responsible is required by Community law, the conditions under which there is a right to reparation depend on the nature of the breach of Community law giving rise to the loss and damage which have been caused.

In the case of a Member State which fails to fulfil its obligation under the third paragraph of Article 189 of the Treaty to take all the measures necessary to achieve the result prescribed by a directive the full effectiveness of that rule of Community law requires that there should be a right to reparation where three conditions are met, that is to say, first, that the result prescribed by the directive should entail the grant of rights to individuals; secondly, that it should be possible to identify the content of those rights on the basis of the provisions of the directive; and thirdly, that there should be a causal link between the breach of the State's obligation and the loss and damage suffered by the injured parties.

In the absence of any Community legislation, it is in accordance with the rules of national law on liability that the State must make reparation for the consequences of the loss and damage caused. Nevertheless, the relevant substantive and procedural conditions laid down by the national law of the Member States must not be less favourable than those relating to similar domestic claims and must not be so framed as to make it virtually impossible or excessively difficult to obtain reparation.

REPORT FOR THE HEARING
in Joined Cases C-6/90 and C-9/90 *

I — Facts and procedure

1. Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (Official Journal 1980 L 283, p. 23) states in Article 1 that it is applicable to employees' claims against employers who are in a state of insolvency (a situation which is clearly defined in Article 2). By way of exception and under certain conditions, the Member States may exclude from the scope of the directive claims by certain categories of employee listed in an annex to the directive.

Under Article 3, employees must be able to obtain payment of their outstanding claims resulting from contracts of employment or employment relationships and relating to pay for the period prior to a date

* Language of the case: Italian.

determined by the Member State. The Member State may choose one of three possible dates: (a) the date of the onset of the employer's insolvency; (b) that of the notice of dismissal issued to the employee concerned on account of the employer's insolvency or (c) that of the onset of the employer's insolvency or that on which the contract of employment or the employment relationship with the employee concerned was discontinued on account of the employer's insolvency. Depending on the date chosen, the Member State has the option of limiting the payment obligation to the periods defined in Article 4 (three months or eight weeks). Article 4(3) also provides for the possibility of placing a ceiling on liability.

Article 5 provides that the Member States are to lay down detailed rules for the organization, financing and operation of the guarantee institutions. The assets of the institutions must be independent of employers' operating capital, employers must contribute to financing, unless it is fully covered by the public authorities, and, finally, the institutions' liabilities must not depend on whether or not obligations to contribute to financing have been fulfilled.

2. The Member States were required to comply with that directive by 23 October 1983 at the latest. The Italian Republic failed to fulfil that obligation, and the Court of Justice made a declaration to that effect in its judgment in Case 22/87 *Commission* v *Italy* [1989] ECR 143.

3. Mr Francovich, the plaintiff in the main proceedings in Case C-6/90, worked for CDN Elettronica SnC, in Vicenza, from 11 January 1983 until 7 April 1984 but received only sporadic payments on account of his wages. He brought proceedings before the Pretore di Vicenza, who by judgment of 31 January 1985 ordered the defendant undertaking to pay the sum of approximately LIT 6 million.

In an attempt to enforce the judgment the bailiff attached to the Tribunale di Vicenza went several times to the undertaking's place of business but found it closed on each occasion; he was therefore obliged to record his failure to execute the judgment.

Mr Francovich therefore submitted that he was entitled to obtain from the Italian State the guarantees provided for by Directive 80/987 or, in the alternative, damages.

4. In Case C-9/90 Danila Bonifaci and 33 other employees brought proceedings on 20 April 1989 before the Pretore di Bassano del Grappa stating that they had been employed by Gaia Confezioni Srl, which was declared insolvent on 5 April 1985. When the employment relationship was discontinued the plaintiffs were owed a total of more than LIT 253 million, and those debts were proved in the insolvency of the undertaking. More than five years after the insolvency the plaintiffs had been paid nothing, and the receiver told them that even a partial distribution in their favour was highly unlikely.

Consequently, the plaintiffs brought proceedings against the Italian Republic

claiming that in view of its obligation to implement Directive 80/987 with effect from 23 October 1983 it should be ordered to pay them the amounts due to them as arrears of salary at least in respect of the last three months or, in the alternative, to pay damages.

5. The Pretore di Vicenza and the Pretore di Bassano del Grappa considered that the proceedings involved the interpretation of the Community legislation in question; by orders of 9 July 1989 and 30 December 1989 respectively they decided to stay the proceedings until the Court of Justice should have delivered a preliminary ruling pursuant to Article 177 of the EEC Treaty on the following questions, which are identical in the two cases:

'1. Under the system of Community law in force, is a private individual who has been adversely affected by the failure of a Member State to implement Directive 80/987 — a failure confirmed by a judgment of the Court of Justice — entitled to require the State itself to give effect to those provisions of that directive which are sufficiently precise and unconditional, by directly invoking the Community legislation against the Member State in default so as to obtain the guarantees which that State itself should have provided and in any event to claim reparation of the loss and damage sustained in relation to provisions to which that right does not apply?

2. Are the combined provisions of Articles 3 and 4 of Council Directive 80/987 to be interpreted as meaning that where the State has not availed itself of the option of laying down limits under Article 4, the State itself is obliged to pay the claims of employees in accordance with Article 3?

3. If the answer to Question 2 is in the negative, the Court is asked to state what the minimum guarantee is that the State must provide pursuant to Directive 80/987 to an entitled employee so as to ensure that the share of pay payable to that employee may be regarded as giving effect to the directive?'

6. The orders of the national courts were received at the Registry of the Court of Justice on 8 January 1990 in Case C-6/90 and 15 January 1990 in Case C-9/90.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted:

— on 24 April 1990 by the Commission of the European Communities, represented by Giuliano Marenco and Karen Banks, members of its Legal Service, acting as Agents;

— on 26 April 1990 by the Italian Government, represented by Oscar Fiumara, Avvocato dello Stato;

— on 3 May 1990 by the Netherlands Government, represented by B. R. Bot, Secretary-General at the Ministry of Foreign Affairs;

— on 4 May 1990 by the United Kingdom, represented by Richard Plender QC, Barrister, and J. E. Collins, of the Treasury Solicitor's Department;

— on 4 May 1990 by Andrea Francovich and Danila Bonifaci and others, represented by Claudio Mondin, Aldo Campesan and Alberto dal Ferro, of the Bar of Vicenza.

By order of 14 March 1990 the Court decided to join the two cases for the purposes of the procedure before it and the judgment.

By letter of 29 May 1990 the Italian Government requested in accordance with Article 95(2) of the Rules of Procedure of the Court of Justice that the cases be decided in plenary session.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory enquiries.

II — Summary of the observations submitted to the Court

7. *Andrea Francovich* and *Danila Bonifaci and Others, the plaintiffs in the main proceedings*, refer in the first place to the Court's consistent ruling that 'wherever the provisions of a directive appear, as far as their subject-matter is concerned, to be unconditional and sufficiently precise, those provisions may be relied upon by an individual against the State where that State fails to implement the directive in national law by the end of the period prescribed or where it fails to implement the directive correctly' (judgment in Case 80/86 *Kolpinghuis Nijmegen* [1987] ECR 3969). The Court has further defined the scope of the concept of the State by holding that such directives may be relied upon against the social security authorities of a region of a State (judgment in Case 152/84 *Marshall* v *Southampton and South-West Hampshire Area Health Authority* [1986] ECR 723) or an authority responsible for police staff in a specific area (judgment in Case 222/84 *Johnston* v *Chief Constable of the Royal Ulster Constabulary* [1986] ECR 1651).

According to the applicants, it is therefore necessary to determine whether the provisions of Directive 80/987 which require the payment of unpaid wages for the period before a certain date are sufficiently precise and unconditional.

The first issue that arises is whether the fulfilment of those two conditions may be affected by the fact that the Member States may choose between three different dates in determining the time from which the payment must be guaranteed. The applicants argue that the 'precise and unconditional' nature of a directive should be assessed not on the basis of the fact that the Member States are left a choice but on the basis of the actual discretion which each State has. Such a right to choose thus constitutes merely an effort to arrive at a 'precise and unconditional' concept which is correct from the legal point of view and compatible from the technical point of view with the diversity of national legal systems. The quality of being precise and unconditional results from the existence of limits from which no derogation can be made and

which lie outside any discretion. In the case of this directive, such a limit is set by the date on which a declaration of insolvency is made, the date from which the State must implement payment by the guarantee institutions. All the hypotheses provided for in Article 3 assume insolvency as a precondition, and are thus logically and chronologically subsequent to it.

The second issue to be resolved relates to the fact that the payments to employees must be made by the guarantee institutions. According to the applicants, the need to create such guarantee institutions constitutes an ancillary obligation on the part of the State, and failure to establish them constitutes a failure to implement the provisions of the directive. The establishment of such an institution, the detailed rules for which are laid down in Article 5 of the directive, does not identify an addressee of the directive distinct from the State but simply constitutes the means or the technical instrument by which the Member State is to fulfil its obligation.

Finally, as regards the Member States' right under Article 4 of the directive, subject to certain minimum conditions, to reduce the payment period provided for in Article 3, the plaintiffs add that the right to introduce restrictions is not absolute but is confined within a very precise limit below which the Member State cannot go, and that so long as the State has not exercised that right Article 3 applies fully and unconditionally. They point out that in the judgment in *Marshall* the Court held that a general right of derogation granted to Member States under one provision of a directive in no way affects the unconditional nature of another provision. Accordingly, the payment obligation, at least as regards the minimum provided for, is not subject to any condition.

8. The applicants put forward a second set of arguments to demonstrate the precise and unconditional nature of the directive. They point out that in Case 22/87, cited above, the Italian Republic argued that certain provisions of Italian Law No 297 of 29 May 1982 (*Official Journal of the Italian Republic* No 148 of 7 June 1982) could be regarded as measures implementing the directive in question. Accordingly, in the eyes of the legislature, the establishment by that law of a guarantee fund was the technical instrument by which the provisions of the directive were partially implemented. Close examination of that law shows that the guarantee fund which was established has the characteristics required by Article 5 of the directive.

The plaintiffs conclude from that that even if it is accepted that Article 3 of the directive is conditional in nature because it is the guarantee institutions and not the State which are required to ensure the payment of unpaid wages, those institutions already exist in the Italian legal system. They go on to argue that Article 2 of Italian Law No 297/82 has already made the choice provided for in Article 3(2) of the directive, by distinguishing between the various ways in which insolvency may come about, having regard to the different procedures which exist in the national legal system. It is therefore unnecessary for the Court to rule on Articles 3 and 5 of the directive since those articles have already been implemented in an appropriate manner in national legislation and the Court has already, in Case 22/87, cited above, held

that the legislation on wages payable at the end of the employment relationship is inadequate.

9. Should the Court not hold that the provisions of the directive have direct effect, the plaintiffs submit that the failure of the State to comply with the provisions of the directive and the existence of harm suffered by employees as a result of the Member State's failure to act constitute the necessary and sufficient grounds on which the State can be held liable to the persons who were intended to benefit from the provisions of the directive.

They submit that any difficulty in the actual assessment of the loss and damage suffered which results from the choice given to Member States by Article 3 of the directive does not preclude the possibility of finding the State liable and holding that the employees are entitled to compensation which the national court may, in the absence of other criteria, assess in accordance with equitable considerations as is provided for in such cases in Article 432 of the Italian Code of Civil Procedure.

According to the plaintiffs, that argument is also supported by the Court's case-law. The Court has held that where it finds that a legislative or administrative measure adopted by a Member State is contrary to Community law, that State is obliged, under Article 86 of the ECSC Treaty, to rescind the measure in question and to make reparation for any unlawful consequences which may have ensued (judgment in Case 6/60 *Humblet* v *Belgium* [1960] ECR 559); similarly, the Court has often stated that the object of an action under Article 169 of the Treaty may consist in establishing the basis of liability that a Member State may incur as a result of its default, particularly in relation to individuals (judgments in Case 39/72 *Commission* v *Italy* [1973] ECR 101, Case 309/84 *Commission* v *Italy* [1986] ECR 599, and Case 154/85 *Commission* v *Italy* [1987] ECR 2717). The effectiveness of directives would be diminished if persons were prevented from relying upon them in legal proceedings and national courts were prevented from taking them into consideration as an element of Community law (judgment in Case 8/81 *Becker* v *Finanzamt Münster-Innenstadt* [1982] ECR 53). Accordingly, where the provisions are sufficiently precise and unconditional the obligation in question, to ensure that an individual may rely directly on those provisions against the State, is one for the national court; where, on the other hand, the provisions of a directive do not have direct effect, the national court must ensure that an individual who has suffered harm has a right to compensation.

In this case, where the Italian Republic has already been found to be in default by the judgment in Case 22/87, cited above, the liability of the State seems clearly established, as appears in particular from the judgment in Case 60/75 *Russo* v *AIMA* [1976] ECR 45), in which the Court stated that 'if such damage has been caused through an infringement of Community law the State is liable to the injured party for the consequences in the context of the provisions of national law on the liability of the State'. The plaintiffs refer to the Court's consistent case-law with regard to the repayment of taxes, in which it has held that such repayment cannot be made subject to evidentiary requirements which make the exercise of that right virtually impossible (judgment in Case 199/82 *Amministrazione delle Finanze dello Stato* v *San Giorgio* [1983] ECR 3595). They add that in view of the privileged nature of the right to

reparation for harm resulting from failure to implement a directive, a national court must in any event ensure that compensation is paid, and any investigation of the subjective aspect of the infringement must not in practice make it impossible for the individual who has been harmed to obtain satisfaction.

10. Finally, with regard to the second and third questions, the plaintiffs argue that the combined provisions of Articles 3 and 4 of Directive 80/987 should be interpreted as meaning that a State which has not exercised its right to introduce the restrictions referred to in Article 4 is obliged to pay employees' wages under the conditions laid down in Article 3, because it would be unjust that a State which has not implemented a directive should be able to rely on the provisions which might appear useful in order to limit its liability.

11. The *Italian Government* argues that the provisions of Directive 80/987 cannot be considered to be unconditional and sufficiently precise. In its view, it is sufficient in that regard to observe that the Member States must provide for and establish guarantee institutions for the purpose in hand and determine the manner in which they are to operate and be financed, that they have the right to exclude certain categories of employees from the guarantee and that they may restrict the amount of that guarantee.

If the directive were to be regarded as unconditional and precise, the national court would be obliged to ensure that all the conditions set out in the directive were met in order for individuals to be able to enforce their rights. It would thus be required to ensure that the employer was insolvent within the meaning of Article 2, that the employees did not fall within categories which may be excluded and that their case fell within the scope of each of the minimal hypotheses set out in Article 4. It is clearly not sufficient for the conditions of only one of these hypotheses to be met, since it might have been excluded by the national legislature. If all those conditions were met, the individual would be entitled to enforce his right on the basis of the least favourable of the hypotheses. The Italian Government considers that in any event the obstacle presented by the Member State's right to set a ceiling on liability is difficult to overcome.

12. The *Commission* begins by considering the question whether the directive is sufficiently precise and unconditional as regards the definition of the employees concerned and the rights which they may assert. In its view the employees are clearly defined in Articles 1 and 2 of the directive by the use of precise expressions, referring to general provisions of labour law, which require no further action by the Member States. The categories of employees who may be excluded are clearly defined in the annex to the directive.

With regard to the provisions of the directive which allow the Member States to reduce the guarantees provided to employees, the Commission points out that it is only a possibility and not a range within which the Member States must make a choice. It follows that those provisions may not be set up against an employee by a Member State which has not adopted implementing measures and thus has not made use of the possibility provided for by the directive. Where a directive defines indi-

vidual rights in a precise manner, it would be incompatible with the theory of the direct effect of directives for a State having failed to fulfil its obligation to be able to rely on its own failure by arguing that if it had implemented the directive it could legitimately have set the rights of the individual at a lower level (see the judgment in Case 286/85 *McDermott and Cotter* v *Minister for Social Welfare and Attorney General* [1987] ECR 1453, paragraph 15). With regard to Article 10 of the directive, which allows Member States to make provision for cases of abuse or collusion, the Commission points out that the absence of national rules on abnormal situations cannot present an obstacle to the direct effect of provisions which define the rights of employees in normal situations.

Even if it were to be held that the provisions in question seek to define the discretion available to the Member States in making their choice, that discretion enables them in each case to determine the minimum right of the employee, and thus cannot prevent the directive from having direct effect.

13. The Commission goes on to consider the question whether it is possible to assert those rights against the State. It is necessary to examine the nature of the guarantee institutions in order to determine whether they are debtors independent of the State or whether it is possible to identify them with the State, at least for the purpose of giving the directive direct effect. It is thus necessary to show that financial responsibility for the benefits provided for by the directive lies ultimately with the State. That possibility of identifying the institutions with the State is based on the interpretation of Article 5(b) of the directive, under which 'employers shall contribute to financing [of the guarantee institution], unless it is fully covered by the public authorities'. The directive thus envisages the financing of the institutions entirely by the State as a possible alternative.

The Commission thus takes a further step in the direction taken with regard to Article 4, asserting that where the directive envisages the possibility that it may be applied in such a way that the State is financially liable, the State cannot avoid that liability by arguing that it could also have applied the directive in another manner. It is unacceptable that a State should be able to escape the obligation to pay by arguing that if it had fulfilled its obligation to implement the directive it could have made others bear part or perhaps even all of the financial burden.

14. Finally, if the Court does not accept that the directive is unconditional and sufficiently precise in nature, the Commission submits that a right to compensation may be asserted against the State which has failed to fulfil its obligation. It begins by referring to the Court's case-law to the effect that the Community court has exclusive jurisdiction concerning the liability of Community institutions, while national courts have jurisdiction with regard to the liability of national authorities (see the judgments in Case 101/78 *Granaria* v *Hoofdproduktschap voor Akkerbouwprodukten* [1979] ECR 623, Case 217/81 *Interagra* v *Commission* [1982] ECR 2233 and Joined Cases 106 to 120/87 *Asteris* v *Greece* [1988] ECR 5515). It goes on to refer to the Court's case-law concerning the importance of judgments given in infringement proceedings for the purpose of establishing the liability of the State towards individuals (see in particular the judgments in Case 6/60 *Humblet* v *Belgium*, cited above, Case 39/72

Commission v *Italy*, cited above, Case 309/84 *Commission* v *Italy*, cited above, Case 154/85 *Commission* v *Italy*, cited above, and Case C-287/87 *Commission* v *Greece* [1990] ECR I-125).

According to the Commission, those assertions are reinforced by the judgment in Case 60/75 *Russo*, cited above, in which the Court held that 'if such damage has been caused through an infringement of Community law the State is liable to the injured party [for] the consequences in the context of the provisions of national law on the liability of the State'. In that judgment the Court also defined the difference in scope of the concept of unlawful acts and that of the right to damages; the former is much broader than the latter. An unlawful act for which the State is answerable towards the Community does not necessarily entail non-contractual liability towards individuals. Such liability exists only if and to the extent to which the purpose of the provision is to protect individual interests, that is to say, to the extent to which that provision grants rights to individuals. The Court thus transposed to the non-contractual liability of States for breaches of Community law a limit which it had already placed on the non-contractual liability of the institutions (judgments in Joined Cases 9/60 and 12/60 *Vloeberghs* v *High Authority* [1961] ECR 197 and Joined Cases 5/66, 7/66 and 13/66 to 24/66 *Kampffmeyer* v *Commission* [1967] ECR 245) and the Community's liability in respect of legislative measures (judgments in Case 74/74 *CNTA* v *Commission* [1975] ECR 533 and Joined Cases 83/76 and 94/76, 4/77, 15/77 and 40/77 *HNL* v *Council and Commission* [1978] ECR 1209). That transposition is entirely logical, for it would be incomprehensible if the breach of the same Community rule gave rise to liability towards individuals who had suffered loss and damage where the breach was committed by a Member State but not where it was committed by an institution.

In this case the Commission observes that in respect of a claim for damages against the State the incomplete nature of the directive as regards the identity of the debtor is irrelevant because the only provisions of the directive which are important are those which make it possible to determine whether the employee in question is entitled to the guarantee and those which place a figure on the guarantee. On the point that the rules in question must be intended to protect individuals, the first recital in the preamble to the directive leaves no doubt, since it states that the provisions of the directive are necessary for the protection of employees.

Finally, the liability of the State must be considered in accordance with the applicable provisions of national law, provided that national law cannot be more restrictive than it is in respect of similar breaches of national law and cannot make compensation impossible or excessively difficult.

15. The *United Kingdom* argues that the provisions of Directive 80/897 are not sufficiently precise and unconditional to have direct effect, in particular because the essential obligation laid down in Article 3 of the directive leaves open a choice regarding the date from which claims are payable and is subject to Article 4 on the possible limits to the guarantee, and Article 5 provides for

a variety of possible rules on the organization and financing of the guarantee institutions to be established by the Member States. Moreover, nowhere in its judgment in Case 22/87, cited above, did the Court suggest that Directive 80/987 produces direct effects. On the contrary, the Court twice referred to the discretion conferred by the directive on the Member States, in relation to the definition of employees (paragraph 17) and the fact that Member States are authorized not to make the guarantee institutions responsible for contributions which have not been paid by an insolvent employer, giving them the option of choosing for that purpose another scheme guaranteeing employee's rights to social security benefits (paragraph 32).

As regards the liability of the Member State, the United Kingdom states that there is no basis in Community law for the proposition that an individual has the right to obtain damages in an action in a domestic court against a Member State to recover losses sustained as a result of that State's failure to fulfil its obligations. On the contrary, the Court's case law shows that the EEC Treaty 'was not intended to create new remedies in the national courts to ensure observance of Community law' (judgment in Case 158/80 *Rewe* v *Hauptzollamt Kiel* [1981] ECR 1805).

It submits that there is no need to reply to the second and third questions, since the sole obligation of the Member States is to take the measures necessary to ensure that the institutions concerned guarantee payment of employee's outstanding claims. They do not themselves have any obligation to pay those claims.

16. The *Netherlands Government* takes no position on the direct effect of the provisions of the directive. Relying on the same case law as the Commission (see section 14, above), it states that there is nothing in Community law to prevent a Member State from incurring liability in proceedings before the national courts for failure to implement a directive, where it has been held in default by the Court of Justice. However, there is no Community law on the matter, and it is therefore necessary to assess in the light of the national law of the State concerned whether the State is liable and, if so, what the consequences of that liability are. It is also for the national legal system to determine the courts which have jurisdiction and to lay down the applicable substantive and procedural rules.

On the second and third questions the Netherlands Government considers that it cannot be accepted that a Member State in default can in all cases be obliged to honour the outstanding claims of employees in the amounts laid down in Article 3 of the directive. Payments must be made through a guarantee fund, which may be private or public in nature. The question whether the Member State is liable in the particular case and the scope of that liability are a matter for the substantive and procedural rules of the national law of the Member State concerned.

III — Oral procedure

17. The *Government of the Federal Republic of Germany*, which did not submit written observations to the Court, made the following arguments during the oral procedure.

On the issue of direct effect, it considers that under Directive 80/987 an individual cannot assert a right to payment against a Member State. According to the German Government, the Commission bases the direct applicability of the directive on a general financial liability on the part of the State and not on the directive itself. Contrary to the Commission's assertions, however, the wording of Article 5(b) does not support the view that the State is responsible for financing the guarantee institution. The sole financing obligation resulting from that paragraph rests with employers. It is only voluntarily or by way of exception that the State may take on that financial responsibility. The judgment in *Becker*, cited above, is not applicable in this case. Directive 80/987 does not give Member States the option of passing on the financial obligation to the employer, because it considers that the employer alone is responsible for the financing of the institutions. The obligation of the Member State is to establish appropriate guarantee institutions. The Commission's position is contrary not merely to the directive's wording but also to its purpose, since it cannot be considered that the risks run by employers should be borne by the State. The German Government argues that the simple breach of the general obligation on the part of the Member State to transpose directives cannot entail their being given direct effect.

On the issue of the non-contractual liability of the Member State, the German Government submits that as Community law now stands the liability of Member States does not fall within the competence of the Community. The judgments relied upon by the Commission confirm that assertion, since they refer to national law on the issue of the liability of the Member State (judgment in Case 101/78 *Granaria* v *Hoofdproduktschap voor Akkerbouwprodukten* [1979] ECR 623). Such liability would require action on the part of the Community legislator and Parliament in order to determine the factual circumstances that would give rise to it.

Finally, as regards the transposition of directives, the German Government considers that in the legal systems of the Member States State liability for legislative default, where it exists, is very limited, in order to preserve the national legislature's freedom of action. The Community legislature should therefore be very careful in introducing such liability.

G. C. Rodríguez Iglesias
Judge-Rapporteur