

Opinion 2/91

Opinion delivered pursuant to the second subparagraph of Article 228(1) of the EEC Treaty

(Convention No 170 of the International Labour Organization concerning safety in the use of chemicals at work)

Opinion of the Court, 19 March 1993 I - 1064

Summary of the Opinion

1. *International agreements — Conclusion — Prior opinion of the Court — Purpose — Compatibility with the EEC Treaty — Competence of the Community*
(EEC Treaty, Art. 228(1), second subpara.)
2. *International agreements — Conditions of participation excluding conclusion by the Community — Competence of the Community — Exercise through joint action by the Member States*
3. *International agreements — Conclusion — Competence of the Community — Express or implied attribution — Exclusive nature — Appraisal criteria*
(EEC Treaty, Art. 5)
4. *International agreements — Convention No 170 of the International Labour Organization (ILO) concerning safety in the use of chemicals at work — Conclusion — Competence enjoyed jointly by the Member States and the Community*
(EEC Treaty, Arts 100 and 118a, Title III, Chapter 1)

5. *International agreements — Agreement applying to overseas countries and territories but lying outside the scope of the association scheme — Conclusion by the Member State responsible for the international representation of those countries and territories*
 6. *International agreements — Agreement falling partially within the competence of the Community and partially within that of the Member States — Need for close cooperation in the negotiation, conclusion and fulfilment thereof*
1. It is possible under the procedure set out in Article 228 of the EEC Treaty, as under that set out in Article 103 of the EAEC Treaty, to consider all questions concerning the compatibility with the provisions of the Treaty of an agreement envisaged, and in particular the question whether the Community has the power to enter into that agreement.
 3. The Community's competence to enter into international commitments may arise from an express attribution by the Treaty or flow implicitly from its provisions. Whenever Community law has created for the institutions of the Community powers within its internal system for the purpose of attaining a specific objective, the Community has competence to enter into the international commitments necessary for the attainment of that objective, even in the absence of an express provision to that effect.

That procedure, however, does not lend itself to examination of the Community's capacity, on an international plane, to enter into a convention drawn up under the auspices of the International Labour Organization, or of any obstacles which the Community may encounter in the exercise of its competence in the light of constitutional rules of that organization.

2. If the conditions of participation in an international convention exclude conclusion by the Community itself but the area covered by that convention comes within the external competence of the Community, that external competence may be exercised through the medium of the Member States acting jointly in the Community's interest.

That competence may be exclusive in nature, excluding any concurrent competence on the part of the Member States, whether under the provisions of the Treaty or by virtue of the scope of the measures adopted by the Community institutions for the application of those provisions and which may be of such a kind as to deprive the Member States of an area of competence which they were previously able to exercise on a transitional basis. It is of little significance whether those measures do or do not come under a common policy. In all of the areas corresponding to the Treaty objectives, Article 5 thereof requires Member States to facilitate the achievement of the Community's tasks and to refrain from any measure which could jeopardize the attainment of those objectives, which could precisely be the case if

Member States were to enter into international commitments containing rules that interfered with those adopted by the Community.

4. The conclusion of Convention No 170 of the International Labour Organization concerning safety in the use of chemicals at work is a matter which falls within the joint competence of the Member States and the Community.

The field which it covers falls within the social provisions of the Treaty, which constitute Chapter 1 of Title III on social policy. The fact that the Convention sets out rules in an area in which the Community enjoys an internal legislative competence does not, however, confer exclusive competence on the Community, since Article 118a of the Treaty envisages the introduction of directives only in order to lay down minimum requirements, with the result that Member States may apply the rules of the Convention, assuming that they are more stringent, on the basis of the freedom which they have to go beyond the requirements of the directives, the opposite being equally possible, since the rules of the Convention are also only minimum rules. The same applies with regard to the directives adopted on the basis of Article 100 of the Treaty, since they also lay down minimum requirements.

In contrast, certain requirements of the Convention, although not contradictory to existing directives, relate to an area, that of classification, packaging and labelling of dangerous substances, in which, given the development of the Community's legislative activity, which has not

been limited to fixing minimum requirements, it must be considered that the Member States are no longer competent to undertake international commitments outside the framework of the Community institutions.

Finally, with regard to the general principles which the Convention contains for its implementation, in particular the consultation of the most representative organizations of employers and workers, it must be considered that, in so far as the substantive provisions of the Convention come within the Community's sphere of competence, the Community is also competent to undertake commitments with regard to the implementation of those provisions despite the fact that social policy is a matter which at present falls predominantly within the competence of the Member States.

5. If the substantive scope of an international convention lies outside the scope assigned by the Treaty to the association scheme for overseas countries and territories, it is for the Member States which are responsible for the international relations of those territories and which represent them in that regard to conclude the convention in question.
6. When it appears that the subject-matter of an international convention falls partly within the competence of the Community and partly within that of the Member States, the requirement of unity in the international representation of the

Community makes it necessary to ensure close cooperation between the Community institutions and the Member States

both in the process of negotiation and conclusion and in the fulfilment of the obligations entered into.

OPINION 2/91 OF THE COURT

19 March 1993

On 21 August 1991 the Court of Justice received a request for an opinion submitted by the Commission of the European Communities pursuant to the second subparagraph of Article 228(1) of the Treaty establishing the European Economic Community. This subparagraph provides that:

The Concil, the Commission or a Member State may obtain beforehand the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty. Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with Article 236.

I — Purpose of the request for an opinion

In its request, the Commission has sought the Court's opinion on the compatibility with the EEC Treaty of Convention No 170 of the International Labour Organization ('the ILO') concerning safety in the use of chemicals at work ('Convention No 170') and, in particular, has sought its opinion on the Community's competence to conclude

that Convention and the consequences which this would have for the Member States.

Convention No 170 was adopted on 25 June 1990 at the 77th session of the International Labour Conference.