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Judgment of the Court of 31 March 1971.
Commission of the European Communities v Council of the European Communities.
European Agreement on Road Transport.
Case 22-70.

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1 . EEC - LEGAL PERSONALITY - EXTERNAL RELATIONS - CAPACITY OF THE COMMUNITY TO CONCLUDE AGREEMENTS WITH THIRD COUNTRIES
(EEC TREATY, ARTICLE 210)
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6 . INTERNATIONAL AGREEMENTS - CONFERMENT OF POWERS IN THE COURSE OF NEGOTIATIONS ENTERED INTO BY THE MEMBER STATES - SITUATION TO BE ASSESSED BY THE INSTITUTIONS CONCERNED - NEED FOR AGREEMENT BETWEEN THE COUNCIL AND THE COMMISSION - JOINT ACTION BY THE MEMBER STATES IN THE INTERESTS OF THE COMMUNITY
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POWERS - POWERS OF THE COUNCIL - EXERCISE IN EXTERNAL RELATIONS - OPTIONAL NATURE
(EEC TREATY, ARTICLE 235)
8 . MEASURES ADOPTED BY AN INSTITUTION - CATEGORY NOT COVERED BY ARTICLE 189 - STATEMENT OF REASONS - ABSENCE MAY NOT BE INVOKED BY THE COMMISSION
(EEC TREATY, ARTICLE 190)

1 . THE COMMUNITY ENJOYS THE CAPACITY TO ESTABLISH CONTRACTUAL LINKS WITH THIRD COUNTRIES OVER THE WHOLE FIELD OF OBJECTIVES DEFINED BY THE TREATY . THIS AUTHORITY ARISES NOT ONLY FROM AN EXPRESS CONFERMENT BY THE TREATY, BUT MAY EQUALLY FLOW FROM OTHER PROVISIONS OF THE TREATY AND FROM MEASURES ADOPTED, WITHIN THE FRAMEWORK OF THOSE PROVISIONS, BY THE COMMUNITY INSTITUTIONS .
IN PARTICULAR, EACH TIME THE COMMUNITY, WITH A VIEW TO IMPLEMENTING A COMMON POLICY ENVISAGED BY THE TREATY, ADOPTS PROVISIONS LAYING DOWN COMMON RULES, WHATEVER FORM THEY MAY TAKE, THE MEMBER STATES NO LONGER HAVE THE RIGHT, ACTING INDIVIDUALLY OR EVEN COLLECTIVELY, TO UNDERTAKE OBLIGATIONS WITH THIRD COUNTRIES WHICH AFFECT THOSE RULES OR ALTER THEIR SCOPE .
WITH REGARD TO THE IMPLEMENTATION OF THE PROVISIONS OF THE TREATY, THE SYSTEM OF INTERNAL COMMUNITY MEASURES MAY NOT BE SEPARATED FROM THAT OF EXTERNAL RELATIONS .
2 . THE POWERS OF THE COMMUNITY IN THE SPHERE OF TRANSPORT EXTEND TO RELATIONSHIPS ARISING FROM INTERNATIONAL LAW, AND INVOLVE THE NEED FOR AGREEMENTS WITH THE THIRD COUNTRIES CONCERNED . THIS AUTHORITY WAS VESTED IN THE COMMUNITY BY REGULATION NO 543/69 OF THE COUNCIL ON THE HARMONIZATION OF CERTAIN SOCIAL LEGISLATION RELATING TO ROAD TRANSPORT .
3 . IN ACCORDANCE WITH THE OBJECTIVE LAID DOWN BY ARTICLE 164, AN ACTION FOR ANNULMENT MUST BE AVAILABLE IN THE CASE OF ALL MEASURES ADOPTED BY THE INSTITUTIONS, WHATEVER THEIR NATURE OR FORM, WHICH ARE INTENDED TO HAVE LEGAL EFFECTS .
4 . IN THE EVENT OF ANNULMENT, PROCEEDINGS OF THE COUNCIL WOULD HAVE TO BE DEEMED NON-EXISTENT AND THE DISPUTED QUESTIONS RECONSIDERED IN ORDER THAT A SOLUTION MIGHT BE REACHED IN ACCORDANCE WITH COMMUNITY LAW .
IT IS THEREFORE INCONTESTABLE THAT THE COMMISSION HAS AN INTEREST IN PURSUING ITS ACTION AGAINST THE PROCEEDINGS OF THE COUNCIL RELATING TO COORDINATION BETWEEN MEMBER STATES .
5 . WITH REGARD TO AGREEMENTS IN THE SPHERE OF TRANSPORT POLICY, THE COMMISSION IS ENTITLED TO MAKE PROPOSALS AND NEGOTIATE, WHILST IT IS FOR THE COUNCIL TO CONCLUDE THE AGREEMENT .
6 . WITH REGARD TO NEGOTIATIONS ENTERED INTO BEFORE AUTHORITY WAS VESTED IN THE COMMUNITY, IT IS FOR THE INSTITUTIONS WHOSE POWERS ARE DIRECTLY CONCERNED, NAMELY THE COUNCIL AND THE COMMISSION, TO CONCUR ON THE APPROPRIATE METHODS OF COOPERATION WITH A VIEW TO ENSURING THE DEFENCE OF THE INTERESTS OF THE COMMUNITY; IN NEGOTIATIONS BETWEEN GOVERNMENTS, MEMBER STATES ARE AT ALL TIMES BOUND TO ACT TOGETHER IN THE INTERESTS AND ON BEHALF OF THE COMMUNITY, IN ACCORDANCE WITH THEIR OBLIGATIONS UNDER ARTICLE 5 .
7 . ALTHOUGH ARTICLE 235 EMPOWERS THE COUNCIL TO TAKE ANY " APPROPRIATE MEASURES " EQUALLY IN THE SPHERE OF EXTERNAL RELATIONS,

IT DOES NOT CREATE AN OBLIGATION BUT CONFERS ON THE COUNCIL AN OPTION, FAILURE TO EXERCISE WHICH CANNOT AFFECT THE VALIDITY OF PROCEEDINGS .
8 . THE REQUIREMENT IMPOSED BY ARTICLE 190 TO PROVIDE A STATEMENT OF REASONS IN THE CASE OF REGULATIONS, DIRECTIVES AND DECISIONS MAY NOT BE INVOKED BY THE COMMISSION AGAINST PROCEEDINGS OF THE COUNCIL IN WHICH THE FORMER HAS ITSELF PARTICIPATED .

IN CASE 22/70
COMMISSION OF THE EUROPEAN COMMUNITIES, REPRESENTED BY GERARD OLIVIER, ASSISTANT DIRECTOR-GENERAL OF ITS LEGAL DEPARTMENT, ACTING AS AGENT, WITH AN ADDRESS FOR SERVICE IN LUXEMBOURG AT THE OFFICE OF ITS LEGAL ADVISER, EMILE REUTER, 4 BOULEVARD ROYAL, APPLICANT,
V
COUNCIL OF THE EUROPEAN COMMUNITIES, REPRESENTED BY ERNST WOHLFART, LEGAL ADVISER TO THE COUNCIL AND DIRECTOR-GENERAL OF ITS GENERAL-SECRETARIAT, ACTING AS AGENT, ASSISTED BY JEAN-PIERRE PUISSOCHET, DIRECTOR OF THE GENERAL SECRETARIAT OF THE COUNCIL, WITH AN ADDRESS FOR SERVICE IN LUXEMBOURG AT THE OFFICE OF J . N . VAN DEN HOUTEN, DIRECTOR OF THE LEGAL DEPARTMENT OF THE EUROPEAN INVESTMENT BANK, 2 PLACE DE METZ, DEFENDANT,

APPLICATION FOR THE ANNULMENT OF THE PROCEEDINGS OF THE COUNCIL OF 20 MARCH 1970, RELATING TO THE NEGOTIATION AND CONCLUSION BY THE MEMBER STATES OF THE EEC OF THE EUROPEAN AGREEMENT CONCERNING THE WORK OF CREWS OF VEHICLES ENGAGED IN INTERNATIONAL ROAD TRANSPORT,

1 BY AN APPLICATION LODGED ON 19 MAY 1970 THE COMMISSION OF THE EUROPEAN COMMUNITIES HAS REQUESTED THE ANNULMENT OF THE COUNCIL' S PROCEEDINGS OF 20 MARCH 1970 REGARDING THE NEGOTIATION AND CONCLUSION BY THE MEMBER STATES OF THE COMMUNITY, UNDER THE AUSPICES OF THE UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE, OF THE EUROPEAN AGREEMENT CONCERNING THE WORK OF CREWS OF VEHICLES ENGAGED IN INTERNATIONAL ROAD TRANSPORT (AETR).
2 AS A PRELIMINARY OBJECTION, THE COUNCIL HAS SUBMITTED THAT THE APPLICATION IS INADMISSIBLE ON THE GROUND THAT THE PROCEEDINGS IN QUESTION ARE NOT AN ACT THE LEGALITY OF WHICH IS OPEN TO REVIEW UNDER THE FIRST PARAGRAPH OF ARTICLE 173 OF THE TREATY .
3 TO DECIDE THIS POINT, IT IS FIRST NECESSARY TO DETERMINE WHICH AUTHORITY WAS, AT THE RELEVANT DATE, EMPOWERED TO NEGOTIATE AND CONCLUDE THE AETR .
4 THE LEGAL EFFECT OF THE PROCEEDINGS DIFFERS ACCORDING TO WHETHER THEY ARE REGARDED AS CONSTITUTING THE EXERCISE OF POWERS CONFERRED ON THE COMMUNITY, OR AS ACKNOWLEDGING A COORDINATION BY THE MEMBER STATES OF THE EXERCISE OF POWERS WHICH REMAINED VESTED IN THEM .
5 TO DECIDE ON THE OBJECTION OF INADMISSIBILITY, THEREFORE, IT IS NECESSARY TO DETERMINE FIRST OF ALL WHETHER, AT THE DATE OF THE

PROCEEDINGS IN QUESTION, POWER TO NEGOTIATE AND CONCLUDE THE AETR WAS VESTED IN THE COMMUNITY OR IN THE MEMBER STATES .

1 - THE INITIAL QUESTION

6 THE COMMISSION TAKES THE VIEW THAT ARTICLE 75 OF THE TREATY, WHICH CONFERRED ON THE COMMUNITY POWERS DEFINED IN WIDE TERMS WITH A VIEW TO IMPLEMENTING THE COMMON TRANSPORT POLICY, MUST APPLY TO EXTERNAL RELATIONS JUST AS MUCH AS TO DOMESTIC MEASURES IN THE SPHERE ENVISAGED .

7 IT BELIEVES THAT THE FULL EFFECT OF THIS PROVISION WOULD BE JEOPARDIZED IF THE POWERS WHICH IT CONFERS, PARTICULARLY THAT OF LAYING DOWN " ANY APPROPRIATE PROVISIONS ", WITHIN THE MEANING OF SUBPARAGRAPH (1) (C) OF THE ARTICLE CITED, DID NOT EXTEND TO THE CONCLUSION OF AGREEMENTS WITH THIRD COUNTRIES .

8 EVEN IF, IT IS ARGUED, THIS POWER DID NOT ORIGINALLY EMBRACE THE WHOLE SPHERE OF TRANSPORT, IT WOULD TEND TO BECOME GENERAL AND EXCLUSIVE AS AND WHERE THE COMMON POLICY IN THIS FIELD CAME TO BE IMPLEMENTED .

9 THE COUNCIL, ON THE OTHER HAND, CONTENDS THAT SINCE THE COMMUNITY ONLY HAS SUCH POWERS AS HAVE BEEN CONFERRED ON IT, AUTHORITY TO ENTER INTO AGREEMENTS WITH THIRD COUNTRIES CANNOT BE ASSUMED IN THE ABSENCE OF AN EXPRESS PROVISION IN THE TREATY .

10 MORE PARTICULARLY, ARTICLE 75 RELATES ONLY TO MEASURES INTERNAL TO THE COMMUNITY, AND CANNOT BE INTERPRETED AS AUTHORIZING THE CONCLUSION OF INTERNATIONAL AGREEMENTS .

11 EVEN IF IT WERE OTHERWISE, SUCH AUTHORITY COULD NOT BE GENERAL AND EXCLUSIVE, BUT AT THE MOST CONCURRENT WITH THAT OF THE MEMBER STATES .

12 IN THE ABSENCE OF SPECIFIC PROVISIONS OF THE TREATY RELATING TO THE NEGOTIATION AND CONCLUSION OF INTERNATIONAL AGREEMENTS IN THE SPHERE OF TRANSPORT POLICY - A CATEGORY INTO WHICH, ESSENTIALLY, THE AETR FALLS - ONE MUST TURN TO THE GENERAL SYSTEM OF COMMUNITY LAW IN THE SPHERE OF RELATIONS WITH THIRD COUNTRIES .

13 ARTICLE 210 PROVIDES THAT " THE COMMUNITY SHALL HAVE LEGAL PERSONALITY ".

14 THIS PROVISION, PLACED AT THE HEAD OF PART SIX OF THE TREATY, DEVOTED TO " GENERAL AND FINAL PROVISIONS ", MEANS THAT IN ITS EXTERNAL RELATIONS THE COMMUNITY ENJOYS THE CAPACITY TO ESTABLISH CONTRACTUAL LINKS WITH THIRD COUNTRIES OVER THE WHOLE FIELD OF OBJECTIVES DEFINED IN PART ONE OF THE TREATY, WHICH PART SIX SUPPLEMENTS .

15 TO DETERMINE IN A PARTICULAR CASE THE COMMUNITY' S AUTHORITY TO ENTER INTO INTERNATIONAL AGREEMENTS, REGARD MUST BE HAD TO THE WHOLE SCHEME OF THE TREATY NO LESS THAN TO ITS SUBSTANTIVE PROVISIONS .

16 SUCH AUTHORITY ARISES NOT ONLY FROM AN EXPRESS CONFERMENT BY THE TREATY - AS IS THE CASE WITH ARTICLES 113 AND 114 FOR TARIFF AND TRADE AGREEMENTS AND WITH ARTICLE 238 FOR ASSOCIATION AGREEMENTS - BUT MAY EQUALLY FLOW FROM OTHER PROVISIONS OF THE TREATY AND FROM MEASURES ADOPTED, WITHIN THE FRAMEWORK OF THOSE PROVISIONS, BY THE COMMUNITY INSTITUTIONS .

17 IN PARTICULAR, EACH TIME THE COMMUNITY, WITH A VIEW TO IMPLEMENTING A COMMON POLICY ENVISAGED BY THE TREATY, ADOPTS PROVISIONS LAYING DOWN COMMON RULES, WHATEVER FORM THESE MAY TAKE, THE MEMBER STATES NO LONGER HAVE THE RIGHT, ACTING INDIVIDUALLY OR EVEN COLLECTIVELY, TO UNDERTAKE OBLIGATIONS WITH

THIRD COUNTRIES WHICH AFFECT THOSE RULES .
18 AS AND WHEN SUCH COMMON RULES COME INTO BEING, THE COMMUNITY ALONE IS IN A POSITION TO ASSUME AND CARRY OUT CONTRACTUAL OBLIGATIONS TOWARDS THIRD COUNTRIES AFFECTING THE WHOLE SPHERE OF APPLICATION OF THE COMMUNITY LEGAL SYSTEM .
19 WITH REGARD TO THE IMPLEMENTATION OF THE PROVISIONS OF THE TREATY THE SYSTEM OF INTERNAL COMMUNITY MEASURES MAY NOT THEREFORE BE SEPARATED FROM THAT OF EXTERNAL RELATIONS .
20 UNDER ARTICLE 3 (E), THE ADOPTION OF A COMMON POLICY IN THE SPHERE OF TRANSPORT IS SPECIALLY MENTIONED AMONGST THE OBJECTIVES OF THE COMMUNITY .
21 UNDER ARTICLE 5, THE MEMBER STATES ARE REQUIRED ON THE ONE HAND TO TAKE ALL APPROPRIATE MEASURES TO ENSURE FULFILMENT OF THE OBLIGATIONS ARISING OUT OF THE TREATY OR RESULTING FROM ACTION TAKEN BY THE INSTITUTIONS AND, ON THE OTHER HAND, TO ABSTAIN FROM ANY MEASURE WHICH MIGHT JEOPARDIZE THE ATTAINMENT OF THE OBJECTIVES OF THE TREATY .
22 IF THESE TWO PROVISIONS ARE READ IN CONJUNCTION, IT FOLLOWS THAT TO THE EXTENT TO WHICH COMMUNITY RULES ARE PROMULGATED FOR THE ATTAINMENT OF THE OBJECTIVES OF THE TREATY, THE MEMBER STATES CANNOT, OUTSIDE THE FRAMEWORK OF THE COMMUNITY INSTITUTIONS, ASSUME OBLIGATIONS WHICH MIGHT AFFECT THOSE RULES OR ALTER THEIR SCOPE .
23 ACCORDING TO ARTICLE 74, THE OBJECTIVES OF THE TREATY IN MATTERS OF TRANSPORT ARE TO BE PURSUED WITHIN THE FRAMEWORK OF A COMMON POLICY .
24 WITH THIS IN VIEW, ARTICLE 75 (1) DIRECTS THE COUNCIL TO LAY DOWN COMMON RULES AND, IN ADDITION, " ANY OTHER APPROPRIATE PROVISIONS ".
25 BY THE TERMS OF SUBPARAGRAPH (A) OF THE SAME PROVISION, THOSE COMMON RULES ARE APPLICABLE " TO INTERNATIONAL TRANSPORT TO OR FROM THE TERRITORY OF A MEMBER STATE OR PASSING ACROSS THE TERRITORY OF ONE OR MORE MEMBER STATES ".
26 THIS PROVISION IS EQUALLY CONCERNED WITH TRANSPORT FROM OR TO THIRD COUNTRIES, AS REGARDS THAT PART OF THE JOURNEY WHICH TAKES PLACE ON COMMUNITY TERRITORY .
27 IT THUS ASSUMES THAT THE POWERS OF THE COMMUNITY EXTEND TO RELATIONSHIPS ARISING FROM INTERNATIONAL LAW, AND HENCE INVOLVE THE NEED IN THE SPHERE IN QUESTION FOR AGREEMENTS WITH THE THIRD COUNTRIES CONCERNED .
28 ALTHOUGH IT IS TRUE THAT ARTICLES 74 AND 75 DO NOT EXPRESSLY CONFER ON THE COMMUNITY AUTHORITY TO ENTER INTO INTERNATIONAL AGREEMENTS, NEVERTHELESS THE BRINGING INTO FORCE, ON 25 MARCH 1969, OF REGULATION NO 543/69 OF THE COUNCIL ON THE HARMONIZATION OF CERTAIN SOCIAL LEGISLATION RELATING TO ROAD TRANSPORT (OJ L 77, P . 49) NECESSARILY VESTED IN THE COMMUNITY POWER TO ENTER INTO ANY AGREEMENTS WITH THIRD COUNTRIES RELATING TO THE SUBJECT-MATTER GOVERNED BY THAT REGULATION .
29 THIS GRANT OF POWER IS MOREOVER EXPRESSLY RECOGNIZED BY ARTICLE 3 OF THE SAID REGULATION WHICH PRESCRIBES THAT : " THE COMMUNITY SHALL ENTER INTO ANY NEGOTIATIONS WITH THIRD COUNTRIES WHICH MAY PROVE NECESSARY FOR THE PURPOSE OF IMPLEMENTING THIS REGULATION ".
30 SINCE THE SUBJECT-MATTER OF THE AETR FALLS WITHIN THE SCOPE OF REGULATION NO 543/69, THE COMMUNITY HAS BEEN EMPOWERED TO NEGOTIATE AND CONCLUDE THE AGREEMENT IN QUESTION SINCE THE ENTRY INTO FORCE OF THE SAID REGULATION .

31 THESE COMMUNITY POWERS EXCLUDE THE POSSIBILITY OF CONCURRENT POWERS ON THE PART OF MEMBER STATES, SINCE ANY STEPS TAKEN OUTSIDE THE FRAMEWORK OF THE COMMUNITY INSTITUTIONS WOULD BE INCOMPATIBLE WITH THE UNITY OF THE COMMON MARKET AND THE UNIFORM APPLICATION OF COMMUNITY LAW .
32 THIS IS THE LEGAL POSITION IN THE LIGHT OF WHICH THE QUESTION OF ADMISSIBILITY HAS TO BE RESOLVED .
2 - ADMISSIBILITY OF THE APPLICATION
33 THE ADMISSIBILITY OF THE APPLICATION IS DISPUTED BY THE COUNCIL ON VARIOUS GROUNDS, BASED ON THE NATURE OF THE PROCEEDINGS IN QUESTION, AND TO A LESSER EXTENT ON THE COMMISSION' S ALLEGED LACK OF INTEREST IN THE MATTER, ITS PREVIOUS ATTITUDE, AND THE FACT THAT THE APPLICATION IS OUT OF TIME .
(A) SUBMISSION RELATING TO THE NATURE OF THE PROCEEDINGS OF 20 MARCH 1970
34 THE COUNCIL CONSIDERS THAT THE PROCEEDINGS OF 20 MARCH 1970 DO NOT CONSTITUTE AN ACT, WITHIN THE MEANING OF THE FIRST SENTENCE OF THE FIRST PARAGRAPH OF ARTICLE 173, THE LEGALITY OF WHICH IS OPEN TO REVIEW .
35 NEITHER BY THEIR FORM NOR BY THEIR SUBJECT-MATTER OR CONTENT, IT IS ARGUED, WERE THESE PROCEEDINGS A REGULATION, A DECISION OR A DIRECTIVE WITHIN THE MEANING OF ARTICLE 189 .
36 THEY WERE REALLY NOTHING MORE THAN A COORDINATION OF POLICIES AMONGST MEMBER STATES WITHIN THE FRAMEWORK OF THE COUNCIL, AND AS SUCH CREATED NO RIGHTS, IMPOSED NO OBLIGATIONS AND DID NOT MODIFY ANY LEGA POSITION .
37 THIS IS SAID TO BE THE CASE MORE PARTICULARLY BECAUSE IN THE EVENT OF A DISPUTE BETWEEN THE INSTITUTIONS ADMISSIBILITY HAS TO BE APPRAISED WITH PARTICULAR RIGOUR .
38 UNDER ARTICLE 173, THE COURT HAS A DUTY TO REVIEW THE LEGALITY " OF ACTS OF THE COUNCIL ... OTHER THAN RECOMMENDATIONS OR OPINIONS ".
39 SINCE THE ONLY MATTERS EXCLUDED FROM THE SCOPE OF THE ACTION FOR ANNULMENT OPEN TO THE MEMBER STATES AND THE INSTITUTIONS ARE " RECOMMENDATIONS OR OPINIONS " - WHICH BY THE FINAL PARAGRAPH OF ARTICLE 189 ARE DECLARED TO HAVE NO BINDING FORCE - ARTICLE 173 TREATS AS ACTS OPEN TO REVIEW BY THE COURT ALL MEASURES ADOPTED BY THE INSTITUTIONS WHICH ARE INTENDED TO HAVE LEGAL FORCE .
40 THE OBJECTIVE OF THIS REVIEW IS TO ENSURE, AS REQUIRED BY ARTICLE 164, OBSERVANCE OF THE LAW IN THE INTERPRETATION AND APPLICATION OF THE TREATY .
41 IT WOULD BE INCONSISTENT WITH THIS OBJECTIVE TO INTERPRET THE CONDITIONS UNDER WHICH THE ACTION IS ADMISSIBLE SO RESTRICTIVELY AS TO LIMIT THE AVAILABILITY OF THIS PROCEDURE MERELY TO THE CATEGORIES OF MEASURES REFERRED TO BY ARTICLE 189 .
42 AN ACTION FOR ANNULMENT MUST THEREFORE BE AVAILABLE IN THE CASE OF ALL MEASURES ADOPTED BY THE INSTITUTIONS, WHATEVER THEIR NATURE OR FORM, WHICH ARE INTENDED TO HAVE LEGAL EFFECTS .
43 THE NATURE OF THE PROCEEDINGS IN QUESTION HAS TO BE DETERMINED IN THE LIGHT OF THE FOREGOING .
44 IN THE COURSE OF THE MEETING ON 20 MARCH 1970, THE COUNCIL, AFTER AN EXCHANGE OF VIEWS BETWEEN ITS MEMBERS AND THE REPRESENTATIVE OF THE COMMISSION, REACHED A NUMBER OF " CONCLUSIONS " ON THE ATTITUDE TO BE TAKEN BY THE GOVERNMENTS OF THE MEMBER STATES IN THE DECISIVE NEGOTIATIONS ON THE AETR .
45 THESE PROCEEDINGS WERE CONCERNED PARTLY WITH THE OBJECTIVE OF

THE NEGOTIATIONS AND PARTLY WITH NEGOTIATING PROCEDURE .
46 AS REGARDS THE OBJECTIVE TO BE PURSUED, THE COUNCIL SETTLED ON A NEGOTIATING POSITION AIMED AT HAVING THE AETR ADAPTED TO THE PROVISIONS OF THE COMMUNITY SYSTEM APART FROM THE CONCESSION OF CERTAIN DEROGATIONS FROM THAT SYSTEM WHICH WOULD HAVE TO BE ACCEPTED BY THE COMMUNITY .
47 HAVING REGARD TO THE OBJECTIVE THUS ESTABLISHED, THE COUNCIL INVITED THE COMMISSION TO PUT FORWARD, AT THE APPROPRIATE TIME AND IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 75 OF THE TREATY, THE NECESSARY PROPOSALS WITH A VIEW TO AMENDING REGULATION NO 543/69 .
48 AS REGARDS NEGOTIATING, THE COUNCIL DECIDED, IN ACCORDANCE WITH THE COURSE OF ACTION DECIDED UPON AT ITS PREVIOUS MEETINGS, THAT THE NEGOTIATIONS SHOULD BE CARRIED ON AND CONCLUDED BY THE SIX MEMBER STATES, WHICH WOULD BECOME CONTRACTING PARTIES TO THE AETR .
49 THROUGHOUT THE NEGOTIATIONS AND AT THE CONCLUSION OF THE AGREEMENT, THE STATES WOULD ACT IN COMMON AND WOULD CONSTANTLY COORDINATE THEIR POSITIONS ACCORDING TO THE USUAL PROCEDURE IN CLOSE ASSOCIATION WITH THE COMMUNITY INSTITUTIONS, THE DELEGATION OF THE MEMBER STATE CURRENTLY OCCUPYING THE PRESIDENCY OF THE COUNCIL ACTING AS SPOKESMAN .
50 IT DOES NOT APPEAR FROM THE MINUTES THAT THE COMMISSION RAISED ANY OBJECTIONS TO THE DEFINITION BY THE COUNCIL OF THE OBJECTIVE OF THE NEGOTIATIONS .
51 ON THE OTHER HAND, IT DID LODGE AN EXPRESS RESERVATION REGARDING THE NEGOTIATING PROCEDURE, DECLARING THAT IT CONSIDERED THAT THE POSITION ADOPTED BY THE COUNCIL WAS NOT IN ACCORDANCE WITH THE TREATY, AND MORE PARTICULARLY WITH ARTICLE 228 .
52 IT FOLLOWS FROM THE FOREGOING THAT THE COUNCIL' S PROCEEDINGS DEALT WITH A MATTER FALLING WITHIN THE POWER OF THE COMMUNITY, AND THAT THE MEMBER STATES COULD NOT THEREFORE ACT OUTSIDE THE FRAMEWORK OF THE COMMON INSTITUTIONS .
53 IT THUS SEEMS THAT IN SO FAR AS THEY CONCERNED THE OBJECTIVE OF THE NEGOTIATIONS AS DEFINED BY THE COUNCIL, THE PROCEEDINGS OF 20 MARCH 1970 COULD NOT HAVE BEEN SIMPLY THE EXPRESSION OR THE RECOGNITION OF A VOLUNTARY COORDINATION, BUT WERE DESIGNED TO LAY DOWN A COURSE OF ACTION BINDING ON BOTH THE INSTITUTIONS AND THE MEMBER STATES, AND DESTINED ULTIMATELY TO BE REFLECTED IN THE TENOR OF THE REGULATION .
54 IN THE PART OF ITS CONCLUSIONS RELATING TO THE NEGOTIATING PROCEDURE, THE COUNCIL ADOPTED PROVISIONS WHICH WERE CAPABLE OF DEROGATING IN CERTAIN CIRCUMSTANCES FROM THE PROCEDURE LAID DOWN BY THE TREATY REGARDING NEGOTIATIONS WITH THIRD COUNTRIES AND THE CONCLUSION OF AGREEMENTS .
55 HENCE, THE PROCEEDINGS OF 20 MARCH 1970 HAD DEFINITE LEGAL EFFECTS BOTH ON RELATIONS BETWEEN THE COMMUNITY AND THE MEMBER STATES AND ON THE RELATIONSHIP BETWEEN INSTITUTIONS .
(B) ALTERNATIVE SUBMISSIONS ON ADMISSIBILITY
56 THE COUNCIL CONTENDS THAT ANALYSIS OF THE CONSEQUENCES WHICH AN ANNULMENT OF THE PROCEEDINGS ON 20 MARCH 1970 MIGHT INVOLVE CONFIRMS THAT THE LATTER WERE DEVOID OF ALL LEGAL EFFECT .
57 SUCH AN ANNULMENT WOULD CANCEL THE RECOGNITION OF THE COORDINATION BETWEEN MEMBER STATES, BUT WOULD NOT AFFECT EITHER THE REALITY OF THAT COORDINATION OR THE SUBSEQUENT ACTION OF THOSE STATES IN THE NEGOTIATION OF THE AETR .

58 THE COUNCIL CLAIMS THAT THE COMMISSION' S ACTION THEREFORE CANNOT ACHIEVE ITS AIM, AND IS THUS DEVOID OF PURPOSE .
59 UNDER ARTICLE 174, " IF THE ACTION IS WELL FOUNDED THE COURT OF JUSTICE SHALL DECLARE THE ACT CONCERNED TO BE VOID ".
60 IF THAT WERE DONE, THE COUNCIL' S PROCEEDINGS WOULD HAVE TO BE DEEMED NON-EXISTENT IN SO FAR AS THEY HAD BEEN ANNULLED BY THE COURT; THE PARTIES TO THE DISPUTE WOULD THEN BE RESTORED TO THEIR ORIGINAL POSITION, AND WOULD HAVE TO RECONSIDER THE DISPUTED QUESTIONS SO AS TO RESOLVE THEM IN ACCORDANCE WITH COMMUNITY LAW .
61 IT IS THUS INCONTESTABLE THAT THE COMMISSION HAS AN INTEREST IN PURSUING ITS ACTION .
62 NEXT, THE COUNCIL CONSIDERS THAT THE COMMISSION IS DISQUALIFIED FROM PURSUING SUCH AN ACTION BECAUSE THE COMMISSION ITSELF IS RESPONSIBLE FOR THE SITUATION IN QUESTION THROUGH HAVING FAILED TO TAKE, AT THE PROPER TIME, THE STEPS NECESSARY TO ALLOW COMMUNITY POWERS TO BE EXERCISED, BY SUBMITTING SUITABLE PROPOSALS TO THE COUNCIL .
63 HOWEVER, SINCE THE QUESTIONS PUT BEFORE THE COURT BY THE COMMISSION ARE CONCERNED WITH THE INSTITUTIONAL STRUCTURE OF THE COMMUNITY, THE ADMISSIBILITY OF THE APPLICATION CANNOT DEPEND ON PRIOR OMISSIONS OR ERRORS ON THE PART OF THE APPLICANT .
64 MOREOVER, AN EVALUATION OF THE OBJECTIONS RAISED BY THE COUNCIL CAN ONLY BE UNDERTAKEN AS PART OF THE EXAMINATION OF THE SUBSTANCE OF THE DISPUTE .
65 FINALLY, THE COUNCIL OBJECTS THAT THE APPLICATION IS OUT OF TIME, ON THE GROUND THAT THE PROCEEDINGS OF 20 MARCH 1970 DID NOTHING MORE THAN RE-STATE PRINCIPLES LAID DOWN AT PREVIOUS MEETINGS OF THE COUNCIL, OF WHICH THE LAST ONE TOOK PLACE ON 17 AND 18 MARCH 1969 .
66 THE PROCEEDINGS OF 20 MARCH 1970, HOWEVER, CANNOT BE REGARDED AS SIMPLY A CONFIRMATION OF PREVIOUS DISCUSSIONS, SINCE REGULATION NO 543/69 OF 25 MARCH 1969 BROUGHT ABOUT A DECISIVE CHANGE IN THE ALLOCATION OF POWERS BETWEEN THE COMMUNITY AND THE MEMBER STATES ON THE SUBJECT-MATTER OF THE NEGOTIATIONS .
67 FOR ALL THESE REASONS, THE APPLICATION IS ADMISSIBLE .
3 - SUBSTANCE
68 ESSENTIALLY, THE COMMISSION DISPUTES THE VALIDITY OF THE PROCEEDINGS OF 20 MARCH 1970 ON THE GROUND THAT THEY INVOLVED INFRINGEMENTS OF PROVISIONS OF THE TREATY, MORE PARTICULARLY OF ARTICLES 75, 228 AND 235 CONCERNING THE DISTRIBUTION OF POWERS BETWEEN THE COUNCIL AND THE COMMISSION, AND CONSEQUENTLY THE RIGHTS WHICH IT WAS THE COMMISSION' S DUTY TO EXERCISE IN THE NEGOTIATIONS ON THE AETR .
(A) SUBMISSION RELATING TO INFRINGEMENT OF ARTICLES 75 AND 228 .
69 THE COMMISSION CLAIMS THAT IN VIEW OF THE POWERS VESTED IN THE COMMUNITY UNDER ARTICLE 75, THE AETR SHOULD HAVE BEEN NEGOTIATED AND CONCLUDED BY THE COMMUNITY IN ACCORDANCE WITH THE COMMUNITY PROCEDURE DEFINED BY ARTICLE 228 (1).
70 ALTHOUGH THE COUNCIL MAY, BY VIRTUE OF THESE PROVISIONS, DECIDE IN EACH CASE WHETHER IT IS EXPEDIENT TO ENTER INTO AN AGREEMENT WITH THIRD COUNTRIES, IT DOES NOT ENJOY A DISCRETION TO DECIDE WHETHER TO PROCEED THROUGH INTER-GOVERNMENTAL OR COMMUNITY CHANNELS .
71 BY DECIDING TO PROCEED THROUGH INTER-GOVERNMENTAL CHANNELS IT MADE IT IMPOSSIBLE FOR THE COMMISSION TO PERFORM THE TASK WHICH THE TREATY ENTRUSTED TO IT IN THE SPHERE OF NEGOTIATIONS WITH THIRD

COUNTRIES .
72 IN THE ABSENCE OF SPECIFIC PROVISIONS IN THE TREATY APPLICABLE TO THE NEGOTIATION AND IMPLEMENTATION OF THE AGREEMENT UNDER DISCUSSION, THE APPROPRIATE RULES MUST BE INFERRED FROM THE GENERAL TENOR OF THOSE ARTICLES OF THE TREATY WHICH RELATE TO THE NEGOTIATIONS UNDERTAKEN ON THE AETR .
73 THE DISTRIBUTION OF POWERS BETWEEN THE COMMUNITY INSTITUTIONS TO NEGOTIATE AND IMPLEMENT THE AETR MUST BE DETERMINED WITH DUE REGARD BOTH TO THE PROVISIONS RELATING TO THE COMMON TRANSPORT POLICY AND TO THOSE GOVERNING THE CONCLUSION OF AGREEMENTS BY THE COMMUNITY .
74 BY THE TERMS OF ARTICLE 75 (1), IT IS A MATTER FOR THE COUNCIL, ACTING ON A PROPOSAL FROM THE COMMISSION AND AFTER CONSULTING THE ECONOMIC AND SOCIAL COMMITTEE AND THE ASSEMBLY, TO LAY DOWN THE APPROPRIATE PROVISIONS, WHETHER BY REGULATION OR OTHERWISE, FOR THE PURPOSE OF IMPLEMENTING THE COMMON TRANSPORT POLICY .
75 ACCORDING TO ARTICLE 228 (1), WHERE AGREEMENTS HAVE TO BE CONCLUDED WITH ONE OR MORE THIRD COUNTRIES OR AN INTERNATIONAL ORGANIZATION, SUCH AGREEMENTS ARE TO BE NEGOTIATED BY THE COMMISSION AND CONCLUDED BY THE COUNCIL, SUBJECT TO ANY MORE EXTENSIVE POWERS WHICH MAY HAVE BEEN VESTED IN THE COMMISSION .
76 AS A SUBSIDIARY POINT, SINCE THE NEGOTIATIONS TOOK PLACE UNDER THE AUSPICES OF THE UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE, THE FIRST PARAGRAPH OF ARTICLE 116 HAS ALSO TO BE TAKEN INTO ACCOUNT . BY THE TERMS OF THAT PARAGRAPH, FROM THE END OF THE TRANSITIONAL PERIOD ONWARDS, MEMBER STATES SHALL " PROCEED WITHIN THE FRAMEWORK OF INTERNATIONAL ORGANIZATIONS OF AN ECONOMIC CHARACTER ONLY BY COMMON ACTION ", THE IMPLEMENTATION OF SUCH COMMON ACTION BEING WITHIN THE POWERS OF THE COUNCIL, BASING ITS DECISIONS ON PROPOSALS SUBMITTED BY THE COMMISSION .
77 IF THESE VARIOUS PROVISIONS ARE READ IN CONJUNCTION, IT IS CLEAR THAT WHEREVER A MATTER FORMS THE SUBJECT OF A COMMON POLICY, THE MEMBER STATES ARE BOUND IN EVERY CASE TO ACT JOINTLY IN DEFENCE OF THE INTERESTS OF THE COMMUNITY .
78 THIS REQUIREMENT OF JOINT ACTION WAS IN FACT RESPECTED BY THE PROCEEDINGS OF 20 MARCH 1970, WHICH CANNOT GIVE RISE TO ANY CRITICISM IN THIS RESPECT .
79 MOREOVER, IT FOLLOWS FROM THESE PROVISIONS TAKEN AS A WHOLE, AND PARTICULARLY FROM ARTICLE 228 (1), THAT THE RIGHT TO CONCLUDE THE AGREEMENT WAS VESTED IN THE COUNCIL .
80 THE COMMISSION FOR ITS PART WAS REQUIRED TO ACT IN TWO WAYS, FIRST BY EXERCISING ITS RIGHT TO MAKE PROPOSALS, WHICH ARISES FROM ARTICLE 75 (1) AND THE FIRST PARAGRAPH OF ARTICLE 116, AND, SECONDLY, IN ITS CAPACITY AS NEGOTIATOR BY THE TERMS OF THE FIRST SUBPARAGRAPH OF ARTICLE 228 (1).
81 HOWEVER, THIS DISTRIBUTION OF POWERS BETWEEN INSTITUTIONS WOULD ONLY HAVE BEEN REQUIRED WHERE NEGOTIATIONS WERE UNDERTAKEN AT A TIME WHEN THE VESTING OF POWERS IN THE COMMUNITY HAD TAKEN EFFECT, EITHER BY VIRTUE OF THE TREATY ITSELF OR BY VIRTUE OF MEASURES TAKEN BY THE INSTITUTIONS .
82 IN THIS CONNEXION IT MUST BE BORNE IN MIND THAT AN EARLIER VERSION OF THE AETR HAD BEEN DRAWN UP IN 1962, AT A PERIOD WHEN, BECAUSE THE COMMON TRANSPORT POLICY WAS NOT YET SUFFICIENTLY DEVELOPED, POWER TO CONCLUDE THIS AGREEMENT WAS VESTED IN THE MEMBER STATES .
83 THE STAGE OF NEGOTIATIONS OF WHICH THE PROCEEDINGS IN QUESTION

FORMED PART WAS NOT AIMED AT WORKING OUT A NEW AGREEMENT, BUT SIMPLY AT INTRODUCING INTO THE VERSION DRAWN UP IN 1962 SUCH MODIFICATIONS AS WERE NECESSARY TO ENABLE ALL THE CONTRACTING PARTIES TO RATIFY IT .

84 THE NEGOTIATIONS ON THE AETR ARE THUS CHARACTERIZED BY THE FACT THAT THEIR ORIGIN AND A CONSIDERABLE PART OF THE WORK CARRIED OUT UNDER THE AUSPICES OF THE ECONOMIC COMMISSION FOR EUROPE TOOK PLACE BEFORE POWERS WERE CONFERRED ON THE COMMUNITY AS A RESULT OF REGULATION NO 543/69 .

85 IT APPEARS THEREFORE THAT ON 20 MARCH 1970 THE COUNCIL ACTED IN A SITUATION WHERE IT NO LONGER ENJOYED COMPLETE FREEDOM OF ACTION IN ITS RELATIONS WITH THE THIRD COUNTRIES TAKING PART IN THE SAME NEGOTIATIONS .

86 AT THAT STAGE OF THE NEGOTIATIONS, TO HAVE SUGGESTED TO THE THIRD COUNTRIES CONCERNED THAT THERE WAS NOW A NEW DISTRIBUTION OF POWERS WITHIN THE COMMUNITY MIGHT WELL HAVE JEOPARDIZED THE SUCCESSFUL OUTCOME OF THE NEGOTIATIONS, AS WAS INDEED RECOGNIZED BY THE COMMISSION' S REPRESENTATIVE IN THE COURSE OF THE COUNCIL' S DELIBERATIONS .

87 IN SUCH A SITUATION IT WAS FOR THE TWO INSTITUTIONS WHOSE POWERS WERE DIRECTLY CONCERNED, NAMELY, THE COUNCIL AND THE COMMISSION, TO REACH AGREEMENT, IN ACCORDANCE WITH ARTICLE 15 OF THE TREATY OF APRIL 1965 ESTABLISHING A SINGLE COUNCIL AND A SINGLE COMMISSION OF THE EUROPEAN COMMUNITIES, ON THE APPROPRIATE METHODS OF COOPERATION WITH A VIEW TO ENSURING MOST EFFECTIVELY THE DEFENCE OF THE INTERESTS OF THE COMMUNITY .

88 IT IS CLEAR FROM THE MINUTES OF THE MEETING OF 20 MARCH 1970 THAT THE COMMISSION MADE NO FORMAL USE OF THE RIGHT TO SUBMIT PROPOSALS OPEN TO IT UNDER ARTICLES 75 AND 116 .

89 NOR DID IT DEMAND THE SIMPLE APPLICATION OF ARTICLE 228 (1) IN REGARD TO ITS RIGHT OF NEGOTIATION .

90 IT MAY THEREFORE BE ACCEPTED THAT, IN CARRYING ON THE NEGOTIATIONS AND CONCLUDING THE AGREEMENT SIMULTANEOUSLY IN THE MANNER DECIDED ON BY THE COUNCIL, THE MEMBER STATES ACTED, AND CONTINUE TO ACT, IN THE INTEREST AND ON BEHALF OF THE COMMUNITY IN ACCORDANCE WITH THEIR OBLIGATIONS UNDER ARTICLE 5 OF THE TREATY .

91 HENCE, IN DECIDING IN THESE CIRCUMSTANCES ON JOINT ACTION BY THE MEMBER STATES, THE COUNCIL HAS NOT FAILED IN ITS OBLIGATIONS ARISING FROM ARTICLES 75 AND 228 .

92 FOR THESE REASONS, THE SUBMISSION MUST BE REJECTED .

(B) OTHER SUBMISSIONS PUT FORWARD BY THE COMMISSION (ARTICLE 235; FAILURE TO STATE REASONS)

93 AS A SUBSIDIARY MATTER, THE COMMISSION CLAIMS THAT IN VIEW OF THE REQUIREMENTS IN CONNEXION WITH THE IMPLEMENTATION OF THE COMMON TRANSPORT POLICY, THE COUNCIL, IF IT FAILED TO BASE ITS ACTION ON ARTICLE 75, OUGHT AT LEAST TO HAVE MADE USE OF THE POWERS CONFERRED ON IT BY ARTICLE 235 .

94 FOR ITS PART, THE COUNCIL TAKES THE VIEW THAT, SINCE THE MEANS OF JOINT ACTION BY MEMBER STATES WAS AVAILABLE, THERE WAS NO NEED TO RESORT TO THIS PROVISION; MOREOVER, THE COMMISSION NEVER TOOK THE INITIATIVE IN SUBMITTING A PROPOSAL TO THAT EFFECT, AS IS REQUIRED BY THE PROVISION IN QUESTION .

95 ALTHOUGH ARTICLE 235 EMPOWERS THE COUNCIL TO TAKE ANY " APPROPRIATE MEASURES " EQUALLY IN THE SPHERE OF EXTERNAL RELATIONS, IT DOES NOT CREATE AN OBLIGATION, BUT CONFERS ON THE COUNCIL AN

OPTION, FAILURE TO EXERCISE WHICH CANNOT AFFECT THE VALIDITY OF PROCEEDINGS .
96 THIS SUBMISSION MUST THEREFORE BE REJECTED .
97 THE COMMISSION ALSO CLAIMS THAT THE CONTESTED PROCEEDINGS DID NOT INDICATE THE LEGAL GROUNDS ON WHICH THEY WERE BASED AND PROVIDED NO STATEMENT OF REASONS .
98 THESE REQUIREMENTS ARE IMPOSED BY ARTICLE 190 IN RELATION TO REGULATIONS, DIRECTIVES AND DECISIONS, AND CANNOT BE EXTENDED TO MEASURES OF A SPECIAL NATURE SUCH AS THE PROCEEDINGS OF 20 MARCH 1970 .
99 THE COMMISSION' S PARTICIPATION IN THE ACTUAL WORK OF THE COUNCIL AFFORDED IT ALL THE LEGAL SAFEGUARDS WHICH ARTICLE 190 WAS DESIGNED TO ENSURE FOR THIRD PARTIES AFFECTED BY THE MEASURES MENTIONED THEREIN .
100 THE APPLICATION MUST THEREFORE BE DISMISSED .

101 UNDER THE TERMS OF ARTICLE 69 (2) OF THE RULES OF PROCEDURE THE UNSUCCESSFUL PARTY SHALL BE ORDERED TO PAY THE COSTS IF THEY HAVE BEEN ASKED FOR IN THE SUCCESSFUL PARTY' S PLEADING .
102 IN THE PRESENT CASE NEITHER PARTY HAS ASKED FOR COSTS .
103 THE PARTIES SHOULD THEREFORE BEAR THEIR OWN COSTS .

THE COURT
HEREBY :
1 . DISMISSES THE APPLICATION;
2 . ORDERS THE PARTIES TO BEAR THEIR OWN COSTS .

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