art. 24 GG hergeleitete Vorbehalt. Es handelt sich also um eine rechtliche Schwierigkeit, die ausschließlich aus dem noch in Fluß befindlichen fortschreitenden Integrationsprozeß der Gemeinschaft entsteht und mit der gegenwärtigen Phase des Übergangs beendet sein wird.

Vorläufig entsteht also in dem unterstellten Fall einer Kollision von Gemeinschaftsrecht mit einem Teil des nationalen Verfassungsrechts, näherhin der grundgesetzlichen Grundrechtsgarantien, die Frage, welches Recht vorgeht, das andere also verdrängt. In diesem Normenkonflikt setzt sich die Grundrechtsgarantie des Grundgesetzes durch, solange nicht entsprechend dem Vertragsmechanismus die zuständigen Organe der Gemeinschaft den Normenkonflikt behoben haben.

5. Aus dem dargelegten Verhältnis von Grundgesetz und Gemeinschaftsrecht folgt für die Zuständigkeiten des Europäischen Gerichtshofs und des Bundesverfassungsgerichts:

a) Der Europäische Gerichtshof ist, entsprechend den Kompetenzregeln des Vertrags, zuständig, über die Rechtsgültigkeit der Normen des Gemeinschaftsrechts (einschließlich der nach seiner Auffassung existierenden ungeschriebenen Normen des Gemeinschaftsrechts) und ihre Auslegung zu entscheiden. Inzidentfragen aus dem nationalen Recht der Bundesrepublik Deutschland (oder eines anderen Mitgliedstaates) entscheidet er jedenfalls nicht mit Verbindlichkeit für diesen Staat. Ausführungen in der Begründung seiner Entscheidungen, daß ein bestimmter Inhalt einer Gemeinschaftsnorm inhaltlich übereinstimme oder vereinbar sei mit einer Verfassungsvorschrift des nationalen Rechts - hier: mit einer Grundrechtsgarantie des Grundgesetzes -, stellen unverbindliche obiter dicta dar.

Im Rahmen dieser Kompetenz stellt der Gerichtshof mit Verbindlichkeit für alle Mitgliedstaaten den Inhalt des Gemeinschaftsrechts fest. Dementsprechend haben die Gerichte der Bundesrepublik Deutschland unter den Voraussetzungen des Art.

177 des Vertrags die Entscheidung des Europäischen Gerichtshofs einzuholen, bevor sie die Frage der Vereinbarkeit der für sie entscheidungserheblichen Norm des Gemeinschaftsrechts mit Grundrechtsgarantien des Grundgesetzes aufwerfen.

b) Das Bundesverfassungsgericht entscheidet, wie sich aus den vorangegangenen Darlegungen ergibt, niemals über die Gültigkeit oder Ungültigkeit einer Vorschrift des Gemeinschaftsrechts. Es kann höchstens zu dem Ergebnis kommen, daß eine solche Vorschrift von den Behörden oder Gerichten der Bundesrepublik Deutschland nicht angewandt werden darf, soweit sie mit einer Grundrechtsvorschrift des Grundgesetzes kollidiert. Inzidentfragen aus dem Gemeinschaftsrecht kann es (ebenso wie umgekehrt der Europäische Gerichtshof) selbst entscheiden, sofern nicht die Voraussetzungen des auch für das Bundesverfassungsgericht verbindlichen Art. 177 des Vertrags vorliegen oder schon eine nach dem Gemeinschaftsrecht das Bundesverfassungsgericht bindende Entscheidung des Europäischen Gerichtshofs eingreift.

6. Grundrechte können mehrfach rechtlich garantiert sein und dementsprechend mehrfachen gerichtlichen Schutz genießen. Der Europäische Gerichtshof hält sich, wie seine Judikatur ausweist, auch für zuständig, die Grundrechte nach Maßgabe des Gemeinschaftsrechts durch seine Rechtsprechung zu schützen. Die im Grundgesetz garantierten Grundrechte zu schützen, ist dagegen allein das Bundesverfassungsgericht im Rahmen der ihm im Grundgesetz eingeräumten Kompetenzen berufen. Diese verfassungsrechtliche Aufgabe kann ihm kein anderes Gericht abnehmen. Soweit also danach Bürger der Bundesrepublik Deutschland einen Anspruch auf gerichtlichen Schutz ihrer im Grundgesetz garantierten Grundrechte haben, kann ihr Status keine Beeinträchtigung erleiden nur deshalb, weil sie durch Rechtsakte von Behörden oder Gerichten der Bundesrepublik Deutschland unmittelbar betroffen werden, die sich auf Gemeinschaftsrecht stützen. Andernfalls entstünde gerade für die elementarsten Statusrechte des Bürgers eine empfindliche Lücke des gerichtlichen Schutzes. Im übrigen gilt für die Verfassung einer Gemeinschaft von Staaten mit einer freiheitlich-demokratischen Verfassung im Zweifel grundsätzlich nichts anderes wie für einen freiheitlichdemokratisch verfaßten Bundesstaat: Es schadet der Gemeinschaft und ihrer freiheitlichen (und demokratischen) Verfassung nicht, wenn und soweit ihre Mitglieder in ihrer Verfassung die Freiheitsrechte ihrer Bürger stärker verbürgen als die Gemeinschaft es tut.

7. Im einzelnen bemißt sich der Gerichtsschutz durch das Bundesverfassungsgericht ausschließlich nach dem Verfassungsrecht der Bundesrepublik Deutschland und der näheren Regelung im Bundesverfassungsgerichtsgesetz:

a) Im Normenkontrollverfahren auf Vorlage eines Gerichts geht es immer um die Überprüfung einer gesetzlichen Vorschrift. Da das Gemeinschaftsrecht die im nationalen Recht herkömmliche Unterscheidung zwischen Vorschriften eines förmlichen Gesetzes und Vorschriften einer auf ein förmliches Gesetz gestützten Verordnung nicht kennt, ist jede Form einer Verordnung der Gemeinschaft im Sinne der Verfahrensvorschriften für das Bundesverfassungsgericht eine gesetzliche Vorschrift.

b) Eine erste Schranke ergibt sich für die Zuständigkeit des Bundesverfassungsgerichts daraus, daß es nur Akte der deutschen Staatsgewalt, also Entscheidungen der Gerichte, Verwaltungsakte der Behörden und Maßnahmen

der Verfassungsorgane der Bundesrepublik Deutschland zum Gegenstand seiner Kontrolle machen kann. Deshalb hält das Bundesverfassungsgericht die Verfassungsbeschwerde eines Bürgers der Bundesrepublik Deutschland unmittelbar gegen eine Verordnung der Gemeinschaft für unzulässig (BVerfGE 22, 293 [297]).

c) Vollzieht eine Verwaltungsbehörde der Bundesrepublik Deutschland oder handhabt ein Gericht der Bundesrepublik Deutschland eine Verordnung der Gemeinschaft, so liegt darin Ausübung deutscher Staatsgewalt; und dabei sind Verwaltungsbehörde und Gerichte auch an das Verfassungsrecht der Bundesrepublik Deutschland gebunden. Was den Grundrechtsschutz anlangt, vollzieht er sich nach dem Verfahrensrecht des Bundesverfassungsgerichts, wenn man von der Verfassungsbeschwerde absieht, die erst nach Erschöpfung des Rechtswegs zulässig ist - die Ausnahme des § 90 Abs. 2 BVerfGG kommt bei der Anfechtung eines auf eine Vorschrift des Gemeinschaftsrechts gestützten Verwaltungsakts kaum je in Betracht -, im Wege der Gerichtsvorlage im sog. Normenkontrollverfahren vor dem Bundesverfassungsgericht. Dieses Verfahren bedarf im Hinblick auf die dargelegten Besonderheiten des Verhältnisses von nationalem Verfassungsrecht und Gemeinschaftsrecht einiger Modifikationen, wie sie das Bundesverfassungsgericht auch sonst in der Vergangenheit in seiner Rechtsprechung für notwendig gehalten hat. So hat es beispielsweise im Rahmen einer Normenkontrolle die bestehende Rechtslage im Hinblick auf einen Verfassungsauftrag als nicht mit dem Grundgesetz vereinbar festgestellt und eine Frist zur Behebung des Mangels gesetzt; so hat es sich mit der Feststellung der Unvereinbarkeit einer Regelung mit dem Gleichheitssatz begnügt, ohne die Regelung für nichtig zu erklären; so hat es eine von den Besatzungsmächten in Kraft gesetzte Regelung als mit dem Grundgesetz in Widerspruch stehend erklärt und die Bundesregierung verpflichtet, darauf hinzuwirken, daß sie durch den deutschen Gesetzgeber mit dem Grundgesetz in Einklang gebracht werden kann; so hat es die vorbeugende Normenkontrolle gegenüber Vertragsgesetzen entwickelt. Im Zuge dieser Rechtsprechung liegt es, wenn sich das Bundesverfassungsgericht in Fällen der hier in Rede stehenden Art darauf beschränkt, die Unanwendbarkeit einer Vorschrift des Gemeinschaftsrechts durch die Verwaltungsbehörden oder Gerichte der Bundesrepublik Deutschland festzustellen, soweit sie mit einer Grundrechtsgarantie des Grundgesetzes kollidiert.

Die Konzentrierung dieser Entscheidung beim Bundesverfassungsgericht ist nicht nur verfassungsrechtlich aus demselben Grund geboten, der zum sog. Verwerfungsmonopol des Gerichts geführt hat, sondern liegt auch im Interesse der Gemeinschaft und ihres Rechts. Nach dem Grundgedanken des Art. 100 Abs. 1 GG ist es Aufgabe des Bundesverfassungsgerichts zu verhüten, daß jedes deutsche Gericht sich über den Willen des Gesetzgebers hinwegsetzt, indem es die von ihm beschlossenen Gesetze nicht anwendet, weil sie nach Auffassung des Gerichts gegen das Grundgesetz verstoßen (BVerfGE 1, 184 [197]; 2, 124 [129]). Das innerstaatliche Gesetzesrecht erhält damit einen Geltungsschutz gegenüber Gerichten, die ihm aus verfassungsrechtlichen Gründen die Gültigkeit versagen möchten. Ähnlich verhält es sich mit der Regelung des Art. 100 Abs. 2 GG, nach der bei Zweifeln, ob eine allgemeine Regel der Völkerrechts Rechte und Pflichten für den Einzelnen erzeugt, das Bundesverfassungsgericht angerufen werden muß. Deshalb erfordert es der Grundgedanke des Art. 100 GG, die Geltung des Gemeinschaftsrechts in der Bundesrepublik Deutschland in gleicher Weise wie das nationale Recht vor Beeinträchtigung zu schützen.

Das Ergebnis ist: Solange der Integrationsprozeß der Gemeinschaft nicht so weit fortgeschritten ist, daß das Gemeinschaftsrecht auch einen von einem Parlament beschlossenen und in Geltung stehenden formulierten Katalog von Grundrechten enthält, der dem Grundrechtskatalog des Grundgesetzes adäquat ist, ist nach Einholung der in Art. 177 des Vertrags geforderten Entscheidung des Europäischen Gerichtshofs die Vorlage eines Gerichts der Bundesrepublik Deutschland an das Bundesverfassungsgericht im Normenkontrollverfahren zulässig und geboten, wenn das Gericht die für es entscheidungserhebliche Vorschrift des Gemeinschaftsrechts in der vom Europäischen Gerichtshof gegebenen Auslegung für unanwendbar hält, weil und soweit sie mit einem der Grundrechte des Grundgesetzes kollidiert.

II.

Die Fortbildung des Verfahrensrechts des Bundesverfassungsgerichts kann ohne Anrufung des Plenums getroffen werden, weil sie nicht in Widerspruch zu einer Entscheidung des Ersten Senats dieses Gerichts steht:

Der Erste Senat hat bisher entschieden, daß eine Maßnahme eines fremden Staats nicht der Kontrolle des Bundesverfassungsgerichts unterliegt, und daß auch eine Maßnahme, die auf ein Militärregierungsgesetz gestützt und von einer deutschen Behörde "auf Anordnung der Militärregierung" ergangen ist, keine Maßnahme der deutschen öffentlichen Gewalt ist und deshalb ebenfalls der Rechtsprechung des Bundesverfassungsgerichts entzogen ist (BVerfGE 1, 10). Aus dem gleichen Grund hat er die Verfassungsbeschwerde, die sich mittelbar oder unmittelbar gegen Entscheidungen eines obersten Rückerstattungsgerichts wendet, für unzulässig gehalten (BVerfGE 6, 15; 22, 91) und eine Verfassungsbeschwerde gegen eine rein innerkirchliche Maßnahme als unzulässig verworfen (BVerfGE 18, 385). Er hat außerdem entschieden, daß das Bundesverfassungsgericht nicht zuständig ist, deutsches Recht (nämlich ein Durchführungsgesetz zum Kontrollratsgesetz) auf seine Vereinbarkeit mit dem Besatzungsrecht zu überprüfen (BVerfGE 3, 368). In diesem Zusammenhang heißt es wörtlich: "Das Grundgesetz und das Gesetz über das Bundesverfassungsgericht enthalten keine verfassungsgerichtliche Generalklausel für die Zuständigkeit des Bundesverfassungsgerichts. ... Für die Prüfung deutschen Rechts auf seine Vereinbarkeit mit Besatzungsrecht ist dem Bundesverfassungsgericht keine besondere Zuständigkeit zugewiesen. Das Bundesverfassungsrecht und das im Rahmen des Grundgesetzes geltende Bundesrecht sind für das Bundesverfassungsgericht einziger Prüfungsmaßstab. Seine Zuständigkeit kann nicht aus rechtspolitischen Erwägungen über die positive Zuständigkeitsregelung hinaus erweitert werden" (BVerfGE 3, 368 [376 f.]). In einem Normenkontrollverfahren, das eine Bestimmung der 42. Durchführungsverordnung zum Umstellungsgesetz betraf, hat der Erste Senat weiter entschieden, daß die angegriffene Bestimmung Besatzungsrecht sei und Besatzungsrecht auf seine Vereinbarkeit mit dem Grundgesetz nicht geprüft werden könne (BVerfGE 4, 45). Dieser Entscheidung folgen aber aus der Zeit nach Inkrafttreten des Pariser Vertragswerks die Entscheidungen, in denen Besatzungsrecht auf seine Vereinbarkeit mit dem Grundgesetz überprüft und den zuständigen Verfassungsorganen der Bundesrepublik Deutschland aufgegeben wird, nach entsprechender Konsultation der Drei Mächte den Inhalt des Gesetzes mit dem Grundgesetz in Übereinstimmung zu bringen (BVerfGE 15, 337 und Entscheidung vom 14. November 1973 - 1 BvR 719/69 - betreffend Ehegesetz [BVerfGE 36, 146]). In der Entscheidung vom 18. Oktober 1967 (BVerfGE 22, 293) wird schließlich, wie schon bemerkt, eine Verfassungsbeschwerde unmittelbar gegen Verordnungen des

Rates oder der Kommission der Europäischen Wirtschaftsgemeinschaft als unzulässig verworfen, weil sie sich nicht gegen einen Akt der deutschen, an das Grundgesetz gebundenen öffentlichen Gewalt richtet. In diesem Zusammenhang wird ausgeführt: Die Zulässigkeit könne nicht begründet werden mit der Erwägung, es bestehe ein dringendes Bedürfnis für einen verfassungsgerichtlichen Rechtsschutz, weil die im Gemeinschaftsrecht gebotenen Möglichkeiten nicht ausreichten, um einen hinlänglichen Schutz der Grundrechte der Angehörigen von Mitgliedstaaten zu gewährleisten. Die Zuständigkeit des Bundesverfassungsgerichts könne auch durch ein noch so dringendes rechtspolitisches Bedürfnis nicht erweitert werden. Danach folgt der Satz: "Nicht entschieden ist damit, ob und in welchem Umfang das Bundesverfassungsgericht im Rahmen eines zulässigerweise bei ihm anhängig gemachten Verfahrens Gemeinschaftsrecht an den Grundrechtsnormen des Grundgesetzes messen kann ..." Das hänge u. a. davon ab, "ob und in welchem Maße die Bundesrepublik Deutschland bei der Übertragung von Hoheitsrechten nach Art. 24 Abs. 1 GG die Gemeinschaftsorgane von solcher Bindung (an Grundrechte) freistellen konnte".

Mit keiner der genannten Entscheidungen des Ersten Senats und ihrer tragenden Begründung stellt sich die unter I, 1 bis 7 gegebene Begründung der vorliegenden Entscheidung in Widerspruch. Sie knüpft vielmehr an die Begründung der Entscheidung des Ersten Senats vom 30. Juli 1952 (BVerfGE 1, 396) an, die das Verfahrensrecht der Normenkontrolle fortgebildet hat, indem sie die vorbeugende Normenkontrolle für Vertragsgesetze entwickelt und dabei auf die Notwendigkeit abgehoben hat, für diese Fälle das Verfahren entsprechend der Eigenart der Vertragsgesetz zu *modifizieren* (BVerfGE 1, 396 [410]) und an die weiteren Entscheidungen dieses Senats, in denen Besatzungsrecht auf seine Übereinstimmung mit dem Grundgesetz geprüft und dem Gesetzgeber aufgegeben wurde, durch entsprechende Verhandlungen mit den Drei Mächten die Voraussetzungen zu schaffen, das verfassungswidrige besatzungsrechtliche Gesetz inhaltlich mit dem Grundgesetz in Übereinstimmung zu bringen. Die vorliegende Entscheidung führt außerdem die eigene Rechtsprechung des Zweiten Senats weiter, die sich bisher über das Verhältnis von Gemeinschaftsrecht und einfachem Recht der Bundesrepublik Deutschland ausläßt (BVerfGE 29, 198; 31, 145).

III.

Die angegriffene Regelung des Gemeinschaftsrechts in der vom Europäischen Gerichtshof gegebenen Auslegung kollidiert nicht mit einer Grundrechtsgarantie des Grundgesetzes, weder mit Art. 12 noch mit Art. 2 Abs. 1 GG.

1. Vorweg ist zu bemerken, daß der im System der Lizenzierung mit Kautionsgestellung für Ausfuhr und Einfuhr gewisser Erzeugnisse und Waren vorgesehene Verfall der Kaution nicht als ein durch staatliche Anordnung auferlegtes Übel für vorwerfbares rechtswidriges Verhalten ähnlich einer Strafe oder eines Bußgeldes gewertet werden kann. In diesem System ist vielmehr eine der Privatrechtsordnung bekannte Rechtsfigur eingebaut, die dem Charakter von Risikogeschäften Rechnung trägt (z.B. Termingeschäfte, Abzahlungsgeschäfte, Geschäfte über wiederkehrende Lieferung von Waren usw.). Solchen Geschäften ist die Gestellung einer Kaution und der Verfall einer Kaution unter den vertraglich vereinbarten Bedingungen nicht fremd. Auch bei der Ausfuhr und Einfuhr von Gütern, die der Regelung der angegriffenen Vorschriften unterfallen, weiß der interessierte Kaufmann, welches Risiko er eingeht, und hat die Freiheit der Entscheidung, ob er

den Vertrag unter den - hier nicht vereinbarten, aber gesetzlich festgelegten - Bedingungen eingehen will oder nicht. Alle Bedenken, die aus dem Vergleich mit einer strafrechtlichen oder strafrechtsähnlichen Sanktion hergeleitet werden, gehen deshalb von vornherein fehl (ebenso BVerfGE 9, 137 [144]).

2. Das in den angegriffenen Vorschriften enthaltene System ist im gegenwärtigen Stadium der Entwicklung der Europäischen Gemeinschaft, in dem der wirtschaftliche Verkehr ohne Planung und wirksame Kontrolle nicht funktionieren kann, nicht nur angemessen, sondern (noch) unentbehrlich und durch ein anderes, ähnlich wirksames und einfaches, andererseits marktkonformes System nicht zu ersetzen.

3. Was das Grundrecht der Berufsfreiheit (Art. 12 GG) anlangt, so sind die im Urteil vom 11. Juni 1958 (BVerfGE 7, 377 [397 ff.]) entwickelten Grundsätze auch hier maßgebend. Die Regelung der Lizenzierung von Ausfuhr- und Einfuhrgeschäften mit Kautionsgestellung und Kautionsverfall berührt die Berufsausübung, deren Beschränkung der Gesetzgeber vorsehen kann. Dabei ist er allerdings nicht frei. Hier hat er eine "reine Ausübungsregelung" getroffen, "die auf die Freiheit der Berufswahl nicht zurückwirkt, vielmehr nur bestimmt, in welcher Art und Weise die Berufsangehörigen ihre Berufstätigkeit im einzelnen zu gestalten haben. Hier können in weitem Maße Gesichtspunkte der Zweckmäßigkeit zur Geltung kommen; nach ihnen ist zu bemessen, welche Auflagen den Berufsangehörigen gemacht werden müssen, um Nachteile und Gefahren für die Allgemeinheit abzuwehren ... Der Grundrechtsschutz beschränkt sich insoweit auf die Abwehr in sich verfassungswidriger, weil übermäßig belastender und nicht zumutbarer gesetzlicher Auflagen; von diesen Ausnahmen abgesehen, trifft die hier in Frage stehende Beeinträchtigung der Berufsfreiheit den Grundrechtsträger nicht allzu empfindlich, da er bereits im Beruf steht und die Befugnis, ihn auszuüben, nicht berührt wird" (BVerfGE 7, 377 [405 f.]).

Bei Anlegung dieses Maßstabs kollidiert die angegriffene Regelung nicht mit Art. 12 GG. Denn für sie sprechen, wie schon der Europäische Gerichtshof in seiner Entscheidung dargelegt hat, wohlerwogene Gründe, um empfindliche Nachteile für die Europäische Wirtschaftsgemeinschaft abzuwehren. Eine "in sich verfassungswidrige, weil übermäßig belastende und nicht zumutbare" Auflage steht hier ebensowenig in Rede wie in dem insoweit vergleichbaren Fall, der mit der sog. Reugeld-Entscheidung vom 3. Februar 1959 (BVerfGE 9, 137) entschieden wurde; in jener Entscheidung hat das Gericht nicht einmal erwogen, daß Art. 12 GG verletzt sein könnte (BVerfGE 9, 137 [146]).

4. Soweit in den Formeln "übermäßig belastend" und "nicht zumutbar" die Berücksichtigung des Grundsatzes der Verhältnismäßigkeit gefordert wird, ist bei der Regelung über die Voraussetzungen eines Verfalls der Kaution zu beachten: Es entspricht dem Zweck einer Kaution, daß sie verfällt, wenn die im Vertrag oder im Gesetz festgelegten Verpflichtungen, gleichgültig ob schuldhaft oder nicht schuldhaft, nicht erfüllt werden. Daß sie nicht verfällt, muß demnach eine Ausnahme bleiben, die nicht alle Fälle umfaßt, in denen der Gesteller der Kaution schuldlos, also mit der gehörigen Sorgfalt eines Kaufmanns gehandelt hat. Die angegriffene Regelung faßt die Ausnahme unter dem Rechtsbegriff der höheren Gewalt, und der Europäische Gerichtshof hat diesen Begriff dahin verbindlich ausgelegt, daß darunter neben den in der Regelung ausdrücklich genannten Fällen nicht nur alle Fälle absoluter Unmöglichkeit der Ein- oder Ausfuhr, sondern auch Fälle einzubeziehen sind, in denen die Ein- oder Ausfuhr nicht erfolgte wegen vom Willen des Im- oder

Exporteurs unabhängiger Umstände, deren Folgen trotz aller aufwendbaren Sorgfalt nur um den Preis unverhältnismäßiger Opfer vermeidbar gewesen wären. Das umschreibt, zumal der Europäische Gerichtshof hinzufügt, die Begriffselemente "Sorgfalt, die er hätte aufwenden müssen" und "Schwere des Opfers, das er ... hätte auf sich nehmen müssen" seien elastisch, den im deutschen Recht geläufigen, im Verfassungsgrundsatz der Verhältnismäßigkeit mitenthaltenen Rechtsgedanken, daß der Verpflichtete in Fällen dieser Art bei einer "überobligationsmäßigen Belastung" von seiner Verpflichtung frei werden kann.

5. Der Anwendung der angegriffenen Regelung durch die deutschen Behörden und Gerichte im vorliegenden Fall steht demnach Art. 12 GG nicht entgegen. Neben dem Art. 12 GG kommt nach der ständigen Rechtsprechung des Bundesverfassungsgerichts als weiterer selbständiger Prüfungsmaßstab Art. 2 Abs. 1 GG im vorliegenden Fall nicht in Betracht (BVerfGE 9, 63 [73]; 9, 73 [77]; 9, 338 [343]; 10, 185 [199]; 21, 227 [234]; 23, 50 [55 f.]).

IV.

Diese Entscheidung ist zu B.I und II mit fünf zu drei Stimmen, zu B.III einstimmig ergangen.

Dr. Seuffert, Dr. v. Schlabrendorff, Dr. Rupp, Dr. Geiger, Hirsch, Dr. Rinck, Dr. Rottmann, Wand

Abweichende Meinung der Richter Dr. Rupp, Hirsch und Wand zum Beschluß des Zweiten Senats vom 29. Mai 1974 - BvL 52/71 -

Wir halten die Vorlage für unzulässig und können daher dem Beschluß zu B.I und II nicht zustimmen.

I.

Rechtsvorschriften, die von Organen der Europäischen Gemeinschaften aufgrund der ihnen übertragenen Kompetenzen erlassen worden sind (sekundäres Gemeinschaftsrecht), können nicht auf ihre Vereinbarkeit mit den Grundrechtsnormen des Grundgesetzes geprüft werden.

1. Die Verfassung der Bundesrepublik Deutschland sieht in Art. 24 Abs. 1 GG vor, daß der Bund durch Gesetz Hoheitsrechte auf zwischenstaatliche Einrichtungen übertragen kann. Von dieser Befugnis hat er durch Ratifizierung des EWG-Vertrags Gebrauch gemacht (vgl. Art. 1 des Gesetzes vom 27. Juli 1957 - BGBl. II S. 753 -). Damit ist auf einem begrenzten Sektor (Art. 2, 3 EWGV) eine eigenständige Rechtsordnung entstanden, die über eigene Organe, einen eigenen Normenbestand und ein eigenes Rechtsschutzsystem verfügt. Gemeinschaftsorgane sind mit Rechtsetzungsbefugnissen ausgestattet. Die von ihnen erlassenen Rechtsvorschriften, die weder der nationalen Rechtsordnung noch dem Völkerrecht angehören, bilden - zusammen mit den Bestimmungen des Vertrags und ungeschriebenen Rechtsgrundsätzen - den Normenbestand der Gemeinschaft. Der Gerichtshof der Europäischen Gemeinschaften sichert die Wahrung des Rechts bei der Auslegung und Anwendung des Vertrags. Diese Gemeinschaftsrechtsordnung ist autonom und unabhängig vom nationalen Rechtskreis.

2. Beide Rechtskreise kennen - jeweils für ihren Bereich - Grundrechtsnormen und ein zu ihrer Durchsetzung geeignetes Rechtsschutzsystem.

a) Grundrechte werden nicht nur vom Grundgesetz innerhalb der nationalen Rechtsordnung der Bundesrepublik Deutschland verbürgt, sondern auch von der Rechtsordnung der Europäischen Gemeinschaften gewährleistet.

Der EWG-Vertrag enthält neben vereinzelten Bestimmungen mit grundrechtsähnlichem Gehalt (z.B. Art. 7 Abs. 1 und 119) in Art. 215 Abs. 2 eine Bezugnahme auf die allgemeinen Rechtsgrundsätze, die den Rechtsordnungen der Mitgliedstaaten gemeinsam sind. Vor allem sind in der Rechtsprechung des Europäischen Gerichtshofes die wesentlichen Bestandteile des Rechtsstaatsprinzips und die Grundrechte auf Gemeinschaftsebene garantiert. Der Grundsatz der Verhältnismäßigkeit ist vom Europäischen Gerichtshof schon seit Beginn seiner Rechtsprechung als Maßstab für die Rechtmäßigkeit des Handelns der Gemeinschaftsorgane anerkannt worden (siehe u. a. Sammlung der Rechtsprechung des Gerichtshofes - Slg. - 1955/56, 297 [311]; 1958, 159 [196 f.]; 1962, 653 [686]; 1970, 1125 [1137]; 1973, 1091 [1112]). In der vom Verwaltungsgericht Frankfurt im Ausgangsverfahren eingeholten Vorabentscheidung hat der Gerichtshof nicht nur geprüft, ob die in den jetzt dem Bundesverfassungsgericht zur Prüfung vorliegenden EWG-Verordnungen vorgeschriebene Kautionsstellung ein "notwendiges und angemessenes Mittel" zur Erreichung des angestrebten Zieles ist, sondern auch erörtert, ob der Handel durch die Kautionsstellung übermäßig belastet wird (Slg. 1970, 1125 [1137]).

Das Gebot der Gesetzmäßigkeit der Verwaltung findet in der Rechtsprechung des Gerichtshofes ebenfalls seinen Ausdruck (vgl. Slg. 1958, 9 [41 f.]).

Das Erfordernis der Rechtssicherheit und des Vertrauensschutzes ist vom Gerichtshof wiederholt anerkannt worden (vgl. u. a. Slg. 1961, 239 [259]; 1962, 653 [686]; 1964, 1213 [1233 f.]; 1967, 591 [611]; 1973, 575 [584] und 723 [729]). Die Achtung des Grundsatzes des rechtlichen Gehörs (vgl. Slg. 1961, 108 [169]) und des Verbots der Doppelbestrafung (Slg. 1966, 153 [178]; 1969, 1 [15]; 1972, 1281 [1290]) ist durch die Rechtsprechung des Gerichtshofes gewährleistet.

Während dem Diskriminierungsverbot in der Rechtsprechung des Gerichtshofes von Anfang an große Bedeutung zukam (vgl. u. a. Slg. 1958, 233 [257]; 1961, 345 [364]; 1962, 653 [692]; 1971, 823 [838]; 1973, 1055 [1073 f.]; Urteil vom 30. Januar 1974 - Rs 148/73 - S. 14 f. des hektographierten Textes), ist der Schutz der Freiheitsrechte erst in den letzten Jahren klarer zum Ausdruck gekommen. Inzwischen liegt aber auch hierzu genügend Rechtsprechung vor, um die Feststellung zu gestatten, daß die Grundrechte auf Gemeinschaftsebene ausreichend geschützt sind. Der Gerichtshof hat wiederholt betont, daß die Beachtung der Grundrechte zu den allgemeinen Rechtsgrundsätzen gehört, deren Wahrung er zu sichern hat (Slg. 1969, 419 [425]; 1970 1125 [1135]; Urteil vom 14. Mai 1974 - RS 4/73 - S. 29 f. des hektographierten Textes). Maßstab hierfür sind in erster Linie die gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten. Das bedeutet, wie der Gerichtshof in seinem Urteil vom 14. Mai 1974 ausführt, daß keine Maßnahme als rechtmäßig anerkannt werden kann, die mit den von den Verfassungen der Mitgliedstaaten anerkannten und geschützten Grundrechten unvereinbar ist. In der gleichen Entscheidung hat der Gerichtshof darüber hinaus klargestellt, daß Beschränkungen der Grundrechte zur Verwirklichung der dem allgemeinen Wohle dienenden Ziele der

Europäischen Gemeinschaften ihre Grenze dort finden, wo die Grundrechte in ihrem Wesen angetastet würden (a.a.O. S. 30). Trotz des Fehlens eines Grundrechtskatalogs ist somit der Schutz der im Grundgesetz gewährleisteten Grundrechte auch in der Rechtsordnung der Europäischen Gemeinschaften - wenn auch teilweise in modifizierter Form - durch die Rechtsprechung des Europäischen Gerichtshofes gewährleistet. Es kommt hinzu, daß nach der Ratifikation der Europäischen Menschenrechtskonvention und des Zusatzprotokolls vom 20. März 1952 durch Frankreich nunmehr alle Mitgliedstaaten der Gemeinschaften auch Vertragspartner der Konvention sind. Deshalb ist damit zu rechnen, daß der Gerichtshof auch die in der Konvention und im Zusatzprotokoll enthaltenen Bestimmungen zum Schutze der Menschenrechte und Grundfreiheiten zur Konkretisierung der "allgemeinen Rechtsgrundsätze, die den Rechtsordnungen der Mitgliedstaaten gemeinsam sind", heranziehen wird, wie in der Entscheidung vom 14. Mai 1974 bereits angedeutet ist.

b) Die Rechtsordnung der Europäischen Gemeinschaften verfügt auch über ein zur Durchsetzung dieser Grundrechte geeignetes Rechtsschutzsystem.

Der Einzelne kann den Europäischen Gerichtshof gegen Handlungen der Gemeinschaftsorgane zwar nur anrufen, wenn er von einer solchen Handlung unmittelbar und individuell betroffen ist (Art. 173 Abs. 2 EWGV). Soweit Rechtsvorschriften der Gemeinschaften oder an die Mitgliedstaaten gerichtete Entscheidungen der Ausführung durch staatliche Organe der Bundesrepublik Deutschland bedürfen, steht dem Einzelnen aber der gegen den innerstaatlichen Akt gegebene Rechtsweg offen. In diesem Verfahren haben die deutschen Gerichte auch zu prüfen, ob die Vorschriften des Gemeinschaftsrechts, auf die sich die angegriffene Maßnahme stützt, mit höherrangigen Normen der Gemeinschaftsrechtsordnung vereinbar sind. Zu diesen höherrangigen Normen gehören auch die vom Europäischen Gerichtshof anerkannten Grundrechte und rechtsstaatlichen Grundsätze. Ergeben sich Zweifel, ob die anzuwendende Vorschrift mit den Grundrechten oder dem Rechtsstaatsprinzip in Einklang steht, so hat das deutsche Gericht die Möglichkeit und - soweit es in letzter Instanz entscheidet - auch die Pflicht, diese Frage gemäß Art. 177 EWGV dem Europäischen Gerichtshof zur Vorabentscheidung vorzulegen.

3. Normen beider Rechtsordnungen, sowohl des Gemeinschaftsrechts als auch des nationalen Rechts, entfalten im Bereich der Bundesrepublik Deutschland unmittelbare Rechtswirkungen. Die von Gemeinschaftsorganen erlassenen Rechtsvorschriften sind für die deutschen Behörden und Gerichte ebenso verbindlich wie die Normen des innerstaatlichen Rechts. Damit stellt sich die Frage, welches Recht maßgebend ist, wenn Vorschriften des Gemeinschaftsrechts von Bestimmungen des nationalen Rechts inhaltlich abweichen.

Diese Frage ist für das Verhältnis des europäischen Gemeinschaftsrechts zum nationalen Recht der Bundesrepublik Deutschland durch Art. 24 Abs. 1 GG in Verbindung mit dem Zustimmungsgesetz zum EWG-Vertrag entschieden. Art. 24 Abs. 1 GG besagt bei sachgerechter Auslegung nicht nur, daß die Übertragung von Hoheitsrechten auf zwischenstaatliche Einrichtungen überhaupt zulässig ist, sondern auch, daß die Hoheitsakte der zwischenstaatlichen Einrichtungen von der Bundesrepublik Deutschland anzuerkennen sind (BVerfGE 31, 145 [174]). Das schließt es von vornherein aus, sie nationaler Kontrolle zu unterwerfen. Denn darauf hat die Bundesrepublik Deutschland durch den Beitritt zur EWG, ihre Zustimmung

zur Errichtung von Gemeinschaftsorganen und ihre Mitwirkung an der Begründung autonomer Hoheitsgewalt gerade verzichtet. Zu den anzuerkennenden, keiner nationalen Kontrolle unterliegenden Hoheitsakten gehört auch die Rechtsetzung der europäischen Gemeinschaftsorgane. Die von ihnen erlassenen Rechtsvorschriften können daher in ihrer Geltung und Anwendbarkeit nicht davon abhängig sein, ob sie den Maßstäben des innerstaatlichen Rechts entsprechen. Gemeinschaftsrecht geht inhaltlich abweichenden Bestimmungen des nationalen Rechts vor. Dies gilt nicht nur im Verhältnis zu innerstaatlichen Normen des einfachen Rechts, sondern auch gegenüber Grundrechtsnormen der nationalen Verfassung.

Die Mehrheit des Senats hält dem entgegen, Art. 24 Abs. 1 GG eröffne nicht den Weg, "die Grundstruktur der Verfassung, auf der ihre Identität beruht" und zu der besonders ihr Grundrechtsteil rechnet, durch die Gesetzgebung zwischenstaatlicher Einrichtungen zu ändern. Dieser Einwand geht jedoch fehl. Richtig ist zwar, daß der Vorrang des Gemeinschaftsrechts gegenüber Vorschriften des innerstaatlichen Rechts nur insoweit gelten kann, als das Grundgesetz die Übertragung von Hoheitsgewalt auf Gemeinschaftsorgane gestattet. Darüber hinaus trifft es zu, daß Art. 24 Abs. 1 GG die Übertragung von Hoheitsrechten auf zwischenstaatliche Einrichtungen nicht schrankenlos zuläßt. Wie alle Verfassungsvorschriften ist diese Bestimmung so auszulegen, daß sie mit den elementaren Grundsätzen des Grundgesetzes und seiner Wertordnung in Einklang steht (vgl. BVerfGE 30, 1 [19]). Dabei ist einerseits das Bekenntnis zu einem vereinten Europa in der Präambel des Grundgesetzes, andererseits die besondere Sorge um die Wahrung einer freiheitlichen und demokratischen Ordnung, wie sie in zahlreichen Verfassungsvorschriften ihren Ausdruck gefunden hat, zu berücksichtigen. Die Auslegung des Art. 24 Abs. 1 GG aus dem Gesamtzusammenhang der Verfassung ergibt, daß der Verzicht auf die Ausübung von Hoheitsgewalt in bestimmten Bereichen und die Duldung der Ausübung von Hoheitsgewalt durch Organe einer überstaatlichen Gemeinschaft dann - und nur dann - zulässig ist, wenn die öffentliche Gewalt der überstaatlichen Gemeinschaft nach ihrer Rechtsordnung den gleichen Bindungen unterliegt, wie sie sich für den Bereich des innerstaatlichen Rechts aus den fundamentalen und unabdingbaren Prinzipien des Grundgesetzes ergeben; dazu gehört insbesondere der Schutz des Kernbestandes der Grundrechte.

Diese Voraussetzung ist bei der Europäischen Wirtschaftsgemeinschaft erfüllt. Der innerhalb der Gemeinschaft gewährleistete Grundrechtsschutz unterscheidet sich seinem Wesen und seiner Struktur nach nicht von dem Grundrechtssystem der nationalen Verfassung. In beiden Rechtsordnungen wird der Kernbestand der Grundrechte anerkannt und geschützt. Die Grundrechte, die innerhalb des Rechtskreises der Europäischen Gemeinschaften gelten, sind denen, die das Grundgesetz garantiert, wesensgleich; ihre Grundlage bilden die gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten - ihre Anerkennung beruht auf den gleichen Wert- und Ordnungsvorstellungen. Das reicht aus. Kein Mitgliedstaat kann verlangen, daß die Grundrechte auf Gemeinschaftsebene gerade in der Gestalt gewährleistet werden, wie sie die nationale Verfassung kennt. Art. 24 Abs. 1 GG läßt es zu, Hoheitsrechte in eine Gemeinschaft einzubringen, die zwar die national verbürgten Grundrechte nicht für sich gelten läßt, innerhalb ihrer Rechtsordnung aber einen Grundrechtsschutz garantiert, der in seinen Grundzügen dem Standard des Grundgesetzes entspricht. Daraus folgt, daß Vorschriften des Gemeinschaftsrechts nur an die Grundrechtsnormen gebunden sind, die auf Gemeinschaftsebene gelten, nicht aber zusätzlich noch den Grundrechtsnormen der nationalen Verfassung genügen müssen.

Die "Grundstruktur der Verfassung, auf der ihre Identität beruht", steht dabei nicht auf dem Spiel. Die Frage, ob Art. 24 Abs. 1 GG eine Übertragung von Hoheitsrechten gestattet, die Gemeinschaftsorganen die Möglichkeit gibt, überhaupt frei von Grundrechtsbindungen innerstaatlich verbindliches Recht zu setzen, stellt sich heute nicht mehr. Darum ist es im Ansatz verfehlt, wenn die Mehrheit des Senats glaubt, einen "Einbruch" in die das Grundgesetz konstituierenden Strukturen, insbesondere seinen Grundrechtsteil, abwehren zu müssen, indem sie Gemeinschaftsrecht an die Grundrechtsnormen der nationalen Verfassung bindet. Dies läßt sich auch nicht mit dem Hinweis begründen, die Europäischen Gemeinschaften besäßen noch keinen kodifizierten Grundrechtskatalog. Die Art und Weise der Grundrechtsverbürgung ist in diesem Zusammenhang ohne Belang, die Behauptung, nur eine Kodifikation biete ausreichende Rechtsgewißheit, nicht stichhaltig. Weshalb - wie die Mehrheit des Senats meint - für das Verhältnis zwischen Gemeinschaftsrecht und Grundgesetz "der gegenwärtige Stand der Integration der Gemeinschaft" bedeutsam sein soll, leuchtet nicht ein. Das Argument, die Grundrechte der Verfassung müßten sich gegenüber sekundärem Gemeinschaftsrecht auch deswegen durchsetzen, weil die Gemeinschaft noch eines unmittelbar legitimierten Parlamentes entbehre, ist in sich nicht schlüssig. Grundrechtsschutz und demokratisches Prinzip sind innerhalb eines freiheitlich und demokratisch verfaßten Gemeinwesens nicht austauschbar; sie ergänzen sich. Die Verwirklichung des demokratischen Prinzips in der EWG könnte zwar den Gesetzgeber und die Exekutive zu einer stärkeren Beachtung der Grundrechte veranlassen; dadurch würde sich aber gerichtlicher Grundrechtsschutz nicht erübrigen.

Die von der Mehrheit des Senats vertretene Rechtsauffassung führt überdies zu unannehmbaren Ergebnissen. Wäre die Anwendbarkeit sekundären Gemeinschaftsrechts davon abhängig, daß es den Grundrechtsnormen einer nationalen Verfassung genügt, so könnte - da die Mitgliedstaaten Grundrechte in unterschiedlichem Ausmaß gewährleisten - der Fall eintreten, daß Rechtsvorschriften der Gemeinschaften in einigen Mitgliedstaaten anwendbar sind, dagegen in anderen nicht. Damit käme es gerade auf dem Gebiet des Gemeinschaftsrechts zur Rechtszersplitterung. Diese Möglichkeit eröffnen, heißt ein Stück europäischer Rechtseinheit preisgeben, den Bestand der Gemeinschaft gefährden und den Grundgedanken der europäischen Einigung verleugnen.

Die Mehrheit des Senats setzt sich mit ihrer Rechtsansicht auch in Widerspruch zur ständigen Rechtsprechung des Europäischen Gerichtshofs. Der Gerichtshof hat aus Wortlaut und Geist des EWG-Vertrags geschlossen, daß dem aus einer autonomen Rechtsquelle fließenden Gemeinschaftsrecht keine wie immer gearteten innerstaatlichen Rechtsvorschriften der Mitgliedstaaten - auch nicht Bestimmungen des nationalen Verfassungsrechts - vorgehen können (Slg. 1964, 1251 [1270]; 1970, 1125 [1135]). Die gleiche Auffassung hat das Europäische Parlament wiederholt zum Ausdruck gebracht (Amtsblatt der Europäischen Gemeinschaften - Amtsbl. - 1965/2923 in Verbindung mit dem Bericht Dehousse, Dokument 43/65; Bericht des Rechtsausschusses vom 28. Februar 1973, Dokument 297/72). Darüber hinaus hat der Italienische Verfassungsgerichtshof in seinem Urteil vom 18. Dezember 1973 (Nr. 183/73) klargestellt, daß Verordnungen des Gemeinschaftsrechts einer Kontrolle auf ihre Vereinbarkeit mit italienischem Verfassungsrecht nicht unterliegen.

Das Bundesverfassungsgericht besitzt keine Kompetenz, Vorschriften des Gemeinschaftsrechts am Maßstab des Grundgesetzes, insbesondere seines Grundrechtsteiles, zu prüfen, um danach die Frage ihrer Gültigkeit zu beantworten.

Die Mehrheit des Senats räumt zwar ein, daß das Bundesverfassungsgericht über die Gültigkeit oder Ungültigkeit einer Norm des Gemeinschaftsrechts nicht zu entscheiden habe, nimmt jedoch diese Feststellung im Ergebnis wieder zurück, indem sie hinzusetzt, das Bundesverfassungsgericht könne eine solche Norm im Bereich der Bundesrepublik Deutschland für unanwendbar erklären. Diese Unterscheidung zwischen Ungültigkeit und Unanwendbarkeit einer Norm erschöpft sich aber im Gebrauch verschiedener Worte. Ein sachlicher Unterschied liegt ihr nicht zugrunde. Erklärt ein Gericht eine Rechtsnorm wegen Verstoßes gegen höherrangiges Recht für generell unanwendbar, so spricht es damit der Sache nach aus, daß die Norm nicht gilt, also ungültig ist. Diese Befugnis steht dem Bundesverfassungsgericht gegenüber den Rechtsvorschriften der Gemeinschaftsorgane nicht zu. Daß die Mehrheit des Senats sie gleichwohl in Anspruch nimmt, ist ein unzulässiger Eingriff in die dem Europäischen Gerichtshof vorbehaltene Kompetenz, deren Anerkennung Art. 24 Abs. 1 GG gebietet; dieser Eingriff schafft für die Bundesrepublik Deutschland einen Sonderstatus und setzt sie dem berechtigten Vorwurf einer Verletzung des EWG-Vertrags und der Gefährdung der Gemeinschaftsrechtsordnung aus.

II.

Die Frage, ob ein deutsches Gericht, das in einem bei ihm anhängigen Verfahren Vorschriften des sekundären Gemeinschaftsrechts anzuwenden hat, diese gemäß Art. 100 Abs. 1 GG dem Bundesverfassungsgericht zur verfassungsrechtlichen Prüfung vorlegen kann, stellt sich nicht, wenn man der zu I dargelegten Rechtsauffassung über das Verhältnis zwischen Gemeinschaftsrecht und nationalem Verfassungsrecht folgt. Den Ausführungen zu B I 7 und II des Beschlusses kann aber auch aus anderen rechtlichen Gründen nicht gefolgt werden. Selbst wenn man davon ausgeht, daß deutsche Gerichte befugt sind, Vorschriften des sekundären Gemeinschaftsrechts wegen Unvereinbarkeit mit den Grundrechtsgarantien oder anderen wesentlichen Prinzipien des Grundgesetzes die Anwendung zu versagen, ist die Vorlage des Verwaltungsgerichts Frankfurt dennoch unzulässig. Wegen der grundsätzlichen Bedeutung dieser Frage muß ungeachtet der zu I vertretenen Rechtsauffassung auch hierauf noch eingegangen werden.

1. Art. 100 Abs. 1 GG ist auf Vorschriften des sekundären Gemeinschaftsrechts nicht anwendbar. Schon dem Wortlaut dieser Bestimmung wie auch dem Zusammenhang zwischen Art. 100 Abs. 1 und Art. 93 Abs. 1 Nr. 2 GG ist zu entnehmen, daß unter einem "Gesetz" nur Vorschriften des Bundes- und des Landesrechts zu verstehen sind. Von dieser Auslegung ist das Bundesverfassungsgericht auch bisher ausgegangen (vgl. BVerfGE 1, 184 [197]; 4, 45 [48 f.]). Dieses Auslegungsergebnis folgt zudem aus Wesen und Zielrichtung des Normenkontrollverfahrens. Normenkontrolle bedeutet ihrem Kern nach Prüfung, ob eine Norm gültig ist. Das Verwerfungsmonopol des Bundesverfassungsgerichts nach Art. 100 Abs. 1 GG stellt eine Kontrolle des Gerichts gegenüber dem Gesetzgeber dar, nicht aber eine Kontrolle des Bundesverfassungsgerichts über die anderen Gerichte (vgl. BVerfGE 7, 1 [15]). Die Ausübung dieser Kontrolle über den Gesetzgeber setzt voraus, daß es sich bei der Rechtsetzung um Akte eines deutschen Rechtsetzungsorgans handelt. Wie auch in dem Beschluß des Senats anerkannt wird, können Maßnahmen einer nicht deutschen öffentlichen Gewalt vom Bundesverfassungsgericht nicht überprüft werden (vgl. BVerfGE 1, 10 [11]; 6, 15 [18]; 6, 290 [295]; 22, 91 [92]; 22, 293 [295]). Gleichzeitig bestätigt der Senat die bisherige Rechtsprechung des Bundesverfassungsgerichts, daß die Vorschriften des sekundären

Gemeinschaftsrechts als Normen einer eigenständigen Rechtsordnung, die aus einer autonomen Rechtsquelle fließen (vgl. BVerfGE 22, 293 [296]; 29, 198 [210]; 31, 145 [173 f.]), nicht Akte der deutschen staatlichen Gewalt sind (vgl. BVerfGE 22, 293 [297]). Somit kann Art. 100 Abs. 1 GG auf Vorschriften des Gemeinschaftsrechts keine Anwendung finden (so auch die ganz überwiegende Meinung im Schrifttum, siehe unter anderem: Maunz in Maunz-Dürig-Herzog, Grundgesetz, Rdnr. 11 zu Art. 100; Stern in Bonner Kommentar [Zweitbearbeitung], Rdnr. 78 zu Art. 100; Leibholz/Rupprecht, Bundesverfassungsgerichtsgesetz, Rdnr. 11 zu § 80; Sigloch in Maunz/Sigloch/Schmidt-Bleibtreu/Klein, Bundesverfassungsgerichtsgesetz, Rdnr. 55 zu § 80).

Die Tatsache, daß die Anwendung der von den Gemeinschaftsorganen erlassenen Verordnungen durch Behörden und Gerichte der Bundesrepublik Deutschland Ausübung deutscher öffentlicher Gewalt darstellt, kann diese Verordnungen selbst nicht zu einem geeigneten Prüfungsgegenstand im Verfahren nach Art. 100 Abs. 1 GG machen. Durch die Anwendung im Einzelfall werden diese Vorschriften nicht Bestandteil der deutschen Rechtsordnung. Akte der deutschen öffentlichen Gewalt, die vom Bundesverfassungsgericht gegebenenfalls überprüft werden können, sind nur die Verwaltungsakte und gerichtlichen Entscheidungen selbst. Diese aber können nicht im Wege der konkreten Normenkontrolle, sondern nur in dem in Art. 93 Abs. 1 Nr. 4 a GG, § 90 BVerfGG vorgesehenen Verfassungsbeschwerdeverfahren zur verfassungsrechtlichen Prüfung gestellt werden. Die Anwendbarkeit von Art. 100 Abs. 1 GG auf Vorschriften des sekundären Gemeinschaftsrechts kann schließlich auch nicht aus dem in der Rechtsprechung des Bundesverfassungsgerichts wiederholt hervorgehobenen Grundgedanken des Verwerfungsmonopols - den Gesetzgeber vor der Nichtbeachtung seiner Gesetze zu schützen - hergeleitet werden. Abgesehen davon, daß dieser Grundgedanke allein die Zuständigkeit des Bundesverfassungsgerichts nicht begründen kann, wenn ein "Gesetz" im Sinne von Art. 100 Abs. 1 GG nicht vorliegt, sondern nur der genaueren Bestimmung des Gesetzesbegriffes dient, trifft dieser Grundgedanke hier auch nicht zu; denn er setzt den an das Grundgesetz gebundenen Gesetzgeber voraus. Das Verwerfungsmonopol des Bundesverfassungsgerichts soll verhüten, daß sich jedes einzelne Gericht über den Willen des unter der Geltung der Verfassung tätig gewordenen Gesetzgebers hinwegsetzen und seinem Gesetz die Anerkennung versagen kann (BVerfGE 10, 124 [127]). Der "Gesetzgeber" der Europäischen Gemeinschaften wird aber nicht unter der Geltung des Grundgesetzes tätig.

Ebensowenig kann aus Art. 10C Abs. 2 GG auf die Zulässigkeit der konkreten Normenkontrolle in Fällen wie dem vorliegenden geschlossen werden; denn Art. 100 Abs. 2 GG betrifft nicht die Kontrolle gegenüber dem Gesetzgeber. Das hier geregelte Verfahren dient der Normenverifikation, nicht der Normenkontrolle; es ersetzt im Ergebnis das Gesetzgebungsverfahren (BVerfGE 23, 288 [318]).

2. Wenn der Senat die Zulässigkeit der Vorlage im wesentlichen mit der Erwägung bejaht, daß zwar nicht die zur Prüfung gestellten EWG-Vorschriften selbst, wohl aber die Anwendung dieser Vorschriften durch die deutschen Gerichte der Bindung an das Grundgesetz und der Überprüfbarkeit durch das Bundesverfassungsgericht unterliegen, so wird - auch wenn dies nicht klar zum Ausdruck kommt - Art. 100 Abs. 1 GG nicht mehr unmittelbar, sondern analog angewandt, denn eine solche Rechtsfolge wird vom möglichen Wortsinn der Bestimmung unter Berücksichtigung des mit ihr verfolgten Ziels nicht mehr getragen. Eine analoge Anwendung kann hier aber schon deshalb nicht in Betracht kommen, weil gerade die wesentlichen

Voraussetzungen für ein Normenkontrollverfahren nicht gegeben sind. Zudem steht einer analogen Anwendung entgegen, daß die Zuständigkeit des Bundesverfassungsgerichts im Grundgesetz und in dem Gesetz über das Bundesverfassungsgericht im einzelnen abschließend geregelt ist. Eine Ausdehnung der Kompetenzen über den gesetzlich gezogenen Rahmen hinaus in analoger Anwendung der Zuständigkeitsbestimmung ist unzulässig (BVerfGE 2, 341 [346]). Die Aufgabe des Bundesverfassungsgerichts, Hüter der Verfassung zu sein, kann auch bei Vorliegen eines noch so dringenden rechtspolitischen Bedürfnisses nicht zu einer Erweiterung der Zuständigkeit führen (vgl. BVerfGE 1, 396 [408 f.]; 3, 368 [376 f.]; 13, 54 [96]; 22, 293 [298]).

Die Erwägung, daß das Bundesverfassungsgericht in weitem Umfang zur freien Gestaltung seines Verfahrens befugt ist, kann eine Ausdehnung der Zuständigkeit ebenfalls nicht rechtfertigen. Die Fortbildung des Verfahrensrechts darf nur im Rahmen eines zugelassenen Verfahrens erfolgen, nicht aber die Zuständigkeit über das Gesetz hinaus gegenständlich erweitern (vgl. BVerfGE 1, 396 [408]).

3. Wird aber trotz der dargelegten Bedenken die Zulässigkeit einer analogen Anwendung von Art. 100 Abs. 1 GG bejaht, so hätte zuvor zumindest nach § 16 Abs. 1 BVerfGG eine Entscheidung des Plenums herbeigeführt werden müssen; denn der Senat weicht in mehrfacher Hinsicht von Rechtsauffassungen ab, die in den tragenden Gründen von Entscheidungen des Ersten Senats enthalten sind.

a) Wie im Beschluß selbst erwähnt ist, hat der Erste Senat eine Vorlage, mit der Vorschriften des Besatzungsrechts nach Art. 100 Abs. 1 GG zur Prüfung gestellt wurden, mit der Begründung für unzulässig erklärt, daß Besatzungsrecht vom Bundesverfassungsgericht nicht auf seine Vereinbarkeit mit dem Grundgesetz geprüft werden könne (BVerfGE 4, 45 [48 f.]). Zur näheren Begründung wird auf eine frühere Entscheidung des Ersten Senats verwiesen, in der festgestellt wurde, daß Besatzungsrecht nicht als Bundesrecht angesehen werden kann (BVerfGE 3, 368 [374 f.]).

Diese den Beschluß tragende Rechtsauffassung ist nicht in späteren Entscheidungen aufgegeben worden. Die vom Senat zitierten Entscheidungen über die Vereinbarkeit von Bestimmungen des Besatzungsrechts mit dem Grundgesetz (BVerfGE 15, 337; 36, 146) ergingen nicht auf Vorlagen im Verfahren der konkreten Normenkontrolle, sondern in Verfassungsbeschwerdeverfahren. Über die Zulässigkeit einer unmittelbar Bestimmungen des Besatzungsrechts zur Prüfung stellenden Vorlage nach Art. 100 Abs. 1 GG hatte der Erste Senat in diesen Verfahren daher nicht zu befinden. In beiden Entscheidungen wird aber die Rechtsprechung bestätigt, daß dem Bundesverfassungsgericht hinsichtlich der Bestimmungen des Besatzungsrechts eine Verwerfungskompetenz nicht zusteht (BVerfGE 15, 337 [346]; 36, 146 [171]). In dem Beschluß vom 14. November 1973 erklärt der Erste Senat, das Bundesverfassungsgericht könne Kontrollratsrecht auch nicht förmlich für mit dem Grundgesetz unvereinbar erklären (BVerfGE 36, 146 [161]).

Hierzu steht nicht in Widerspruch, daß der Erste Senat die in Frage stehenden Bestimmungen des Besatzungsrechts materiell auf ihre Vereinbarkeit mit dem Grundgesetz geprüft hat. Damit wurde nicht das Besatzungsrecht selbst zum Prüfungsgegenstand gemacht. Vielmehr ergab sich die Zulässigkeit dieses Vorgehens aus der Befugnis des Bundesverfassungsgerichts zu prüfen, ob dem an

das Grundgesetz gebundenen Gesetzgeber ein verfassungswidriges Unterlassen vorzuwerfen ist, weil er besatzungsrechtliche Vorschriften, die mit dem Grundgesetz nicht vereinbar sind, nicht in angemessener Frist nach Inkrafttreten des Überleitungsvertrags aufgehoben oder geändert hat, um eine dem Grundgesetz entsprechende Rechtsordnung zu schaffen (vgl. BVerfGE 15, 337 [349 f.]; 36, 146 [171]).

b) Der vorstehende Beschluß weicht außerdem von der Entscheidung des Ersten Senats vom 17. Juni 1953 ab, in der ausdrücklich festgestellt wurde, daß eine Ausdehnung der Kompetenzen des Bundesverfassungsgerichts über den gesetzlich gezogenen Rahmen hinaus in analoger Anwendung der Zuständigkeitsbestimmungen unzulässig ist (BVerfGE 2, 341 [346]). Diese Rechtsauffassung hat der Erste Senat in späteren Entscheidungen nicht aufgegeben. Vielmehr wird in dem Beschluß, der eine Verfassungsbeschwerde gegen Bestimmungen in Verordnungen des Rates und der Kommission der Europäischen Wirtschaftsgemeinschaften für unzulässig erklärte, erneut festgestellt, daß die Zuständigkeit des Bundesverfassungsgerichts im Grundgesetz und im Gesetz über das Bundesverfassungsgericht abschließend geregelt ist (BVerfGE 22, 293 [298]).

Dr. Rupp, Hirsch, Wand

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2. The concept of public policy must, in the Community context, and where, in particular, it is used as a justification for derogating from the fundamental principles of equality of treatment and freedom of movement for workers, be interpreted strictly, so that its scope cannot be determined unilaterally by each Member State without being subject to control by the institutions of the Community.
3. Restrictions cannot be imposed on the right of a national of any Member State to enter the territory of another Member State, to stay there and to move within it unless his presence or conduct constitutes a genuine and sufficiently serious threat to public policy.
4. An appraisal as to whether measures designed to safeguard public policy are justified must have regard to all rules of Community law the object of which is, on the one hand, to limit the discretionary power of Member States in this respect and, on the other, to ensure that the rights of persons subject thereunder to restrictive measures are protected. These limitations and safeguards arise, in particular, from the duty imposed on Member States to base the measures adopted exclusively on the personal conduct of the individuals concerned, to refrain from adopting any measures in this respect which service ends unrelated to the requirements of public policy or which adversely affect the exercise of trade union rights and, finally, unless this is contrary to the interests of the security of the State involved, immediately to inform any person against whom a restrictive measure has been adopted of the grounds on which the decision taken is based to enable him to make effective use of legal remedies.
5. Measures restricting the right of residence which are limited to part only of the national territory may not be imposed by a Member State on nationals of other Member States who are subject to the provisions of the Treaty except in the cases and circumstances in which such measures may be applied to nationals of the State concerned.

In Case 36/75

Reference to the Court under Article 177 of the EEC Treaty by the Tribunal administratif, Paris, for a preliminary ruling in the action pending before that court between

ROLAND RUTILI, residing at Gennevilliers,

and

THE MINISTER FOR THE INTERIOR

on the interpretation of Article 48 of the EEC Treaty

1220

RUTILI v MINISTER FOR THE INTERIOR

THE COURT

composed of: R. Lecourt, President, H. Kutscher, President of Chamber, A. M. Donner, J. Mertens de Wilmars, P. Pescatore, M. Sørensen and A. J. Mackenzie Stuart, Judges,

Advocate-General: H. Mayras
Registrar: A. Van Houtte

gives the following:

JUDGMENT

Facts

The facts of the case, the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

Mr Roland Rutili, of Italian nationality, was born on 27 April 1940 in Loudun (Vienne), and has been resident in France since his birth; he is married to a Frenchwoman and was, until 1968, the holder of a privileged resident's permit and domiciled at Audun-le-Tiche (in the department of Meurthe-et-Moselle), where he worked and engaged in trade union activities.

On 12 August 1968, the Ministry for the Interior made a deportation order against him.

On 10 September 1968 an order was issued requiring him to reside in the department of Puy-de-Dôme.

By orders of 19 November 1968 the Minister for the Interior revoked the deportation and residence orders affecting Mr Rutili and, on the same date, informed the Prefect of the Moselle of his decision to prohibit Mr Rutili from residing in the departments of Moselle, Meurthe-et-Moselle, Meuse and Vosges.

On 17 January 1970 Mr Rutili applied for the grant of a residence permit for a national of a Member State of the EEC.

On 9 July 1970 he appealed to the Tribunal administratif, Paris, against the implied decision refusing him this document.

On 23 October 1970, the Prefect of Police, acting on instructions given by the Minister for the Interior on 17 July, granted Mr Rutili a residence permit for a national of a Member State of the EEC, which was valid until 22 October 1975 but subject to a prohibition on residence in the departments of Moselle, Meurthe-et-Moselle, Meuse and Vosges.

On 16 December 1970, Mr Rutili brought proceedings before the Tribunal administratif, Paris, for annulment of the decision limiting the territorial validity of his residence permit.

During the proceedings before the Tribunal administratif, it became apparent that Mr Rutili's presence in the departments of Lorraine was considered by the Minister for the Interior to be 'likely to disturb public policy' and that there were complaints against him in respect of certain activities, the truth of which is, however, contested, which are alleged to consist, in essence, in political actions during the parliamentary elections in March 1967 and the events of May and June 1968 and in his participation in a demonstration during the celebrations on 14 July 1968 at Audun-le-Tiche.

By judgment of 16 December 1974, the Tribunal administratif, Paris, decided to stay proceedings under Article 177 of the EEC Treaty until the Court of Justice had given a preliminary ruling on the following questions:

1. Does the expression, 'subject to limitations justified on grounds of public policy', employed in Article 48 of the Treaty establishing the EEC concern merely the legislative decisions which each Member State of the EEC has decided to take in order to limit within its territory the freedom of movement and residence for nationals of other Member States or does it also concern individual decisions taken in application of such legislative decisions?
2. What is the precise meaning to be attributed to the word 'justified'?

The decision of the Tribunal administratif, Paris was entered at the Court Registry on 9 April 1975.

Written observations under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC were submitted on 16 June 1975 by the Commission of the European Communities, on 20 June by the Government of the French Republic and on 26 June by the Government of the Italian Republic.

After hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

On 2 September 1975, the Government of the French Republic supplied to the Court at the request of the latter certain details of the substantive and procedural conditions in which a prohibition on residence in part of the national territory may be issued against a French national.

II — Written observations submitted to the Court

A — The first question

The *Government of the French Republic* takes the view that this question is answered by Council Directive No 64/221 of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ, English Special Edition 1963-1964, p. 117), which lays down the conditions on which measures based on those grounds may be taken against individuals; in particular, Article 3 (1) thereof provides as follows: 'Measures taken on grounds of public policy or of public security shall be based exclusively on the personal conduct of the individual concerned.' This is the directive expressly referred to in the third recital of the preamble to Council Directive No 68/360 of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (OJ, English Special Edition 1968 (II) p. 485), cited in the decision of the Tribunal Administratif, Paris.

The *Government of the Italian Republic* considers it desirable that regulations of a general and abstract nature adopted in the Member States of the EEC should specify the grounds of public policy which, on the basis of uniform criteria

throughout the Community, are capable of limiting the rights arising under Article 48 of the EEC Treaty; this would substantially reduce the discretionary character of an individual decision taken by the administration which applies abstract regulations to a particular case. In the present state of Community law, however, limitations on the right of freedom of movement may arise from individual administrative measures but appraisal of the grounds of public policy must, in each particular case, be made in the light of the Community regulations which have been promulgated for the very purpose of restricting this discretionary power in view of the objectives embodied in Article 48.

On the question whether an individual administrative measure may decide to prohibit residence in certain regions of a State only, it must be stated that although Article 6 (1) (a) of Directive No 68/360 provides that the residence permit of a national of a Member State of the EEC must be valid throughout the territory of the State which issued it, Article 10 of the same directive allows Member States to derogate from its provisions on grounds of public policy, public security or public health. It would, therefore, appear that a decision prohibiting residence in certain parts of the national territory may be justified on grounds of public policy.

However, it follows from the judgment of the Court of Justice of 26 February 1975 in Case 67/74 (*Bonsignore* v *Stadt Köln* [1975] ECR 297; reference for a preliminary ruling by the Verwaltungsgericht Köln) that derogations from the rules concerning the free movement of persons constitute exceptions which must be strictly construed; personal conduct capable of justifying such departures must, accordingly, be of a particularly serious nature. In these circumstances, the view may be taken that Community law does not permit grading of the seriousness of conduct penalized by administrative measures and that it is doubtful whether the immediate measure of a prohibition on residence in certain regions only of the national territory may be applied. Moreover, the fact that the measure imposed is not one of deportation but a partial prohibition on residence may enable the conclusion to be drawn that the conduct which gave rise to the penalty is not of the particularly serious nature required by Community regulations.

The *Commission of the European Communities* takes the view that an answer in the affirmative, though accompanied by certain details, should be given to the question whether the reservation made concerning public policy in Article 48 (3) of the EEC Treaty also covers individual decisions implementing legislative decisions taken by a Member State in order to restrict the freedom of movement and residence on its territory of the nationals of Member States.

(a) The wide discretion traditionally enjoyed by the immigration authorities is limited by Directive No 64/221, the object of which is to restrict the actions of national authorities by means both of provisions covering matters of substance (Articles 2, 3 and 4) and by procedural provisions (Articles 5 to 9). Some provisions of Community law concerning the reservation on public policy, in particular Article 48 of the Treaty and Article 3 (1) of Directive No 64/221, are directly applicable in the legal systems of the Member States. Thus, the discretionary powers of the national administrative authorities are circumscribed not only within the limits fixed by the rules of national law, supplemented as necessary by the incorporation into domestic law of the rules which appear in the directive, but also within the limits fixed by the directly applicable provisions of the Community directive.

(b) These limits are of decisive concern precisely when individual decisions are

taken, as the directive requires each case to be examined individually.

(c) The expression, 'subject to limitations justified on grounds of public policy', used in Article 48 (3) of the EEC Treaty is, therefore, primarily concerned with individual decisions taken against foreigners who are nationals of a Member State of the EEC.

B — The second question

The *Government of the French Republic* takes the view that the precise meaning to be given to the word 'justified' in the expression 'subject to limitations justified on grounds of public policy' in Article 48 of the EEC Treaty follows from the judgment of the Court of 4 December 1974 in Case 41/74 *(van Duyn* v *Home Office;* a reference for a preliminary ruling from the Chancery Division of the High Court of Justice, [1974] ECR 1337). In its judgment, the Court ruled, *inter alia,* that

'... the concept of public policy in the context of the Community and where, in particular, it is used as a justification for derogating from the fundamental principle of freedom of movement for workers, must be interpreted strictly, so that its scope cannot be determined unilaterally by each Member State without being subject to control by the institutions of the Community. Nevertheless, the particular circumstances justifying recourse to the concept of public policy may vary from one country to another and from one period to another, and it is therefore necessary in this matter to allow the competent national authorities an area of discretion within the limits imposed by the Treaty';

and that

'It follows that a Member State, for reasons of public policy, can, where it deems necessary, refuse a national of another Member State the benefit of the principle of freedom of movement for workers in a case where such a national proposes to take up a particular offer of employment even though the Member State does not place a similar restriction upon its own nationals.'

The *Government of the Italian Republic* considers that, particularly in view of Article 6 of Directive No 64/221, the term 'justified' in the first place means that there must be an exhaustive explanation of the reasons for measures which, on grounds of public policy, limit the rights secured by Article 48 of the Treaty, and that this seems manifestly not to have been done in the case of the decision contested in the main action.

Nor is it possible to tell from the statement of reasons for that decision whether, in this particular case, the principle laid down in Article 3 (1) of Directive No 64/21 was observed, and in particular whether the contested measure is concerned only with threats to public policy and public security on the part of the person who is the subject thereof, or whether it was adopted for the unlawful purpose of deterring other foreigners.

Furthermore, limitations on the freedom of movement cannot be regarded as justified under Community law if they are imposed without guaranteeing the rights of appeal for those concerned under the terms laid down by Articles 8 and 9 of Directive No 64/221.

Finally, the limitations imposed upon workers' freedom of movement on grounds of public policy and countenanced, exceptionally, under Article 48 (3) of the Treaty, may be regarded as justified if they fulfil the substantive and formal requirements prescribed by Directive No 64/221 which, in accordance with the case-law of the Court, must be interpreted restrictively.

According to the *Commission of the European Communities,* an appraisal of

the precise meaning to be given to the word 'justified' may be based on three viewpoints:

(a) The measure must first of all be justified in the sense that the decision by which it is adopted against the person concerned must be reasoned.

As the measure may only be based on adequate grounds and refer exclusively to the personal conduct of the individual concerned, these grounds must be explained to him, especially to enable him to make use of the legal remedies which, under Articles 8 and 9 of Directive No 64/221, the Member States must make available to him. Under Article 6 of the Directive: 'The person concerned shall be informed of the grounds of public policy, public security or public health upon which the decision taken in his case is based, unless this is contrary to the interests of the security of the State involved.' In the present case, it is for the Court dealing with the substance of the case to assess whether the grounds are, in this sense, really 'justified'.

(b) With regard to the meaning of the concept of public policy which is capable of justifying measures taken against a foreigner, in view in particular of Directive No 64/221, the case-law of the Court and the viewpoint of the French Minister for the Interior, the following considerations must be borne in mind:

— The right to enter the territory of Member States and to reside there is an indispensable element of the free movement of persons, which is itself one of the underlying principles of the Community. The exercise of this right of entry and of residence, enshrined in Article 48 of the EEC Treaty, is subject to no reservations except those provided for by way of limitation in paragraph (3) of the article, which refer to public policy, public security or public health; since it is an exception, it must be restrictively interpreted.

— The concept of public policy must, therefore, be resorted to only in particularly serious cases.

— In the Member States of the Community, fundamental human rights, the 'public freedoms', are established and recognized by the State. National statutory law lays down the basic rules for each of these freedoms and prescribes their limits both to enable them to be exercised simultaneously and to protect society. These limitations form a basic criterion for determining at what point an activity may be regarded as constituting 'a danger to society'. Thus, an activity which consists of the legitimate exercise of a freedom enjoyed by the public and recognized as such by national law can scarcely be considered to affect adversely the public policy of a State because the person responsible for it is a foreigner.

— In fields involving the exercise by the public of its freedoms, an appraisal whether a foreigner has acted contrary to public policy must be made by reference not only to the national rules of a host State which recognizes its own citizens as being entitled to those freedoms, but also of the relevant international obligations into which the State has entered.

— The exercise of trade union rights by a foreigner, under the same conditions as a national, cannot be regarded as in itself constituting an offence against public policy. The exercise of trade union rights was recognized by Article 8 of Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II) p. 475) and embodied in several international documents. Such recognition enables foreigners, without discrimination based on national descent or origin, to make full use of collective bargaining rights including, in particular, the right to take collective action in case of dispute, and the right to strike. The exercise of trade union rights is subject

to certain limitations laid down by the law and which, in a democratic society, are necessary to ensure respect for the rights and liberties of others and to safeguard public order, national security, public health and morals. In this connexion, it must be borne in mind that the concept of political neutrality, which applies particularly to foreigners, must be handled with care in the context of a Community which is trying to integrate the migrant worker more and more closely into the host country and which likes to emphasize its political aims. The host state can no doubt impose restrictions on the political activity of foreigners; at the same time, political neutrality must on no account be used to prevent the normal exercise of legitimate economic and social rights which are enshrined in Community law.

(c) On the question whether the measure adopted is justified in the present case, the following comments may be made:

— Directive No 64/221 expressly refers to refusal of entry into a territory and expulsion from a territory as special measures which may be taken against a national of a Member State; on the other hand, it contains no provision that prohibitions on residence in part of the territory may be justified on grounds of public policy.

— One might, at first, be tempted to conclude that, as the administrative authorities are justified in adopting a deportation measure against a foreigner, they may *a fortiori* adopt a less drastic measure, and that it would be to encourage them in every case to opt for deportation if they were prohibited from adopting a less radical measure.

— Nevertheless, the right to move freely within a State and to choose to reside there is a basic human right; thus, Article 6 (1) (a) of Directive No 68/360 provides that a residence permit, which is a straightforward entitlement to residence embodying, in administrative terms, the right of residence recognized by the directive, must, in principle, be valid throughout the territory of the State which issued it. It is open to question whether the French authorities were entitled to limit the scope of that Community provision by providing, in the Decree of 5 January 1970, that 'a residence permit for a national of a Member State of the EEC shall be valid throughout French territory save in the case of an individual decision taken by the Minister for the Interior on grounds of public policy.'

— An order as to place of residence may nevertheless be made against a foreigner in certain circumstances where special restrictions on foreigners appear to be in fact justifiable on grounds of public policy. But it must be possible, in each individual case, to justify the application to a foreigner of the general rule laid down in the Decree of 5 January 1970. In the present case, however, the measure contested in the main action appears to be discriminatory or unfounded.

— Finally, refusal of a residence permit may have very serious consequences for the person concerned and also for his family.

(d) In conclusion, in order to be 'justified' within the meaning of Article 48 (3) of the EEC Treaty, a measure affecting an individual must:

— in accordance with the provisions of Articles 8 and 9 of Directive No 64/221, state the grounds on which it is based;

— be based on particularly serious grounds, especially when the activity for which the national of a Member State is criticized is the result of exercising a freedom expressly recognized by the State in which he resides or a fundamental right enshrined in an international document; the exercise of trade union freedom cannot constitute an offence against public order or public

security within the meaning of Article 48 (3) if it takes a form which is considered lawful in the case of nationals;

— in view of the restriction on freedom of movement which it involves and the consequences which it entails for the person concerned and members of his family, in each particular case be calculated to meet the specific threat to public order posed by the person concerned.

III — Oral procedure

Mr Rutili, the plaintiff in the main action, represented by Marcel Manville, Advocate of the Paris Bar, and the Commission of the European Communities, represented by its Legal Adviser, Jean-Claude Séché, submitted their oral observations at the hearing on 1 October 1975.

During the hearing, the *plaintiff in the main action* claimed that the decision limiting the territorial validity of his residence permit is, both from the standpoint of French law and of Community law, wholly without legal justification; from the standpoint of Community law, more particularly, it is an infringement of the fundamental right of freedom of movement and of the principle of non-discrimination.

The Advocate-General delivered his opinion on 14 October 1975.

Law

1 By a decision of 16 December 1974, received at the Court Registry on 9 April 1975, the Tribunal administratif, Paris, has referred to the Court two questions under Article 177 of the EEC Treaty concerning the interpretation of the reservation made in respect of public policy in Article 48 of the EEC Treaty in the light of the measures taken for implementation of that article, especially Regulation No 1612/68 of the Council of 15 October 1968 and Council Directive No 68/360 of the same date, on freedom of movement for workers (OJ English Special Edition 1968 (II) pp. 475 and 485).

2 These questions were raised in the course of proceedings brought by an Italian national residing in the French Republic against a decision to grant him a residence permit for a national of a Member State of the EEC subject to a prohibition on residence in certain French departments.

3 The file of the Tribunal administratif and the oral procedure before the Court have established that the plaintiff in the main action was, in 1968, the subject first of all of a deportation order and then of an order directing him to reside in a particular department.

4 On 23 October 1970 this measure was replaced by a prohibition on residence in four departments including the department in which the person concerned was habitually resident and where his family continues to reside.

5 It is also clear from the file on the case and from information supplied to the Court that the reasons for the measures taken against the plaintiff in the main action were disclosed to him in general terms during the proceedings brought before the Tribunal administratif on a date subsequent to the commencement of the action, namely, 16 December 1970.

6 From information given to the Tribunal administratif by the Ministry for the Interior, which, however, is contested by the plaintiff in the main action, it transpires that his political and trade union activities during 1967 and 1968 are the subject of complaint and that his presence in the departments covered by the decision is for this reason regarded as 'likely to disturb public policy'.

7 In order to resolve the questions of Community law raised during the proceedings concerning the principles of freedom of movement and equality of treatment for workers of the Member States, the Tribunal administratif referred two questions to the Court for the purpose of ascertaining the precise meaning of the reservation regarding public policy contained in Article 48 of the Treaty.

First question

8 The first question asks whether the expression 'subject to limitations justified on grounds of public policy' in Article 48 of the Treaty concerns only the legislative decisions which each Member State has decided to take in order to limit within its territory the freedom of movement and residence for nationals of other Member States or whether it also concerns individual decisions taken in application of such legislative provisions.

9 Under Article 48 (1), freedom of movement for workers is to be secured within the Community.

10 Under Article 48 (2), such freedom of movement is to entail the abolition of any discrimination based on nationality as regards employment, remuneration and other conditions of work and employment.

11 Under Article 48 (3), it is to entail the right for workers to move freely within the territory of Member States, to stay there for the purpose of employment and to remain there when employment has ceased.

12 Subject to any special provisions in the Treaty, Article 7 thereof contains a general prohibition, within the field of application of the Treaty, on any discrimination on grounds of nationality.

13 Nevertheless, under Article 48 (3), freedom of movement for workers, in particular their freedom to move within the territory of Member States, may be restricted by limitations justified on grounds of public policy, public security or public health.

14 Various implementing measures have been taken for the purpose of putting the above-mentioned provisions into effect, in particular Regulation No 1612/68 and Council Directive No 68/360 on freedom of movement for workers.

15 The reservation concerning public policy was laid down in Council Directive No 64/221 of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ, English Special Edition 1963-1964, p. 117).

16 The effect of all these provisions, without exception, is to impose duties on Member States and it is, accordingly, for the courts to give the rules of Community law which may be pleaded before them precedence over the provisions of national law if legislative measures adopted by a Member State in order to limit within its territory freedom of movement or residence for nationals of other Member States prove to be incompatible with any of those duties.

17 Inasmuch as the object of the provisions of the Treaty and of secondary legislation is to regulate the situation of individuals and to ensure their protection, it is also for the national courts to examine whether individual decisions are compatible with the relevant provisions of Community law.

18 This applies not only to the rules prohibiting discrimination and those concerning freedom of movement enshrined in Articles 7 and 48 of the Treaty and in Regulation No 1612/68, but also to the provisions of Directive No 64/221, which are intended both to define the scope of the reservation concerning public policy and to ensure certain minimal procedural safeguards for persons who are the subject of measures restricting their freedom of movement or their right of residence.

19 This conclusion is based in equal measure on due respect for the rights of the nationals of Member States, which are directly conferred by the Treaty and by Regulation No 1612/68, and the express provision in Article 3 of Directive No 64/221 which requires that measures taken on grounds of public policy or of public security 'shall be based exclusively on the personal conduct of the individual concerned'.

20 It is all the more necessary to adopt this view of the matter inasmuch as national legislation concerned with the protection of public policy and security usually reserves to the national authorities discretionary powers which might well escape all judicial review if the courts were unable to extend their consideration to individual decisions taken pursuant to the reservation contained in Article 48 (3) of the Treaty.

21 The reply to the question referred to the Court must therefore be that the expression 'subject to limitations justified on grounds of public policy' in Article 48 concerns not only the legislative provisions which each Member State has adopted to limit within its territory freedom of movement and residence for nationals of other Member States but concerns also individual decisions taken in application of such legislative provisions.

Second question

22 The second question asks what is the precise meaning to be attributed to the word 'justified' in the phrase 'subject to limitations justified on grounds of public policy' in Article 48 (3) of the Treaty.

23 In that provision, the words 'limitations justified' mean that only limitations which fulfil the requirements of the law, including those contained in

Community law, are permissible with regard, in particular, to the right of nationals of Member States to freedom of movement and residence.

24 In this context, regard must be had both to the rules of substantive law and to the formal or procedural rules subject to which Member States exercise the powers reserved under Article 48 (3) in respect of public policy and public security.

25 In addition, consideration must be given to the particular issues raised in relation to Community law by the nature of the measure complained of before the Tribunal Administratif in that it consists in a prohibition on residence limited to part of the national territory.

Justification of measures adopted on grounds of public policy from the point of view of substantive law

26 By virtue of the reservation contained in Article 48 (3), Member States continue to be, in principle, free to determine the requirements of public policy in the light of their national needs.

27 Nevertheless, the concept of public policy must, in the Community context and where, in particular, it is used as a justification for derogating from the fundamental principles of equality of treatment and freedom of movement for workers, be interpreted strictly, so that its scope cannot be determined unilaterally by each Member State without being subject to control by the institutions of the Community.

28 Accordingly, restrictions cannot be imposed on the right of a national of any Member State to enter the territory of another Member State, to stay there and to move within it unless his presence or conduct constitutes a genuine and sufficiently serious threat to public policy.

29 In this connexion Article 3 of Directive No 64/221 imposes on Member States the duty to base their decision on the individual circumstances of any person under the protection of Community law and not on general considerations.

30 Moreover, Article 2 of the same directive provides that grounds of public policy shall not be put to improper use by being 'invoked to service economic ends'.

31 Nor, under Article 8 of Regulation No 1612/68, which ensures equality of treatment as regards membership of trade unions and the exercise of rights attaching thereto, may the reservation relating to public policy be invoked on grounds arising from the exercise of those rights.

32 Taken as a whole, these limitations placed on the powers of Member States in respect of control of aliens are a specific manifestation of the more general principle, enshrined in Articles 8, 9, 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 and ratified by all the Member States, and in Article 2 of Protocol No 4 of the same Convention, signed in Strasbourg on 16 September 1963, which provide, in identical terms, that no restrictions in the interests of national security or public safety shall be placed on the rights secured by the above-quoted articles other than such as are necessary for the protection of those interests 'in a democratic society.'

Measures adopted on grounds of public policy: justification from the procedural point of view

33 According to the third recital of the preamble to Directive No 64/221, one of the aims which it pursues is that 'in each Member State, nationals of other Member States should have adequate legal remedies available to them in respect of the decisions of the administration' in respect of measures based on the protection of public policy.

34 Under Article 8 of the same directive, the person concerned shall, in respect of any decision affecting him, have 'the same legal remedies ... as are available to nationals of the State concerned in respect of acts of the administration.'

35 In default of this, the person concerned must, under Article 9, at the very least be able to exercise his right of defence before a competent authority

which must not be the same as that which adopted the measure restricting his freedom.

36 Furthermore, Article 6 of the directive provides that the person concerned shall be informed of the grounds upon which the decision taken in his case is based, unless this is contrary to the interests of the security of the State.

37 It is clear from these provisions that any person enjoying the protection of the provisions quoted must be entitled to a double safeguard comprising notification to him of the grounds on which any restrictive measure has been adopted in his case and the availability of a right of appeal.

38 It is appropriate to state also that all steps must be taken by the Member States to ensure that this double safeguard is in fact available to anyone against whom a restrictive measure has been adopted.

39 In particular, this requirement means that the State concerned must, when notifying an individual of a restrictive measure adopted in his case, give him a precise and comprehensive statement of the grounds for the decision, to enable him to take effective steps to prepare his defence.

The justification for, in particular, a prohibition on residence in part of the national territory

40 The questions put by the Tribunal administratif were raised in connexion with a measure prohibiting residence in a limited part of the national territory.

41 In reply to a question from the Court, the Government of the French Republic stated that such measures may be taken in the case of its own nationals either, in the case of certain criminal convictions, as an additional penalty, or following the declaration of a state of emergency.

42 The provisions enabling certain areas of the national territory to be prohibited to foreign nationals are, however, based on legislative instruments specifically concerning them.

43 In this connexion, the Government of the French Republic draws attention to Article 4 of Council Directive No 64/220 of 25 February 1964 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services (OJ, English Special Edition 1963-1964, p. 115) which reads: 'Subject to any measures taken in particular cases on grounds of public policy or public security, the right of residence shall be effective throughout the territory of the Member State concerned.'

44 It is clear that this provision is peculiar to the directive concerned and is exclusively applicable in respect of establishment and the provision of services and it has not been re-enacted in the directives on freedom of movement for workers, in particular Directive No 68/360, which is still in force, or, again, in Council Directive No 73/148 of 21 May 1973 concerning establishment and the provision of services (OJ L 172, p. 14), which has meanwhile replaced Directive No 64/220.

45 In the Commission's view, expressed during the oral proceedings, the absence of this provision in the directives at present applicable to employed persons or to establishment and the provision of services, does not, however, mean that Member States have absolutely no power to impose, in respect of foreigners who are nationals of other Member States, prohibitions on residence limited to part of the territory.

46 Right of entry into the territory of Member States and the right to stay there and to move freely within it is defined in the Treaty by reference to the whole territory of these States and not by reference to its internal subdivisions.

47 The reservation contained in Article 48 (3) concerning the protection of public policy has the same scope as the rights the exercise of which may, under that paragraph, be subject to limitations.

48 It follows that prohibitions on residence under the reservation inserted to this effect in Article 48 (3) may be imposed only in respect of the whole of the national territory.

49 On the other hand, in the case of partial prohibitions on residence, limited to certain areas of the territory, persons covered by Community law must, under Article 7 of the Treaty and within the field of application of that provision, be treated on a footing of equality with the nationals of the Member State concerned.

50 It follows that a Member State cannot, in the case of a national of another Member State covered by the provisions of the Treaty, impose prohibitions on residence which are territorially limited except in circumstances where such prohibitions may be imposed on its own nationals.

51 The answer to the second question must, therefore, be that an appraisal as to whether measures designed to safeguard public policy are justified must have regard to all rules of Community law the object of which is, on the one hand, to limit the discretionary power of Member States in this respect and, on the other, to ensure that the rights of persons subject thereunder to restrictive measures are protected.

52 These limitations and safeguards arise, in particular, from the duty imposed on Member States to base the measures adopted exclusively on the personal conduct of the individuals concerned, to refrain from adopting any measures in this respect which service ends unrelated to the requirements of public policy or which adversely affect the exercise of trade union rights and, finally, unless this is contrary to the interests of the security of the State involved, immediately to inform any person against whom a restrictive measure has been adopted of the grounds on which the decision taken is based to enable him to make effective use of legal remedies.

53 In particular, measures restricting the right of residence which are limited to part only of the national territory may not be imposed by a Member State on nationals of other Member States who are subject to the provisions of the Treaty except in the cases and circumstances in which such measures may be applied to nationals of the State concerned.

Costs

54 The costs incurred by the Government of the French Republic, the Government of the Italian Republic and the Commission of the European

Communities, which have submitted observations to the Court, are not recoverable.

55 As these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the Tribunal administratif, Paris, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Tribunal administratif, Paris, by judgment of 16 December 1974, hereby rules:

1. **The expression 'subject to limitations justified on grounds of public policy', in Article 48 concerns not only the legislative provisions adopted by each Member State to limit within its territory freedom of movement and residence for nationals of other Member States but concerns also individual decisions taken in application of such legislative provisions.**

2. **An appraisal as to whether measures designed to safeguard public policy are justified must have regard to all rules of Community law the object of which is, on the one hand, to limit the discretionary power of Member States in this respect and, on the other, to ensure that the rights of persons subject thereunder to restrictive measures are protected.**

   These limitations and safeguards arise, in particular, from the duty imposed on Member States to base the measures adopted exclusively on the personal conduct of the individuals concerned; to refrain from adopting any measures in this respect which service ends unrelated to the requirements of public policy or which adversely affect the exercise of trade union rights and, finally, unless this is contrary to the interests of the security of the State involved, immediately to inform any person against whom a restrictive measure has been adopted of the grounds on which the decision taken is based to enable him to make effective use of legal remedies.

   In particular, measures restricting the right of residence which are limited to part only of the national territory may not be imposed by a Member State on nationals of other Member

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States who are subject to the provisions of the Treaty except in the cases and circumstances in which such measures may be applied to nationals of the State concerned.

Lecourt Kutscher Donner Mertens de Wilmars

Pescatore Sørensen Mackenzie Stuart

Delivered in open court in Luxembourg on 28 October 1975.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 14 OCTOBER 1975 [1]

Mr President,
Members of the Court,

Introduction

The present case takes its place in the line of precedents introduced by the two recent judgments of this Court of 4 December 1974 in *Van Duyn* (Case 41/74 [1974] ECR 1337) and of 26 February 1975 in *Bonsignore* (Case 67/74 [1975] ECR 297).

It affords the Court an opportunity to define more clearly the outlines of the concept of public policy contained in Article 48 (3) of the Treaty establishing the European Economic Community.

The Tribunal administratif, Paris, has referred two questions for a preliminary ruling and in considering them the Court will need to give an interpretation of this exception to the principle of freedom of movement for workers within the Community.

The first question asks whether the expression 'subject to limitations justified on grounds of public policy' concern only the legislative decisions which each Member State has decided to take in order to limit, on its territory, freedom of movement and of residence for nationals of other Member States.

The second, more fundamental, question is concerned with the actual significance of the concept of public policy; the French court is in fact asking what precise meaning is to be attributed to the word 'justified'.

1 — Translated from the French.

ECLI:EU:C:1979:290
Judgment of 13 December 1979, C-44/79, Liselotte Hauer v Land Rheinland-Pfalz

that an act of an institution of the Community imposes restrictions on the new planting of vines cannot be challenged in principle as being incompatible with due observance of the right to property. However, it is necessary that those restrictions should in fact correspond to objectives of general interest pursued by the Community and that, with regard to the aim pursued, they should not constitute a disproportionate and intolerable interference with the rights of the owner, such as to impinge upon the very substance of the right to property.

6. The prohibition on the new planting of vines laid down for a limited period by Regulation No 1162/76 is justified by the objectives of general interest pursued by the Community, consisting in the immediate reduction of production surpluses and in the preparation, in the longer term, of a restructuring of the European wine industry. It does not therefore infringe the substance of the right to property.

7. In the same way as the right to property, the right of freedom to pursue trade or professional activities, far from constituting an unfettered prerogative, must be viewed in the light of the social function of the activities protected thereunder.

In particular, this being a case of the prohibition, by an act of an institution of the Communities, on the new planting of vines, it is appropriate to note that such a measure in no way affects access to the occupation of wine growing or the free pursuit of that occupation on land previously devoted to wine-growing. Since this case concerns new plantings, any restriction on the free pursuit of the occupation of wine-growing is an adjunct to the restriction placed upon the exercise of the right to property.

In Case 44/79

REFERENCE to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht [Administrative Court] Neustadt an der Weinstraße for a preliminary ruling in the action pending before that court between

LISELOTTE HAUER, residing at Bad Dürkheim

and

LAND RHEINLAND-PFALZ

on the interpretation of Article 2 of Council Regulation (EEC) No 1162/76 of 17 May 1976 on measures designed to adjust wine-growing potential to market requirements, as amended by Council Regulation (EEC) No 2776/78 of 23 November 1978, with regard to Article 1 of the Gesetz über Maßnahmen auf dem Gebiete der Weinwirtschaft (Weinwirtschaftsgesetz),

JUDGMENT OF 13. 12. 1979 — CASE 44/79

THE COURT

composed of: H. Kutscher, President, A. O'Keeffe and A. Touffait (Presidents of Chambers), J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, G. Bosco, T. Koopmans and O. Due, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

Liselotte Hauer is the owner of a plot of land forming part of the administrative district of Bad Dürkheim.

The suitability for wine-growing, within the meaning of Article 1 of the Gesetz über Maßnahmen auf dem Gebiete der Weinwirtschaft (Weinwirtschaftsgesetz) [German law on measures relating to the wine industry], of the plots adjacent to Mrs Hauer's was the subject of several actions before the Verwaltungsgericht [Administrative Court] Neustadt an der Weinstraße ending in a settlement on 22 May 1975 whereby the Land Rheinland-Pfalz [Rhineland-Palatinate] undertook to authorize the new planting of vines on several parts of the plots in question.

On 6 June 1975 Mrs Hauer in turn applied for authorization to undertake the new planting of vines on the land which she owns.

The Land Rheinland-Pfalz refused to grant her that authorization on 2 January 1976 on the ground that her land was unsuitable for wine-growing, within the meaning of Article 1 (2) of the Weinwirtschaftsgesetz.

Mrs Hauer lodged an objection against that decision on 22 January 1976.

That objection was overruled by the Land Rheinland-Pfalz by a decision of 21 October 1976 on the grounds that the

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land was unsuitable for wine-growing under the terms of the Weinwirtschaftsgesetz and that Council Regulation (EEC) No 1162/76 of 17 May 1976 on measures designed to adjust wine-growing potential to market requirements (Official Journal L 135, p. 32) had in the meantime prohibited all new planting of vine varieties classified as wine grape varieties for the administrative unit concerned.

Mrs Hauer appealed against that decision on 25 November 1976 to the Verwaltungsgericht Neustadt an der Weinstraße.

In the course of the proceedings the Land Rheinland-Pfalz stated that it was willing to grant the authorization requested after the expiry of the prohibition on new planting imposed by Regulation No 1162/76 for the period from 1 December 1976 to 30 November 1978. [That period was subsequently extended, first to 30 November 1979 by Council Regulation (EEC) No 2776/78 of 23 November 1978, amending for the second time Regulation No 1162/67 (Official Journal L 333, p. 1), and by Council Regulation No 348/79 of 5 February 1979, on measures designed to adjust wine-growing potential to market requirements (Official Journal L 54, p. 81), then to 31 December 1979 by Council Regulation No 2595/79 of 22 November 1979, amending Regulation No 348/79 (Official Journal L 297, p. 5)]. For her part Mrs Hauer argued that Regulation No 1162/76 was not applicable to a request for authorization submitted well before its entry into force and that the Land Rheinland-Pfalz should have granted the authorization before the regulation came into force. Mrs Hauer also pleaded the possible incompatibility of the Community regulation with certain provisions, in particular Articles 12 and 14, of the Basic Law of the Federal Republic of Germany.

The Verwaltungsgericht Neustadt an der Weinstraße, by an order of its second chamber of 14 December 1978, stayed proceedings pursuant to Article 177 of the EEC Treaty until the Court of Justice has given a preliminary ruling on the following questions:

(1) Is Council Regulation (EEC) No 1162/76 of 17 May 1976 as amended by Council Regulation (EEC) No 2776/78 of 23 November 1978 to be interpreted as meaning that Article 2 (1) thereof also applies to those applications for authorization of new planting of vineyards which had already been made before the said regulation entered into force?

and if the answer to question 1 is in the affirmative

(2) Is Article 2 (1) of the said regulation to be interpreted as meaning that the prohibition laid down therein on the granting of authorizations for new planting — disregarding the exceptions specified in Article 2 (2) of the regulation — is of *inclusive* application, that is to say, is in particular unaffected by the question of the unsuitability of the land as provided in Article 1 (2) and Article 2 of the German Law on measures applicable in the wine industry (Weinwirtschaftsgesetz [Law relating to the wine industry])?

The order of the Verwaltungsgericht Neustadt an der Weinstraße was received at the Court Registry on 20 March 1979.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted on 23 March 1979 by the Commission of the European Communities, represented by the Director-General of the Legal Department, Claus-Dieter Ehlermann,

acting as Agent, assisted by Professor Jochen A. Frowein of the University of Bielefeld, on 30 May 1979 by the Council of the European Communities, represented by Bernard Schloh, an Adviser in its Legal Department, and Arthur Brautigam, an Administrator in that department, acting as Agents, and on 11 June 1979 by the Government of the Federal Republic of Germany, represented by Martin Seidel, Departmental Adviser in the Federal Ministry for Economic Affairs, acting as Agent, assisted by Hans Hinrich Boie, Senior Governmental Adviser in the same Ministry.

Having heard the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations submitted to the Court

The *Government of the Federal Republic of Germany* considers that the two questions referred to the Court require answers in the affirmative.

(a) The first question

Article 2 (1) of Regulation No 1162/76 imposes a general prohibition on all new planting of certain types of vines; it is clear from the second subparagraph thereof that it covers cases in which the authorization for new planting, although not yet granted, has already been applied for. That conclusion follows from the clear terms of the prohibition which does not provide for any derogation in a case where authorization proceedings are pending.

A limitation of the general prohibition on new planting in cases where authorization proceedings were pending would have required — especially in the field of agricultural law — a specific and express provision.

Article 4 of the regulation contains transitional provisions; but they applied only to cases in which rights had already been acquired through the granting of authorizations, and not to the stage of an application preceding the authorization. Moreover, Article 4 results in a restriction of such acquired rights because it suspends the exercise thereof for the duration of the prohibition. That demonstrates the Community legislature's wish to make the prohibition on planting as general in nature as possible.

That is the only interpretation of Article 2 (1) which seems to accord with the aims of Regulation No 1162/76.

The preamble to the regulation states that the measures introduced thereby are intended to put an end to the considerable imbalance in the table wine market and to put a brake on production. In order to attain those objectives the Community legislature had to make the prohibition on planting as general and effective as possible. So the beginning of the period whence the prohibition on granting authorizations was applicable was linked to the issue of the authorization, not to the application for it.

That interpretation of Article 2 (1) of Regulation No 1162/76 is in accordance with superior rules of Community law, in particular the principles of legal certainty and the protection of legitimate expectations. The protection of an acquired legal position can be pleaded

only in cases where the alteration thereof constitutes an "encroachment upon an established position"; that cannot be the case when an individual has requested, but not yet obtained, from the administration some form of benefit.

That interpretation is in accordance with an appraisal of the legal situation with regard to national constitutional law which is also taken into consideration by the Court of Justice. According to national constitutional law the legislature is in principle empowered to enact new law applicable as from a particular date; an infringement of constitutional principles, in this case the guarantee of property rights, embracing the principle of the protection of legitimate expectations, can be held to exist only if there are no clear, relevant reasons justifying the date chosen, which is obviously not so in this case. But the citizen cannot rely absolutely on the continuation without change of a given legal situation; in view of the important objectives, from the point of view of the general interest, of a satisfactory organization of the wine market, the mere opening of a procedure on an application for authorization cannot strengthen the owner's position to the point of rendering mandatory, as regards constitutional law, a derogation from the temporary prohibition on planting.

The first question should be answered as follows:

Regulation No 1162/76, as amended by Regulation No 2776/78, must be interpreted as meaning that Article 2 (1) thereof also applies to those applications for authorization of new planting of vineyards, which had already been made before the said regulation came into force.

(b) The second question

The prohibition on planting imposed by Article 2 (1) of Regulation No 1162/76 is general in scope: it applies, irrespective of the quality of the land, also to land suitable for wine-growing.

That interpretation alone accords with the wording of the provision in question, which does not contain any reservation, and with the purpose of the regulation. Moreover, no restrictive interpretation is imposed by a superior rule of law; even on a general interpretation the provision in question is in accordance with, in particular, the fundamental rights recognized by Community law.

Article 2 (1) of Regulation No 1162/76 is compatible, in particular, with the right to property, which is a fundamental right guaranteed by the constitutions of all the Member States and which also ranks as a constitutional rule in Community law.

By denying the owner of a piece of land the possibility of using it for wine-growing the prohibition on planting admittedly constitutes a restriction on the owner's powers; however, it does not constitute an unacceptable infringement of a fundamental right. The scope of that right should be measured in relation to its social function; the substance and enjoyment of property rights are subject to restrictions which must be accepted by each owner on the basis of the superior general interest and the general good.

The measure in question does not adversely affect the "substance" of the right to property: it does not restrict the owner's power to make use of his land except in one of the numerous imaginable ways and is of limited duration.

The prohibition on planting decreed by Article 2 (1) of Regulation No 1162/76 is required by the superior general interest. It was decided upon in order to avoid a situation of severe crisis within the common market in agricultural products; so it is, in accordance with the case-law of the Court, "justified by the objectives of general interest pursued by the Community". The last few years have seen considerable surpluses of table wine; the principal cause of the increase in production has been the growth of the cultivated area due to the planting of new vines on the plains. The surplus supply has led to a fall in prices and serious disturbances on the market; that development has threatened not only the objectives of the agricultural policy entailed in the common organization of the market in wine (stabilization of markets, guaranteed existence and income for producers), but also other objectives of general interest contained in the EEC Treaty (free movement of goods, political and social harmony within the Community). The protection of those objectives justified a restriction on the powers of owners.

Such a radical measure was essential for the attainment of those objectives; the development noted could not be tackled by methods less coercive upon the individual. The reduction in wine production has been sought by direct restrictions on production (prohibition on planting, reconversion premiums), measures pertaining to the organization of the market (preventive distillation, extension of private storage of grape must) and measures to improve quality; the prohibition on planting is only one element in a system of co-ordinated measures, closely linked as regards their effectiveness.

The restriction on planting in question did not constitute an excessive burden for the producers concerned: it was applicable for a limited period and was taken in the interest of the commercial operators themselves.

Article 2 (1) of Regulation No 1162/76 is, moreover, compatible with the fundamental right freely to pursue an economic activity, which is recognized in Community law as having two aspects: the freedom to undertake a professional or trade activity and the freedom to pursue that activity without hindrance.

To the extent to which it affects the second aspect, the prohibition on planting in question does not constitute an unacceptable interference with the fundamental right freely to pursue economic activity; the latter is not an absolute individual right, excluding any restriction; it must be seen in a social context. The rules under challenge do not go beyond what is necessary and constitute, in accordance with the case-law of the Court, a necessary and appropriate method of attaining legitimate objectives. The reasons justifying restrictions on the guarantee of property rights apply equally to the limitations which they imply as regards the freedom to pursue an economic activity.

The principle of proportionality was respected: the fundamental right was only limited as regards the freedom to carry on a professional or trade activity and there was no interference with the free choice of a profession or trade.

A restriction on planting such as that prescribed by Article 2 (1) of Regulation No 1162/76 is also acceptable under national constitutional law; in particular, it is compatible with the fundamental

right to property guaranteed by Article 14 of the Grundgesetz [Basic Law] of the Federal Republic.

The second sentence of Article 14 (1) provides that the substance of the right to property and its limitations shall be fixed by laws; such legislative provisions must be justified by the general interest and must respect the principle of proportionality. The restriction on the powers of the owner must be appropriate and necessary for the attainment of the objective concerned and must now constitute an excessive burden.

The provisions challenged in the main action comply with those criteria.

Their objective shows that they were justified on grounds of the superior general interest; they were inevitable and constituted an appropriate method. Nor do they appear disproportionate; in this regard it is important to take account of the fact that Article 2 (2) (b) of the regulation exempts from the prohibition new planting carried out under development plans which attract investment aid.

The temporary prohibition on planting is also compatible with the fundamental right freely to choose a profession or trade guaranteed by Article 12 of the Grundgesetz.

The second sentence of Article 12 (1) enables the legislature to adopt rules governing the free pursuit of a profession or trade. That power to adopt rules is subject to the principle of proportionality. For the purpose of determining objectives of economic policy and the appropriate measures for the attainment thereof, the Grundgesetz allows the legislature a degree of latitude in its appraisal of the situation and in its choice of action; its intervention must be justified on appropriate and reasonable grounds and founded on regard for the common good. Those methods must respect, within the context of a general appraisal, the limits of what may be required. The prohibition of new plantings is, admittedly, close to the highest degree of restriction conceivable under Article 12 of Grundgesetz; however, it does not exclude all possibility of entering the trade and it is not imposed for an indefinite period. A general appraisal of the question must take account of the fact that the legislature's freedom of action in order to overcome a serious crisis includes the possibility of adopting temporary, *ad hoc* solutions so as to gain time in order to work out long-term structural solutions. Thus rules prohibiting planting for a limited period and accompanied by the preparation of a comprehensive programme of action are, at all events, legitimate.

The second question should be answered as follows:

The prohibition on the granting of authorizations for new planting laid down in Article 2 (1) of Regulation No 1162/76 as amended by Regulation No 2776/78 is of inclusive application — subject to the exemptions referred to in Article 2 (2) of the regulation — irrespective of the question of the quality of the land.

The *Council*, after clarifying the implications of the main action in domestic constitutional law and recalling the background to Regulation No 1162/76, submits observations which may be summarized as follows:

(a) The first question

Regulation No 1162/76 applies also to applications for authorization submitted before its entry into force. That conclusion follows clearly from the first sentence of Article 2 (1) thereof, which

prohibits any new planting during the period from 1 December 1976 to 30 November 1978; moreover, the second sentence provides that Member States shall no longer grant authorizations for new planting as from the date of the regulation's entry into force, namely 27 May 1976. Finally, Article 4 extends by two years the period of validity of rights to plant or re-plant existing under national laws on the date of the regulation's entry into force.

The prohibition contained in the first sentence of Article 2 (1), which therefore also applies to individual rights to plant acquired before the regulation's entry into force, applies *a fortiori* to cases in which an authorization had not yet been granted by the competent national authorities, although an application had been submitted before the regulation's entry into force.

(b) The second question

This question should also be answered in the affirmative.

The purpose of Regulation No 1162/76 is to restrict production of table wines by preventing an increase in wine-growing potential; to limit the prohibition on new planting to land considered unsuitable for wine-growing would seriously impair its effectiveness.

That interpretation is confirmed by the first sentence of Article 2 (1) which lays down a general prohibition on all new planting of vine varieties classified as wine grape varieties, regardless of the suitability of the land for wine-growing; that conclusion is supported by the exhaustive list of exemptions from the principle of total prohibition contained in Article 2 (2).

(c) The validity of Regulation No 1162/76

Since the Verwaltungsgericht has clearly suggested in its order making the reference that Regulation No 1162/76, as interpreted by the Council, might be inapplicable in the German courts as being incompatible with the fundamental rights guaranteed by the German constitution, in is necessary also to express an opinion on the validity of the regulation.

From the point of view of Community law the position is clear: the regulation must be applied by the national authorities, including the courts of each Member State, as long as the Court of Justice has not declared it invalid (under Article 177) or annulled it (under Article 174).

Having regard to the case-law of the Bundesverfassungsgericht [Federal Constitutional Court], it is necessary, when considering the guarantee of fundamental rights, to recall that in the Community legal order it is permissible, according to the case-law of the Court of Justice, to apply, as regards the right of property and the right freely to undertake business, work and other professional or trade activities, certain limitations justified by the objectives of general interest pursued by the Community, provided that the substance of those rights is not impaired. Thus the right of property and the right to undertake business are in principle guaranteed in the Community legal order; but the exercise of those rights may be subjected to limitations, in accordance with the general interest, in order to permit the attainment of the objectives of the Community, provided that the rights in question are not stripped of their substance.

In the present case the temporary restriction imposed by Regulation No 1162/76 on the freedom to pursue the trade of wine-grower and on the right of

property is, taking into account its purpose, very limited in nature; the very substance of those rights is not, in the present case, impaired.

Articles 12 and 14 of the German Grundgesetz also accept the principle that those rights are subject to restrictions justified by the public interest. In that regard it should also be noted that the Community rules do not impair the substance of fundamental rights.

In is also necessary to take account of the fact that the measure in question is a protective measure, adopted because of a sudden and serious imbalance in the market and intended to avoid the formation of structural surpluses while awaiting permanent structural measures.

(d) The questions submitted to the Court call for the following answers:

— The prohibition contained in Article 2 (1) of Regulation No 1162/76 applies also to applications for authorization submitted to the national authorities before the date on which the regulation entered into force, on which those authorities had not at that time taken a final decision.

— That prohibition applies to all land, regardless of its degree of suitability for wine-growing.

— Regulation No 1162/76, the validity of which cannot be challenged from the point of view of fundamental rights, must be applied by the national authorities, including the courts of each Member State, as long as it has not been declared invalid by the Court of Justice.

The *Commission's* observations on the questions of interpretation and validity raised in the main action may be summarized as follows:

(a) The first question

It follows clearly from its terms and its aims that Regulation No 1162/76 must be applied to administrative procedures which have already been commenced.

Article 6 provided for the regulation's entry into force on the third day following its publication in the Official Journal of the Communities; it does not contain any provision whereby applications submitted before that date should be treated differently from the manner prescribed in Article 2. Article 4 contains a provision expressly suspending acquired rights without referring to administrative procedures already commenced; it follows that those procedures are subject to the prohibition on granting new authorizations contained in Article 2 of the regulation.

The purpose of the regulation, as explained in the preamble thereto, was to put an end to a severe crisis which had led to an imbalance in the wine market; given that premise, only a prohibition having general effect, without regard to rights already acquired or administrative procedures already commenced, would have made sense.

That interpretation is strengthened by the fact that the prohibition on new plantings is a measure of limited duration; such temporary measures generally modify market conditions and are intended to have as wide an effect as possible for the duration of their validity.

Therefore Article 2 (1) of Regulation No 1162/76 — since re-enacted, in the amended version of Regulation No 2776/78, by Regulation No 348/79 —

was applicable to applications for new planting of vines submitted before the regulation's entry into force.

(b) The second question

It is clear from the wording of Regulation No 1162/76, in the amended version of Regulation No 348/79, that it is applicable irrespective of the conditions in which a right to plant is acquired by virtue of national provisions on wine-growing; that conclusion follows from Article 4 which suspends the exercise of rights acquired under national legislation. Furthermore, the independence of Community law requires that it should not make reference to rules of national law except by express provision to that effect.

(c) The validity of the prohibition on new planting during a fixed period.

— There is no general principle of law requiring that the applicant, in an administrative procedure already commenced, be protected against a worsening of his legal position. In the absence of any derogation, amending laws govern future aspects of situations arising under the former law; that principle is equally valid in relation to administrative procedures already commenced.

— The plaintiff in the main action did not, at the time when Regulation No 1162/76 came into force, possess a right, acquired under the German law on wine-growing, to plant vines; therefore she cannot claim protection of a duly-acquired right.

— The case-law both of the Court of Justice and of the Bundesverfassungsgericht shows that there does not exist any general principle of the protection of legitimate expectation, whereby every person is entitled to rely on the maintenance of a legal situation which is favourable to him and whereby he is assured of the protection of that expectation.

— Admittedly, rules prohibiting the planting of vines restrict the exercise of property rights over the land in question. But it is permissible that the Community legal order should subject rights, such as the right of property, to certain restrictions justified by the objectives of general interest pursued by the Community, as long as the substance of those rights is not impaired. Restrictions on agricultural production in the general interest form part of the measures, recognized in the Member States of the Community, whereby the right of property is restricted in the public interest. In Community law, such a restriction is accepted by the EEC Treaty: Article 39 (1) (c) describes the stabilization of markets as an objective of the common agricultural policy; Article 43 (2) enables the Council to make regulations for that purpose which, according to Article 40 (3), may include all necessary measures. Those measures include the prohibition for a fixed period on new planting, as provided for in Article 17 (5) of Regulation (EEC) No 816/70 of the Council of 28 April 1970 laying down additional provisions for the common organization of the market in wine (Official Journal, English Special Edition 1970 (I), p. 234), on which Regulation No 1162/76 is expressly based. Moreover, a temporary prohibition of new planting is a necessary measure and is in accordance with the principle of proportionality, as is shown by the development of the wine market in the course of recent years. Nor

does it affect land-owners to an intolerable degree. Consequently it must be considered a legitimate restriction of the right of property.

— As far as German constitutional law is concerned, it should be noted that the Bundesverfassungsgericht held in its judgment of 14 February 1967 that restrictions on new planting introduced by the Weinwirtschaftsgesetz constitute legitimate rules in relation to the substance and limits of the right of property under Article 14 (1) of the Grundgesetz. According to the Bundesverfassungsgericht the restriction on the powers of the owner must be appropriate and necessary for the attainment of the objective pursued and must not be abusively coercive and thereby intolerable. The basic difference between the restrictions on new planting laid down in German law and those of Regulation No 1162/76 consists in the fact that, under the Weinwirtschaftsgesetz, authorization for new planting can be refused only if the land is, according to objective criteria, unsuitable for wine-growing. The rule against imposing an excessive burden, which emerges from the case-law of the Bundesverfassungsgericht and which may be relied upon against the Community rules, must be seen in relation to the objective expressly stated by the legislature. Unlike the Weinwirtschaftsgesetz, the Community rules are intended broadly to prevent the new planting of vines for a fixed period. Having regard to that objective, the rule against imposing an excessive burden is not disregarded if a prohibition on new planting may on the whole be considered necessary to maintain a balance on the wine market. A temporary restriction on planting vines on land previously not used for wine-growing must, according to the criteria laid down by the Bundesverfassungsgericht, be accepted as a legitimate limitation of property rights, if it is dictated by superior economic interests. Restrictions on the right to exploit the soil are not in German law regarded as similar in nature to expropriation; a prohibition, for a period of three years, on new planting of vines on land not previously used for growing vines does not constitute an infringement of the fundamental right of property.

— The fundamental right freely to pursue a profession or trade is also subject to restrictions: reasonable grounds, involving the general interest, may justify restrictive rules. The grounds relied on in the context of the protection of property rights must lead to the conclusion that rules restricting the right freely to pursue a profession or trade are lawful. The Bundesverfassungsgericht must also recognize that, under Article 12 of the Grundgesetz, a restriction on new planting, applying solely to the extension to new land of the pursuit of wine-growing practised hitherto, may be justified by reasonable considerations involving the general interest.

(d) The questions submitted to the Court should be answered as follows:

— Regulation No 1162/76, in the current version thereof contained in Regulation No 348/79, must be interpreted as meaning that Article 2 (1) thereof also applies to applications submitted before its entry into force.

— The validity of the prohibition on new planting is not affected by national provisions.

— The case has disclosed no factor of such a kind as to affect the validity of the prohibition on new planting laid down by Article 2 of Regulation No 1162/76 and Article 2 of Regulation No 348/79.

III — Oral procedure

Mrs Liselotte Hauer, represented by Herbert Drews, Advocate at the Zweibrücken Bar, the Land Rheinland-Pfalz, represented by Josef Koy, Ministerialrat at the Ministry of Agriculture and Wine Production, the Government of the Federal Republic of Germany, represented by Martin Seidel, the Council of the European Communities, represented by Bernhard Schloh and Arthur Brautigam, and the Commission of the European Communities, represented by Professor Jochen A. Frowein, Claus-Dieter Ehlermann and the expert, Alfred Reichardt, Principal Administrator in the Directorate General for Agriculture, presented oral argument and/or replied to questions put by the Court at the Sitting on 11 October 1979.

At the sitting *Mrs Hauer* laid special emphasis on the fact that in the main action, after overruling — illegally — the objection against the refusal to authorize new plantings, the Land Rheinland-Pfalz had, in the course of the proceedings, stated its willingness to grant the authorization requested, but had been prevented from doing so by Regulation No 1162/76. Further, it was necessary to distinguish between a prohibition on the granting of authorizations and a prohibition on new plantings; only the latter had an effect on the market. By prohibiting Member States from granting authorization for new plantings, Regulation No 1162/76 infringes the principle of proportionality as well as Articles 12 and 14 of the Grundgesetz of the Federal Republic. Finally, by providing for the possibility of further extending the period of validity of the prohibition, the regulation did not in fact lay down a temporary rule.

The *Advocate General* delivered his opinion at the sitting on 8 November 1979.

Decision

F By an order of 14 December 1978, received at the Court on 20 March 1979, the Verwaltungsgericht Neustadt an der Weinstraße submitted two questions to the Court for a preliminary ruling, pursuant to Article 177 of the EEC Treaty, on the interpretation of Council Regulation (EEC) No 1162/76 of 17 May 1976 on measures designed to adjust wine-growing potential to market requirements (Official Journal L 135, p. 32), amended by Council Regulation (EEC) No 2776/78 of 23 November 1978 (Official Journal L 333, p. 1).

2 The file on the case shows that on 6 June 1975 the plaintiff in the main action applied to the competent administrative authority of the Land Rheinland-Pfalz for authorization to plant vines on a plot of land which she owns in the region of Bad Dürkheim. That authorization was refused initially owing to the fact that under the provisions of the German legislation applicable to that sphere, namely the Law relating to the wine industry (Weinwirtschaftsgesetz) of 10 March 1977, the plot of land in question was not considered suitable for wine-growing. On 22 January 1976 the person concerned lodged an objection against that decision. While proceedings relating to that objection were pending before the competent administrative authority, Regulation No 1162/76 of 17 May 1976 was adopted, Article 2 of which imposes a prohibition for a period of three years on all new planting of vines. On 21 October of that year the administrative authority overruled the objection, stating two grounds: on the one hand, the unsuitability of the land and, on the other hand, the prohibition on planting as a result of the Community regulation referred to.

3 The person concerned appealed to the Verwaltungsgericht. As a result of experts' reports on the grapes grown in the same area and taking into account a settlement reached with various other owners of plots of land adjacent to that of the applicant, the administrative authority accepted that the plaintiff's land may be considered suitable for wine-growing in accordance with the minimum requirements laid down by national legislation. Consequently, the authority stated its willingness to grant the authorization as from the end of the prohibition on new planting imposed by the Community rules. Thus it appears that the dispute between the parties is henceforth solely concerned with questions of Community law.

4 For her part, the plaintiff in the main action considers that the authorization applied for should be granted to her on the ground that the provisions of Regulation No 1162/76 are not applicable in the case of an application introduced long before the entry into force of that regulation. Even supposing that the regulation is applicable in the case of applications submitted before its entry into force, its provisions may in the applicant's submission still not be relied upon against her because they are contrary to her right to property and to her right freely to pursue a trade or profession rights which are guaranteed by Articles 12 and 14 of the Grundgesetz of the Federal Republic of Germany.

5 In order to resolve that dispute, the Verwaltungsgericht drafted two questions worded as follows:

1. Is Council Regulation (EEC) No 1162/76 of 17 May 1976 as amended by Council Regulation (EEC) No 2776/78 of 23 November 1978 to be interpreted as meaning that Article 2 (1) thereof also applies to those applications for authorization of new planting of vineyards which had already been made before the said regulation entered into force?

   and if the answer to Question 1 is in the affirmative

2. Is Article 2 (1) of the said regulation to be interpreted as meaning that the prohibition laid down therein on the granting of authorizations for new planting — disregarding the exceptions specified in Articles 2 (2) of the regulation — is of *inclusive* application, that is to say, is in particular unaffected by the question of the unsuitability of the land as provided in Article 1 (2) and Article 2 of the German Law on measures applicable in the wine industry (Weinwirtschaftsgesetz [Law relating to the wine industry])?

The first question (application of Regulation No 1162/76 in time)

6 In this regard, the plaintiff in the main action claims that her application, submitted to the competent administrative authority on 6 June 1975, should in the normal course of events have led to a decision in her favour before the entry into force of the Community regulation if the administrative procedure had taken its usual course and if the administration had recognized without delay the fact that her plot of land is suitable for wine-growing in accordance with the requirements of national law. It is, she argues, necessary to take account of that situation in deciding the time from which the Community regulation is applicable, the more so as the production of the vineyard in question would not have had any appreciable influence on market conditions, in view of the time which elapses between the planting of a vineyard and its first production.

7 The arguments advanced by the plaintiff in the main action cannot be upheld. Indeed the second subparagraph of Article 2 (1) of Regulation No 1162/76 expressly provides that Member States shall no longer grant authorizations for new planting "as from the date on which this Regulation enters into force". By referring to the act of granting authorization, that provision rules out the possibility of taking into consideration the time at which an application was submitted. It indicates the intention to give immediate effect to the regulation, to such an extent that even the exercise of

rights to plant or re-plant acquired prior to the entry into force of the regulation is suspended during the period of the prohibition as a result of Article 4 of the same regulation.

8 As is stated in the sixth recital of the preamble, with regard to the last-mentioned provision, the prohibition on new plantings is required by an "undeniable public interest", making it necessary to put a brake on the overproduction of wine in the Community, to re-establish the balance of the market and to prevent the formation of structural surpluses. Thus it appears that the object of Regulation No 1162/76 is the immediate prevention of any extension in the area covered by vineyards. Therefore no exception may be made in favour of an application submitted before its entry into force.

9 It is therefore necessary to reply to the first question that Council Regulation No 1162/76 of 17 May 1976, amended by Regulation No 2776/78 of 23 November 1978, must be interpreted as meaning that Article 2 (1) thereof also applies to applications for authorization of new planting of vines made before the entry into force of the first regulation.

The second question (the substantive scope of Regulation No 1162/76)

10 In its second question the Verwaltungsgericht asks the Court to rule whether the prohibition on granting authorizations for new planting laid down by Article 2 (1) of Regulation No 1162/76 is of inclusive application, that is to say whether it also includes land recognized as suitable for wine-growing in accordance with the criteria applied by national legislation.

11 In this regard, the text of the regulation is explicit in so far as Article 2 prohibits "all new planting" without making any distinction according to the quality of the land concerned. It is clear from both the text and the stated objectives of Regulation No 1162/76 that the prohibition must apply to new plantings irrespective of the nature of the land and of the classification thereof under national legislation. In fact, the object of the regulation, as is clear in particular from the second recital of the preamble thereto, is to bring

to an end the surplus in European wine production and to re-establish the balance of the market both in the short and in the long term. Only Article 2 (2) of the regulation provides for some exceptions to the general nature of the prohibition laid down by paragraph (1) of the same article, but it is common ground that none of those exceptions applies in this case.

12 Therefore the reply to the second question must be that Article 2 (1) of Regulation No 1162/76 must be interpreted as meaning that the prohibition laid down therein on the granting of authorizations for new planting — disregarding the exceptions specified in Article 2 (2) of the regulation — is of inclusive application, that is to say, is in particular unaffected by the question of the suitability or otherwise of a plot of land for wine-growing, as determined by the provisions of a national law.

The protection of fundamental rights in the Community legal order

13 In its order making the reference, the Verwaltungsgericht states that if Regulation No 1162/76 must be interpreted as meaning that it lays down a prohibition of general application, so as to include even land appropriate for wine growing, that provision might have to be considered inapplicable in the Federal Republic of Germany owing to doubts existing with regard to its compatibility with the fundamental rights guaranteed by Articles 14 and 12 of the Grundgesetz concerning, respectively, the right to property and the right freely to pursue trade and professional activities.

14 As the Court declared in its judgment of 17 December 1970, *Internationale Handelsgesellschaft* [1970] ECR 1125, the question of a possible infringement of fundamental rights by a measure of the Community institutions can only be judged in the light of Community law itself. The introduction of special criteria for assessment stemming from the legislation or constitutional law of a particular Member State would, by damaging the substantive unity and efficacy of Community law, lead inevitably to the destruction of the unity of the Common Market and the jeopardizing of the cohesion of the Community.

15 The Court also emphasized in the judgment cited, and later in the judgment of 14 May 1974, *Nold* [1974] ECR 491, that fundamental rights form an

integral part of the general principles of the law, the observance of which it ensures; that in safeguarding those rights, the Court is bound to draw inspiration from constitutional traditions common to the Member States, so that measures which are incompatible with the fundamental rights recognized by the constitutions of those States are unacceptable in the Community; and that, similarly, international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law. That conception was later recognized by the joint declaration of the European Parliament, the Council and the Commission of 5 April 1977, which, after recalling the case-law of the Court, refers on the one hand to the rights guaranteed by the constitutions of the Member States and on the other hand to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (Official Journal C 103, 1977, p. 1).

16 In these circumstances, the doubts evinced by the Verwaltungsgericht as to the compatibility of the provisions of Regulation No 1162/76 with the rules concerning the protection of fundamental rights must be understood as questioning the validity of the regulation in the light of Community law. In this regard, it is necessary to distinguish between, on the one hand, a possible infringement of the right to property and, on the other hand, a possible limitation upon the freedom to pursue a trade or profession.

The question of the right to property

17 The right to property is guaranteed in the Community legal order in accordance with the ideas common to the constitutions of the Member States, which are also reflected in the first Protocol to the European Convention for the Protection of Human Rights.

18 Article 1 of that Protocol provides as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

19 Having declared that persons are entitled to the peaceful enjoyment of their property, that provision envisages two ways in which the rights of a property owner may be impaired, according as the impairment is intended to deprive the owner of his right or to restrict the exercise thereof. In this case it is incontestable that the prohibition on new planting cannot be considered to be an act depriving the owner of his property, since he remains free to dispose of it or to put it to other uses which are not prohibited. On the other hand, there is no doubt that that prohibition restricts the use of the property. In this regard, the second paragraph of Article 1 of the Protocol provides an important indication in so far as it recognizes the right of a State "to enforce such laws as it deems necessary to control the use of property in accordance with the general interest". Thus the Protocol accepts in principle the legality of restrictions upon the use of property, whilst at the same time limiting those restrictions to the extent to which they are deemed "necessary" by a State for the protection of the "general interest". However, that provision does not, enable a sufficiently precise answer to be given to the question submitted by the Verwaltungsgericht.

20 Therefore, in order to be able to answer that question, it is necessary to consider also the indications provided by the constitutional rules and practices of the nine Member States. One of the first points to emerge in this regard is that those rules and practices permit the legislature to control the use of private property in accordance with the general interest. Thus some constitutions refer to the obligations arising out of the ownership of property (German Grundgesetz, Article 14 (2), first sentence), to its social function (Italian constitution, Article 42 (2)), to the subordination of its use to the requirements of the common good (German Grundgesetz, Article 14 (2), second sentence, and the Irish constitution, Article 43.2.2°), or of social justice (Irish constitution, Article 43.2.1°). In all the Member States, numerous legislative measures have given concrete expression to that social function of the right to property. Thus in all the Member States there is legislation on agriculture and forestry, the water supply, the protection of the

environment and town and country planning, which imposes restrictions, sometimes appreciable, on the use of real property.

21 More particularly, all the wine-producing countries of the Community have restrictive legislation, albeit of differing severity, concerning the planting of vines, the selection of varieties and the methods of cultivation. In none of the countries concerned are those provisions considered to be incompatible in principle with the regard due to the right to property.

22 Thus it may be stated, taking into account the constitutional precepts common to the Member States and consistent legislative practices, in widely varying spheres, that the fact that Regulation No 1162/76 imposed restrictions on the new planting of vines cannot be challenged in principle. It is a type of restriction which is known and accepted as lawful, in identical or similar forms, in the constitutional structure of all the Member States.

23 However, that finding does not deal completely with the problem raised by the Verwaltungsgericht. Even if it is not possible to dispute in principle the Community's ability to restrict the exercise of the right to property in the context of a common organization of the market and for the purposes of a structural policy, it is still necessary to examine whether the restrictions introduced by the provisions in dispute in fact correspond to objectives of general interest pursued by the Community or whether, with regard to the aim pursued, they constitute a disproportionate and intolerable interference with the rights of the owner, impinging upon the very substance of the right to property. Such in fact is the plea submitted by the plaintiff in the main action, who considers that only the pursuit of a qualitative policy would permit the legislature to restrict the use of wine-growing property, with the result that she possesses an unassailable right from the moment that it is recognized that her land is suitable for wine growing. It is therefore necessary to identify the aim pursued by the disputed regulation and to determine whether there exists a reasonable relationship between the measures provided for by the regulation and the aim pursued by the Community in this case.

24 The provisions of Regulation No 1162/76 must be considered in the context of the common organization of the market in wine which is closely linked to the structural policy envisaged by the Community in the area in question. The aims of that policy are stated in Regulation (EEC) No 816/70 of 28 April 1970 laying down additional provisions for the common organization of the market in wine (Official Journal, English Special Edition 1970 (1), p. 234), which provides the basis for the disputed regulation, and in Regulation No 337/79 of 5 February 1979 on the common organization of the market in wine (Official Journal L 54, p. 1), which codifies all the provisions governing the common organization of the market. Title III of that regulation, laying down "rules concerning production and for controlling planting", now forms the legal framework in that sphere. Another factor which makes it possible to perceive the Community policy pursued in that field is the Council Resolution of 21 April 1975 concerning new guidelines to balance the market in table wines (Official Journal C 90, p. 1).

25 Taken as a whole, those measures show that the policy initiated and partially implemented by the Community consists of a common organization of the market in conjunction with a structural improvement in the wine-producing sector. Within the framework of the guidelines laid down by Article 39 of the EEC Treaty that action seeks to achieve a double objective, namely, on the one hand, to establish a lasting balance on the wine market at a price level which is profitable for producers and fair to consumers and, secondly, to obtain an improvement in the quality of wines marketed. In order to attain that double objective of quantitative balance and qualitative improvement, the Community rules relating to the market in wine provide for an extensive range of measures which apply both at the production stage and at the marketing stage for wine.

26 In this regard, it is necessary to refer in particular to the provisions of Article 17 of Regulation No 816/70, re-enacted in an extended form by Article 31 of Regulation No 337/79, which provide for the establishment by the Member States of forecasts of planting and production, co-ordinated within the framework of a compulsory Community plan. For the purpose of implementing that plan measures may be adopted concerning the planting, re-planting, grubbing-up or cessation of cultivation of vineyards.

27 It is in this context that Regulation No 1162/76 was adopted. It is apparent from the preamble to that regulation and from the economic circumstances in which it was adopted, a feature of which was the formation as from the 1974 harvest of permanent production surpluses, that that regulation fulfils a double function: on the one hand, it must enable an immediate brake to be put on the continued increase in the surpluses; on the other hand, it must win for the Community institutions the time necessary for the implementation of a structural policy designed to encourage high-quality production, whilst respecting the individual characteristics and needs of the different wine-producing regions of the Community, through the selection of land for grape growing and the selection of grape varieties, and through the regulation of production methods.

28 It was in order to fulfil that twofold purpose that the Council introduced by Regulation No 1162/76 a general prohibition on new plantings, without making any distinction, apart from certain narrowly defined exceptions, according to the quality of the land. It should be noted that, as regards its sweeping scope, the measure introduced by the Council is of a temporary nature. It is designed to deal immediately with a conjunctural situation characterized by surpluses, whilst at the same time preparing permanent structural measures.

29 Seen in this light, the measure criticized does not entail any undue limitation upon the exercise of the right to property. Indeed, the cultivation of new vineyards in a situation of continuous over-production would not have any effect, from the economic point of view, apart from increasing the volume of the surpluses; further, such an extension at that stage would entail the risk of making more difficult the implementation of a structural policy at the Community level in the event of such a policy resting on the application of criteria more stringent than the current provisions of national legislation concerning the selection of land accepted for wine-growing.

30 Therefore it is necessary to conclude that the restriction imposed upon the use of property by the prohibition on the new planting of vines introduced for a limited period by Regulation No 1162/76 is justified by the objectives of general interest pursued by the Community and does not infringe the substance of the right to property in the form in which it is recognized and protected in the Community legal order.

The question of the freedom to pursue trade or professional activities

31 The applicant in the main action also submits that the prohibition on new plantings imposed by Regulation No 1162/76 infringes her fundamental rights in so far as its effect is to restrict her freedom to pursue her occupation as a wine-grower.

32 As the Court has already stated in its judgment of 14 May 1974, *Nold*, referred to above, although it is true that guarantees are given by the constitutional law of several Member States in respect of the freedom to pursue trade or professional activities, the right thereby guaranteed, far from constituting an unfettered prerogative, must likewise be viewed in the light of the social function of the activities protected thereunder. In this case, it must be observed that the disputed Community measure does not in any way affect access to the occupation of wine-growing, or the freedom to pursue that occupation on land at present devoted to wine-growing. To the extent to which the prohibition on new plantings affects the free pursuit of the occupation of wine-growing, that limitation is no more than the consequence of the restriction upon the exercise of the right to property, so that the two restrictions merge. Thus the restriction upon the free pursuit of the occupation of wine-growing, assuming that it exists, is justified by the same reasons which justify the restriction placed upon the use of property.

33 Thus it is apparent from the foregoing that consideration of Regulation No 1162/76, in the light of the doubts expressed by the Verwaltungsgericht, has disclosed no factor of such a kind as to affect the validity of that regulation on account of its being contrary to the requirements flowing from the protection of fundamental rights in the Community.

Costs

The costs incurred by the Government of the Federal Republic of Germany, by the Council and by 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 Verwaltungsgericht Neustadt an der Weinstraße, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions submitted to it by the Verwaltungsgericht Neustadt an der Weinstraße by order of 14 December 1978, hereby rules:

1. **Council Regulation (EEC) No 1162/76 of 17 May 1976 on measures designed to adjust wine-growing potential to market requirements, as amended by Council Regulation (EEC) No 2776/78 of 23 November 1978, amending for the second time Regulation No 1162/76, must be interpreted as meaning that Article 2 (1) thereof also applies to applications for authorization of new planting of vines submitted before the entry into force of that regulation.**

2. **Article 2 (1) of Regulation No 1162/76 must be interpreted as meaning that the prohibition laid down therein on the granting of authorizations for new planting — disregarding the exceptions specified in Article 2 (2) of the regulation — is of inclusive application, that is to say, is in particular unaffected by the question of the suitability or otherwise of a plot of land for wine-growing, as determined by the provisions of a national law.**

Kutscher O'Keeffe Touffait Mertens de Wilmars Pescatore

Mackenzie Stuart Bosco Koopmans Due

Delivered in open court in Luxembourg on 13 December 1979.

A. Van Houtte
Registrar

H. Kutscher
President

3751

II.4. Fundamental Rights in the Treaties, from the Single European Act to Amsterdam (1986 – 1997)

1987 OJ L169/1
Single European Act

29. 6. 87 Official Journal of the European Communities No L 169/1

SINGLE EUROPEAN ACT

HIS MAJESTY THE KING OF THE BELGIANS,

HER MAJESTY THE QUEEN OF DENMARK,

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY,

THE PRESIDENT OF THE HELLENIC REPUBLIC,

HIS MAJESTY THE KING OF SPAIN,

THE PRESIDENT OF THE FRENCH REPUBLIC,

THE PRESIDENT OF IRELAND,

THE PRESIDENT OF THE ITALIAN REPUBLIC,

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG,

HER MAJESTY THE QUEEN OF THE NETHERLANDS,

THE PRESIDENT OF THE PORTUGUESE REPUBLIC,

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

MOVED by the will to continue the work undertaken on the basis of the Treaties establishing the European Communities and to transform relations as a whole among their States into a European Union, in accordance with the Solemn Declaration of Stuttgart of 19 June 1983,

RESOLVED to implement this European Union on the basis, firstly, of the Communities operating in accordance with their own rules and, secondly, of European Cooperation among the Signatory States in the sphere of foreign policy and to invest this union with the necessary means of action,

DETERMINED to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice,

CONVINCED that the European idea, the results achieved in the fields of economic integration and political cooperation, and the need for new developments correspond to the wishes of the democractic peoples of Europe, for whom the European Parliament, elected by universal suffrage, is an indispensable means of expression,

AWARE of the responsibility incumbent upon Europe to aim at speaking ever increasingly with one voice and to act with consistency and solidarity in order more effectively to protect its common interests and independence, in particular to display the principles of democracy and compliance with the law and with human rights to which they are attached, so that together they may make their own contribution to the preservation of international peace and security in accordance with the undertaking entered into by them within the framework of the United Nations Charter,

DETERMINED to improve the economic and social situation by extending common policies and pursuing new objectives, and to ensure a smoother functioning of the Communities by enabling the Institutions to exercise their powers under conditions most in keeping with Community interests,

WHEREAS at their Conference in Paris from 19 to 21 October 1972 the Heads of State or of Government approved the objective of the progressive realization of Economic and Monetary Union,

HAVING REGARD to the Annex to the conclusions of the Presidency of the European Council in Bremen on 6 and 7 July 1978 and the resolution of the European Council in Brussels on 5 December 1978 on the introduction of the European Monetary System (EMS) and related questions, and noting that in accordance

29. 6. 87 Official Journal of the European Communities No L 169/3

with that Resolution, the Community and the Central Banks of the Member States have taken a number of measures intended to implement monetary cooperation,

HAVE DECIDED to adopt this Act and to this end have designated as their plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS:

Mr Leo TINDEMANS,
Minister for External Relations

HER MAJESTY THE QUEEN OF DENMARK:

Mr Uffe ELLEMANN-JENSEN,
Minister for Foreign Affairs

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Mr Hans-Dietrich GENSCHER,
Federal Minister of Foreign Affairs

THE PRESIDENT OF THE HELLENIC REPUBLIC:

Mr Karolos PAPOULIAS,
Minister for Foreign Affairs

HIS MAJESTY THE KING OF SPAIN:

Mr Francisco FERNANDEZ ORDONEZ,
Minister for Foreign Affairs

THE PRESIDENT OF THE FRENCH REPUBLIC:

Mr Roland DUMAS,
Minister for External Relations

THE PRESIDENT OF IRELAND:

Mr Peter BARRY, T.D.,
Minister for Foreign Affairs

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Mr Giulio ANDREOTTI,
Minister for Foreign Affairs

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

Mr Robert GOEBBELS,
State Secretary, Ministry for Foreign Affairs

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

Mr Hans van den BROEK,
Minister for Foreign Affairs

THE PRESIDENT OF THE PORTUGUESE REPUBLIC:

Mr Pedro PIRES DE MIRANDA,
Minister for Foreign Affairs

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

Mrs Lynda CHALKER,
Minister of State for Foreign and Commonwealth Affairs

WHO, having exchanged their full powers, found in good and due form:

1992 OJ C191/1
Treaty on European Union - Maastricht Treaty

29. 7. 92 Official Journal of the European Communities No C 191/1

TREATY ON EUROPEAN UNION

(92/C 191/01)

HIS MAJESTY THE KING OF THE BELGIANS,

HER MAJESTY THE QUEEN OF DENMARK,

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY,

THE PRESIDENT OF THE HELLENIC REPUBLIC,

HIS MAJESTY THE KING OF SPAIN,

THE PRESIDENT OF THE FRENCH REPUBLIC,

THE PRESIDENT OF IRELAND,

THE PRESIDENT OF THE ITALIAN REPUBLIC,

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG,

HER MAJESTY THE QUEEN OF THE NETHERLANDS,

THE PRESIDENT OF THE PORTUGUESE REPUBLIC,

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

RESOLVED to mark a new stage in the process of European integration undertaken with the establishment of the European Communities,

RECALLING the historic importance of the ending of the division of the European continent and the need to create firm bases for the construction of the future Europe,

CONFIRMING their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law,

DESIRING to deepen the solidarity between their peoples while respecting their history, their culture and their traditions,

DESIRING to enhance further the democratic and efficient functioning of the institutions so as to enable them better to carry out, within a single institutional framework, the tasks entrusted to them,

RESOLVED to achieve the strengthening and the convergence of their economies and to establish an economic and monetary union including, in accordance with the provisions of this Treaty, a single and stable currency,

DETERMINED to promote economic and social progress for their peoples, within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields,

RESOLVED to establish a citizenship common to nationals of their countries,

RESOLVED to implement a common foreign and security policy including the eventual framing of a common defence policy, which might in time lead to a common defence, thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world,

REAFFIRMING their objective to facilitate the free movement of persons, while ensuring the safety and security of their peoples, by including provisions on justice and home affairs in this Treaty,

RESOLVED to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity,

IN VIEW of further steps to be taken in order to advance European integration,

HAVE DECIDED to establish a European Union and to this end have designated as their plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS:

Mark EYSKENS,
Minister for Foreign Affairs;

Philippe MAYSTADT,
Minister for Finance;

HER MAJESTY THE QUEEN OF DENMARK:

Uffe ELLEMANN-JENSEN,
Minister for Foreign Affairs;

Anders FOGH RASMUSSEN,
Minister for Economic Affairs;

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Hans-Dietrich GENSCHER,
Federal Minister for Foreign Affairs;

Theodor WAIGEL,
Federal Minister for Finance;

THE PRESIDENT OF THE HELLENIC REPUBLIC:

Antonios SAMARAS,
Minister for Foreign Affairs;

Efthymios CHRISTODOULOU,
Minister for Economic Affairs;

HIS MAJESTY THE KING OF SPAIN:

Francisco FERNÁNDEZ ORDÓÑEZ,
Minister for Foreign Affairs;

Carlos SOLCHAGA CATALÁN,
Minister for Economic Affairs and Finance;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Roland DUMAS,
Minister for Foreign Affairs;

Pierre BEREGOVOY,
Minister for Economic and Financial Affairs and the Budget;

29. 7. 92 Official Journal of the European Communities No C 191/3

THE PRESIDENT OF IRELAND:

Gerard COLLINS,
Minister for Foreign Affairs;

Bertie AHERN,
Minister for Finance;

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Gianni DE MICHELIS,
Minister for Foreign Affairs;

Guido CARLI,
Minister for the Treasury;

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

Jacques F. POOS,
Deputy Prime Minister,
Minister for Foreign Affairs;

Jean-Claude JUNCKER,
Minister for Finance;

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

Hans van den BROEK,
Minister for Foreign Affairs;

Willem KOK,
Minister for Finance;

THE PRESIDENT OF THE PORTUGUESE REPUBLIC:

João de Deus PINHEIRO,
Minister for Foreign Affairs;

Jorge BRAGA de MACEDO,
Minister for Finance;

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

The Rt. Hon. Douglas HURD,
Secretary of State for Foreign and Commonwealth Affairs;

The Hon. Francis MAUDE,
Financial Secretary to the Treasury;

WHO, having exchanged their full powers, found in good and due form, have agreed as follows:

No C 191/4 Official Journal of the European Communities 29. 7. 92

TITLE I

COMMON PROVISIONS

Article A

By this Treaty, the High Contracting Parties establish among themselves a European Union, hereinafter called 'the Union'.

This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen.

The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty. Its task shall be to organize, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples.

Article B

The Union shall set itself the following objectives:

— to promote economic and social progress which is balanced and sustainable, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of this Treaty;

— to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the eventual framing of a common defence policy, which might in time lead to a common defence;

— to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union;

— to develop close cooperation on justice and home affairs;

— to maintain in full the 'acquis communautaire' and build on it with a view to considering, through the procedure referred to in Article N(2), to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community.

The objectives of the Union shall be achieved as provided in this Treaty and in accordance with the conditions and the timetable set out therein while respecting the principle of subsidiarity as defined in Article 3b of the Treaty establishing the European Community.

Article C

The Union shall be served by a single institutional framework which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the 'acquis communautaire'.

The Union shall in particular ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies. The Council and the Commission shall be responsible for ensuring such consistency. They shall ensure the implementation of these policies, each in accordance with its respective powers.

Article D

The European Council shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof.

The European Council shall bring together the Heads of State or of Government of the Member States and the President of the Commission. They shall be assisted by the Ministers for Foreign Affairs of the Member States and by a Member of the Commission. The European Council shall meet at least twice a year, under the chairmanship of the Head of State or of Government of the Member State which holds the Presidency of the Council.

The European Council shall submit to the European Parliament a report after each of its meetings and a yearly written report on the progress achieved by the Union.

Article E

The European Parliament, the Council, the Commission and the Court of Justice shall exercise their powers under the conditions and for the purposes provided for, on the one hand, by the provisions of the Treaties establishing the European Communities and of the subsequent Treaties and Acts modifying and supplementing them and, on the other hand, by the other provisions of this Treaty.

Article F

1. The Union shall respect the national identities of its Member States, whose systems of government are founded on the principles of democracy.

2. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

3. The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.

TITLE II

PROVISIONS AMENDING THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY WITH A VIEW TO ESTABLISHING THE EUROPEAN COMMUNITY

Article G

The Treaty establishing the European Economic Community shall be amended in accordance with the provisions of this Article, in order to establish a European Community.

A. Throughout the Treaty:

1) The term 'European Economic Community' shall be replaced by the term 'European Community'.

B. In Part One 'Principles':

2) Article 2 shall be replaced by the following:

'Article 2

The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing the common policies or activities referred to in Articles 3 and 3a, to promote throughout the Community a harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, a high degree of convergence of economic performance, a high level of employment and of social protection, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.'

3) Article 3 shall be replaced by the following:

'Article 3

For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:

(a) the elimination, as between Member States, of customs duties and quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;

(b) a common commercial policy;

(c) an internal market characterized by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital;

(d) measures concerning the entry and movement of persons in the internal market as provided for in Article 100c;

(e) a common policy in the sphere of agriculture and fisheries;

(f) a common policy in the sphere of transport;

(g) a system ensuring that competition in the internal market is not distorted;

(h) the approximation of the laws of Member States to the extent required for the functioning of the common market;

(i) a policy in the social sphere comprising a European Social Fund;

(j) the strengthening of economic and social cohesion;

(k) a policy in the sphere of the environment;

(l) the strengthening of the competitiveness of Community industry;

(m) the promotion of research and technological development;

28) Articles 204 and 205 shall be repealed.

29) Article 206 shall be replaced by the following:

'Article 206

The Community may conclude with one or more States or international organizations agreements establishing an association involving reciprocal rights and obligations, common action and special procedures.

These agreements shall be concluded by the Council, acting unanimously after consulting the European Parliament.

Where such agreements call for amendments to this Treaty, these amendments shall first be adopted in accordance with the procedure laid down in Article N of the Treaty on European Union.'

TITLE V

PROVISIONS ON A COMMON FOREIGN AND SECURITY POLICY

Article J

A common foreign and security policy is hereby established which shall be governed by the following provisions.

Article J.1

1. The Union and its Member States shall define and implement a common foreign and security policy, governed by the provisions of this Title and covering all areas of foreign and security policy.

2. The objectives of the common foreign and security policy shall be:

— to safeguard the common values, fundamental interests and independence of the Union;

— to strengthen the security of the Union and its Member States in all ways;

— to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter;

— to promote international cooperation;

— to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

3. The Union shall pursue these objectives:

— by establishing systematic cooperation between Member States in the conduct of policy, in accordance with Article J.2;

— by gradually implementing, in accordance with Article J.3, joint action in the areas in which the Member States have important interests in common.

4. The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations. The Council shall ensure that these principles are complied with.

Article J.2

1. Member States shall inform and consult one another within the Council on any matter of foreign and security policy of general interest in order to ensure that their combined influence is exerted as effectively as possible by means of concerted and convergent action.

2. Whenever it deems it necessary, the Council shall define a common position.

Member States shall ensure that their national policies conform to the common positions.

3. Member States shall coordinate their action in international organizations and at international conferences. They shall uphold the common positions in such fora.

In international organizations and at international conferences where not all the Member States participate, those which do take part shall uphold the common positions.

Article J.3

The procedure for adopting joint action in matters covered by the foreign and security policy shall be the following:

1. The Council shall decide, on the basis of general guidelines from the European Council, that a matter should be the subject of joint action.

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TITLE VI

PROVISIONS ON COOPERATION IN THE FIELDS OF JUSTICE AND HOME AFFAIRS

Article K

Cooperation in the fields of justice and home affairs shall be governed by the following provisions.

Article K.1

For the purposes of achieving the objectives of the Union, in particular the free movement of persons, and without prejudice to the powers of the European Community, Member States shall regard the following areas as matters of common interest:

1. asylum policy;

2. rules governing the crossing by persons of the external borders of the Member States and the exercise of controls thereon;

3. immigration policy and policy regarding nationals of third countries:

   (a) conditions of entry and movement by nationals of third countries on the territory of Member States;

   (b) conditions of residence by nationals of third countries on the territory of Member States, including family reunion and access to employment;

   (c) combatting unauthorized immigration, residence and work by nationals of third countries on the territory of Member States;

4. combatting drug addiction in so far as this is not covered by 7 to 9;

5. combatting fraud on an international scale in so far as this is not covered by 7 to 9;

6. judicial cooperation in civil matters;

7. judicial cooperation in criminal matters;

8. customs cooperation;

9. police cooperation for the purposes of preventing and combatting terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs cooperation, in connection with the organization of a Union-wide system for exchanging information within a European Police Office (Europol).

Article K.2

1. The matters referred to in Article K.1 shall be dealt with in compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Convention relating to the Status of Refugees of 28 July 1951 and having regard to the protection afforded by Member States to persons persecuted on political grounds.

2. This Title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

Article K.3

1. In the areas referred to in Article K.1, Member States shall inform and consult one another within the Council with a view to coordinating their action. To that end, they shall establish collaboration between the relevant departments of their administrations.

2. The Council may:

— on the initiative of any Member State or of the Commission, in the areas referred to in Article K.1(1) to (6);

— on the initiative of any Member State, in the areas referred to in Article K1(7) to (9):

   (a) adopt joint positions and promote, using the appropriate form and procedures, any cooperation contributing to the pursuit of the objectives of the Union;

   (b) adopt joint action in so far as the objectives of the Union can be attained better by joint action than by the Member States acting individually on account of the scale or effects of the action envisaged; it may decide that measures implementing joint action are to be adopted by a qualified majority;

   (c) without prejudice to Article 220 of the Treaty establishing the European Community, draw up conventions which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.

1997 OJ C340/1
Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts

10. 11. 97 EN Official Journal of the European Communities C 340/1

TREATY OF AMSTERDAM AMENDING THE TREATY ON EUROPEAN UNION, THE TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES AND CERTAIN RELATED ACTS

(97/C 340/01)

10. 11. 97 [FR] Official Journal of the European Communities C 340/3

HIS MAJESTY THE KING OF THE BELGIANS,

HER MAJESTY THE QUEEN OF DENMARK,

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY,

THE PRESIDENT OF THE HELLENIC REPUBLIC,

HIS MAJESTY THE KING OF SPAIN,

THE PRESIDENT OF THE FRENCH REPUBLIC,

THE COMMISSION AUTHORISED BY ARTICLE 14 OF THE CONSTITUTION OF IRELAND TO EXERCISE AND PERFORM THE POWERS AND FUNCTIONS OF THE PRESIDENT OF IRELAND,

THE PRESIDENT OF THE ITALIAN REPUBLIC,

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG,

HER MAJESTY THE QUEEN OF THE NETHERLANDS,

THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA,

THE PRESIDENT OF THE PORTUGUESE REPUBLIC,

THE PRESIDENT OF THE REPUBLIC OF FINLAND,

HIS MAJESTY THE KING OF SWEDEN,

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

HAVE RESOLVED to amend the Treaty on European Union, the Treaties establishing the European Communities and certain related acts,

and to this end have designated as their Plenipotentiaries:

C 340/4 EN Official Journal of the European Communities 10. 11. 97

HIS MAJESTY THE KING OF THE BELGIANS:

Mr. Erik DERYCKE,
Minister for Foreign Affairs;

HER MAJESTY THE QUEEN OF DENMARK:

Mr. Niels Helveg PETERSEN,
Minister for Foreign Affairs;

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Dr. Klaus KINKEL,
Federal Minister for Foreign Affairs
and Deputy Federal Chancellor;

THE PRESIDENT OF THE HELLENIC REPUBLIC:

Mr. Theodoros PANGALOS,
Minister for Foreign Affairs;

HIS MAJESTY THE KING OF SPAIN:

Mr. Juan Abel MATUTES,
Minister for Foreign Affairs;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Mr. Hubert VÉDRINE,
Minister for Foreign Affairs;

10. 11. 97 EN Official Journal of the European Communities C 340/5

THE COMMISSION AUTHORISED BY ARTICLE 14 OF THE CONSTITUTION OF IRELAND TO EXERCISE AND PERFORM THE POWERS AND FUNCTIONS OF THE PRESIDENT OF IRELAND:

Mr. Raphael P. BURKE,
Minister for Foreign Affairs;

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Mr. Lamberto DINI,
Minister for Foreign Affairs;

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

Mr. Jacques F. POOS,
Deputy Prime Minister,
Minister for Foreign Affairs, Foreign Trade and Cooperation;

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

Mr. Hans VAN MIERLO,
Deputy Prime Minister
and Minister for Foreign Affairs;

THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA:

Mr. Wolfgang SCHÜSSEL,
Federal Minister for Foreign Affairs
and Vice Chancellor;

THE PRESIDENT OF THE PORTUGUESE REPUBLIC:

Mr. Jaime GAMA,
Minister for Foreign Affairs;

C 340/6 EN Official Journal of the European Communities 10. 11. 97

THE PRESIDENT OF THE REPUBLIC OF FINLAND:

Ms. Tarja HALONEN,
Minister for Foreign Affairs;

HIS MAJESTY THE KING OF SWEDEN:

Ms. Lena HJELM-WALLÉN,
Minister for Foreign Affairs;

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

Mr. Douglas HENDERSON,
Minister of State,
Foreign and Commonwealth Office;

WHO, having exchanged their full powers found in good and due form,

HAVE AGREED AS FOLLOWS:

10. 11. 97 EN Official Journal of the European Communities C 340/7

PART ONE

SUBSTANTIVE AMENDMENTS

Article 1

The Treaty on European Union shall be amended in accordance with the provisions of this Article.

1. After the third recital the following recital shall be inserted:

   'CONFIRMING their attachment to fundamental social rights as defined in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers,'

2. The existing seventh recital shall be replaced by the following:

   'DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields,'

3. The existing ninth and tenth recitals shall be replaced by the following:

   'RESOLVED to implement a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence in accordance with the provisions of Article J.7, thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world,

   RESOLVED to facilitate the free movement of persons, while ensuring the safety and security of their peoples, by establishing an area of freedom, security and justice, in accordance with the provisions of this Treaty,'

4. In Article A the second paragraph shall be replaced by the following:

   'This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.'

5. Article B shall be replaced by the following:

   '**Article B**

   The Union shall set itself the following objectives:

   — to promote economic and social progress and a high level of employment and to achieve balanced and sustainable development, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of this Treaty;

— to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence, in accordance with the provisions of Article J.7;

— to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union;

— to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime;

— to maintain in full the *acquis communautaire* and build on it with a view to considering to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community.

The objectives of the Union shall be achieved as provided in this Treaty and in accordance with the conditions and the timetable set out therein while respecting the principle of subsidiarity as defined in Article 3b of the Treaty establishing the European Community.'

6. In Article C, the second paragraph shall be replaced by the following:

'The Union shall in particular ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies. The Council and the Commission shall be responsible for ensuring such consistency and shall cooperate to this end. They shall ensure the implementation of these policies, each in accordance with its respective powers.'

7. Article E shall be replaced by the following:

'**Article E**

The European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors shall exercise their powers under the conditions and for the purposes provided for, on the one hand, by the provisions of the Treaties establishing the European Communities and of the subsequent Treaties and Acts modifying and supplementing them and, on the other hand, by the other provisions of this Treaty.'

8. Article F shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.';

(b) the existing paragraph 3 shall become paragraph 4 and a new paragraph 3 shall be inserted as follows:

'3. The Union shall respect the national identities of its Member States.'

9. The following Article shall be inserted at the end of Title I:

'**Article F.1**

1. The Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of principles mentioned in Article F(1), after inviting the government of the Member State in question to submit its observations.

2. Where such a determination has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Treaty to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under this Treaty shall in any case continue to be binding on that State.

3. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 2 in response to changes in the situation which led to their being imposed.

4. For the purposes of this Article, the Council shall act without taking into account the vote of the representative of the government of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 1. A qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 148(2) of the Treaty establishing the European Community.

This paragraph shall also apply in the event of voting rights being suspended pursuant to paragraph 2.

5. For the purposes of this Article, the European Parliament shall act by a two thirds majority of the votes cast, representing a majority of its members.'

10. Title V shall be replaced by the following:

'Title V

PROVISIONS ON A COMMON FOREIGN AND SECURITY POLICY

Article J.1

1. The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be:

— to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter;

— to strengthen the security of the Union in all ways;

— to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders;

— to promote international cooperation;

— to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

2. The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity.

The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.

The Council shall ensure that these principles are complied with.

Article J.2

The Union shall pursue the objectives set out in Article J.1 by:

— defining the principles of and general guidelines for the common foreign and security policy;

— deciding on common strategies;

adopting joint actions;

— adopting common positions;

— strengthening systematic cooperation between Member States in the conduct of policy.

Article J.3

1. The European Council shall define the principles of and general guidelines for the common foreign and security policy, including for matters with defence implications.

2. The European Council shall decide on common strategies to be implemented by the Union in areas where the Member States have important interests in common.

Common strategies shall set out their objectives, duration and the means to be made available by the Union and the Member States.

3. The Council shall take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines defined by the European Council.

II.5. Annex: Indicative Index of Additional Pre-Charter Documents

1. The First Path – Institutional Resolutions, Calls and Drafts in relation to a Charter of Rights

Reference	Title	Date	Body
1965 OJ 187/2923	Résolution relative à la primauté du droit communautaire sur le droit des Etats membres	22/10/1965	European Parliament
1967 OJ 67/2054	Résolution relative à l'application du droit communautaire par les Etats membres	10/05/1967	European Parliament
1967 OJ 67/2055	Résolution sur la protection juridique des personnes privées dans les Communautés européennes	10/05/1967	European Parliament
1973 OJ C23/7	Resolution on the Protection of the Fundamental Rights of Member States' Citizens when Community Law is Drafted (Jozeau-Marigné Report)	04/04/1973	European Parliament
1975 OJ C179/28	Resolution on European Union	10/07/1975	European Parliament
COM (76) 37	The protection of fundamental rights as Community law is created and developed. Report of the Commission submitted to the European Parliament and the Council	04/02/1976	European Commission
Annex to COM (76) 37	The problems of drawing up a catalogue of fundamental rights for the European Communities. A study requested by the Commission - Report annexed to COM (76) 37	04/02/1976	Prof. R. Bernhardt
1976 OJ C159/13	Resolution on the Primacy of Community Law and the Protection of Fundamental Rights	15/07/1976	European Parliament
1976 OJ C259/17	Resolution on the Report of the Commission of the European Communities on the Protection of Fundamental Rights	12/10/1976	European Parliament
COM (76) 374 final	(Draft) Common Declaration by the European Parliament, the Council and the Commission concerning the respect of Human Rights	27/10/1976	European Commission
1977 OJ C103/1	Joint Declaration by the European Parliament, the Council and the Commission Concerning the Protection of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms	05/04/1977	European Parliament, European Commission, Council of the European Community
1977 OJ C299/26	Resolution on the Granting of Special Rights to be Citizens of the European Community in Implementation of the Decision of the Paris Summit of December 1974 (Point 11 of the Final Communiqué	16/11/1977	European Parliament
ISBN 92-823-0011-0 (French)	Proceedings of the Round Table on Special Rights and a Charter of the Rights of the Citizens of the European Community and Related Documents (Florence, 26-28 October 1978)	1979	European Parliament
1984 OJ C77/33	Draft Treaty Establishing the European Union (Spinelli Report)	14/02/1984	European Parliament

The European Parliament's Declaration on Fundamental Rights and Freedoms (12/04/1989)

SP(87) 2789	European Parliament Committee on Institutional Affairs Summary Record of the meeting on 1 and 2 December 1987	04/12/1987	European Parliament
SP(88) 2866	European Parliament Institutional Affairs Committee Summary Record	25/11/1988	European Parliament
A2-3/89/Part A	Motion for a Resolution - White Paper (De Gucht Report) drawn up on behalf of the Committee on Institutional Affairs on the Declaration of Fundamental Rights and Freedoms	20/03/1989	European Parliament
A2-3/89/Part B	(Report) - Report (De Gucht Report) drawn up on behalf of the Committee on Institutional Affairs on the Declaration of Fundamental Rights and Freedoms	20/03/1989	European Parliament
1989 OJ C120/51	Resolution adopting the "Declaration of Fundamental Rights and Freedoms"	12/04/1989	European Parliament

The Community Charter of Fundamental Social Rights of Workers (09/12/1989)

Reference	Title	Date	Body
SN 4443/1/88	Conclusions of the Presidency of the European Council held in Rhodes on 2 and 3 December 1988	03/12/1988	European Council
1989 OJ C96	Resolution on the social dimension of the internal market	15/03/1989	European Parliament
SN 254/2/89	Presidency Conclusions of the European Council held in Madrid on 26 and 27 June 1989	27/06/1989	European Council
1989 OJ C256/130	Resolution on the achievement of economic and social cohesion	14/09/1989	European Parliament
COM (89) 471	Draft Community Charter of Fundamental Social Rights of Workers	02/10/1989	European Commission
1989 OJ C323/44	Resolution on the Community Charter of Fundamental Social Rights	22/11/1989	European Parliament
ISBN 92-826-0975-5	Community Charter of the Fundamental Social Rights of Workers (adopted by 11 Members)	09/12/1989	Heads of State and Government of the Member States (adopted by 11 Member States)
1990 OJ C231/91	Resolution on the European Parliament's Guidelines for a Draft Constitution for the European Union	11/07/1990	European Parliament
1990 OJ C231/97	Resolution on the Intergovernmental Conference in the Context of Parliament's Strategy for European Union	11/07/1990	European Parliament
1990 OJ C324/219	Resolution on the Intergovernmental Conferences in the Context of the European Parliament's Strategy for European Union	22/11/1990	European Parliament
1991 OJ C19/65	Resolution on the Constitutional Basis of European Union	12/12/1990	European Parliament
1991 OJ C183/473	Resolution on Union Citizenship	14/06/1991	European Parliament
1991 OJ C240/45	Resolution on Human Rights	09/07/1991	European Parliament
1993 OJ C115/178	Resolution on Respect for Human Rights in the European Community (Annual Report of the European Parliament)	11/03/1993	European Parliament
1994 OJ C61/155	Resolution on the Constitution of the European Union	10/02/1994	European Parliament
1995 OJ C151/56	Resolution on the Functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference - Implementation and development of the Union, based on the report by D. Martin and J.L.Bourlanges	17/05/1995	European Parliament
ISBN 92-827-7697-2	For a Europe of civic and social rights: Report by the Comité des Sages	February 1996	Comité des Sages
1997 OJ C371/99	Resolution on the Amsterdam Treaty	19/11/1997	European Parliament
None	Koalitionsvereinbarung zwischen der Sozialdemokratischen Partei Deutschlands und Bündnis 90/Die GRÜNEN	20/10/1998	Sozialdemokratische Partei Deutschlands and Bündnis 90/Die GRÜNEN
P4_CRE(1999)01-12(1)	Speech by the President of the Council of the European Union Joschka Fischer, Federal Minister for Foreign Affairs on the Priorities of the German Council Presidency	12/01/1999	Bundesaußenminister Joschka Fischer (DEU)
ISBN 92-828-6605-X	Affirming fundamental rights in the European Union: time to act (Simitis Report)	February 1999	Expert Group on Fundamental Rights

Reference	Title	Date	Body
2000 OJ C54/93	Resolution on the Establishment of the Charter of Fundamental Rights	16/09/1999	European Parliament
PE 168.629	Working Paper - Fundamental Social Rights	November 1999	European Parliament
PE 168.338/AE	Working Paper - What Form of Constitution for the European Union?	December 1999	European Parliament

2. The Second Path – Accession to the European Convention on Human Rights

COM (76) 37	The protection of fundamental rights as Community law is created and developed. Report of the Commission submittted to the European Parliament and the Council	04/02/1976	European Commission
Annex to COM (76) 37	The problems of drawing up a catalogue of fundamental rights for the European Communities. A study requested by the Commission - Report annexed to COM (76) 37	04/02/1976	Prof. R. Bernhardt
P-40/79	Community accession to the European Convention on Human Rights. Information Memo P-40/79	April 1979	European Commission
1979 OJ C127/70	Resolution on the accession of the European Community to the European Convention on Human Rights	27/04/1979	European Parliament
COM (79) 210	Memorandum on the accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms	02/05/1979	European Commission
Resolution 745(1981)	Resolution 745 (1981) on Accession of the European Communities to the European Convention on Human Rights	29/01/1981	Parliamentary Assembly of the Council of Europe
1982 OJ C304/253	Resolution embodying the opinion of the European Parliament on the memorandum on adhesion to the European convention on human rights and fundamental freedoms	29/10/1982	European Parliament
SEC (90) 2087	Commission Communication on Community accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms and some of its Protocols	19/11/1990	European Commission
1991 OJ C240/45	Resolution on Human Rights	09/07/1991	European Parliament
1993 OJ C115/178	Resolution on Respect for Human Rights in the European Community (Annual Report of the European Parliament)	11/03/1993	European Parliament
SEC (93) 1679	Accession of the Community to the European Convention on Human Rights and the Community legal order	26/10/1993	European Commission
1994 OJ C 44/32	Resolution on Community accession to the European Convention on Human Rights	18/01/1994	European Parliament
None	Request for an opinion on the accession by the Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms	26/04/1994	Council of the European Union
Resolution 1068 (1995)	Resolution 1068 (1995) on Accession of the European Community to the European Convention on Human Rights	27/09/1995	Parliamentary Assembly of the Council of Europe
Opinion 2/94	Opinion 2/94 - Adhesion of the Community to the ECHR	28/03/1996	Court of Justice of the European Communities
1996 OJ C320/36	Resolution on respect for Human Rights in the European Union in 1994	28/10/1996	European Parliament
1997 OJ C132/31	Resolution on Respect for Human Rights in the European Union (1995)	08/04/1997	European Parliament
Recommendation 1365 (1998)	Recommendation 1365 (1998) on Relations with the European Union (follow-up to the European Union's Amsterdam Summit)	21/04/1998	Parliamentary Assembly of the Council of Europe

3. The Judicial Origins of the Charter of Fundamental Rights

Reference	Title	Date	Body
ECLI:EU:C:1959:4	Judgment of 4 February 1959, C-1/58, Friedrich Stork & Cie v High Authority of the European Coal and Steel Community	04/02/1959	Court of Justice of the European Communities
ECLI:EU:C:1960:5	Judgment of 12 February 1960, C-16 - 18/59, Geitling v High Authority	12/02/1960	Court of Justice of the European Communities
ECLI:EU:C:1965:13	Judgment of 1 April 1965, C-40/64, Marcello Sgarlata and others v Commission of the EEC	01/04/1965	Court of Justice of the European Communities
San Michele	Sentenza del 16 Dicembre 1965 n.98, Acciaierie San Michele	16/12/1965	Corte Costituzionale (ITA)
BVerfGE 22, 293-299, EWG-Verordnungen	BVerfG, Beschluss vom 18. Oktober 1967 ("EWG-Verordnungen") – 1 BvR 248/63 –, BVerfGE 22,293-299	18/10/1967	Bundesverfassungsgericht (DEU)
ECLI:EU:C:1969:57	C-29/69, Stauder, Erich Stauder v City of Ulm-Sozialamt	12/11/1969	Court of Justice of the European Communities
ECLI:EU:C:1970:114	C-11/70, Internationale Handelsgesellschaft, C-11/70, Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel	17/12/1970	Court of Justice of the European Communities
ECLI:EU:C:1974:51	C-4/73, Nold, C-4/73, J. Nold, Kohlen- und Baustoffgroßhandlung v Commission of the European Communities	14/05/1973	Court of Justice of the European Communities
Frontini	Sentenza del 27 Dicembre 1973. n.183, Frontini	27/12/1973	Corte Costituzionale (ITA)
BVerfGE 37, 271-305, Solange I	Solange I ("Solange I") – 2 BvL 52/71 –, BVerfGE 37, 271-305	29/05/1974	Bundesverfassungsgericht (DEU)
ECLI:EU:C:1975:137	C-36/75, Rutili, C-36/75, Roland Rutili v Ministre de l'intérieur	28/10/1975	Court of Justice of the European Communities
ECLI:EU:C:1979:290	C-44/79, Hauer, Liselotte Hauer v Land Rheinland-Pfalz	13/12/1979	Court of Justice of the European Communities
ECLI:EU:C:1985:329	Judgment of 11 July 1985, Joined Cases C-60 and 61/84, Cinéthèque, ECLI:EU:C:1985:329	11/07/1985	Court of Justice of the European Communities
ECLI:EU:C:1987:400	Judgment of 30 September 1986, C-12/86, Demirel, ECLI:EU:C:1987:400	30/09/1986	Court of Justice of the European Communities
BVerfGE 73, 339-388, Solange II	BVerfG, Beschluss vom 22. Oktober 1986 ("Solange II") – 2 BvR 197/83 –, BVerfGE 73, 339-388	22/10/1986	Bundesverfassungsgericht (DEU)
ECLI:EU:C:1989:321	Judgment of 13 July 1989, C-5/88, Wachauf, ECLI:EU:C:1989:321	13/07/1989	Court of Justice of the European Communities
ECLI:EU:C:1991:254	Judgment of 18 June 1991, C-260/89, ERT, ECLI:EU:C:1991:254	18/06/1991	Court of Justice of the European Communities
BVerfGE 89, 155-213	BVerfG, Urteil vom 12. Oktober 1993 ("Maastricht") – 2 BvR 2134/92 –, BVerfGE 89, 155-213	12/10/1993	Bundesverfassungsgericht (DEU)

4. Fundamental Rights in the Treaties, from the Single European Act to Amsterdam (1986 – 1997)

Reference	Title	Date	Body
1987 OJ L169/1	Single European Act	01/01/1987 (Entry into force)	
1992 OJ C191/1	Treaty on European Union - Maastricht Treaty	01/11/1993 (Entry into force)	
1997 OJ C340/1	Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts	01/05/1999 (Entry into force)	

Human Rights in EC Law and Political Declarations

Bulletin of the European Communities, No.10, 1972	Declaration of the European Summit held in Paris on 19-21 October 1972	21/10/1972	European Council
None	Declaration on European Identity adopted at the Copenhagen European Summit of 14 and 15 December 1973	15/12/1973	European Council
None	Conclusions of the Presidency of the European Council held in Copenhagen on 7-8 April 1978, Annex D - Declaration on Democracy	20/04/1978	European Council
1986 OJ C158/1	Joint Declaration against racism and xenophobia	11/06/1986	European Parliament, European Commission, Council of the European Community
None	Declaration on Human Rights - Meeting of Foreign Ministers held in Brussels on 21 July 1986	21/07/1986	Council of the European Communities
None	Declaration on the international role of the Community	23/12/1988	European Council
1990 OJ C157/1	Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 29 May 1990 on the fight against racism and xenophobia	29/05/1990	Council of the European Communities
SN 60/1/90	Conclusions of the Presidency of the European Council held in Dublin on 25-26 June 1990, Annex 3 - Declaration on anti-semitism, racism and xenophobia	26/06/1990	European Council
SN 151/3/91	Conclusions of the Presidency of the European Council held in Luxembourg on 28-29 June 1991, Annex 5 - Declaration on Human Rights	29/06/1991	European Council
None	Resolution of the Council and of the representatives of the governments of the Member States meeting within the Council on human rights, democracy and development	28/11/1991	Council of the European Communities
SN 271/1/91	Conclusions of the European Council held in Maastricht on 9-10 December 1991, Annex 3 - Declaration on racism and xenophobia	10/12/1991	European Council
None	Conclusions of the European Council held in Vienna on 11 and 12 December 1998 – II – Human Rights	12/12/1998	European Council