OPINION OF ADVOCATE GENERAL LA PERGOLA

delivered on 26 March 1996 *

1. By an order of 23 August 1994, the Arrondissementsrechtbank (District Court), Amsterdam, referred to the Court of Justice the following questions for a preliminary ruling concerning the interpretation of Decision No 3/80 adopted on 19 September 1980 by the Association Council set up by the Association Agreement between the European Economic Community and Turkey: [1]

'1. Is Decision No 3/80 of the EEC-Turkey Association Council on the application of social security schemes of the Member States of the European Communities to Turkish workers and members of their families applicable in the Community without an implementation procedure having taken place, as laid down in Article 2(1) of the Agreement on the necessary measures and procedures for the application of the Agreement creating an association between the European Economic Community and Turkey?

2. (a) If Decision No 3/80 is not (yet) applicable in the Community, can that decision nevertheless in certain circumstances have legal consequences, in so far as its provisions are capable of being applied directly?

(b) If the first question is answered in the affirmative, are Articles 12 and 13 of Decision No 3/80 sufficiently clear and precise to be capable of being applied directly without the need for further implementing measures, as provided for in Article 32 of Decision No 3/80?

3. (a) If Article 13 of Decision No 3/80 can be applied in circumstances of this kind, should the articles of Regulation (EEC) No 1408/71 referred to in Article 13 be applied as they were worded at the time when the Association Council adopted that decision on 19 September 1980, or should subsequent

* Original language: Italian.

1 — Agreement establishing an association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963 and concluded on behalf of the Community by Council Decision of 28 December 1963, 64/732/EEC (OJ 1973 C 113, p. 1).

amendments to the relevant articles of Regulation No 1408/71 also be taken into account?

(b) Does it also matter in that regard whether the amendments made after 19 September 1980 have resulted in parts of the relevant provisions subsequently being set out in more detail in other articles of or in annexes to Regulation No 1408/71?'

2. The case that has given rise to the questions for a preliminary ruling is summarized below.

There are four disputes before the national court. The first three are between Mrs Taflan-Met, Mrs Altun-Baser and Mrs Andal-Bugdayci, Turkish nationals, and Bestuur van de Sociale Verzekeringsbank, and the fourth between Mr Akol, also a Turkish national, and Bestuur van de Nieuwe Algemene Bedrijfsvereniging. The plaintiffs in the first three cases are in the same situation: they are the widows of Turkish nationals who had been employed in various Community States, including the Netherlands. Following the deaths of their husbands, they applied for widow's pensions. Their applications were, however, rejected by the competent Netherlands authorities on the ground that the social security system in the Netherlands is based on risk: regardless of the length of the period of insurance, the insured person, or his survivors, are entitled to benefit only if the risk materializes at a time when the insured is covered by the Netherlands legislation. According to the national court, that was not the position in this case since the individuals concerned were in Turkey at the time of their deaths and were not therefore covered by the Netherlands social security system at that time.

The case of Mr Akol is similar in some respects: a Turkish national, he worked in a number of Community countries, including the Netherlands, and his application for an invalidity pension was rejected by the competent authorities of that State. Here again, his application was refused because he became incapable of work at a time when he was no longer working in the Netherlands and was therefore not covered by the legislation of that country.

3. Since the benefits at issue are not able to be accorded under Dutch legislation, the national court takes the view that a different response might be possible if Decision No 3/80 of the EEC-Turkey Association

Council, in particular Articles 12 [2] and 13, [3] were deemed applicable in this case. The Arrondissementsrechtbank, Amsterdam, therefore referred the aforesaid questions to the Court of Justice for a preliminary ruling.

The first question

4. The first question seeks to establish whether Decision No 3/80 is applicable in its own right within the Community or whether an appropriate Council measure is needed to transpose it. Article 2(1) of the Agreement of 12 September 1963 on measures and procedures required for the implementation of the Agreement establishing an Association between the European Economic Community and Turkey [4] provides that '[d]ecisions and recommendations of the Council of Association on matters which ... are within the province of the Community, shall be implemented by decision of the Council acting unanimously adopted after the Commission has been consulted'. Indeed, on 8 February 1983 the Commission submitted to the Council a proposal for a Regulation (EEC) 'to bring this Decision (3/80) into force within the Community and to lay down supplementary detailed rules for its implementation'. [5] However, that proposal has not yet been approved by the Council. The question therefore arises which is at issue in this case, namely whether Decision No 3/80 can be directly applied even in the absence of the implementing measure apparently required under Article 2 of the Agreement.

5. The Court of Justice has already considered the question whether a Community implementing measure is necessarily required for decisions of the Association Council, and decided in Case 30/88 *Greece* v *Commission* [6] that this is not so. In an earlier case, [7] Advocate General Mancini had moreover also pointed out that 'Article 2(1) of Agreement 64/737/EEC requires the transposition into Community law only of decisions which could not otherwise be applied'. A similar view was subsequently taken by Advocate General Darmon in Case

2 — 'The rights to benefits of a worker who has successively or alternatively been subject to the legislation of two or more Member States shall be established in accordance with Article 37(1), first sentence, and (2), Articles 38 to 40, Article 41(1)(a), (b), (c) and (e) and (2), and Articles 42 and 43 of Regulation (EEC) No 1408/71.
However,
(a) for the purpose of applying Article 39(4) of Regulation (EEC) No 1408/71, all the members of the family, including children, residing in the Community or in Turkey, shall be taken into account;
(b) the reference in Article 40(1) of this Regulation to the provisions of Title III, Chapter 3, of Regulation (EEC) No 1408/71 shall be replaced by a reference to the provisions of Title III, Chapter 3 of this Decision.'

3 — 'The rights to benefits of a worker who has been subject to the legislation of two or more Member States, or of his survivors, shall be established in accordance with Article 44(2), first sentence, Articles 45, 46(2), Articles 47, 48, 49 and 51 of Regulation (EEC) No 1408/71.
However:
(a) Article 46(2) of Regulation (EEC) No 1408/71 shall apply even if the conditions for acquiring entitlement to benefits are satisfied without the need to have recourse to Article 45 of the said Regulation;
(b) for the purposes of applying Article 47(3) of Regulation (EEC) No 1408/71, all the members of the family, including children, residing in the Community or in Turkey shall be taken into account;
(c) for the purposes of applying Article 49(1)(a) and (2) and Article 51 of Regulation (EEC) No 1408/71, the reference to Article 46 shall be replaced by a reference to Article 46(2).'

4 — Agreement 64/737/EEC on measures and procedures required for the implementation of the Agreement establishing an Association between the European Economic Community and Turkey (JO 1964 217, p. 3703; an English version may be found in *Collection of the Agreements concluded by the European Communities*, Vol. 3, Bilateral Agreements EEC-Europe 1958-1975, Office for Official Publications of the European Communities, p. 571).

5 — OJ 1983 C 110, p. 1.

6 — Case 30/88 *Greece* v *Commission* [1989] ECR 3711.

7 — Case 204/86 *Greece* v *Council* [1988] ECR 5323. See the Opinion, at 5351.

C-192/89 *Sevince*. [8] It may be said — as was observed by Advocate General Tesauro in Case 30/88 *Greece* v *Commission* [9] — that the view taken by the Court and its Advocates General is that the provision at issue here does not require 'any and every measure adopted by the Association's governing bodies to be formally transposed'. A specific act of the Council is in fact needed in order to implement the decisions at issue only if the substance of the particular decision in question does not allow it immediately to be applied directly by the courts. [10] '[T]he decisions of the Council of Association, in the same way as the Agreement itself, form an integral part, as from their entry into force, of the Community legal system'. That was the ruling given by the Court of Justice in *Sevince*. [11] We are dealing with what is now established case-law; I do not consider it necessary to take a fresh look at it.

The question now before the Court, however, requires a tricky preliminary inquiry. As the Court has already made clear, the decisions in question do not form an integral part of the Community legal order until they have actually entered into force. Moreover, it is hard to see how this could be otherwise: the decision must be able to take effect before it can be applied, and, to use the customary form of words, become an integral part of the Community legal order. It is significant that in the abovementioned judgments the Court ruled on decisions that were in fact already in force. In this case, however, Decision No 3/80 does not specify the date on which it is to enter into force.

6. The crux of these proceedings is the inquiry to determine the time at which Decision No 3/80 entered into force. The Commission submits that the decision came into force on the day on which the Council adopted it, that is to say, 19 September 1980. Its argument is that the measure in question is essentially 'an international agreement in simplified form'; in the absence of an express provision, the date of its entry into force should therefore be established by means of an interpretation based on the general law of treaties. That body of law, principally Article 24 of the 1986 Vienna Convention, which was laid down in order to effect a full codification of this area, stipulates that, unless otherwise provided, a treaty enters into force at the time when the Contracting Parties manifest the intention to be bound by it. In this case — the Commission says — the time when the Contracting Parties manifested that intention was none other than the date when the decision was adopted and the adoption of that decision, in common with every other such decision, required their unanimous assent. The decision therefore entered into force at the same time as it was adopted, precisely because it takes the form of an agreement governed by the law of treaties.

The defendant institutions in the main proceedings, however, and likewise the Member

8 — Case C-192/89 *Sevince* [1990] ECR I-3461. See the Opinion, at I-3483.

9 — Cited in footnote 6. See the Opinion at 3725.

10 — I would make it clear here that if the terms of the decision are not sufficiently clear and precise for it to be applied directly and an appropriate measure laying down supplementary implementing provisions is therefore needed, that measure does not, in my view, constitute transposition in the technical sense.

11 — Cited in footnote 8, paragraph 9. See also Case C-237/91 *Kus* v *Landeshauptstadt Wiesbaden* [1992] ECR I-6781, paragraph 9, which confirms the approach taken in the earlier cases.

States which have submitted observations, take the opposite view. The reasons they give are as follows. Unlike the other decisions — Decisions Nos 1 and 2 — which were adopted on the same day, Decision No 3/80 does not specify the date on which it is to enter into force. This shows that the authors of the decision did not intend that it should be deemed to be in force from the date when they adopted it. On that view, the rules contained in Decision No 3/80 are anything but complete and it therefore requires appropriate implementing measures before it can be brought into force. In other words, the entry into force of the decision is dependent upon the adoption of such further measures. Not only — these parties add — does the decision in question not specify the date of its entry into force, but it provides, in one of its final provisions, that the parties — including therefore the Community — are to take, each to the extent to which they are concerned, the necessary steps to implement the decision. They finally point out that the Commission itself considered it necessary to propose the adoption of a Community regulation specifically for the purpose of implementing Decision No 3/80, but that the relevant proposal has not yet been approved by the Council.

7. For my part, I take the view that the Commission's argument cannot be accepted. It cannot be claimed, as the Commission does, that Decision No 3/80 has already entered into force, without first having found that there is a rule that, unless otherwise provided, the decision at issue must be regarded as having entered into force on the day on which the Association Council adopted it. But no such rule has been laid down either by the Association Agreement or by any other provision of an agreement governing the activity of the Association Council provided for in the Agreement. Nor does it appear that a similar rule has come into being as a result of custom or even by a mere practice in the sphere in which the Council is called upon to operate.

8. Having said this, it remains to be seen whether the law of treaties may be of any assistance in the inquiry which the Court has to undertake. The Commission considers that it may rely upon the law of treaties [12] to conclude that the decision entered into force at the time when it was adopted. I am perplexed by this view. It is questionable whether the Vienna Convention can be applied to this case. It has not in fact been shown that the decisions of the Association Council are to be regarded as international treaties: [13] they are measures whose formation and effectiveness is governed by the system of law established on the basis of the

12 — It is not clear from the Commission's reasoning whether the 1986 Vienna Convention is directly applicable, in so far as the decisions at issue are in fact treaties, or by analogy, on the ground that they are international legal acts which may be equated with treaties only by analogy. This point is irrelevant once — as I shall explain below — the view is taken that applying the Convention to this case does not produce the outcome sought by the Commission. Consequently, whether the Convention applies directly or by analogy the practical result is the same: its provisions include no rule justifying, in the absence of a provision to the contrary, the immediate entry into force of decisions of the Association Council. I would point out, however, simply in order to cover all theoretical possibilities, that authoritative academic writers question whether provisions setting up an organization — such as the EEC-Turkey Association — can be supplemented by proceeding by analogy where they contain lacunae (see Monaco: *Scritti di diritto delle organizzazioni internazionali*, Milan, 1981, p. 237, and the commentators cited at p. 238, footnote 17).

13 — However, in the sense that these are agreements in simplified form, see Gilsdorf: 'Les organes institués par des accords communautaires: effets juridiques de leurs décisions', in *Revue du Marché Commun*, 1992, p. 328 et seq., and Martines: 'Sugli atti degli organi istituiti dagli accordi di associazione della CEE', in *Foro italiano*, 1993, IV, p. 429 et seq. These writers concede, however, that the Association Council has its own legislative power, logically implying that its acts cannot be international agreements.

Association Agreement, under which the Contracting Parties are to transfer to the Council, which they comprise on a collegiate basis, the decision-taking function, that is to say, the function of producing binding rules. The decision is therefore the act by which the exercise of the function transferred by the Contracting Parties, as subjects of international law, to the body provided for by the legal system established by the Association Agreement is given practical expression. [14] The body in question adopts its own decisions by virtue of the provision which vested in it the competence to take decisions, in order to pursue, institutionally, the essential aims of the association relationship created by the Community with a third State. Certainly, the decisions adopted by the Association Council are ultimately founded on the agreement which set up that body and defines its function. This does not mean, however, that the decisions are converted into so many international agreements — whether or not they are in simplified form has little bearing — which would be agreements concluded directly between the Member States without the intervention of the body in which, in this instance, they are represented on a collegiate basis. The association system operates therefore through the intermediary of the decision-taking power of that body and this, no matter how the decisions which it adopts are sought to be defined, is not the same as the production of legal rules by treaty in accordance with international law. In addition, the decision-taking function of the Association Council is expressed to be binding in Article 22 of the basic treaty. [15] That is an indisputable fact. If the decisions were agreements, then they would have binding effect by virtue of their nature and Article 22 would be superfluous because, if interpreted as the Commission seeks to interpret it, this would amount to mere repetition of the principle *pacta sunt servanda*.

If the decisions cannot be equated with international agreements, the precondition for resolving the problem of the entry into force of the decision, as raised in this case, by reference to the law of treaties, in particular the Vienna Convention, is not satisfied. [16] A different conclusion has to be drawn. There is no rule the terms of which resolve the problem, and the only possible response is to take the view that the Council, as the body in which the decision-taking function is vested, may decide, not only on the prescriptive content, but also on the temporal effects and the actual entry into force of the decisions which it takes. The intention to confer immediate effect on a decision must, however, emerge unequivocally from its provisions, failing which the essential requirement of legal certainty would be impaired. This point is important. A system of direct transposition — or, as it is also termed, incorpo-

14 — In *Kus* v *Landeshaupstadt Wiesbaden* (cited in footnote 11; at I-6798 and I-6799), Advocate General Darmon — although proposing to classify the decisions as agreements in simplified form — noted that: '... under the Association Agreement, the Contracting Parties, including the Community, empowered the Association Council to adopt binding decisions'. Advocate General Darmon concluded from this that: 'To an extent, the contracting parties delegated to the Association Council the implementation of Article 12 of the Agreement and Article 36 of the Protocol'. That seems to me to describe a situation in which decision-taking power is vested in a body rather than one in which the parties negotiate and conclude the international agreement directly between themselves. Moreover, the EEC-Turkey Association Council is generally included among those bodies established by treaty and empowered by that same treaty to exercise legislative power (see Schermers: *International Institutional Law*, The Hague, 1995, p. 814, footnote 536).

15 — In *Kus* v *Landeshaupstadt Wiesbaden* (cited above), at I-6798, Advocate General Darmon took the view that 'the Community provided for the binding effect of those decisions in the Agreement itself'. And it is for precisely that reason, with which I fully concur, that the decisions in question do not constitute international agreements. If in fact they were international agreements, there would be no need for their binding effect to be provided for in an earlier treaty.

16 — In so far as 'all special procedures for the production of rules of international law based on a pre-existing treaty' are outside the scope of the law of treaties; see Mosconi: *La formazione dei trattati*, Milan, 1968, p. 23.

ration — of measures derived from the Association Agreement has come about by way of case-law. A system of that kind, even when provided for in legal systems other than the Community legal order — therefore, above all, in the national legal systems — necessitates, specifically in order to safeguard the principle of certainty of legal effects, the adoption of a number of vital safeguards, the first of which requires that an international rule which is automatically to be transformed into domestic law, should have been produced in accordance with the precepts and principles governing its entry into force. The automatic nature of this transformation guarantees procedural economy but is not, nor can it ever be, a mechanism that takes no account of considerations of legal certainty.

9. I should point out that the conclusion to which I have arrived would stay the same even if the type of ideas put forward by the Commission were perchance endorsed inasmuch as the decision at issue was regarded as an international agreement. By invoking the Vienna Convention, the Commission is making, for present purposes, a two-fold logical transition: Article 24 of the Vienna Convention provides — the Commission points out — that in the absence of a specific provision to the contrary, 'a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States'; the decision is therefore formed by means of the consent of all the parties, given that it is stipulated that the Council has to take decisions unanimously, and, for that very reason, enters into force on the day it is adopted. In so reasoning, however, the Commission is confusing the adoption of the decision with its entry into force. It is one thing to adopt the decision unanimously and quite another to manifest the intention that the operative part of the decision — which means, on this view, the prescriptive content of the agreement — should be immediately binding on the parties. Article 12 of the Vienna Convention in fact establishes that the signing of the treaty — which should in this case, the Commission argues, equate to the mere adoption of the decision — expresses consent to be bound in the following three cases only:

'(a) the treaty provides that signature shall have that effect;

(b) it is otherwise established that the negotiating States were agreed that signature should have that effect; or

(c) the intention of the State to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation'.

None of these hypotheses are satisfied in this case. First, neither Decision No 3/80 nor the Association Agreement provides that silence

as to the date of entry into force of the decision amounts to consent of the parties to be bound with immediate effect. [17] Case (b) does not apply since it does not appear in any way that it was the parties' intention that the decision should be considered to have entered into force at the time it was adopted. On the contrary, bearing in mind the content of the decision, its substantial financial implications and the need to provide for appropriate implementing measures, such a conclusion would be implausible. Finally, it cannot even be claimed that the requirements of case (c) are satisfied. Assuming, which I do not concede, that the parties' representatives were plenipotentiaries within the meaning of the Vienna Convention, they would still have had to manifest the intention to commit the contracting State represented by them with immediate effect. [18] The conferral of full powers is in fact merely the appointment of a plenipotentiary as the body empowered to express the consent of the State, without any need for further ratification, acceptance or approval of the treaty. It does not suffice, however, that the plenipotentiary should be empowered to express the consent of his State to be bound, *illico et immediate*, by the treaty. The plenipotentiary must also have intended to make use of that power. Establishing whether or not the intention required here was actually present in this case is a matter of interpretation. It seems to me that in this case the answer has to be in the negative. Bearing in mind, here again, the content of the decision, its literal wording and the consequences that would have resulted from its immediate application, it certainly cannot be presumed that the parties consented to be bound by it from the date on which it was adopted.

10. In conclusion, whether it is considered to be the product of the exercise of the power vested in the Association Council or a species of international agreement, Decision No 3/80 can be deemed to have entered into force immediately only if that was the intention of those who brought it into being. On that very point, the Commission has not succeeded in showing that its argument is well founded. The intention to confer immediate effect on the decision must, as I said earlier, be unequivocal. Silence as to the date of entry into force certainly does not amount to tacit manifestation of an intention that the decision should take effect immediately. If anything, the opposite is true: given its essentially negative value, silence cannot as a rule be deemed to constitute consent: in the instant case, acceptance of the immediate effect of the decision cannot be *presumed*, it has to be *inferred* from what the decision lays down and from all the evidence enabling the interpreter of the decision correctly to identify and reconstruct the intention of its author. I would add, again with reference to the argument put forward by the Commission, that in international law the intention of the parties is sovereign and, where there is doubt, the general rule of interpretation *in dubio mitius* requires the interpreter of the act to select from among the various possible readings of the text in question the interpretation which places the least burden on the parties. In this case, the immediate entry into force of the decision would have heavy financial implications and it cannot be considered that the parties intended to assume responsibility for them as from the day on which the decision was adopted, given that

17 — There would be no point in citing Article 22 of the Association Agreement, under which decisions are binding. What is in issue here is not whether or not the decisions are binding — it is a matter of establishing at what time they become binding. The above provision has nothing to say about that.

18 — See Morelli: *Nozioni di diritto internazionale*, Padua, 1967, p. 308.

they omitted to make express provision to that effect.

11. I must therefore give my preference to the argument put forward by the defendant institutions in the main proceedings and by the Member States which have submitted observations to the Court. Their argument is based on the consideration that the rules contained in Decision No 3/80 are incomplete and necessarily require implementing provisions. Their finding is correct. In the intention of the parties, the entry into force of the decision was not to be immediate, but was to be contingent on the adoption of implementing measures. Such provisions have, as I have mentioned, been drafted by the Commission but have not yet been adopted by the Council. [19] Decision No 3/80 has therefore not entered into force, nor could it have done so for the reasons which I have just given.

12. Nor should the Commission's argument be followed to the effect that such implementing measures are unnecessary in this case on the ground that Decision No 3/80 is sufficiently clear and precise to be applied immediately. In the first place, if the author of the decision considered supplementary measures indispensable and made its entry into force dependent upon the adoption of such measures, I fail to see how the Court can take a different view. But even leaving aside that unassailable point, it is a fact that it was actually necessary to adopt implementing measures. There would be no point in objecting — as the Commission would appear to — that the content of the decision at issue was self-executing and that its proposal for a regulation was justified simply because at the time when it was submitted, in 1983, the practice of invariably implementing in every eventuality all the decisions of the Association Council still applied. Were what the Commission states to be correct, it would be sufficient for its proposal to be limited to Article 1, according to which: 'Decision No 3/80 of the EEC-Turkey Association Council of 19 September 1980 on the application of the social security schemes of the Member States of the European Communities to Turkish workers and members of their families, annexed to this regulation, shall be *applicable* within the Community'. [20] There would, however, be no explanation for the remaining 79 articles of the proposal and its seven annexes laying down the precise, detailed rules needed in order for Decision No 3/80 to be applied within the Community. [21] In other words, the purpose

19 — There would be no point in objecting, as the Commission did at the hearing, that a clause similar to Article 32 was also included in the decisions that formed the subject-matter of the *Sevince* judgment and were held by the Court to constitute simply a repetition of the principle that the Treaty is to be carried out in good faith. Every clause has to be interpreted in context. The present context is radically different from that of the *Sevince* case. The latter case concerned decisions the content of which was complete, whereas this case involves an incomplete set of contractual rules requiring the adoption of implementing measures. Furthermore, while the decisions in *Sevince* provided for their entry into force, no such provision has been made here; and the stipulation that the necessary implementing measures are to be adopted subsequently has to be read precisely in conjunction with the fact that the date of entry into force is not laid down.

20 — My emphasis.

21 — It is worth pointing out that the proposal has never been withdrawn by the Commission and is therefore still pending before the Council; this seems further to confirm that the Commission itself considers, even now, the adoption of implementing measures designed to carry out Decision No 3/80 to be essential.

of the 1983 Commission proposal was not simply to incorporate the decision at issue here; it was in fact intended to lay down a genuine implementing regulation, as is clear, moreover, from the preamble to the proposal which states that: '... it is necessary to bring this Decision into force within the Community and to lay down *supplementary detailed rules for its implementation*'. [22]

It was therefore legitimate to take the view that implementing rules had to be adopted before Decision No 3/80 could apply within the Community. In fact, it seems to me that it would be impossible to envisage a social security system operating without a specific framework of implementing rules. In particular, detailed provisions are needed concerning prohibition of overlapping benefits, aggregation of periods, pro-rata benefits, administrative and medical checks for the workers concerned, and calculation and distribution of costs as between the institutions of the Member States, submission and consideration of benefit claims and the possibility of disputes arising between the institutions of the Member States. In short, there has to be a whole series of rules governing the complex area with which we are dealing here. [23] Those are the very rules which the Commission was concerned to provide for in the aforementioned proposal for a regulation in 1983. I would point out, moreover, that Regulation No 1408/71 [24] in its time required the adoption of a detailed implementing regulation [25] and that, as the Commission itself acknowledges, the implementing provisions it has laid down in regard to Decision No 3/80 largely mirror those contained in the latter regulation.

Nor can it be said that the provisions of Decision No 3/80 could be supplemented by having recourse to corresponding or similar provisions laid down by Regulation No 1408/71 and the regulations adopted to implement it. To supplement the decision in that way would, in my view, be completely unjustified. The decision at issue does not seek to provide the same arrangements for Turkish workers as are laid down in the aforementioned regulations for Community workers. It is enough to read the decision to realize that some provisions of those regulations are declared to be applicable. Others

22 — My emphasis.

23 — It is worth pointing out that the need for implementing measures also arises specifically in relation to Articles 12 and 13 of the decision, which form the subject-matter of these proceedings. It is sufficient to consider in that connection Article 6 of the Commission proposal for an implementing regulation, which provides for 'General rules for the implementation of provisions dealing with the prevention of overlapping of benefits — application of those provisions to benefits in respect of invalidity, old age and death (pensions)'; Article 13 of the proposal which provides for 'General rules for the aggregation of periods' and is specifically intended to give effect to Articles 12 and 13 of the decision; and Chapter 3 of Title IV entitled 'Invalidity, old age and death (pensions)'.

24 — Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (consolidated version in OJ 1992 C 325, p. 1).

25 — Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, self-employed persons and members of their families moving within the Community (consolidated version in OJ 1992 C 325, p. 96).

are not. In some instances, rules which take the place of or derogate from those texts are provided for. At most, the decision at issue here contains specific references incorporating some provisions of Regulation No 1408/71; it does not contain a formal reference to all the rules laid down in that regulation. Since such reference is only specific to the particular provision incorporated, it must be construed as being limited to the provision referred to and cannot, therefore, be extended to include the relevant implementing measures subsequently laid down. That is why appropriate implementing measures have to be adopted before Decision No 3/80 can be put into effect, but cannot be inferred, by interpretation, by referring to other Community social security rules.

13. To conclude: the question of the entry into force and, consequently, of the incorporation of the Council decision into the Community legal order neither can nor should be resolved by relying on the automatic nature of its effects — which the Commission seeks to connect with the adoption of the decision; it has to be resolved by reference to the intention manifested by the Council when it adopted the decision. For the reasons already explained, the entry into force of the decision must be considered to be dependent upon the adoption of supplementary, implementing provisions [26] which the decision's author itself considered to be essential. [27] The courts cannot take a different view.

Far from contradicting what the Court has ruled concerning transposition of decisions of the Association Council, the outcome at which I am in the course of arriving draws the logical conclusions from the case-law. The Court has ruled that an appropriate formal transposition measure is not needed for a decision such as the decision at issue. The decision is incorporated into the Community legal order immediately as from its entry into force. If that is so, entry into force means not only that the measure must be perfected in terms of the external legal system in which it is brought into being but clearly also that it must be incorporated into the Community legal system. Bringing the rule into effect immediately therefore entails — if we are to follow, as I consider we must, the approach taken in the relevant case-law — that there must be an intention immediately to incorporate the measure into the Community sphere with all the ensuing consequences: and it is the specific, unequivocal intention to produce just that effect which has, as I have explained above, to be established by way of interpretation. In this case, supplementary implementing measures are

26 — It is interesting to note that Regulation No 1408/71 is based on that very legislative technique. Article 99 of the regulation in fact provides that it 'shall enter into force on the first day of the seventh month following the publication ... of the *implementing Regulation* ...', demonstrating that even in the Community context, the entry into force and, consequently, the applicability of the basic social security legislation can be — and indeed has been — made dependent upon the adoption of specific implementing measures.

27 — Further clarification is needed here. In this case, the need for implementing measures determines not only the application of a rule that is already in force but the actual entry into force of the rule. This case differs from those already considered by the Court in which it ruled that measures to supplement or implement a decision of the Association Council are not needed where the provisions of that decision are sufficiently clear and precise to be able to be applied immediately. Those cases in fact involved decisions that had already entered into force. And it is plain that if the rule is already in force and further specification is not required, it may take effect immediately.

essential both to bring the provision into effect, thereby triggering automatic transposition as defined by the Court, and to allow the courts to apply the measures to the persons concerned.

Since Decision No 3/80 has yet to enter into force, the abovementioned case-law of the Court means that the decision at issue here must be regarded as not forming an integral part of the Community legal order.

14. I shall add one further consideration. The fact that a decision adopted a good 16 years ago has not entered yet into force should certainly not come as a surprise or be considered an anomaly. There are numerous instances of measures and treaties which have been adopted but have never entered into force, or entered into force decades later. The question might certainly be asked as to whether the party which should have provided for the implementing measures needed in order for Decision No 3/80 to enter into force has conducted itself properly or in good faith. However, that is irrelevant in this context: the Court is not required to determine the possible international liability of any legal person who may have prejudiced the entry into force of the measure at issue here. It has simply to establish whether the author of the decision manifested the intention that the measure should enter into force immediately. The answer to the question, as I have made clear, is that it manifested no such intention.

The second question

15. The second question essentially seeks to establish whether Decision No 3/80 can have legal effects even though it 'is not yet applicable in the Community'. In the event of an affirmative answer, it is asked whether Articles 12 and 13 of that decision are sufficiently clear and precise to be capable of having direct effect.

In my view, the first part of the question should be answered in the negative. The concept of applicability has to be interpreted here as meaning imputing the decision to the Community legal order. If, for the reasons already explained, the decision is not yet applicable — and does not therefore constitute an integral part of the Community legal order — it cannot be seen what legal effects it can have. A measure which has not yet become part of the Community legal order cannot have any effect, not even the direct effect to which the national court refers.

The second part of the question is put only if the first part is answered in the affirmative, and therefore need not be considered here.

The third question

16. The national court's third question seeks to establish whether the reference in Decision No 3/80 to certain provisions of

Regulation No 1408/71 has to be interpreted in a static or a dynamic way. Here again, the question presupposes that the decision has already entered into force and is therefore applicable in the Community. The answer has therefore to be deemed to be encompassed by the negative answer which, I believe, has to be given to the first and second questions.

Conclusion

17. In view of the foregoing considerations, I therefore propose that the Court should reply as follows to the questions submitted by the Arrondissementsrechtbank, Amsterdam:

(1) Since Decision No 3/80 of the EEC-Turkey Association Council on the application of the social security schemes of the Member States of the European Communities to Turkish workers and members of their families has not yet entered into force, it does not constitute an integral part of the Community legal order and is therefore not directly applicable within that legal order.

(2) No legal effect may therefore ensue from that decision within the Community legal order.