2003:14

Carl Fredrik Bergström and Matilda Rotkirch

Decentralized Agencies and the IGC:

a Question of Accountability

Sieps
Swedish Institute for European Policy Studies

Carl Fredrik Bergström and Matilda Rotkirch

Decentralized Agencies and the IGC:

a Question of Accountability

Report No. 14
October/2003

Publisher: Swedish Institute for European Policy Studies.

The report can be ordered from
info@sieps.se

The report is available at
www.sieps.se

Cover: Svensk Information AB

Print: EO-print AB

Stockholm, October 2003

ISBN 91-85129-12-7
ISSN 1651-7679

PREFACE

Sieps, the Swedish Institute for European Policy Studies, conducts and promotes research, evaluations, analyses and studies of European policy issues, with a focus primarily in the areas of political science, law and economics.

Sieps has commissioned a number of reports relating to issues that, in the opinion of Sieps, will be of importance in the intergovernmental conference. The reports will be dealing with a range of constitutional, procedural and material questions. Each report will outline the key principal problems of the issue area, the work and the proposals of the Convention and analyse these proposals from clearly stated assumptions or aims and finally to be firmly grounded in the academic debate. The reader shall consequently be able to get an overview of the state of the art as well as a comprehensive introduction to the issues in question.

One of the missions of the Institute is to act as a bridge between academics and policy-makers and one of the primary aims of these reports is to build this bridge. Furthermore, in a broader sense the reports shall contribute to increased interest in current issues in European integration as well as increased debate on the future of Europe.

Tomas Dahlman
Director
Sieps

ABOUT THE AUTHORS

Carl Fredrik Bergström is researcher at the Swedish Institute for European Policy Studies (Sieps) and lecturer at the Stockholm University Faculty of Law. His main field of research is EU legislation and decision-making.

Matilda Rotkirch is assistant researcher at Sieps and has a degree in Law from the University of Lund. She has previously worked in the Commission Legal Service and the European Parliament.

DECENTRALIZED AGENCIES AND THE IGC: A QUESTION OF ACCOUNTABILITY

1 INTRODUCTION

1.1 Question

During the last decade, significant responsibilities have been assigned with an increasing number of EU-bodies appearing under titles such as 'agency', 'office' or 'centre'. Since these bodies have fundamental similarities they are often given the collective label of decentralized agencies.[1] Perhaps most obviously, the term decentralized, in this context, refers to the fact that all but a few of them have been located outside Brussels. But it reflects also the impression that the authority these bodies exercise is such that one may have expected it to rest with the Commission.

Somewhat surprisingly, the challenges the establishment of decentralized agencies pose to entrenched notions of the way in which the European Community and Union works has not provoked much interest in the legal debate.[2] At the same time it is clear that they are here to stay and that more will follow those already established.[3] Against that background it is the ambition

---

[1] See, for example, IDEA: the inter-institutional directory at http://europa.eu.int/idea.

[2] For a discussion on the role of decentralized agencies in the European Union, see, for example, Chiti, E., The Emergence of a Community Administration: the Case of European agencies (2000) 37 *Common Market Law Review* 309; Everson, M., Independent agencies: Hierarchy Beaters? (1995) 1 *European Law Journal* 180; Dehousse, R., Regulation by Networks in the European Community: the Role of European agencies (1997) 4 *Journal of European Public Policy* 246; and Lenaerts, K., Regulating the Regulatory Process: Delegation of Powers in the European Community (1993) 18 *European Law Review* 23.

[3] See Commission Proposal of 8 August 2003 for a Regulation Establishing a European Centre for Disease Prevention and Control (COM(2003) 441 final); Commission Proposal of 11 February 2003 for a Regulation establishing the European Network and Information Security Agency (COM(2003) 63 final); Commission Proposal of 23 January 2001 for a Regulation establishing a European Railway Agency (COM(2002) 23); and the Proposal for a new Chemicals Agency in the Commission's Draft

of this report to identify some of those features which, since they are shared by all or some of the existing agencies, are essential in order to explain their legal nature and to highlight some problems which should be addressed in the process leading up to the adoption of a new constitutional treaty. Focus will be set on the issue of accountability. At present, the role of decentralized agencies is premised on the Court of Justice's idea of an institutional balance of powers, requiring an EU-institution to assume full responsibility. But the exact meaning of this is far from clear and, more importantly, there is a risk that current efforts to comply with the Court's requirements are causing more obscurity than clarity.

1.2 Outline

The report will start with a brief summary followed by conclusions (Part 2). This is followed by a basic definition of decentralized agencies, focusing on features which are shared by all of them, and an attempt to make a functional distinction between three principal categories (Part 3). The main part of the report gives an account for the relevant case-law regarding delegation of powers and current possibilities to review the legality of to decentralized agencies' activities (Part 4). Finally, the place of decentralized agencies in a future constitutional treaty will be discussed in the light of the work of the European Convention (Part 5).

Chemicals Legislation (the REACH System) based on the White Paper of 13 February 2002 on the Strategy for a future Chemicals Policy (COM(2001)88), at: www.europa.eu.int/comm/environment/chemicals/whitepaper.htm.

2 SUMMARY AND CONCLUSIONS

2.1 Summary

Decentralized agencies can be identified as bodies with a legal personality of their own which have been established in order to accomplish specific technical, scientific or managerial tasks. Even if they have fundamental similarities, there are considerable differences with regard to their tasks and powers of decision-making. In order to find some common denominators between the sixteen decentralized agencies currently in operation within the fields of application of the EC Treaty, a functional distinction may be made between three different categories: administration agencies dealing with matters of internal administration, authorization agencies responsible for granting permissions and co-ordination agencies collecting, analysing and re-distributing information.

According to the constitutional case law of the Court of Justice, the establishment and operation of decentralized agencies is premised on the requirement that delegation of powers to autonomous bodies which are not themselves 'institutions' must not upset the institutional balance. But the exact and, indeed, practical meaning of this is far from clear. The ruling which has been considered most important in this context is the ruling in Case 9/56 *Meroni & Co. S.p.A. v High Authority of the ECSC.* Here the Court held that delegation of clearly defined executive powers to bodies similar to the existing decentralized agencies was possible if it could be made in such a way as to ensure that all legal restrictions on the exercise of these powers would continue to apply. The requirement for effective judicial review was specifically emphasised in this respect. An even more restrictive approach was taken by the Court in its more recent ruling in Case 98/80 *Romano v Institut National d'Assurance Maladie-Invalidité.* Here the empowerment of bodies similar to decentralized agencies to adopt acts having the force of law was regarded as prohibited. Support for that conclusion was found in a very strict interpretation of the EC Treaty and the rules relating to judicial review. Like now these rules do only envisage judicial review of acts adopted by real 'institutions'.

The relevance of these, seemingly contradictory, rulings with respect to the establishment and operation of decentralized agencies is difficult to appreciate. But one thing is clear: no delegation of powers to decentralized agencies can be tolerated if it means that the exercise of these powers cannot be subject to judicial review. Unfortunately, the full implications of this remain uncertain since the Court of Justice has been unwilling to claim any general jurisdiction to review acts of bodies other than institutions.

Most of the regulations establishing decentralized agencies have attempted to solve the problem or, at least, uncertainty with respect to judicial review by including provisions concerning the control of legality of acts adopted by these agencies. Three types of solutions have been envisaged: a possibility to refer any act of an agency to the Commission for it to examine the legality (presumably, the decision of the Commission can then be subject to review by the Court in accordance with rules of the EC Treaty); the insertion of a specific provision simply explaining that the Court shall have jurisdiction in actions against an agency under the rules of the EC Treaty; and finally, a possibility to appeal an act of an agency to a quasi-judicial boards of appeal and, ultimately, to the Court.

But importantly, the various solutions envisaged in these regulations do not, completely, compensate the lack of a general jurisdiction stated in the EC Treaty. It is clear that certain acts adopted by an agency may fall outside the scope of judicial review and, importantly, there are still some regulations establishing agencies which are silent on the point of judicial review. Since the need to answer the question of agencies' legal accountability is central to their future it is of utmost importance that it is given a satisfactory answer in the forthcoming IGC. In line with this the European Convention has recommended that a new constitutional treaty should extend existing rules on judicial review so as to include also acts of decentralized agencies.

2.2 Conclusions

A need for clarification of the preconditions for judicial review

> The possibility to provide for judicial review of decentralized agencies' activities in secondary legislation is not sufficient. Therefore, a future constitutional treaty should include a provision clarifying that the Court of Justice has jurisdiction and, indeed, responsibility, to review the legality of binding acts adopted by decentralized agencies.

The Court of Justice has made it clear that delegation of tasks to decentralized agencies may only take place if judicial review of acts adopted by them is secured. But the central provision of the EC Treaty, Article 230, does not confer jurisdiction on the Court of Justice to review acts adopted by decentralized agencies. It is true that the Court has sometimes demonstrated a readiness to extend the scope of this article with reference to the "spirit" and "system" of the EC Treaty. But, importantly, it has never claimed any general jurisdiction to review acts of bodies other than 'institutions'. To some extent the lack of a general jurisdiction is compensated by the fact that most regulations establishing agencies provide for 'tailor-made' solutions with respect to judicial review. But these are rather inconsistent and insufficient. It would therefore be welcomed if the IGC followed the recommendation of the European Convention that a future constitutional treaty should include a provision clarifying that the Court of Justice has jurisdiction and, indeed, responsibility, to review the legality of binding acts adopted by decentralized agencies.

> There are many reasons why a new constitutional treaty should also contain a new provision clarifying the preconditions for establishment and function of decentralized agencies. Such a provision should clarify the scope of powers that may be delegated or transferred to decentralized

agencies. Perhaps most importantly, this would add to the transparency of the EU decision-making system (which must be the most important objective for any constitutional project). It is to regret, therefore, that this has not been recommended by the European Convention. If this omission will be remedied by the IGC it may desirable also to introduce a separate legal basis for the future establishment of decentralized agencies.

A separate legal basis

Most existing decentralized agencies have their legal basis in Article 308 of the EC Treaty (*cf.* the future "flexibility clause" in Article I-17 of the Draft Constitutional Treaty). This is intended to be used as a residual competence, in situations where action is necessary but the EC Treaty has not provided any more specific powers. The establishment of decentralized agencies seems to be a continuing trend and it is quite likely that agencies will play a central role in the future. For the sake of clarity and transparency, the development should be reflected and adequately described in a new constitutional treaty. It would also be desirable that the scope of the powers that may be delegated or transferred to decentralised agencies are clarified, this in particular so since they are bound to be involved in decision-making that affect the rights of individuals (and the constitutional case-law of the Court of Justice is unclear).

It would be an additional advantage if a new constitutional treaty introduced a separate and specific legal basis for the establishment of decentralized agencies. It is true that some of the most recent decentralized agencies have been based on the provision of the Treaty which constitutes the specific legal basis relevant for the policy field in question. But this approach may be considered inappropriate since the establishment and operation of decentralized agencies is an organisational or institutional phenomenon rather than a substantive one. Arguably, the approach could also lead to difficulties if need arise to establish decentralized agencies in policy areas where the EU

has been entrusted with more limited powers. It is inevitable that any attempt to introduce a separate legal basis for the future establishment of decentralized agencies will lead to a discussion what procedure should be applicable, and in particular, what right of participation should be granted to the European Parliament.

3 THE LEGAL NATURE OF DECENTRALIZED AGENCIES

In spite of the unfortunate lack of an authoritative explanation as to the meaning and place of decentralized agencies in the legal order established by the EC Treaty,[4] there is no shortage of information.[5] The conditions subject to which agencies operate are accessible and there is much practical experience to be evaluated. In the following assessment, a starting point will be taken in the legal instruments (regulations) by which the agencies currently operating within the field of application of the EC Treaty have been set up and those features which are common to all of them will be singled out so as to provide a basic definition.

Proceeding beyond the point of a basic definition, what must be emphasised is the problem of neatly presenting a full picture of the role of decentralized agencies. Maybe such a picture does not even exist? To quite some extent it may be suspected that decentralized agencies have emerged as an alternative to firm institutional commitments. If so, one of the most fundamental features of decentralized agencies will be their flexible or even

---

[4] Although most existing agencies operate within the fields of application of the EC Treaty, there are also some agencies which operate in other fields. These are, most notably, the European Police Office (OJ 1995 C 316/1); the European Union Institute for Security Studies (OJ 2001 L 200/1); the European Union Satellite Centre (OJ 2001 L 200/5); and the European body for the enhancement of judicial co-operation, Eurojust (OJ 2002 L 63/1). This report will only consider decentralized agencies established under the EC Treaty.

[5] A conceptualisation proposal was recently tabled by the Commission's Legal Service according to which the concept of Community agency relates to decentralised bodies having the following characteristics: creation by regulation, legal personality, autonomous management bodies, financial independence, staff covered by the staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities, defined missions and tasks. See Quero-Mussot, A., Establishing a framework for decision-making regulatory agencies (2001) Report *by the Working Group 3a on the White Paper on Governance* SG/8597/01, p. 6. This article can be found at www.europa.eu.int/comm/governance/areas/ group6/index_en.htm.

indeterminate nature. This notwithstanding, there is still a lot to be said. Therefore, in order to find common denominators and at the same time avoid more simplification than justified it has been considered appropriate to focus on decentralized agencies' primary objectives and mode of operation. This enables a functional distinction to be made between three principal categories of decentralized agencies.[6] Stressing that these categories overlap and that the introduction of new decentralized agencies may give reasons to reconsider them, the report will make use of the labels of administration agencies, authorization agencies and co-ordination agencies. The meaning of each label will be explained below.

3.1 A basic definition

Legal basis

The most fundamental feature of existing decentralized agencies is the fact that they have all been set up in regulations adopted by the Council. Recalling the special nature of regulations this means that each agency is a body of the European Union and in principle beyond control of the Member State in which it is located. As to their establishment, all agencies but four (of which three are the most recent ones),[7] have their legal basis in Article 308 of the EC Treaty and, thus, the so-called residual competence. This denotes not only that no specific com-

---

[6] Cf. the classification suggested by the Commission in its Communication on the operating framework for the European Regulatory Agencies, *infra* note 76. Here it is stated that, if only looking at the *responsibility and powers* of the existing agencies under the EC Treaty, there are three types: those whose function primarily is to provide assistance in the form of opinions and recommendations which provide the technical and scientific basis for the Commission's decisions, those primarily providing assistance in the form of inspection reports intended to enable the Commission to meet its responsibilities as "guardian" of Community law and those empowered to adopt individual decisions which are legally binding on third parties.

[7] It may be noted that the decisions to establish these agencies have been taken by the Council together with the European Parliament in accordance with the so-called co-decision procedure.

petence could be found in the EC Treaty but that it was possible for the Governments to agree, unanimously, that the establishment of these agencies was necessary in order to attain the overall objectives of the EC Treaty.[8]

Legal personality

All decentralized agencies have legal personality. According to the relevant regulations, this means that they shall benefit from the widest powers granted to legal persons in the laws of all Member States. The most practical aspect of this is that they may acquire or dispose of property and be parties to legal proceedings. The legal personality decentralized agencies thus possess in the sphere of national law must not be confused with the fact that they are ultimately creatures of the European Union. A circumstance which is reflected in provisions that agencies' staff shall be subject to the same rules as other EU-officials.

Organisation

In respect of the way in which existing decentralized agencies are organised, a number of common features may be distinguished. So has each agency been furnished with a director (sometimes referred to as an executive director or a president) and a supervisory board (referred to as a management, administrative or governing board or an administrative council). The director acts as an agency's legal representative and its face towards the world. His or her duties relate, primarily, to the preparation and implementation of decisions and programmes adopted by an agency's supervisory board. Normally, the director is appointed by the supervisory board to which he or she is also held accountable for the performance of his or her

---

[8] According to Article 308 of the EC Treaty: "If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures."

[9] Most typically, the director shall be appointed by the supervisory board on a proposal from the Commission for a renewable period of five years.

duties.[9] In the composition of the supervisory board reflections are found of the most dominant interests involved in an agency's field of activity. There is a strong representation by the Member States or, more precisely, the Governments and a more limited representation by the Commission. Many times additional representation has been sought of a wider group of interests. This, indeed, is an essential factor in the characterisation of different agencies and will be returned to below. It will be seen also that the organisation of most, but not all, agencies include additional components, such as advisory units and boards of appeal.

Funding and financial control

The financial responsibility for decentralized agencies lies with the EU and expenditures related to their activities are part of the general budget. But at the same time there is a clear ambition that fees which must be paid for the services some agencies provide will enable those agencies to become self-financed and economically independent. It may also be noted that nothing preclude financial support from external sources and that contributions from, for example, representatives of the social partners have sometimes been explicitly envisaged. Like other EU-bodies, when it comes to audit arrangements a distinction applies between internal and external budget control. The mode of internal control differs. In some cases a financial controller shall be appointed by the Commission and in other by the

---

In the case of the three 'old' agencies, the European agency for Co-operation, the European Centre for the Development of Vocational Training and the Foundation for Improvement of Living and Working Conditions, the director shall, however, be appointed by the Commission (from a list of candidates submitted by the supervisory board). In the case of the Community Plant Variety Office and the Office for Harmonization in the Internal Market, the director shall be appointed by the Council (from a list of candidates which in the case of the previous shall be proposed by the Commission and in the case of the latter by the agency's supervisory board). It may be noted in respect of the last two that it is the Council who shall exercise disciplinary authority over the agencies' directors as well as other officials.

agency itself. Importantly, all decentralized agencies are subject to external control by the European Court of Auditors.

3.2 A functional classification

Administration agencies

agency	location	legal basis	field of activity
European Agency for Co-operation/	Brussels 1982	Article 308 EC	overseas countries personnel
Translation Centre for Bodies of the European Union	Luxembourg 1997	Article 308 EC	internal administration

The European Agency for Co-operation[10] and the Translation Centre for Bodies of the European Union[11] have both been established to deal with what may be characterized as matters of internal administration. This is, in the first case, with the recruitment and training of personnel at Commission delegations in the ACP Countries and, in the second, with the backing of other agencies in the form of translation services.

Reflections of the limited group of interests in relation to which administration agencies operate can be found in the composition of their supervisory boards. The supervisory board of the Translation Centre consists of one representative from each of the Member States, two representatives from the Commission and one representative from each of the other decentralized agencies. The supervisory board of the agency for Co-operation is made up exclusively of members appointed by the Commission. Overall, the organisation of the administration agencies follows the general pattern. None of them has been provided with any additional components.

[10] See Council Regulation 3245/81/EEC of 26 October 1981 setting up a European Agency for Co-operation (OJ 1981 L 328/1).
[11] See Council Regulation 2965/94/EC of 28 November 1994 setting up a Translation Centre for bodies of the European Union (OJ 1994 L 314/1).

Authorization agencies

agency	location	legal basis	field of activity
European Agency for the Evaluation of Medicinal Products	London 1995	Article 308 EC	free movement of goods/ public health
Office for Harmonization in the Internal Market	Alicante 1995	Article 308 EC	free movement of goods/ intellectual property
European Community Plant Variety Office	Angers 1997	Article 308 EC	free movement of goods/ intellectual property
European Aviation Safety Agency	Brussels 2003	Article 80 EC	transport/ internal market

The Office for Harmonization in the Internal Market,[12] the European Community Plant Variety Office,[13] the European Agency for the Evaluation of Medicinal Products[14] and the European Aviation Safety Agency[15] have all been charged with the operation of a system intended to ensure uniform application of a clearly defined regime. That is, in respect of the first two, a system directed at the protection by registration of certain intellectual property rights (trade marks and eventually design on the one hand and plant varieties on the other) and in respect of the latter ones, a system for authorization of medicinal respectively aeronautical products. If successfully examined, applications filed with these agencies will give trade marks, plant varieties and medicinal or aeronautical products

[12] See Council Regulation 40/94/EC of 20 December 1993 on the Community Trade Mark (OJ 1994 L 11/1).

[13] See Council Regulation 2100/94/EC of 27 July 1994 on Community plant variety rights (OJ 1994 L 227/1).

[14] See Council Regulation 2309/93/EEC of 22 July 1993 laying down Community procedures for the authorization and supervision of medicinal products for human and veterinary use and establishing a European Agency for the Evaluation of Medicinal Products (OJ 1993 L 214/1).

[15] See Council Regulation 1592/02/EC of 15 July 2002 establishing a European Aviation Safety Agency (OJ L 2002 240/1).

the same legal status throughout the EU. The procedure for examination of an application is based on collaboration between the agency and the national authorities responsible for the respective field. While a final decision to grant a trade mark or plant variety right or a certificate for aeronautical products is taken by the agency itself, as to the authorization of a new medicinal product, the agency will only issue an opinion leaving the decision to the Commission.

The supervisory boards of the Office for Harmonization, the European Community Plant Variety Office and the European Aviation Safety Agency are exclusively composed of representatives of the Member States and the Commission. As to the European Agency for the Evaluation of Medicinal Products a further two representatives shall be appointed by the European Parliament. All authorization agencies have been provided with additional components: the Agency for the Evaluation of Medicinal Products with two scientific committees and the Office for Harmonization, the European Community Plant Variety Office and the European Aviation Safety Agency with quasi-judicial boards of appeal.

---

[16] See Council Regulation 337/75/EEC of 10 February 1975 establishing a European Centre for the Development of Vocational Training (OJ 1975 L 39/1).

[17] See Council Regulation 1365/75/EEC of 26 May 1975 on the creation of a European Foundation for the improvement of living and working conditions (OJ 1975 L 139/1).

[18] See Council Regulation 1210/90/EEC of 7 May 1990 on the establishment of the European Environment Agency and the European Environment Information and Observation Network (OJ 1990 L 120/1).

[19] See Council Regulation 1360/90/EEC of 7 May 1990 establishing a European Training Foundation (OJ 1990 L 131/1).

Co-ordination agencies

agency	location	legal basis	field of activity
European Centre for Development of Vocational Training	Tessaloniki 1975	Article 308 EC	social policy/ free movement of workers
Foundation for Improvement of Living and Working Conditions	Dublin 1975	Article 308 EC	social policy/ free movement of workers
European Environmental Agency	Copenhagen 1994	Article 175 EC	environment
European Training Foundation	Turin 1995	Article 308 EC	external relations/ social policy
European Monitoring Centre for Drugs and Drug Addiction	Lisbon 1996	Article 308 EC	public health/ social policy/ crime
European Agency for Safety and Health at Work	Bilbao 1997	Article 308 EC	social policy/ public health
European Monitoring Centre for Racism and Xenophobia	Vienna 1998	Article 308 EC Article 284 EC	free movement of persons/ fundamental rights
European Agency for Reconstruction	Thessaloniki 2000	Article 308 EC	external relations/ finances
European Food and Safety Authority	Brussels 2002	Article 37, 133 and 152 EC	agriculture/public health
European Maritime Safety Agency	Brussels 2003	Article 80 EC	transport/ internal market

This is by far the category to which most existing decentralized agencies can be conferred. It includes the European Centre for the Development of Vocational Training,[16] the Foundation for Improvement of Living and Working Conditions,[17] the European Environmental Agency,[18] the European Training Foundation,[19] the European Monitoring Centre for Drugs and Drug Addiction,[20] the European Agency for Safety and Health at Work[21], the European Monitoring Centre for Racism and Xenophobia[22], the European Agency for Reconstruction[23], the European Food and Safety Authority[24] and the European Maritime Safety Agency.[25]

Most characteristically these agencies have all been set up to provide the information which the Commission and the Member States need when they, within their respective spheres of competence, adopt binding measures or formulate courses of action. Significantly, co-ordination agencies' own suppliers of information have not been limited to units of the national administration but involve international organisations and non-governmental bodies. An infrastructure for these networks has been provided by computer-systems such as REITOX (the European Information Network on Drugs and Drug Addiction), RAXEN (the European Racism and Xenophobia Information Network) and EIONET (the European Environment Information and Observation Network).

---

[20] See Council Regulation 302/93/EEC of 8 February 1993 on the establishment of a European Monitoring Centre for Drugs and Drug Addiction (OJ 1993 L 36/1).

[21] See Council Regulation 2062/94/EC of 18 July 1994 establishing a European Agency for Safety and Health at Work (OJ 1994 L 216/1).

[22] See Council Regulation 1035/97/EC of 2 June 1997 establishing a European Monitoring Centre on Racism and Xenophobia (OJ 1997 L 151/1).

[23] See Council Regulation 2454/99/EC of 15 November 1999 establishing a European Agency for Reconstruction (OJ 1999 L 299/1).

[24] See Council Regulation 178/02/EC of 28 January 2002 establishing a European Food Safety Authority (OJ 2002 L 31/1).

[25] See Council Regulation 1406/02/EC of 27 June 2002 establishing a European Maritime Safety Agency (OJ 2002 L 208/1).

In addition to representatives of the Member States and the Commission, the supervisory board of a co-ordination agency normally includes a number of persons particularly qualified in the field. These persons may be representatives of dominant interests involved, for example representatives of employers' or employees' organizations, or what can be referred to as independent expertise.[26] With only a few exceptions, in addition to the supervisory board and the director, co-ordination agencies have been furnished with permanent units such as a committee of experts or an advisory forum.

[26] While members representing the social partners shall be appointed by the Member States, it is typically the European Parliament who shall appoint any member representing independent expertise. In the case of the European Monitoring Centre for Racism and Xenophobia, however, one such expert shall be appointed by the Council of Europe. The management board of the European Food Safety Authority is a bit special being composed of one Commission representative and 14 members appointed by the Council, in consultation with the Parliament, on the basis of a list drawn up by the Commission, four of whom must have experience of working within consumer organisations and other operators concerned.

4 DECENTRALIZED AGENCIES AND THE LAW

4.1 The idea of an institutional balance of powers

Since its early case law, the Court of Justice has insisted that the legal order established by the EC Treaty is one characterized by a balance of powers, as between the EC/EU and the Member States but also within the EC/EU, as between its institutions: the Council, the European Parliament, the Commission, the Court of Justice and the Court of Auditors.[27] According to the Court, a system has been set up "for distributing powers" among the institutions, assigning to each of them its own role in the institutional structure and the accomplishment of the tasks.[28] In accordance with the role given to it, each institution is thought to represent a particular aspect of the wider interest.[29] On the basis of that submission, the Court has developed the idea of an institutional balance of powers into a tool for constitutional supervision. As reasoned by the Court, "[o]bservance of the institutional balance means that each of the institution must exercise its powers with due regard for the powers of the

---

[27] See, for example, Case 9/56 *Meroni & Co. S.p.A. v High Authority of the ECSC, infra* note 31.

[28] See Case C-70/88 *European Parliament v Council* [1990] ECR I-2041, at p. 2072 (paragraph 21).

[29] See, for example, Case 138/79 *SA Roquette Frères v. Council* [1980] ECR 3333 at p. 3360 (paragraph 33) and Case C-70/88 *European Parliament v Council, supra* note 28 at p. 2073 (paragraph 26). So, for example, has the Court explained that the power reflected by the European Parliament's right to be consulted "represents an essential factor in the institutional balance intended by the Treaty. Although limited, it reflects at Community level the fundamental democratic principle that the peoples should take part in the exercise of powers through the intermediary of a representative assembly." For a further discussion, see, for example, Lenaerts, *supra* note 2, at p. 42; Lenaerts, K., Constitutionalism and the Many Facets of Federalism (1990) 38 *American Journal of Comparative Law* 205; and Craig, P., Democracy and Rule-making within the EC: an Empirical and Normative Assessment, in Craig/Harlow (Eds.) *Lawmaking in the European Union* (Kluwer Law International 1998).

other institutions. It also requires that it should be possible to penalise any breach of that rule which may occur."[30]

The concept of delegation of powers

Against the background of the Court of Justice's notion of balance of powers, the possibility of an institution to transfer responsibilities to any other body has been premised on the requirement that the balance must not be disturbed. This in turn has led many commentators to a discussion in terms of delegation of powers. In that respect no ruling from the Court has been given more attention than that given in Case 9/56 *Meroni & Co. S.p.A v High Authority of the ECSC*.[31] Here the Court showed itself prepared to accept a limited delegation of powers to a body which did not qualify as an institution if only very strict requirements were satisfied. In spite of the fact that it was given in the context of the ECSC Treaty,[32] the ruling in Case 9/56 has often times been thought to have validity also in the context of the EC Treaty.[33]

---

[30] See Case C-70/88 *European Parliament v Council, supra* note 28, at p. 2072 (paragraph 22).

[31] Case 9/56 *Meroni & Co. S.p.A. v High Authority of the ECSC* [1957-58] ECR 133.

[32] The Treaty of 18 April 1951 establishing a European Coal and Steel Community.

[33] The relevance of this ruling in the context of the EC Treaty has been extensively explored and, most often, confirmed in legal literature. See, for example, Everson and Lenaerts, *supra* note 2; Kapteyn, P.J.G. and VerLoren van Themaat, P., *Introduction to the Law of the European Communities* (Kluwer Law International 1998) at p. 245; and Hartley, T.C, *The Foundations of European Community Law* (Clarendon Press 1994) at pp. 122–125; Bradley, K., Comitology and the Law: Through a Glass Darkly (1992) 29 *Common Market Law Review* 693, at p. 697; Schwarze, J., *European Administrative Law,* (Sweet & Maxwell 1992) at pp. 1205–1206; and Türk, A., Case Law in the Area of Implementation of EC Law, in Andenaes, M. and Türk, A. (Eds.) *Delegated Legislation and the Role of Committees in the EC* (Kluwer Law International 2000), at p. 186. But, importantly, the general relevance of the ruling in Case 9/56 has also been questioned. See e.g. Vos, E., Reforming the European Commission: What Role to Play for EU agencies? (2000) 37 *Common Market Law Review* 5 at 1122; Dehousse, R., Misfits: EU law and the Transformation

The background to the ruling was that a compulsory arrangement had been created for undertakings using ferrous scrap. Implementation of the arrangement had been entrusted to two special bodies established under private law. Most significantly, one of these bodies, the Imported Ferrous Scrap Equalization Fund, had been given the power to fix the rates of contributions payable and to notify individual undertakings of the amount of the contributions to be paid. Should there be any failure to pay, however, an "enforceable decision" to that end was to be taken by the forerunner to the Commission, the High Authority. Eventually such a decision was taken against the Italian company Meroni & Co. S.p.A. But considering that its own role as limited to "the mere adoption of data furnished by an independent body" the High Authority had seen no reason to state the grounds on which the decision was based.[34]

In the subsequent legal challenge brought by Meroni & Co. S.p.A., the Court found that the fact that the decision had not been accompanied by an explanation was sufficient grounds upon which to annul it.[35] But the Court went on also to discuss the more general question whether a delegation of powers could be permitted without interfering with the balance of powers. Two findings are of particular relevance for present purposes.

The first was the meaning given to the notion of delegation. In this respect the Court indicated very clearly that if the arrangement had been such that the High Authority had "taken over" the deliberations of the Imported Ferrous Scrap Equalisation Fund, this would not constitute a delegation in the strict sense but merely "the granting of a power to draw up resolutions the

---

of European Governance (2002) *Jean Monnet Working Paper* 2; and Yataganas, X. A., Delegation of Regulatory Authority in the European Union (2001) *Jean Monnet Working Paper* 3 (the last two can be found at www.jeanmonnetprogram.org/papers).

[34] At p. 148 of the Judgment 9/56 *Meroni & Co. S.p.A. v High Authority of the ECSC, supra* note 31.

[35] At pp. 141–143 of the Judgment 9/56 *Meroni & Co. S.p.A. v High Authority of the ECSC, supra* note 31.

application of which belongs to the High Authority, the latter retaining full responsibility for the same."[36]

The second finding was reached after the Court had established that a delegation had effectively taken place. Through a rather wide interpretation of the provision of the ECSC Treaty which provided a legal basis for the contested arrangement, it was acknowledged that a delegation of certain tasks was possible to "bodies established under private law, having a distinct legal personality and possessing powers of their own".[37] But that was strictly limited, with respect both to the manner in which the delegation had to be made and the scope of the powers it could involve. This meant, first, that the delegation had to be made in a way which could ensure that all legal restrictions on the exercise of powers would continue to apply. The duty to state reasons and the rules relating to judicial review were specifically emphasised.[38] Then, as to the scope of the powers, the Court explained that it could only permit a delegation if it involved "clearly defined executive powers" the exercise of which would be open to review "in the light of objective criteria" laid down by the delegating institution.[39] According to the Court, to go further than that and accept a delegation which entailed the exercise of "a discretionary power" would undermine the fundamental guarantee for effectiveness and accountability stemming from the institutional balance of powers.[40]

An even more restrictive approach was taken by the Court of Justice in Case 98/80 *Romano v Institut National d'Assurance*

---

[36] At p. 147 of the Judgment 9/56 *Meroni & Co. S.p.A. v High Authority of the ECSC, supra* note 31.

[37] At p. 151 of the Judgment 9/56 *Meroni & Co. S.p.A. v High Authority of the ECSC, supra* note 31. Cf. Article 53 ECSC (1952).

[38] At p. 149 of the Judgment 9/56 *Meroni & Co. S.p.A. v High Authority of the ECSC, supra* note 31.

[39] At pp. 149-154 of the Judgment 9/56 *Meroni & Co. S.p.A. v High Authority of the ECSC, supra* note 31.

[40] At p. 152 of the Judgment 9/56 *Meroni & Co. S.p.A. v High Authority of the ECSC, supra* note 31.

Maladie-Invalidité.[41] This concerned an arrangement for social security of migrant workers and, in particular, the power of the so called Administrative Commission for the Social Securit of Migrant Workers to lay down certain criteria which national authorities would have to take into account.[42] In its rather straightforward ruling the Court read Article 211 of the EC Treaty (stating a possibility for the Council to confer implementing powers on the Commission) as exclusive, thus giving raise to a complete prohibition for the Council to empower any other body "to adopt acts having the force of law." Support for that conclusion was found in a strict interpretation of the rules of the EC Treaty relating to judicial review: Articles 230 and 234 (see *infra* 4.2). Without considering its ruling in Case 9/56 and the possibility envisaged therein that a delegation could be made in such a manner as to secure that the rules relating to judicial review would continue to apply the Court stated that its jurisdiction was limited to acts of 'institutions'.[43]

---

[41] See Case 98/80 *Romano v Institut National d'Assurance Maladie Invalidité* [1981] ECR 1241, in particular at p. 1256 (paragraph 20).

[42] Council Regulation 3/58/EEC of 25 September 1958 regarding the social security of migrant workers (OJ 1958 B 30/561).

[43] It may be noted that a reasoning similar to that in Case 98/80 had been adopted by the Court in its landmark ruling in Case 25/70 *Einfuhr- und Vorratsstelle für Getreide und Futtermittel v. Köster, Berodt & Co.* [1970] 2 ECR 1161. One of the issues at stake here was the role of a so called management committee, established by the Council to assist the Commission when implementing the common organization of the market in cereals. As explained by the Council and later confirmed by the Commission, "[t]he detailed rules of the management committee procedure do not have the effect of putting the powers conferred on the Commission in issue: they introduce, it is true, the deliberations of a committee but in the exercise of the powers conferred on it the Commission remains the master of its own decision: it is never obliged to follow the opinion of the Committee" (at p. 1166). Concluding therefore that the function of the committee was only such as to ensure permanent consultation in order to guide the Commission, the Court found no reason to interfere (paragraph 9 of the Judgment). According to Advocate General Dutheillet de Lamothe, "the Council would transgress the limits laid down for it in the Treaty only if it conferred on the Management Committee some power of decision" (at p. 1143).

The relevance of these, seemingly contradictory, rulings with respect to the establishment and operation of decentralized agencies is difficult to appreciate. The Court of Justice has only referred to its ruling in Case 98/80 in four subsequent cases which all involved the Administrative Commission for the Social Security of Migrant Workers.[44] Even more noteworthy is that the Court itself has never relied on the ruling in Case 9/56 to settle later disputes over delegation of powers.[45]. At the same time it has never explicitly deviated from its standpoint in that ruling, the only exception being Case 98/80.[46] But importantly,

---

[44] See Case C-202/97 *Fitzwilliam Executive Search Ltd v Bestuur van het Landelijk instituut sociale verzekeringen* [2000] ECR I-883; Case C-201/91 *Bernard Grisvard and Georges Kreitz v Association pour l'emploi dans l'industrie et le commerce de la Moselle* [1992] ECR I-5009; Case C-102/91 *Doris Knoch v Bundesanstalt für Arbeit* [1992] ECR I-4341; and Case 21/87 *Felix Borowitz v Bundesversicherungsanstalt für Angestellte* [1988] ECR 3715.

[45] When searching for rulings from the Court of Justice referring to Case 9/56 on CELEX (English), six results are found. Five of them mention the case for other reasons than the scope of delegation of powers: Case C-345/00 *FNAB et al. v Coucil of the European Union* [2001] ECR 3811; Joined Cases 81/85 and 119/85 *Usinor v Commission* [1986] ECR 1777; Joined Cases 154, 205, 206, 226 to 228, 263 and 264/78, 39, 31, 83 and 85/79 *SpA Ferriera Valsabbia et al. v Commission* [1980] ECR 907; Case 92/78 *SpA Simmenthal v Commission* [1979] ECR 777 and Case 108/63 *Merlini v High Authority of the European Coal and Steel Community* [1965] ECR 1. The sixth case, C-164/98 P *DIR International Film et al. v Commission* is referred to in footnote 46. It should be noted, however, that Advocate Generals have sometimes referred to the ruling in Case 9/56 as laying down the criteria for a lawful transfer of powers to agencies. See e.g. Advocate General Geelhoed in Case C-378/00 *Commission of the European Communities v European Parliament and Council of the European Union* [2002] ECR I-937 and Joined opinion of Advocate General Jacobs in Case C-67/96 *Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie* [1999] ECR 5751.

[46] Cf. Case C-164/98 *DIR International Film et al. v Commission* [2000] ECR I-447, paragraphs 6 and 7. In this case the Court of Justice summarised a previous reference by the Court of First Instance's to Case 9/56 saying that it entailed a prohibition against "a delegation of powers coupled with a freedom to make assessments implying a wide discretionary power" (emphasis added). The fact that the Court of Justice

irrespective of the difficulties to appreciate the full relevance of these rulings, one thing is clear: they both underline the importance of respect for the system for judicial review.

4.2 The legality of the activities of decentralized agencies

Considering the way in which the tasks of both administration and co-ordination agencies has been formulated it would appear that they have not been intended themselves to exercise any power of decision. In at least one case it has even been explicitly emphasised that the agency "may not take measures which in any way go beyond the sphere of information and the evaluation of that".[47] But at the same time it is clear that the legal autonomy all decentralized agencies are created to develop makes it impossible for them not to involve in decision-making. So, for instance, have both administration and co-ordination agencies been charged with the adoption of the rules needed for implementation of the regulations by which they were established.[48] This has led at least the European Environmental

---

did only repeat that reference, without criticising or correcting it, could perhaps be considered as an indication that it is now prepared to accept a delegation of powers to a body which is not an institution and also taking a less restrictive approach to the scope of the powers involved.

[47] See Article 1 of Council Regulation EEC/302/93, *supra* note 20.

[48] Interestingly, this rather strong element of decentralisation is missing in the case of the four authorization agencies. As provided in their founding regulations, implementing rules shall be adopted by the Commission subject to the regulatory committee procedure. See, in respect of the Office for Harmonization in the Internal Market, Commission Regulation 2868/95/EC of 13 December 1995 implementing Council Regulation 40/94/EC on the Community trade mark, *supra* note 12, [OJ 1995 L 303/1) and Commission Regulation 2869/95/EC of 13 December 1995 on the fees payable to the Office for Harmonization in the Internal Market [OJ 1995 L 303/33); in respect of the Community Plant Variety Office, Commission Regulation 1238/95/EC of 31 May 1995 on the fees payable to the Community Plant Variety Office [OJ 1995 L 121/31); and Commission Regulation 1239/95/EC of 31 May 1995 establishing implementing rules for the application of Commission Regulation 2100/94/EC, *supra* note 13, as regards proceedings before the Community Plant Variety

Agency to claim that it is not bound by legal rules applying to the Council and the Commission but capable and, indeed, required – "in conformity with the principle of legal autonomy" – to set its own rules (in this case concerning the procedure and conditions for public access to the agency's documents).[49]

The scope for judicial review

It has been seen above that the case law concerning the observance of the institutional balance of powers requires that it must be possible to hold each institution responsible for the way in which it makes use of the powers entrusted to it (see *supra* 4.1).[50] For that reason the Court of Justice has also emphasised that "the judicial scheme of the EC Treaty" is such as to permit the Court to review the legality of all measures adopted by the institutions which are intended to have legal effects.[51] But at the same time it is clear that the Court has been unwilling to claim any general jurisdiction to review acts of bodies other than the 'institutions' for the simple reason that this is not envisaged by the judicial scheme of the EC Treaty. The most important provision in that respect is Article 230. According to its first paragraph:

> The Court of Justice shall review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties.

Office (OJ 1995 L 121/37); and in respect of the European Agency for the Evaluation of Medicinal Products, Commission Regulation 1662/95/EC of 7 July 1995 laying down certain detailed arrangements for implementing the Community decision-making procedures in respect of marketing authorizations for products for human or veterinary use [OJ 1995 L 158/4).

[49] Decision of 21 March 1997 on public access to European Environment Agency documents (OJ 1997 C 282/5).

[50] See Case C-70/88 *European Parliament v Council, supra* note 28, at pp. 2072–2073 (paragraphs 22 and 23).

[51] See Case 294/83 *Parti écologiste 'Les Verts' v European Parliament* (1986) ECR 1365, at pp. 1365–1366 (paragraphs 23–24). See also Case 22/70 *Commission v Council* [1971] ECR 263.

It is clear that the Court of Justice has sometimes proved itself prepared to loosen the strict requirements of judicial review in Article 230. Perhaps most importantly in that respect, in Case 294/83 *Parti écologiste 'Les Verts' v European Parliament*[52] the Court explained that it had jurisdiction in an action for annulment brought under Article 230 against a measure adopted by the European Parliament at a time when the European Parliament was not yet listed among the institutions whose measures could be contested. According to the Court, to exclude measures of the European Parliament from those which could be contested would lead to a result contrary both to "the spirit" of the EC Treaty (as expressed in Article 220) and to its system.

The Court of Justice has later taken a similar position in relation to acts of the Court of Auditors in Joined Cases C-193/87 and C-194/87 *Henri Maurissen and European Public Service Union v Court of Auditors of the European Communities.*[53] Here an action against a decision adopted by the Court of Auditors was admitted on the basis of Article 230 in spite of the fact that it was not mentioned in Article 230 and, importantly, had not yet been granted the status of an institution. In his Opinion Advocate General Darmon described the Court's analysis in Case 294/83 as having been expressed so unreservedly that it could be applied without limitation to review of measures adopted by the Court of Auditors. The Advocate General found the need to review the legality of measures to be no less pressing in the case of a measure adopted by a "quasi-institution" or an auxiliary body vested with specific powers of an administrative nature".[54] Apparently, the Court shared his view.

---

[52] Case 294/83 *Parti écologiste 'Les Verts' v European Parliament, supra* note 51.

[53] Joined Cases C-193/87 and C-194/87 *Henri Maurissen and European Public Service Union v Court of Auditors of the European Communities* [1989] ECR 1045.

[54] Opinion of Advocate General Darmon delivered on 12 April 1989 in Joined Cases C-193/87 and C-194/87 *Henri Maurissen and European Public Service Union v Court of Auditors of the European Communities* [1989] ECR I- 1045 at p.50–55.

But the fact remains that the Court has been unwilling to claim any general jurisdiction to review acts of bodies which are not institutions. It would seem therefore that it is only possible to act against an agency's illegal exercise of powers in a situation where it can be seen as the result of an illegal delegation of powers – as a challenge brought against the responsible institution – or in a situation where the action of an illegally empowered agency has led to the adoption of a subsequent measure by someone whose actions can be reviewed.[55] This, indeed, is what had happened in both Case 5/56 *Meroni & Co. S.p.A v High Authority of the ECSC* (a decision by the High Authority) and Case 98/80 *Romano v Institut National d'Assurance Maladie-Invalidité* (a decision by a national authority). The imperfection is apparent. Not only is it difficult to challenge the unlawful empowerment of an agency producing decisions addressed directly to legal or natural persons but, seemingly, impossible to act against an agency doing what it is not supposed to do, thus transgressing the limits of the authority given to it, if this does not give rise to a subsequent measure by someone whose actions can be reviewed.[56] This

---

[55] See Article 230 of the EC Treaty. Not only is it limited to a period of two months after the regulation's publication, but the Court's interpretation of 'directly and individually concerned' has been so careful as to exclude in the present circumstances any challenge brought by a legal or natural person.

[56] It may be noted, in this context, that the task of the European Ombudsman in Article 195 of the EC Treaty has been formulated so as to enable him to examine "instances of maladministration in the activities of the Community institutions or bodies". As demonstrated by the present Ombudsman, the opportunities this offers to inquiry into the activities of an agency must not be underestimated (see in particular European Ombudsman Decision of 23 November 1998 on complaint 581/98/OV against the Translation Centre for Bodies of the European Union; and European Ombudsman Decision and Recommendations of 10 March 1997 on complaint 46/27/07/95/FVK/PD against the European Environment Agency.) Nevertheless, with respect *inter alia* to the discretionary nature of the authority of the European Ombudsman there are reasons to emphasise that this type of control must never be seen as the substitute for an adequate system for judicial review.

may very well be the case with the European Environmental Agency's 'declaration of independence'.[57]

The difficulties that might arise due to the lack of a general jurisdiction for the Court to review acts of decentralized agencies are well illustrated by Case T-148/97 *David T. Keeling v Office for Harmonisation in the Internal Market.*[58] Here David Keeling, a member of one of the boards of appeal of the Office for Harmonisation in the Internal Market, brought an action for annulment of a decision by the agency's president (on the organisation of the boards of appeal) to the Court of First Instance.[59] According to Keeling, the decision could be challenged under Article 230 of the EC Treaty. Support for that was fund in the rulings of the Court of Justice in Case 294/83 *Parti écologiste 'Les Verts' v European Parliament* and Joined Cases C-193/87 and C-194/87 *Henri Maurissen and European Public Service Union v Court of Auditors of the European Communities.*

Somewhat surprisingly, the application was dismissed by the Court of First Instance which stated, in a very clear way, that acts emanating from the Office for Harmonisation in the Internal Market could not be challenged on the basis of Article 230. Emphasised, in particular, was the fact that decentralized agencies were neither 'institutions' nor mentioned in Article 230 of the EC Treaty. Interestingly, the Court of First Instance also pointed out that the contested decision was not immune from alternative forms of judicial review, in accordance with a special procedure laid down in the founding regulation or, indeed, the procedure for actions brought by EU-employees (see *infra*

[57] See *supra* note 49.

[58] Case T-148/97 *David T. Keeling v Office for Harmonisation in the Internal Market (Trade Marks and Designs* [1998] ECR II-2217.

[59] Decision No ADM-97-3 of 21 February of the President of the Office for Harmonisation in Internal Market concerning the organisation of the Boards of Appeal.

4.3).[60] Keeling appealed to the Court of Justice, still claiming that the scope of Article 230 should include acts such as the contested decision (especially in view of its serious implications for the independence of the agency's board of appeal).[61] He particularly questioned the view of the Court of First Instance that alternative forms of judicial review were possible, since there were several situations in which these could not be called into operation. Unfortunately, the Court of Justice was not given an opportunity to address the main questions as the case was removed from the register.[62]

---

[60] Case T-148/97 *David T. Keeling v Office for Harmonisation in the Internal Market, supra* note 58 para. 33 at p. 2229. According to Regulation 40/94/EL, *supra* note 12, three different types of possibilities for review of the agency's decisions had been provided for: that offered via the boards of appeal, that via the Commission's control of legality and that stemming from the circumstance that the agency's staff was also subject to the Staff Regulations and Conditions of Employment.

[61] Case C-305/98 P *David T. Keeling v the Office for Harmonisation in the Internal Market,* (OJ 1998 C 312/4).

[62] Removal from the register of Case C-305/98 P (OJ 1999 C 48/22). As a precautionary measure Keeling also tried to annul the decision of the president by bringing a parallel proceeding to Case T-148/97 before the Court of First Instance based on Article 236 of the EC Treaty in Case T-297/97 *David T. Keeling v Office for Harmonisation in the Internal Market* (OJ 1998 C 26/9). Being employed by the Office for Harmonisation, he could use this possibility of judicial review. The pleas in law and main arguments were the same as those raised in the first case. Again, it is not possible to know how the Court of First Instance reasoned in this case since it was discontinued as the result of a settlement. See also the Cases T-159/97 *Luis Manuel Chaves Fonseca Ferrão v Office for Harmonisation in the Internal Market* [1997] ECR II-1049 and C-248/97 P (R) *Luis Manuel Chaves Fonseca Ferrão v Office for Harmonisation in the Internal Market* [1997] ECR I-4729. Here another member of the board of the Office for Harmonisation brought action contesting the same decision for the same reasons as Keeling. However, in this case the contested decision was held to cause serious and irreparable damage in the event of delay and an application for interim measure was therefore sought (Article 242 and 243 of the EC Treaty). Both the Court of First Instance and the Court of Justice ordered the case to be unfounded due to the fact that there was no urgency for the measure sought.

The significance of provisions on legality

By permitting a delegation of powers only subject to the requirement that a delegation could be made in such a way as to guarantee that the system for judicial control would continue to operate, a possibility was envisaged in the ruling in Case 5/56 *Meroni & Co. S.p.A v High Authority of the ECSC* to extend the scope for judicial review. In line with this, it may be wondered therefore if the Court's apparent lack of jurisdiction over decentralized agencies could not be corrected in secondary legislation? The question is more than hypothetical since most – but not all – of the regulations by which existing decentralized agencies have been established include provisions concerning the control of legality.[63] Three types of solutions have been envisaged.

The first type can be found in regulations establishing the Foundation for Improvement of Living and Working Conditions, the European Agency for Safety and Health at Work, the European Centre for the Development of Vocational Training and the European Agency for Co-operation. In close to identical terms these regulations provide that Member States, members of the supervisory board and third parties directly and personally involved may refer any act of the agency to the Commission for it to examine the legality of that act. Presumably, the formal decision which the Commission will have to take (or to refuse to take) can then be reviewed by the Court.

A second, more straight-forward solution is the one chosen in the case of the European Monitoring Centre for Drugs and Drug Addiction and the European Monitoring Centre for Racism and Xenophobia. Here, a specific provision has been inserted simply explaining that the Court of Justice shall have jurisdic-

[63] The regulations establishing the European Agency for the Evaluation of Medicinal Products, *supra* note 14, the European Environment Agency, *supra* note 18, the European Food Safety Authority, *supra* note 24 and the European Maritime Safety Agency, *supra* note 25, are all silent on verification of the legality of acts of the agency. All regulations establishing agencies do, however, provide for appeals in respect of contractual and non-contractual liability.

tion in actions against the agency under the conditions provided for in Article 230 of the EC Treaty.

The third and most sophisticated solution is the one provided for in the regulations establishing the Office for Harmonization in the Internal Market, the European Community Plant Variety Office and the European Aviation Safety Agency. A procedure has been developed whereby the decisions these three agencies have been authorised to take can be appealed to a number of quasi-judicial boards of appeal and, on grounds identical to those in Article 230 of the EC Treaty, ultimately brought before the Court of Justice. Supplementary to that procedure, a provision has been inserted which requires the Commission ex officio but also on the basis of complaints to examine the legality of some, but not all of the acts which cannot be appealed against.[64] Additionally, in the case of the Office for Harmonization in the Internal Market, the Court of Justice not only has jurisdiction to annul the decision but also to alter it and in the case of the European Aviation Safety Agency, an additional provision makes it possible to appeal against a failure to act.

4.3 Judicial review of decentralized agencies in practice

Despite the fact that Article 230 of the EC Treaty does not include acts adopted by agencies, the Court of Justice has showed itself prepared, in practice, to accept the idea that the scope for judicial review is extended in normal legislation (see *supra* 4.2). When examining the relevant rulings of the Court of Justice and, in particular, the Court of First Instance, it becomes clear that most of them concern actions brought against decisions of the

[64] In the case of the Community Plant Variety Office a limited possibility has also been provided for appeal directly to the Court of Justice. For a more detailed explanation of this third type of solution to the issue of legality control see Millett, T. The Community System of Plant Variety Rights (1999) 24 *European Law Review* 231.

Office for Harmonisation in the Internal Market.[65] In addition to this, the Court of Justice and the Court of First Instance can both hear and determine disputes between "the Community" and its servants under the conditions laid down in Article 236 of the EC Treaty and the Staff Regulations.[66] In contrast to Article 230, Article 236 has been given a wide interpretation by the Court of Justice, stating that it is not restricted exclusively to acts of 'institutions' but include also other bodies. There are several cases where employees of agencies have brought a challenge with reference to how their employer has applied the Staff Regulation.[67]

---

[65] See Council Regulation 40/94/EL, *supra* note 12 and, for example, Case C- 383/99 P *Procter & Gamble Company v Office for Harmonisation in the Internal Market* [2001] ECR I-6251; and Case C-104/00 P *DKV Deutsche Krankenversicherung AG v Office for Harmonisation in the Internal Market* [2002] ECR I-756 from the Court of Justice and, Case T-79/99 *Euro-Lex European Law Expertise GmbH v Office for Harmonisation in the Internal Market* [1999] ECR II-3555; and Case T-120/00 *The Procter & Gamble Company v Office for Harmonisation in the Internal Market* [2001] ECR II-2769 from the Court of First Instance.

[66] See Council Regulation 259/68/EEC, Euratom, ECSC of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ 1968 L 56/1).

[67] See, for example, Case T-180/98 *Elizabeth Cotrim v European Centre for the Development of Vocational Training (Cedefop)* [1999] ECR II-1077; Case T-87/99 *Michel Hendrickx v European Centre for the Development of Vocational Training (Cedefop)* [2000] ECR II-679; Case T-223/99 *Luc Dejaiffe v Office for Harmonisation in the Internal Market* [2000] ECR II-1267; and Case T-79/98 *Manuel Tomás Carrasco Benítez v European Agency for the Evaluation of Medicinal Products* (EMEA) [1999] ECR II-127.

[68] Draft Treaty establishing a Constitution for Europe on 18 July 2003 (CONV 850/03).

5 DECENTRALISED AGENCIES AND THE FUTURE CONSTITUTION

During the Intergovernmental Conference held in Nice, the Heads of State and Government could not agree on the institutional reform needed in order to ensure efficiency after enlargement. Instead a Declaration was adopted which called for a deeper and wider debate on the future development of the European Union. The initiative led to the so-called Laeken Declaration which stated that a Convention should be entrusted with the task of preparing proposals for reform. The European Convention completed its work on 10 July 2003 by presenting its Draft Constitutional Treaty.[68] The Draft Treaty will provide the basis for discussions between the Governments in the Intergovernmental Conference starting on 4 October 2003.

5.1 The place of decentralized agencies in a constitutional treaty

A number of questions relating to the role of decentralized agencies were discussed in the European Convention.[69] Perhaps most notably, in its final report, the Working Group on Complementary Competencies recommended the introduction of a new legal basis for the establishment of future agencies in order to avoid repeated recourse to the "flexibility clause" in Article 308 of the EC Treaty.[70] The same was suggested in contributions from some of the Convention members.[71] But, in the end, no such provision was included in the Draft Constitutional Treaty.[72]

---

[69] The discussions on this point mainly took place in Working Group V on Complementary Competences, Working Group IX on Simplification and the Discussion Circle on the Court of Justice. The Draft Constitutional Treaty also provides for the establishment of two new agencies within the field of Common Security and Defence Policy and Freedom, Security and Justice. The first is a European Armaments, Research and Military Capabilities agency. The second is a legal basis making it possible for the Council to unanimously establish a European Public Prosecutor's Office from Eurojust.

[70] Final Report of Working Group V on Complementary Competencies on 4 November 2002 (CONV 375/1/02).

The European Convention also discussed a provision setting out, explicitly, a possibility to entrust decentralized agencies with the task of implementing legislation. It is noteworthy that this issue was very much promoted by the Commission. Already in its White Paper on Governance the Commission argued that "regulatory agencies" should be created in order to increase the effectiveness of "the executive" and improve the way rules and policy are applied.[73] Quite clearly, such agencies have an important place in the broader picture suggested by the Commission (where the Council and the European Parliament focuses on political direction, leaving implementation to "the

---

[71] See Communication from the Commission of 11 December 2002 on the institutional architecture- For the European Union: peace, freedom. solidarity (COM(2002) 448/02) p. 13; Articles 71 and 79 in the Contribution to a Preliminary Draft Constitution of the European Union, a Working Document called the *Feasibility Study ("Penelope")* on 5 December 2002. See also Article 97 in the Contribution by Elmar Brok (EPP Convention group) The Constitution of the European Union on 6 December 2002 (CONV 325/2/02).

[72] If there is no specific legal basis for the establishment of agencies in a future constitutional treaty, two options remain. First, future agencies can be established based on the "flexibility clause". Today it means that the decision is taken unanimously by the Council members with no possibility for the European Parliament to co-legislate. It should however be noted that the Convention has made some amendments to that article (Article I-17 of the Draft Constitutional Treaty). It is still to be adopted unanimously by the Council but only after obtaining the consent of the European Parliament. The Commission must also draw the Member State's national Parliaments' attention to proposals based on this Article. The second option is to establish agencies based on the provision of the EC Treaty which constitutes the specific legal basis relevant for the policy field in question. This, indeed, has been the case for the three most recent decentralized agencies and also seems to be the trend regarding the new proposals for agencies (see European Food and Safety Authority based on Articles 37, 95, 133 and 152.4; European Maritime Safety Agency based on Article 80.2; European Aviation Safety Agency based on Article 80.2; Proposal for a Regulation Establishing a European Centre for Disease Prevention and Control based on Article 152.4; Proposal for a Regulation establishing the European Network and Information Security Agency based on Articles 95 and 156; and Proposal for a Regulation establishing a European Railway Agency based on Article 71.1).

executive").[74] In line with this, in its contribution to the European Convention, the Commission proposed that a provision setting out the criteria for establishment, running and monitoring of regulatory agencies should be inserted.[75]

The Commission has also published a communication on the operational framework for regulatory agencies suggesting that they could be empowered under certain conditions to enact legal instruments binding on third parties.[76] Obviously, the Commission is well aware of the fact that the principles governing the current system impose constraints on the scope of such powers. In the Commission's view, it is important that regulatory agencies have a certain degree of organisational and functional autonomy and that they are accountable for the action they take but the Commission itself must continue to have the ultimate responsibility to ensure unity and integrity of the

---

[73] The idea of introducing regulatory agencies has also been debated within the Commission. For a long time, the Legal Service of the Commission Services defended the standpoint of the rulings made in Case 9/56 *Meroni & Co. S.p.A. v High Authority of the ECSC,* holding that such delegation would upset the balance of power among EC institutions, reduce the Commission's ability to fulfil its duties under the treaties, and ultimately undermine the constitutional foundations of the Community. The debate stimulated by the preparation of the Commission White Paper on Governance also revealed deep differences of opinion. These different opinions do seem to have come to a common position as the White Paper on Governance was launched. See Majone G., Ideas, Interests and Institutional Change: The European Commission Debates the Delegation Problem *Cahiers Européens de Sciences Po Nr. 4,* 2001, p. 1 and Yataganas (2001), *supra* note 33, p. 56 and 57, at www.jeanmonnetprogram.org/papers.

[74] See the White Paper of 25 July 2001 on Governance (COM(2001) 428 final) p. 24, 31 and 32.

[75] Communication from the Commission, *supra* note 71, p. 13.

[76] Communication from the Commission of 11 December 2002 on the operating framework for the European Regulatory Agencies (COM(2002) 718 final). A regulation laying down the statue for executive agencies already exists: Council Regulation 58/2003/EC of 19 December 2002 laying down the statue for executive agencies to be entrusted with certain tasks in the management of Community programmes (OJ 2002 L 11/1).

executive function.[77] It may be noted, in this context, that the European Parliament has clearly stated the view that its rights of co-decision and political supervision would become more difficult if decision-making powers were increasingly delegated to decentralized agencies.[78]

The Convention Working Group on Simplification proposed that as a general rule implementing acts should fall within the competence of the Commission but that, in some cases, regulatory agencies could be entrusted with the adoption of implementing acts.[79] But the recommendations of the Working Group were not followed on this point and, therefore, the article

---

[77] In order to achieve this balance it is suggested that the Commission indirectly has a strong role in supervising the activities of regulatory agencies. Thus, the administrative board should be equally represented by the Commission and the Council. Interested parties should be represented but without voting rights. The Commission also suggests that it should appoint, and if necessary dismiss, the director based on a list of candidates put forward by the administrative board. Finally, provision should be made in decision-making agencies' internal organisation for boards of appeal to deal with any complaints by third parties arising from decisions they adopt prior to any referral to the Court of First Instance. When it comes to the political supervision, the Commission suggests that the European Parliament and the Council should have certain powers. This is also the reason for not including representatives appointed by the European Parliament in the administrative board.

[78] European Parliament Resolution of 29 November 2001 on the Commission White Paper on European governance (C5-0454/2001-2001/2181(COS)) p. 16-18. In its proposal on a hierarchy of legal norms presented to the Convention, the Parliament suggests that the legislative authority could confer implementing responsibility on a specialist agency or self-regulating body on the condition that this delegation could be withdrawn by the Council, the Parliament or the Commission, see European Parliament resolution on the typology of acts and the hierarchy of legislation in the European Union on 29 January 2003 (CONV 517/03).

[79] See the Final Report of Working Group IX on Simplification on 29 November 2002 (CONV 424/1/02) and the Summary Report on the plenary session 5 and 6 December of 13 December 2002 (CONV 449/02). For a more detailed description of the Working Group on Simplification's proposal on a hierarchy of legal norms, see Bergström, C.F., and Rotkirch, M., Simply simplification? The Proposal for a Hierarchy of Legal Acts *Sieps report 2003:8.* It can be found at www.sieps.se.

on implementing acts in the Draft Constitutional Treaty does not say anything about the role of agencies.[80]

5.2 The problem of judicial review

The European Convention also addressed the question of judicial review for acts adopted by decentralized agencies. The somewhat disparate practice for verification of legality of acts of agencies was brought up in the Discussion Circle on the Court of Justice. In order to unify the system, a majority of the members recommended that Article 230 of the EC Treaty should be amended so as to include legal acts adopted by bodies other than the institutions.[81] The suggestion was followed by the Convention. Article III-270 of the Draft Constitutional Treaty therefore states that the Court of Justice shall review the legality of acts of "bodies or agencies" intended to produce legal effects vis-à-vis third parties. Additionally, the article states that acts setting up bodies and agencies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons. Although this already is the case of many of the existing regulations creating agencies, it is a useful clarification, in the interest of legal certainty, that the legislator may establish specific arrangements for bringing proceedings against agencies.[82]

---

[80] Article 36 of the Draft Constitutional Treaty, *supra* note 68.

[81] Final Report of the Convention discussion circle on the Court of Justice on 25 March 2003 (CONV 636/03). It was pointed out that the circle's approach on this point related only to those bodies and agencies covered by the EC Treaty, since those operating in the framework of the CFSP and police and judicial cooperation in criminal matters had to be examined in the light of the provisions relating to those policies. One member of the circle could not associate himself with the circle's general recommendation, claiming that it had major implications and should be examined subsequently, taking account of the special characteristics of each agency.

[82] See Paper submitted by the Secretariat of the European Convention to the Members of Discussion Circle 1 on 11 March 2003, Right of appeal against agencies created by secondary legislation (CIRCLE I-WD 9) p. 3. Naturally, draft Articles III-272 and III-273 providing for action against institutions failing to act or failing to comply with the judgement of the Court also includes acts of agencies and bodies.

LIST OF MATERIALS

Literature

Bergström, C.F. and Rotkirch, M., Simply Simplification? The Proposal for a Hierarchy of Legal Acts, *Sieps 2003:8*, at www.sieps.se

Bradley, K., Comitology and the Law: Through a Glass Darkly (1992) 29 *Common Market Law Review* 693

Chiti, E., The Emergence of a Community Administration: the Case of European Agencies (2000) 37 *Common Market Law Review* 309

Craig, P., Democracy and Rule-making within the EC: an Empirical and Normative Assessment, in Craig/Harlow (Eds.) *Lawmaking in the European Union* (Kluwer Law International 1998)

Dehousse, R., Regulation by Networks in the European Community: the Role of European Agencies (1997) 4 *Journal of European Public Policy* 246

Dehousse, R., Misfits: EU law and the Transformation of European Governance (2002) *Jean Monnet Working Paper* 2, at www.jeanmonnetprogram.org/papers

Everson, M., Independent Agencies: Hierarchy Beaters? (1995) 1 *European Law Journal* 180

Hartley, T.C., *The Foundations of European Community Law* (Clarendon Press 1994)

Kapteyn, P.J.G. and VerLoren van Themaat, P., *Introduction to the Law of the European Communities* (Kluwer Law International 1998)

Lenaerts, K., Regulating the Regulatory Process: Delegation of Powers in the European Community (1993) 18 *European Law Review* 23

Lenaerts, K., Constitutionalism and the Many Facets of Federalism (1990) 38 *American Journal of Comparative Law* 205

Majone G., Ideas, Interests and Institutional Change: The European Commission Debates the Delegation Problem (2001) *Cahiers Européens de Sciences Po* 4

Millett, T., The Community System of Plant Variety Rights (1999) 24 *European Law Review* 231

Quero-Mussot, A., Establishing a framework for decision-making regulatory agencies (2001) Report *by the Working Group 3a on the White Paper on Governance* SG/8597/01

Schwarze, J., *European Administrative Law* (Sweet & Maxwell 1992)

Türk, A., Case Law in the Area of Implementation of EC Law, in Andenaes, M. and Türk, A. (Eds.), *Delegated Legislation and the Role of Committees in the EC* (Kluwer Law International 2000)

Vos, E., Reforming the European Commission: What Role to Play for EU Agencies? (2000) 37 *Common Market Law Review* 5

Yataganas, X. A., Delegation of Regulatory Authority in the European Union (2001) *Jean Monnet Working Paper* 3, at www.jeanmonnetprogram.org/papers

Legal Acts

Council Regulation 3/58/EEC of 25 September 1958 regarding the social security of migrant workers (OJ 1958 B 30/561)

Council Regulation 259/68/EEC, Euratom, ECSC of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ 1968 L 56/1)

Council Regulation 337/75/EEC of 10 February 1975 establishing a European Centre for the Development of Vocational Training (OJ 1975 L 39/1)

Council Regulation 1365/75/EEC of 26 May 1975 on the creation of a European Foundation for the improvement of living and working conditions (OJ 1975 L 139/1)

Council Regulation 3245/81/EEC of 26 October 1981 setting up a European Agency for Co-operation (OJ 1981 L 328/1)

Council Regulation 1210/90/EEC of 7 May 1990 on the establishment of the European Environment Agency and the European Environment Information and Observation Network (OJ 1990 L 120/1)

Council Regulation 1360/90/EEC of 7 May 1990 establishing a European Training Foundation (OJ 1990 L 131/1)

Council Regulation 302/93/EEC of 8 February 1993 on the establishment of a European Monitoring Centre for Drugs and Drug Addiction (OJ 1993 L 36/1)

Council Regulation 2309/93/EEC of 22 July 1993 laying down Community procedures for the authorization and supervision of medicinal products for human and veterinary use and establishing a European Agency for the Evaluation of Medicinal Products (OJ 1993 L 214/1)

Council Regulation 40/94/EC of 20 December 1993 on the Community Trade Mark (OJ 1994 L 11/1)

Council Regulation 2062/94/EC of 18 July 1994 establishing a European Agency for Safety and Health at Work (OJ 1994 L 216/1)

Council Regulation 2100/94/EC of 27 July 1994 on Community plant variety rights (OJ 1994 L 227/1)

Council Regulation 2965/94/EC of 28 November 1994 setting up a Translation Centre for bodies of the European Union (OJ 1994 L 314/1)

Commission Regulation 1238/95/EC of 31 May 1995 on the fees payable to the Community Plant Variety Office [OJ 1995 L 121/31)

Commission Regulation 1239/95/EC of 31 May 1995 establishing implementing rules for the application of Commission Regulation 2100/94/EC as regards proceedings before the Community Plant Variety Office (OJ 1995 L 121/37)

Commission Regulation 1662/95/EC of 7 July 1995 laying down certain detailed arrangements for implementing the Community decision-making procedures in respect of marketing authorizations for products for human or veterinary use [OJ 1995 L 158/4)

Council Act of 26 July 1995 drawing up the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention) (OJ 1995 C 316/1)

Commission Regulation 2868/95/EC of 13 December 1995 implementing Council Regulation 40/94/EC on the Community trade mark [OJ 1995 L 303/1)

Commission Regulation 2869/95/EC of 13 December 1995 on the fees payable to the Office for Harmonization in the Internal Market [OJ 1995 L 303/33)

Decision No ADM-97-3 of 21 February 1997 of the President of the Office for Harmonisation in Internal Market concerning the organisation of the Boards of Appeal

European Ombudsman Decision and Recommendations of 10 March 1997 on the on complaint 46/27/07/95/FVK/PD against the European Environment Agency

Decision of 21 March 1997 on public access to European Environment Agency documents (OJ 1997 C 282/5)

Council Regulation 1035/97/EC of 2 June 1997 establishing a European Monitoring Centre on Racism and Xenophobia (OJ 1997 L 151/1)

European Ombudsman Decision of 23 November 1998 on complaint 581/98/OV against the Translation Centre for Bodies of the European Union

Council Regulation 2454/99/EC of 15 November 1999 establishing a European Agency for Reconstruction (OJ 1999 L 299/1)

Council Joint Action of 20 July 2001 on the establishment of a European Union Institute for Security Studies (OJ 2001 L 200/1)

Council Joint Action of 20 July 2001 on the establishment of a European Union Satellite Centre (OJ 2001 L 200/5)

European Parliament Resolution of 29 November 2001 on the Commission White Paper on European governance (C5-0454/2001-2001/2181(COS))

Council Regulation 178/02/EC of 28 January 2002 establishing a European Food Safety Authority (OJ 2002 L 31/1)

Council Decision of 28 February 2002 setting up a European body for the enhancement of judicial co-operation, Eurojust, (OJ 2002 L 63/1)

Council Regulation 1406/02/EC of 27 June 2002 establishing a European Maritime Safety Agency (OJ 2002 L 208/1)

Council Regulation 1592/02/EC of 15 July 2002 establishing a European Aviation Safety Agency (OJ L 2002 240/1)

Council Regulation 58/2003/EC of 19 December 2002 laying down the statue for executive agencies to be entrusted with certain tasks in the management of Community programmes (OJ 2002 L 11/1)

Other Official Documents

Commission Proposal of 23 January 2001 for a Regulation establishing a European Railway Agency (COM(2002) 23)

Commission White Paper of 25 July 2001 on European Governance (COM(2001) 428 final)

Final Report of Convention Working Group V on Complementary Competencies of 4 November 2002 (CONV 375/1/02)

Final Report of Convention Working Group IX on Simplification of 29 November 2002 (CONV 424/1/02)

Commission Feasibility Study ("Penelope"), contribution to a preliminary draft Constitution of the European Union of 5 December 2002

The Constitution of the European Union, contribution by Elmar Brok (EPP Convention Group) of 6 December 2002 (CONV 325/2/02)

Commission Communication of 11 December 2002 on the operating framework for the European Regulatory Agencies (COM(2002) 718 final)

Commission Communication of 11 December 2002 on the institutional architecture- For the European Union: peace, freedom, solidarity (COM(2002) 728 final/2)

Summary Report on the Convention plenary session 5 and 6 December of 13 December 2002 (CONV 449/02)

European Parliament Resolution on the typology of acts and the hierarchy of legislation in the European Union on 29 January 2003 (CONV 517/03)

Commission Proposal of 11 February 2003 for a Regulation establishing the European Network and Information Security Agency (COM(2003) 63 final)

Right of appeal against agencies created by secondary legislation, paper submitted by the Secretariat of the European Convention to the Members of Discussion Circle 1 on 11 March 2003 (CIRCLE I-WD 9)

Final Report of the Convention's discussion circle on the Court of Justice on 25 March 2003 (CONV 636/03)

Commission Draft Chemicals Legislation (the REACH System) based on the White Paper of 13 February 2002 on the Strategy for a future Chemicals Policy COM(2001)88, at www.europa.eu.int/comm/environment/chemicals/whitepaper.htm

Draft Treaty establishing a Constitution for Europe on 18 July 2003 (CONV 850/03)

Commission Proposal of 8 August 2003 for a Regulation Establishing a European Centre for Disease Prevention and Control (COM(2003) 441 final)

Judicial Rulings

Court of Justice

Case 9/56 *Meroni & Co. S.p.A. v High Authority of the ECSC* [1957-58] ECR 133

Case 108/63 *Merlini v High Authority of* the European Coal and Steel Community [1965] ECR English special edition 1965, p.1

Case 22/70 *Commission v Council* [1971] ECR 263

Case 25/70 *Einfuhr- und Vorratsstelle für Getreide und Futtermittel v. Köster, Berodt & Co.* [1970] 2 ECR 1161

Case 110/75 *John Mills v. European Investment Bank* [1976] ECR 995

Case 92/78 *SpA Simmenthal v Commission* [1979] ECR 777

Case 138/79 SA *Roquette Frères v. Council* [1980] ECR 3333

Joined Cases 154, 205, 206, 226 to 228, 263 and 264/78, 39, 31, 83 and 85/79 SpA *Ferriera Valsabbia et al. v Commission* [1980] ECR 907

Case 98/80 *Romano v Institut National d'Assurance Maladie-Invalidité* [1981] ECR 1241

Case 294/83 *Parti écologiste 'Les Verts' v European Parliament* (1986) ECR 1365

Joined Cases 81/85 and 119/85 *Usinor v Commission* [1986] ECR 1777

Case 21/87 *Felix Borowitz v Bundesversicherungsanstalt für Angestellte* [1988] ECR 3715

Joined Cases C-193/87 and C-194/87 *Henri Maurissen and European Public Service Union v Court of Auditors of the European Communities* [1989] ECR 1045

Case C-70/88 *European Parliament v Council* [1990] ECR I-2041

Case C-102/91 *Doris Knoch v Bundesanstalt für Arbeit* [1992] ECR I-4341

Case C-201/91 *Bernard Grisvard and Georges Kreitz v Association pour l'emploi dans l'industrie et le commerce de la Moselle* [1992] ECR I-5009

Case C-202/97 *Fitzwilliam Executive Search Ltd v Bestuur van het Landelijk instituut sociale verzekeringen,* [2000] ECR I-883

Case C-248/97 P (R) *Luis Manuel Chaves Fonseca Ferrão v Office for Harmonisation in the Internal Market* [1997] ECR I-4729

Case C-164/98 *DIR International Film et al. v Commission* [2000] ECR I-447

Case C-305/98 P *David T. Keeling v the Office for Harmonisation in the Internal Market,* (OJ 1998 C 312/4)

Removal from the register of Case C-305/98 P (OJ 1999 C 48/22)

Cases C-383/99 P *Procter & Gamble Company v Office for Harmonisation in the Internal Market* [2001] ECR I-6251

Case C-104/00 P *DKV Deutsche Krankenversicherung AG v Office for Harmonisation in the Internal Market* [2002] ECR I-756

Case C-345/00 FNAB *et al. v Coucil of the European Union* [2001] ECR 3811

Court of First Instance

Case T-148/97 *David T. Keeling v Office for Harmonisation in the Internal Market (Trade Marks and Designs* [1998] ECR II-2217

Case T-159/97 *Luis Manuel Chaves Fonseca Ferrão v Office for Harmonisation in the Internal Market* [1997] ECR II-1049

Case T-297/97 *David T. Keeling v Office for Harmonisation in the Internal Market* (OJ 1998 C 26/9)

Case T-79/98 *Manuel Tomás Carrasco Benítez v European Agency for the Evaluation of Medicinal Products* (EMEA) [1999] ECR II-127

Case T-180/98 *Elizabeth Cotrim v European Centre for the Development of Vocational Training (Cedefop)* [1999] ECR II-1077

Case T-79/99 *Euro-Lex European Law Expertise GmbH v Office for Harmonisation in the Internal Market* [1999] ECR II-3555

Case T-87/99 *Michel Hendrickx v European Centre for the Development of Vocational Training (Cedefop)* [2000] ECR II-679

Case T-223/99 *Luc Dejaiffe v Office for Harmonisation in the Internal Market* [2000] ECR II-1267

Case T-120/00 *The Procter & Gamble Company v Office for Harmonisation in the Internal Market* [2001] ECR II-2769

Opinions

Opinion of Advocate General Dutheillet de Lamothe in Case 25/70 *Einfuhr- und Vorratsstelle für Getreide und Futtermittel v. Köster, Berodt & Co.* [1970] ECR 1125

Opinion of Advocate General Darmon in Joined Cases C-193/87 and C-194/87 *Henri Maurissen and European Public Service Union v Court of Auditors of the European Communities* [1989] ECR I- 1045

Opinion of Advocate General Jacobs in Case C-67/96 *Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie* [1999] ECR 5751

Opinion of Advocate General Geelhoed in Case C-378/00 *Commission of the European Communities v European Parliament and Council of the European Union* [2002] ECR I-937

REPORTS FROM SIEPS

Available in English

2003:1
The Open Method of Coordination: A new Governance Architecture for the European Union? Author: **Claudio Radaelli,** Professor of public policy analysis, Bradford University.

2003:7
The Invisible Transformation of Codecision: Problems of Democratic Legitimacy. Authors: **Adrienne Héritier,** Professor, European University Institute, Florence and **Henry Farrell,** visiting Professor, University of Toronto.

2003:8
Simply Simplification? The Proposal for a Hierarchy of Legal Acts. Authors: **Carl Fredrik Bergström,** Researcher, and **Matilda Rotkirch,** Assistant Researcher, Sieps.

2003:9
Reforming the Council: A Work in Progress
Authors: **Helen Wallace,** Director of the Robert Schuman Centre for Advanced Studies, Florence and **Fiona Hayes-Renshaw,** Professor, College of Europe, Bruges.

2003:14
Decentralized Agencies and the IGC: a Question of Accountability. Authors: **Carl Fredrik Bergström,** Researcher, and **Matilda Rotkirch,** Assistant Researcher, Sieps

2003:17
Reinventing Cohesion: The Future of European Structural Policy. Author: **Daniel Tarschys,** Professor, Political Science, Stockholm University.

2003:18
Coming of Age? Economic Management of the European Union. Authors: **Per Molander** and **Allan Gustafsson**

Sieps

Swedish Institute for European Policy Studies

Universitetsvägen 10 F
SE-106 91 Stockholm
Office: Stockholms universitet,
Frescati, House F, 6th floor
Tel: +46-(0)8-16 46 00
Fax: +46-(0)8-16 46 66
E-post: info@sieps.se
www.sieps.se