The reasoning of the Court

I — The admissibility of the request for an opinion

1 The German Government contests the admissibility of the request for an opinion submitted by the Commission pursuant to Article 228(1) of the Treaty. The Netherlands Government also expresses doubt as to the admissibility of that request. According to those Governments, the procedure set out in that article is intended only for the examination of the compatibility with the Treaty of an agreement the conclusion of which is envisaged between the Community and one or more States or an international organization. The present request, they submit, relates to the Community's competence to conclude a convention which is capable of being ratified only by Member States of the ILO and not by the Community, which is not a Member of that international organization.

2 Those arguments cannot be accepted.

3 The Court has consistently held (Opinion 1/75 [1975] ECR 1355; Opinion 1/76 [1977] ECR 741; Ruling 1/78 delivered pursuant to Article 103 of the EAEC Treaty [1978] ECR 2151; and Opinion 1/78 [1979] ECR 2871) that it is possible under the procedure set out in Article 228, 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. That interpretation is confirmed by Article 107(2) of the Rules of Procedure of the Court.

4 It follows that the request for an opinion does not concern the Community's capacity, on the international plane, to enter into a convention drawn up under the auspices of the ILO but relates to the scope, judged solely by reference to the rules of Community law, of the competence of the Community and the Member States within the area covered by Convention No 170. It is not for the Court to assess any obstacles which the Community may encounter in the exercise of its competence because of constitutional rules of the ILO.

5 In any event, although, under the ILO Constitution, the Community cannot itself conclude Convention No 170, its external competence may, if necessary, be exercised through the medium of the Member States acting jointly in the Community's interest.

6 The conditions laid down in the second subparagraph of Article 228(1) of the Treaty have therefore been satisfied and the request is consequently admissible.

II — The substance

7 Before examining whether Convention No 170 falls within the scope of the Community's competence and whether the Community's competence is exclusive, the Court must point out that, as it stated in particular in paragraph 3 of Opinion 1/76, cited above, authority to enter into international commitments may not only arise from an express attribution by the Treaty, but may also flow implicitly from its provisions. The Court concluded, in particular, that whenever Community law created for the institutions of the Community powers within its internal system for the purpose of attaining a specific objective, the Community had authority to enter into the international commitments necessary for the attainment of that objective even in the absence of an express provision in that connection. At paragraph 20 in its judgment in Joined Cases 3, 4 and 6/76 *Kramer and Others* [1976] ECR 1279, the Court had already pointed out that such authority could flow by implication from other measures adopted by the Community institutions within the framework of the Treaty provisions or the acts of accession.

8 The exclusive nature of the Community's competence has been recognized by the Court with respect to Article 113 of the Treaty (Opinion 1/75, cited above; judgment in Case 41/76 *Donckerwolke and Schou* v *Procureur de la République* [1976] ECR 1921, paragraph 32) and to Article 102 of the Act of Accession (judgment in Case 804/79 *Commission* v *United Kingdom* [1981] ECR 1045, paragraphs 17 and 18). It follows from that line of authority that the existence of such competence

arising from a Treaty provision excludes any competence on the part of Member States which is concurrent with that of the Community, in the Community sphere and in the international sphere (see Opinion 1/75 above).

9 The exclusive or non-exclusive nature of the Community's competence does not flow solely from the provisions of the Treaty but may also depend on the scope of the measures which have been adopted by the Community institutions for the application of those provisions and which are of such a kind as to deprive the Member States of an area of competence which they were able to exercise previously on a transitional basis. As the Court stated at paragraph 22 in its judgment in Case 22/70 *Commission* v *Council* [1971] ECR 263 (the *AETR* judgment), where Community rules have been 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.

10 Contrary to the contentions of the German, Spanish and Irish Governments, the authority of the decision in that case cannot be restricted to instances where the Community has adopted Community rules within the framework of a common policy. In all the areas corresponding to the objectives of the Treaty, Article 5 requires Member States to facilitate the achievement of the Community's tasks and to abstain from any measure which could jeopardize the attainment of the objectives of the Treaty.

11 The Community's tasks and the objectives of the Treaty would also be compromised if Member States were able to enter into international commitments containing rules capable of affecting rules already adopted in areas falling outside common policies or of altering their scope.

12 Finally, an agreement may be concluded in an area where competence is shared between the Community and the Member States. In such a case, negotiation and implementation of the agreement require joint action by the Community and the Member States (judgment in *Kramer*, cited above, paragraphs 39 to 45, and Opinion 1/78, cited above, paragraph 60).

III

13 It is necessary to bear in mind the foregoing when examining the question whether Convention No 170 comes within the Community's sphere of competence and, if so, whether that competence is exclusive in nature.

14 Convention No 170 concerns safety in the use of chemicals at work. According to the preamble, its essential objective is to prevent or reduce the incidence of chemically induced illnesses and injuries at work by ensuring that all chemicals are evaluated to determine their hazards, by providing employers and workers with the information necessary for their protection and, finally, by establishing principles for protective programmes.

15 The field covered by Convention No 170 falls within the 'social provisions' of the EEC Treaty which constitute Chapter 1 of Title III on social policy.

16 Under Article 118a of the Treaty, Member States are required to pay particular attention to encouraging improvements, especially in the working environment, as regards the health and safety of workers, and to set as their objective the harmonization of conditions in this area, while maintaining the improvements made. In order to help achieve this objective, the Council has the power to adopt minimum requirements by means of directives. It follows from Article 118a(3) that the provisions adopted pursuant to that article are not to prevent any Member State from maintaining or introducing more stringent measures for the protection of working conditions compatible with the Treaty.

17 The Community thus enjoys an internal legislative competence in the area of social policy. Consequently, Convention No 170, whose subject-matter coincides, moreover, with that of several directives adopted under Article 118a, falls within the Community's area of competence.

18 For the purpose of determining whether this competence is exclusive in nature, it should be pointed out that the provisions of Convention No 170 are not of such a kind as to affect rules adopted pursuant to Article 118a. If, on the one hand, the Community decides to adopt rules which are less stringent than those set out in an ILO convention, Member States may, in accordance with Article 118a(3), adopt more stringent measures for the protection of working conditions or apply for that purpose the provisions of the relevant ILO convention. If, on the other hand, the Community decides to adopt more stringent measures than those provided for under an ILO convention, there is nothing to prevent the full application of Community law by the Member States under Article 19(8) of the ILO Constitution, which allows Members to adopt more stringent measures than those provided for in conventions or recommendations adopted by that organization.

19 The Commission notes, however, that it is sometimes difficult to determine whether a specific measure is more favourable to workers than another. Thus, in order to avoid being in breach of the provisions of an ILO convention, Member States may be tempted not to adopt provisions better suited to the social and technological conditions which are specific to the Community. The Commission therefore takes the view that, in so far as this attitude risks impairing the development of Community law, the Community itself ought to have exclusive competence to conclude Convention No 170.

20 That argument cannot be accepted. Difficulties, such as those referred to by the Commission, which might arise for the legislative function of the Community cannot constitute the basis for exclusive Community competence.

21 Nor, for the same reasons, can exclusive competence be founded on the Community provisions adopted on the basis of Article 100 of the Treaty, such as, in particular, Council Directive 80/1107/EEC of 27 November 1980 on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work (OJ 1980 L 327, p. 8) and individual directives adopted pursuant to Article 8 of Directive 80/1107, all of which lay down minimum requirements.

IV

22 A number of directives adopted in the areas covered by Part III of Convention No 170 do, however, contain rules, which are more than minimum requirements. This is the case, for instance, with regard to Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative practices relating to the classification, packaging and labelling of dangerous substances (OJ, English Special Edition 1967, p. 234), adopted pursuant to Article 100 of the Treaty and amended by, *inter alia*, Directive 79/831/EEC of 18 September 1979 (OJ 1979 L 259, p. 10) and Directive 88/379/EEC of 7 June 1988 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations (OJ 1988 L 187, p. 14), adopted pursuant to Article 100a.

23 Those directives contain provisions which in certain respects constitute measures conferring on workers, in their conditions of work, more extensive protection than that accorded under the provisions contained in Part III of Convention No 170. This is so, in particular, in the case of the very detailed rules on labelling set out in the abovementioned Directive 88/379.

24 The scope of Convention No 170, however, is wider than that of the directives mentioned. The definition of chemicals (Article 2(a)), for instance, is broader than that of products covered by the directives. In addition (and in contrast to the provisions contained in the directives), Articles 6(3)and 7(3) of the Convention regulate the transport of chemicals.

25 While there is no contradiction between these provisions of the Convention and those of the directives mentioned, it must nevertheless be accepted that Part III of Convention No 170 is concerned with an area which is already covered to a large extent by Community rules progressively adopted since 1967 with a view to achieving an ever greater degree of harmonization and designed, on the one hand, to remove barriers to trade resulting from differences in legislation from one Member State to another and, on the other hand, to provide, at the same time, protection for human health and the environment.

26 In those circumstances, it must be considered that the commitments arising from Part III of Convention No 170, falling within the area covered by the directives cited above in paragraph 22, are of such a kind as to affect the Community rules laid down in those directives and that consequently Member States cannot undertake such commitments outside the framework of the Community institutions.

V

27 Part II of Convention No 170 contains general principles relating to its implementation; these are set out in Articles 3, 4 and 5.

28 In so far as it has been established that the substantive provisions of Convention No 170 come within the Community's sphere of competence, the Community is also competent to undertake commitments for putting those provisions into effect.

29 Article 3 requires that the most representative organizations of employers and workers should be consulted on the measures to be taken to give effect to the provisions of Convention No 170. Article 4 provides that each Member must, in the light of national conditions and practice and in consultation with those organizations, formulate, implement and periodically review a coherent policy on safety in the use of chemicals at work.

30 Admittedly, as Community law stands at present, social policy and in particular cooperation between both sides of industry are matters which fall predominantly within the competence of the Member States.

31 This matter, has not, however, been withdrawn entirely from the competence of the Community. It should be noted, in particular, that, according to Article 118b of the Treaty, the Commission is required to endeavour to develop the dialogue between management and labour at European level.

32 Consequently, the question whether international commitments, whose purpose is consultation with representative organizations of employers and workers, fall within the competence of the Member States or of the Community cannot be separated from the objective pursued by such consultation.

33 Article 5 of Convention No 170 requires that the competent authority is to have the power, if justified on safety and health grounds, to prohibit or restrict the use of certain hazardous chemicals, or to require advance notification and authorization before such chemicals are used.

34 As to that, even if the competent authority referred to in that article is an authority of one of the Member States, the Community may nevertheless assume the aforementioned obligation for external purposes. Just as, for internal purposes, the Community may provide, in an area covered by Community rules, that national authorities are to be given certain supervisory powers (see in particular Article 4 of Council Directive 80/1107/EEC of 27 November 1980 on the protection of workers from the risks related to exposure to chemical, physical and biological agents at work, OJ 1980 L 327, p. 8, cited by the Council), it may also, for external purposes, undertake commitments designed to ensure compliance with substantive provisions which fall within its competence and imply the attribution of certain supervisory powers to national authorities.

VI

35 Finally, as the French Government has observed, the substantive scope of the Convention lies outside the scope of the association scheme for overseas countries and territories and consequently, as the Court observed at points 61 and 62 of Opinion 1/78, cited above, 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.

VII

36 At points 34 to 36 in Ruling 1/78 [1978] ECR 2151, the Court pointed out that when it appears that the subject-matter of an agreement or contract falls in part within the competence of the Community and in part within that of the Member States, it is important to ensure that there is a close association between the institutions of the Community and the Member States both in the process of negotiation and conclusion and in the fulfilment of the obligations entered into. This duty of cooperation, to which attention was drawn in the context of the EAEC Treaty, must also apply in the context of the EEC Treaty since it results from the requirement of unity in the international representation of the Community.

37 In this case, cooperation between the Community and the Member States is all the more necessary in view of the fact that the former cannot, as international law stands at present, itself conclude an ILO convention and must do so through the medium of the Member States.

38 It is therefore for the Community institutions and the Member States to take all the measures necessary so as best to ensure such cooperation both in the procedure of submission to the competent authority and ratification of Convention No 170 and in the implementation of commitments resulting from that Convention.

VIII

39 It follows from all the foregoing considerations that the conclusion of ILO Convention No 170 is a matter which falls within the joint competence of the Member States and the Community.

In conclusion,

THE COURT

composed of:

gives the following opinion:

The conclusion of ILO Convention No 170 is a matter which falls within the joint competence of the Member States and the Community.

Due President	Kakouris President of Chamber	Rodríguez Iglesias President of Chamber
Zuleeg President of Chamber	Murray President of Chamber	Mancini Judge
Joliet Judge	Schockweiler Judge	Moitinho de Almeida Judge
Grévisse Judge	Diez de Velasco Judge	
Kapteyn Judge	Edward Judge	

Luxembourg, 19 March 1993.

J.-G. Giraud

Registrar