# OPINION OF ADVOCATE GENERAL VAN GERVEN
## delivered on 15 October 1992 *

*Mr President,*
*Members of the Court,*

1. In this case the Finanzgericht Hamburg has submitted a number of questions in which it seeks a preliminary ruling on the interpretation and the application of the Convention on a common transit procedure, which was concluded on 20 May 1987 between the Community and the EFTA countries (hereinafter 'the Convention'). [1] Those questions arose in a dispute between Deutsche Shell AG, the plaintiff in the main proceedings (hereinafter 'Shell'), and the Hauptzollamt (Principal Customs Office) Hamburg-Harburg.

## Background

2. The Convention contains provisions concerning the carriage of goods in transit between the Community and the EFTA countries as well as between those countries themselves. Article (1) of the Convention provides for a common transit procedure — also known as a common system of transit — for such goods, regardless of their kind and origin. [2] The Community transit procedure, as laid down in Regulation (EEC) No 222/77, [3] constituted a model for that system. The Convention was approved by the Council by decision of 15 June 1987. [4]

Article 11 of the Convention lays down the procedure for the identification of goods in transit. As a general rule, identification of the goods is to be ensured by sealing (Article 11(1)). However, the office of departure may dispense with sealing if, having regard to other possible measures for identification, the description of the goods in the T1 or T2 declaration or in the supplementary documents makes them readily identifiable (Article 11(4)). That exception corresponds to the one applicable in the case of Community transit. [5]

According to Article 63 of Appendix II to the Convention, the customs authorities of each country may authorize certain consignors not to produce at the office of departure either the goods concerned or the transit declaration in respect thereof. The conditions which must be fulfilled in order to gain the status of 'authorized consignor' include the keeping of records enabling the customs authorities to verify the operations concerned (Article 64 of Appendix II). The

* Original language: Dutch.

1 — OJ 1987 L 226, p. 2.

2 — According to Article 3(1)(a) of the Convention, 'transit' means a customs procedure under which goods are carried, under customs control, from a customs office in one country to a customs office in the same or another country over at least one frontier.

3 — Council Regulation (EEC) No 222/77 of 13 December 1976 on Community transit, OJ 1977 L 38, p. 1.

4 — OJ 1987 L 226, p. 1.

5 — See Article 18 of Regulation No 222/77.

authorization must specify, in particular, the identification measures to be taken. To that end the customs authorities may prescribe that the means of transport or the package(s) are to bear special seals, accepted by the customs authorities and affixed by the authorized consignor (Article 65(d) of Appendix II).

3. A Joint Committee was set up under the Convention with responsibility for administering the Convention and ensuring its proper implementation. The Joint Committee consists of representatives of the Contracting Parties — the Community being represented by the Commission — and acts by mutual agreement, that is to say unanimously. It issues recommendations in implementation of the Convention and may by decision make a number of specified amendments or adopt certain measures (Articles 14 and 15 of the Convention).

At its first annual meeting on 21 January 1988 the Joint Committee adopted a compendium of administrative arrangements ('arrangements administratifs', 'Verwaltungsabsprachen', 'Administratieve regelingen'), set out in Document No XXI/1367/87 — EFTA 2. According to the minutes of the meeting, that set of arrangements, as drawn up by the EEC-EFTA experts, is to be applied in implementing the Convention. [6] Chapter III, entitled 'Formalities at the office of departure', C 'Identification measures', contains a *basic arrangement* ('arrangement de base'), which is set out in full in the Report for the Hearing and which states *inter alia* that sealing is the most suitable method of facilitating frontier crossings.

6 — See point 4 of the Minutes of the meeting, Annex I to the Commission's written observations.

It also states that dispensation from sealing, as provided for in Article 11(4) of the Convention, and identification on the basis of the description of the goods, which is also provided for therein, are possible only where that description 'is sufficiently detailed to enable the quantity and the nature of the goods to be easily recognized'.

In addition, the same part of the document sets out *special measures*, which are also referred to in the Report for the Hearing, applicable to trade with Switzerland and Austria. According to those measures 'the provisions of the Convention relating to sealing are to be strictly applied' and dispensation from sealing is authorized by way of exception 'in respect of heavy or bulky goods or those which do not lend themselves to transportation under customs seal (animals) and in respect of vehicles which cannot be sealed for technical reasons'.

4. Shell is an authorized consignor under both the Community transit procedure and the common transit procedure. In that capacity it was permitted by the Hauptzollamt for some considerable time to ship its oil products without being required to affix customs seals. By decision of 1 November 1988 the Hauptzollamt amended that authorization inter alia by permitting Shell henceforth to identify goods by description under the common transit procedure with (all) the EFTA countries only where (i) the goods concerned are difficult to seal, bulky or unsuitable for transportation under customs seal (animals), (ii) for technical reasons vehicles cannot be sealed, or (iii) the customs office of destination is a customs office at the point of entry into an EFTA country. In so doing, the Hauptzollamt was following the instructions of the Federal Ministry of

Finance, which were based on the aforesaid act of the Joint Committee, more specifically the special measures comprised therein which apply to trade with Switzerland and Austria.

5. After unsuccessfully lodging an objection with the Oberfinanzdirektion (Principal Revenue Office) Hamburg, Shell instituted proceedings in the national court, claiming that the relevant part of the Hauptzollamt's decision and the decision of the Oberfinanzdirektion should be set aside. It would like simply to describe its shipments of oil products made under the common transit procedure, as was the case hitherto. In Shell's view, Article 11(4) of the Convention confers on the customs office of departure a discretion in individual cases. That possibility of determining the identification measures which are necessary in the light of the particular circumstances of each individual case is nullified, in its view, by the aforesaid act of the Joint Committee. Shell also considers that the obligation to affix customs seals when shipping its products to EFTA countries is disproportionate. As an authorized consignor, the plaintiff is under constant and effective supervision by the customs authorities, which rules out any abuse of the transit procedure. The practice followed hitherto, also under the Community transit procedure, of identification through description in the transit papers has not given rise to any complaints and is sufficient to safeguard the revenue interests of the countries involved in the transit procedure. In contrast, identification by means of sealing involves considerable expenditure in terms of time and labour in carrying out transit operations, especially where inland waterway vessels have to be sealed. This requires each vessel to be secured using forty to sixty seals, entailing hours of work. In Shell's view, customs interests cannot justify those formalities in the case of transit to EFTA countries, whilst, on the basis of the Hauptzollamt's own assessment and administrative practice, the same is not required in the case of transit to Member States of the Community.

The Hauptzollamt, and the Oberfinanzdirektion Hamburg which intervened in the main proceedings, have argued before the national courts that the arrangements made by the Joint Committee served to ensure the uniform exercise of discretion in the Contracting States. The arrangement at issue here is necessary in order to guarantee fast and unimpeded border crossings, in particular in view of the heavy traffic through Switzerland and Austria. In their view, the Joint Committee was entitled to make such an arrangement, in view of the fact that it is even empowered to amend the appendices to the Convention.

6. Taking the view that the solution of the dispute raises problems of Community law, the national court has submitted the following questions to the Court of Justice:

'(1) Is the resolution of the Joint Committee established under Article 14 of the Convention of 20 May 1987 on a common transit procedure to the effect that Document No XXI/1367/87 — EFTA 2 should be used in the common transit procedure binding on the Member States? Is that resolution subject to the jurisdiction of the Court of Justice?

(2) If Question 1 is answered in the affirmative, is that resolution valid?

(3) If Question 1 is answered in the negative, is the Convention of 20 May 1987 subject to the jurisdiction of the Court of Justice? If this question is answered in the affirmative;

(a) are Article 11(4) and Article 15(2) of the Convention to be interpreted as meaning that the Joint Committee is entitled to restrict the power of the customs office of departure to dispense with sealing, by providing that goods must always be secured by sealing unless the customs office at the point of entry into the EFTA country is the customs office of destination or the space containing the goods cannot be sealed?

(b) Are the provisions referred in (a) to be interpreted as meaning that the decision to dispense with sealing may also be taken by the highest authority in the Member State concerned instead of by the customs office of departure?

(4) If the questions under 3 are answered in the affirmative, are the provisions referred therein in conjunction with the principle of proportionality to be interpreted as meaning that sealing may also be required in the case of the shipment of mineral oils in tanker trains and ships by a consignor authorized under Chapter II of Appendix II to the Convention?'

**Jurisdiction of the Court and legal nature of the contested act**

7. In Questions 1 and 3 the national court seeks to ascertain whether the Court has jurisdiction in relation to the Convention of 20 May 1987 or in relation to the contested act of the Joint Committee established under the Convention.

The national court is correct in assuming that the interpretation of the Convention falls within the jurisdiction of the Court. The Court has consistently held that the provisions of an agreement concluded by the Council form an integral part of the Community legal system as from the entry into force of that agreement. [7] So far as the Community is concerned, such an agreement is an act of one of the Community institutions within the meaning of subparagraph (b) of the first paragraph of Article 177 of the EEC Treaty, and the Court accordingly has jurisdiction to give a preliminary ruling concerning the interpretation of that agreement which is valid within the Community. [8]

7 — See the judgment of 30 April 1974 in Case 181/73 *Haegeman* v *Belgium* [1974] ECR 449, at paragraph 5; see also the judgments of 30 September 1987 in Case 12/86 *Demirel* [1987] ECR 3719, at paragraph 7, 14 November 1989 in Case 30/88 *Greece* v *Commission* [1989] ECR 3711, at paragraph 12, and 20 September 1990 in Case C-192/89 *Sevince* [1990] ECR I-3461, at paragraph 8; see, more recently still, the Opinion of 14 December 1991, Opinion 1/91 [1991] ECR I-6079, at paragraph 37.

8 — Judgment in *Haegeman*, at paragraphs 4 and 6; judgment in *Demirel*, at paragraph 7; Opinion 1/91, at paragraph 38.

8. So far as the jurisdiction of the Court is concerned in relation to the contested act of the Joint Committee, I must begin by considering, in reply to (the first part) of Question 1, how the contested act is to be classified for legal purposes under the Convention.

The designation of the act has already given rise to disagreement. The national court refers to it as a resolution ('Entschließung'), although that term is disputed by the Commission. In the papers relating to the relevant meeting of the Joint Committee, that designation is not used. It is clear, in my view, that it is not a decision within the meaning of Article 15(3) of the Convention. In that provision the areas in which the Joint Committee may adopt a legally binding decision are listed exhaustively. The Joint Committee is empowered to make a number of specific amendments and to adopt a number of specific (transitional) measures. The act under discussion here does not fall within either of those categories. It is apparent, moreover, from the minutes of the annual meeting held on 21 January 1988 that the Joint Committee considered the measure in question necessary for the *application* — and not the amendment — of the Convention. Consequently, the act must be regarded as a recommendation within the meaning of Article 15(2)(b) of the Convention, according to which the Joint Committee is to recommend 'any other measure required for its (the Convention's) application'.

There, right away, is the answer to the first part of Question 1: the measure in question is an act, which is *not* legally *binding*, of an administrative and supervisory body set up under an agreement concluded by the Community with non-member countries.

9. The Commission, which in its observations also comes to the conclusion that the contested act is a recommendation, infers therefrom that the Court has no jurisdiction under Article 177 of the EEC Treaty to rule on the validity and interpretation of an act of that kind. It its view, a wide interpretation of Article 177 is called for only when there is a genuine need for it. That is not so in the case of acts which are not legally binding, that are adopted by institutions acting on the basis of international conventions concluded by the Community. Such acts, according to the Commission, do not form part of the Community legal system. The Commission concedes that in its judgment in *Sevince* the Court itself claimed jurisdiction to give a ruling on the interpretation of the decisions of a joint council of association set up under an association agreement concluded by the Community with a non-member country. However, the Court's primary reason for applying Article 177 of the Treaty is, according to the Commission's reading of *Sevince*, the need for a uniform application of all Community rules throughout the Community. Where a measure has no binding force, that need never arises. The national court can still submit questions to the Court concerning the interpretation of provisions of Community law on which those acts are based. If those acts appear to be compatible with Community law, there is no problem; nor is there a problem if they are incompatible with Community law, as they are not binding.

10. I disagree with that reasoning. In the first place, I do not see why the acts, which are not legally binding, of a body set up pursuant to an international agreement approved by the Council should not form part of the Community legal system, when the binding acts of such a body do form part thereof. It is clear from the recent case-law of the Court that it is not the binding force of the act which is decisive, but the direct connection between the act and the international agreement concluded by the Community. If there is a direct connection of that kind, then the act, in the same way as the international agreement on which it is based, forms an integral part of the Community legal system. [9] Crucial factors for establishing a close connection of that kind are, also according to the Court's case-law, that the act is placed 'within the institutional framework' of the agreement [10] and 'gives effect' to it. [11] It follows that the requirement of a direct connection is fulfilled once it is clear that the contested act has been adopted by 'the authority established by the agreement and entrusted with responsibility for its implementation'. [12] It cannot be disputed that a direct connection of that kind exists in this case; as will become apparent, the act at issue here was adopted within the institutional framework of the Convention by the administrative and supervisory body designated by the Convention (see paragraph 13), and gives effect thereto by aiming to lay down practical guidelines for the customs office of departure as regards the identification of the goods in transit. Consequently the act is directly connected with the fundamental objectives of the Convention, namely simplification of the carriage of goods in trade between the Community and EFTA (see below, paragraphs 15 and 16).

11. If an act is deemed to form part of Community law, the fact that it is not binding does not preclude the application of Article 177. That has already been confirmed by the Court on several occasions in connection with recommendations issued on the basis of the EEC Treaty. [13] In its judgment in *Grimaldi*, the Court considered that:

'It is sufficient to state in that respect that, unlike Article 173 of the EEC Treaty, which excludes review by the Court of acts in the nature of recommendations, Article 177 confers on the Court jurisdiction to give a preliminary ruling on the validity and interpretation of all acts of the institutions of the Community without exception.' [14]

I do not see why that should not apply equally to recommendations of the Joint Committee, which was set up under the international Convention that is under consideration in this case, once it has been established that those recommendations form part of the Community legal system inasmuch as they are closely connected with that Convention. Admittedly, such recommendations cannot confer any rights, as the Court stated in *Grimaldi*,

9 — Judgment in *Sevince*, at paragraph 9; judgment in *Greece* v *Commission*, at paragraph 13.

10 — Judgment of 27 September 1988 in Case 204/86 *Greece* v *Council* [1988] ECR 5323, at paragraph 20; judgment in *Greece* v *Commission*, at paragraph 13.

11 — Judgment in *Sevince*, at paragraph 9.

12 — Judgment in *Sevince*, at paragraph 10.

13 — See the judgments of 15 June 1976 in Case 113/75 *Frecassetti* v *Amministrazione delle Finanze dello Stato* [1976] ECR 983, 9 June 1977 in Case 90/76 *Van Ameyde* [1977] ECR 1091, and 13 December 1989 in Case 322/88 *Grimaldi* v *Fonds des Maladies Professionnelles* [1989] ECR 4407, at paragraph 9.

14 — Judgment in *Grimaldi*, at paragraph 8.

'on individuals upon which the latter may rely before national courts. However, national courts are bound to take those recommendations into consideration in order to decide disputes submitted to them, in particular where they are capable of casting light on the interpretation of other provisions of national or Community law.' [15]

*Mutatis mutandis*, therefore, national courts are also bound to take into account the recommendations of the Joint Committee which are at issue in these proceedings — unless they are invalid on account of their incompatibility with the Convention or with higher principles of law (see, in that regard, paragraph 12 et seq. or paragraph 17) — if they are capable of casting light on the interpretation of the Convention, specifically Article 11(4) thereof.

It follows from all those considerations that the Court has jurisdiction in proceedings under Article 177 to give a ruling on the interpretation and validity of the recommendation at issue.

**Compatibility of the act with the Convention**

12. The question whether the act in question is compatible with the Convention bears essentially on the interpretation of the Convention itself, in particular Articles 11(4) and 15(2) thereof, and Articles 63 and 65 of Appendix II.

15 — Ibid., at paragraph 19.

In Question 3(a) the national court seeks to ascertain, more particularly, whether the Joint Committee is entitled — by means of a recommendation issued on the basis of Article 15(2) of the Convention — to encroach upon the power conferred by Article 11(4) of the Convention on the customs office of departure as was done by the contested act. In addition, the national court asks in Question 3(b) whether the aforesaid provisions of the Convention preclude the decision left to the customs office of departure from being taken by the highest authority in the Member State concerned.

In order to answer those questions, I shall first indicate the power vested in the Joint Committee by Article 15(2) of the Convention (paragraph 13) and subsequently discuss the power conferred on the customs office of departure or on other national authorities by Article 11(4) of the Convention (paragraph 14); finally, I shall examine whether the Joint Committee was entitled to restrict the last-mentioned power by means of the contested act (paragraph 15).

13. As I said earlier, Article 15(1) of the Convention entrusts the Joint Committee with responsibility for administering the Convention and ensuring its proper implementation. To that end, the Committee acts as a forum for discussion between the Contracting Parties (the Community and the EFTA countries) in which the experiences gained in applying the Convention are com-

pared; it also has an advisory role and, in certain cases, a power of decision. As regards proposals to make amendments to the Convention (other than those which are made necessary by amendments to the appendices: see Article 15(3)(c)) and measures required for the application of the Convention, the Joint Committee only has power to issue recommendations (Article 15(2)).

As is clear from the terms of the contested act and, as stated earlier (paragraph 8, above), from the minutes of the meeting at which the act was discussed, it is clearly concerned with the *application* of the Convention — which had already led me to conclude that the act in question was not a decision but a recommendation. Moreover, the national court also refers to Article 15(2) in its question.

It is also apparent from the contradistinction in Article 15(2) between subparagraphs (a) and (b) that the recommendations referred to in (b) are not of such a kind as to recommend the introduction of amendments by the Contracting Parties but relate exclusively to the application of the Convention. From that point of view, the recommendations in the latter category have as their aim, in my opinion, to compare the practices followed by the national customs authorities and to bring them into line with one another as far as possible. However, recommendations formulated with a view to such harmonisation must remain within the framework of the Convention, which does not preclude its provisions from being defined in more detail in a recommendation. [16] In that regard, however, the nature and scope of the provisions of the Convention may not be derogated from.

14. It is now necessary to spell out the discretion conferred by Article 11(4) of the Convention on the customs office of departure, or where appropriate on the higher national customs authorities, with a view to the grant of exemption from the general rule in Article 11(1), according to which the identification of the goods is to be ensured by sealing. As Article 11(4) states, the office of departure may dispense with sealing in an individual case 'if, having regard to other possible measures for identification, the description of the goods in the T1 or T2 declaration or in the supplementary documents makes them readily identifiable'.

The rule in Article 11(4) must be viewed in conjunction with Article 65(d) of Appendix II to the Convention — which forms an integral part thereof [17] — in which the customs authorities are entrusted with the task, in connection with the conditions for the grant of authorization to consignors, to prescribe certain identification measures (including the use of special seals).

It follows from consideration of those two articles together, in my view, that the discretion of the office of departure which neces-

16 — With regard to a power of definition of that kind, see also my Opinion in Case 14/88 *Italy* v *Commission* [1989] ECR 3689, at pp 3694-3695 (paragraph 13), which was concerned with a power of application or definition conferred on the Commission by Regulation (EEC) No 729/70.

17 — See Article 19 of the Convention.

sarily applies in *individual* cases, lies according to the Convention — and must therefore be exercised within — a *general* framework to be established by the higher customs authorities of the State concerned. In my view, that it correct for the purposes of legal certainty and a uniform application by the offices of departure within a given State of their power to accord dispensation from sealing. Is it not self-evident that it is for the higher customs authorities to adopt a general approach in relation to the decision-making practices of individual customs offices?

Hence the answer to Question 3(b) is as follows: the highest customs authority of a State is not entitled to dispense with sealing in individual cases, but is entitled to harmonise as far as possible the decision-making practices of the individual customs offices by laying down general guidelines.

15. There remains the question whether, having regard to the power conferred on the Joint Committee by the Convention as well as the discretion which the Convention confers on the national authorities, the Joint Committee has unlawfully restricted that discretion by issuing the contested recommendation.

That question, it seems to me, can be answered on the basis of the following considerations: (i) as stated earlier, the Joint Committee has the task of bringing into line with one another as far as possible the customs practices followed in the Member States of the Community and in the EFTA countries as regards dispensation from sealing and (ii) sealing, aimed at ensuring the unimpeded movement of goods, constitutes the general rule which may be derogated from on behalf of the undertakings concerned where the goods can be identified in a satisfactory manner by other means which are less onerous for those undertakings.

In the light of those considerations, it seems to me that in any event the basic arrangement as set out in the contested act of the Joint Committee (paragraph 3, above) does not constitute an unlawful restriction of the discretion of the national customs offices or authorities. In my view, the recommendations set out therein merely explain, indeed paraphrase, what is stated in Article 11 of the Convention.

16. In my view, the special provisions in the contested act relating to trade with Switzerland and Austria (paragraph 3, above) also explain the general context in which dispensation may be granted from the general principle that goods must be placed under seal. Admittedly, the possibility which is left to the national customs authorities of granting dispensation as regards trade with those two countries is defined in the act more restrictively than is the case as regards trade with the other EFTA countries. However, that is justified, as is clear from the minutes of the meeting of the Joint Committee on 21 January 1988, by the fact that shortly after the entry into force of the Convention it was established that the identification of goods by means of a description in the transit doc-

uments instead of sealing, as sought by Shell, had the effect of hindering the crossing of the frontier with Austria. As the Commission confirmed at the hearing, that method of identification led the Swiss and Austrian customs authorities to step up spot checks carried out at the borders concerned.

Nor, in the light of that justification — namely to simplify frontier crossings, in particular at the traffic-intensive borders of Switzerland and Austria, as is entirely in keeping with the aim of the Convention [18] — and of the need to ensure in that respect as well a uniform administrative practice as regards the application of the Convention, does that part of the recommendation seem to me to constitute an unlawful encroachment by the Joint Committee on the power of the national customs authorities.

**Compatibility of the act with the principle of proportionality**

17. Shell further submits that the contested act is contrary to the general principles of Community law, more specifically the principle of proportionality. In its view, the restriction of the discretion vested in the national customs offices of departure constitutes a disproportionate exercise of power in relation to an authorized consignor such as Shell. This problem is raised by the national court in Question 4.

My views are as follows. To begin with, it is clear that identification by sealing is treated by the Convention as the most appropriate method of ensuring unimpeded cross-frontier trade. Secondly, it is clear that the preference for sealing expressed by the Joint Committee, within the powers conferred on it by the Convention, has been confirmed. In a situation of that kind, it is not for the Court to substitute its own views on the matter, unless the act adopted by the Joint Committee is obviously contrary to the Community principle of proportionality. That, it seems to me, has by no means been established in this case. Shell has failed to demonstrate that the descriptive method proposed by it as a means of identification provides, from the point of view of the smooth course of trade, an equally practical alternative to the affixing of seals, having regard to the considerable problems to which the first-mentioned method gives rise at frontier crossings with Switzerland and Austria. The affixing of seals is undoubtedly more onerous for Shell; nevertheless, I do not consider that the Joint Committee, in weighing up, on the one hand, the interests of an authorized consignor such as Shell and, on the other, the fact that sealing makes the crossing of borders easier, recommended the adoption of a manifestly disproportionate measure. [19]

18 — See the first recital in the preamble to the Council Decision of 15 June 1987, OJ 1987 L 226, p. 1.

19 — Shell claims that, according to the Federal Ministry of Finance, the special rules recommended for Austria and Switzerland in the contested act are generally applicable and therefore extend to trade with other EFTA countries as well. The national court has not submitted a question on that point. It is not for the Court to rule on the proportionality of that national measure which is more far-reaching (than the recommendations of the Joint Committee).

## Conclusions and proposed answers

18. It is apparent from the foregoing — and this is one answer to Question 2 — that the contested act of the Joint Committee is not, in my view, incompatible either with the Convention or with the Community principle of proportionality and that, consequently, there is no reason why the authorities of the Member States should not, or indeed should not be required to, take into account the recommendations decided upon in that act, as the Court has stated in its case-law, more specifically in the *Grimaldi* judgment. [20]

19. In the light of the foregoing considerations, I consider that the Court should answer the questions submitted by the national court as follows:

(1) The administrative arrangements set out in Document No XXI/1367/87 — EFTA 2 of 21 January 1988, adopted by the Joint Committee established under Article 14 of the Convention of 20 May 1987 on a common transit procedure, are recommendations which are not binding on the Member States but which must be taken into account by them in so far as they are not incompatible with the Convention or with higher principles of law, in particular the principle of proportionality.

(2) Articles 11(4) and 15(2)(b) of the Convention, read in conjunction with Articles 63 and 65(d) of Appendix II to the Convention, do not preclude a higher customs authority of a Member State from establishing the general framework within which the power conferred on the office of departure to dispense with sealing has to be exercised. Nor do those provisions preclude the Joint Committee from defining that power in the aforesaid arrangements, in accordance with the meaning and purpose of the Convention, with a view to the uniform application of the power by the Contracting Parties.

(3) There is no evidence that the aforesaid arrangements are contrary to the principle of proportionality.

20 — See paragraph 11, above.