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The Application of Community Law by National Courts Ex Officio

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Abstract

This Essay will mainly deal with the administrative jurisdiction, but to the extent that it is relevant, will also pay attention to civil suits as well, in a national context as in the Union. The Essay will describe the development of the case-law of the Court of Justice concerning the ex officio application of Community law, starting with the well-known *van Schijndel & van Veen v. Stichting Pensioenfonds voor Fysiotherapeuten and Peterbroeck, Van Campenhout & Cie SCS v. Belgian State* cases of December 14, 1995 and ending with the *van der Weerd & Others v. Minister van Landbouw, Natuur en Voedselkwaliteit* case of June 7, 2006. The latter case seems to contain, at least presently, the final conclusion of the relevant case-law. The *van der Weerd* judgment also deserves special attention because it has a rather peculiar background in Dutch administrative law. Part I of this Essay will briefly describe the *van Schijndel* and *Peterbroeck* cases; Part II will discuss cases which are based on the aims and interests of a rule of Community law, such as *Eco Swiss China Time Ltd. v. Benetton International NV*; Part III will draw a number of interim conclusions in the form of a kind of “checklist”; Part IV will analyze the *van der Weerd* case, and after having raised in Part V a number of remaining questions I will draw some final conclusions. The main question in this Essay will be whether, with the judgment in the *van der Weerd* case, the development of the case-law in this particular field has been finally concluded.

THE APPLICATION OF COMMUNITY LAW BY NATIONAL COURTS *EX OFFICIO*

Richard H. Lauwaars*

INTRODUCTION

The application of Community law by national courts *ex officio*, or of their own motion, is a highly debated issue in the Netherlands.¹ I would like to define “application *ex officio*” as the application of a rule of Community law which has not been mentioned by one of the parties and falls outside the scope of the dispute. It has to be distinguished from what is called *ex officio completion of the legal grounds of appeal*, i.e., that the court within the limits of the dispute supplements the legal grounds which have been submitted by one of the parties. The latter form of *ex officio* judicial action has been expressly laid down in Article 8:69(2) of the General Administrative Law Act, which reads: “The district court shall supplement the legal basis on its own initiative.”²

This Essay will mainly deal with the administrative jurisdiction, but to the extent that it is relevant, will also pay attention to civil suits as well, in a national context as in the Union. The Essay will describe the development of the case-law of the Court of Justice concerning the *ex officio* application of Community law, starting with the well-known *van Schijndel & van Veen v. Stichting Pensioenfonds voor Fysiotherapeuten* and *Peterbroeck, Van Campenhout & Cie SCS v. Belgian State* cases of December 14, 1995 and ending with the *van der Weerd & Others v. Minister van Landbouw, Natuur en Voedselkwaliteit* case of June 7, 2006. The latter case seems to contain, at least presently, the final conclusion of the relevant case-law. The *van der Weerd* judgment also deserves special attention because it has a rather peculiar background in Dutch administrative law. Part I of this Essay will briefly describe the *van Schijndel* and *Peterbroeck* cases; Part II will discuss cases which are based on the aims and interests of a rule of Community law, such as *Eco Swiss China Time Ltd. v. Benetton International NV.*; Part III

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1. See, e.g., J.H. JANS ET AL., EUROPEANISATION OF PUBLIC LAW 308-16 (2007).

2. General Administrative Law Act art. 8:69 (1994) (Neth.).

will draw a number of interim conclusions in the form of a kind of "checklist"; Part IV will analyze the *van der Weerd* case, and after having raised in Part V a number of remaining questions I will draw some final conclusions. The main question in this Essay will be whether, with the judgment in the *van der Weerd* case, the development of the case-law in this particular field has been finally concluded.

I. *THE VAN SCHIJNDEL AND PETERBROECK CASES*

In *van Schijndel*,³ a civil case, two physiotherapists who did not wish to adhere to a mandatory retirement schedule, set up on the initiative of the government, brought an appeal against a retirement fund to pay the premium for their retirement insurance. It was, however, only during the last stage of the proceedings before the Dutch Supreme Court, that they argued that their mandatory participation in the schedule under consideration violated EC competition law rules.⁴ The Supreme Court initially considered that it could not address this issue, because it had to accept the facts of the case as they have been established by the lower court or tribunal. It therefore requested from the European Court of Justice ("ECJ" or the "Court") a preliminary ruling, first about the question of whether it was obliged to apply the rules of European competition law *ex officio*; if so, secondly, whether the Supreme Court was bound to apply the rules of competition law "if in so doing the court would have to abandon the passive role assigned to it."⁵

The Court's answer to the first question declared that the national court is obliged to apply the rules of European competition law *ex officio* when the national court has by virtue of its domestic law the obligation to raise, or even only the power to raise, similar rules of domestic law.⁶ Regarding the second question, the ECJ postulated that "it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals de-

3. *van Schijndel & van Veen v. Stichting Pensioenfonds voor Fysiotherapeuten*, Joined Cases C-430 & 431/93, [1995] E.C.R. I-4705.

4. *See id.* ¶ 10.

5. *Id.* ¶ 12(2).

6. *Id.* ¶ 15.

rive from the direct effect of Community law,"⁷ thus adopting the so-called *principle of national procedural autonomy*. However, the Court added that the following two requirements have to be met: a) the rules of procedure "must not be less favourable than those governing similar domestic actions" (so-called principle of equivalence); and b) they should not "render virtually impossible or excessively difficult the exercise of rights conferred by Community law" (so-called principle of effectiveness).

Concerning this second requirement, the ECJ indicated that the national court should examine whether a national rule of procedure which renders application of Community law impossible or excessively difficult—and for that reason should be left out of account *ex officio*—could be justified by "the basic principles of the domestic judicial system, such as protection of the rights of the defence, the principle of legal certainty and the proper conduct of procedure,"⁸—the so-called procedural rule of reason. The Court of Justice then applied this procedural rule of reason to the circumstances of the appeal before the Supreme Court and concluded that Community law did not require the Supreme Court to abandon its "passive role," thus answering the second question referred in the negative.⁹

The ECJ judgment in *Peterbroeck* reached the opposite conclusion.¹⁰ In this case the question was whether in a tax assessment procedure the national (Belgian) court should apply a rule of Community law *ex officio* when a national rule of procedure prohibited the application of Community law because the appellant had not raised an appeal based upon the Community rule within a very short period (sixty days). The ECJ in *Peterbroeck* considered that the national procedural rule could not be justified by "legal certainty or the proper conduct of procedure."¹¹

II. ECO SWISS AND THE CONSUMER DIRECTIVES CASES

In subsequent case-law, two new elements have been introduced, namely (a) public order and (b) consumer protection.

7. *Id.* ¶ 17.

8. *Id.* ¶ 19.

9. *Id.* ¶¶ 21-22.

10. See *Peterbroeck, Van Campenhout & Cie SCS v. Belgian State*, Case C-312/93, [1995] E.C.R. I-4599.

11. *Id.* ¶ 20.

A. *Public Order*

The notion of public policy—highly relevant in the field of application *ex officio*—played an important role in the *Eco Swiss* case.¹² The Dutch Supreme Court asked whether it should annul an arbitral award which violated Article 81 of the Treaty Establishing the European Community (“EC Treaty”),¹³ although this provision had not been mentioned during the arbitral procedure. According to Article 1065 of the Dutch Code of Civil Procedure, annulment is possible if the award had been contrary to public policy.¹⁴

The Court of Justice replied that Article 81 constitutes a “fundamental provision which is essential for the accomplishment of the tasks entrusted to the Community and, in particular, for the functioning of the internal market.”¹⁵ The arbitral award should therefore be annulled on account of a failure to observe a national rule that had the status of public policy. The Court left unclear whether Article 81 is only a rule of public policy in proceedings for the judicial review of arbitral awards or also outside that particular context. The latter interpretation appears to be the right one, because subsequently the Court held in *Manfredi, Cannito, Tricarico & Murgolo v. Lloyd Adriatico Assicurazioni SpA, Fondiaria Sai SpA & Assitalia SpA* with reference to *Eco Swiss* that “Articles 81 EC and 82 EC are a matter of public policy which must be automatically applied by national courts.”¹⁶

B. *Consumer Protection*

The Court has considered consumer protection issues in the cases *Océano Grupo Editorial SA v. Roció Murciano Quintero*, *Cofidis SA v. Jean-Louis Fredout* and *Elisa María Mostaza Claro v. Centro Móvil Milenium SL*.¹⁷ In the first two cases the Court de-

12. *Eco Swiss China Time Ltd. v. Benetton Int’l NV*, Case C-126/97, [1999] E.C.R. I-3055.

13. Consolidated Version of the Treaty establishing the European Community art. 81, O.J. C 321 E/37, at E/73 (2006).

14. See *Eco Swiss*, [1999] E.C.R. I-3055, ¶ 7(1)(e).

15. *Id.* ¶ 36.

16. *Manfredi, Cannito, Tricarico & Murgolo v. Lloyd Adriatico Assicurazioni SpA, Fondiaria Sai SpA & Assitalia SpA*, Joined Cases C-295-98/04, [2006] E.C.R. I-6619, ¶ 31.

17. *Elisa María Mostaza Claro v. Centro Móvil Milenium SL*, Case C-168/05, [2006] E.C.R. I-10421; *Cofidis SA v. Jean-Louis Fredout*, Case C-473/00, [2002] E.C.R. I-10875; *Océano Grupo Editorial SA v. Roció Murciano Quintero* (C-240/98) & *Salvat*

cided that the national court must, of its own motion, examine the applicability of Directive 93/13/EEC on unfair terms in consumer contracts. In the *Elisa Claro* case, the claim that an arbitration clause in a mobile telephone contract should be considered invalid on account of the Unfair Contract Terms Directive had only been raised after the termination of the arbitration proceedings.¹⁸ The Court initially repeated its previously decided doctrines concerning the principles of procedural autonomy, equivalence and effectiveness, and then cited the *Océano* and *Codifis* judgments, which had held that a national court should *ex officio* examine whether a particular clause has to be qualified as unfair.

Finally, even *Eco Swiss* appeared on the stage when the Court declared that:

[W]here its domestic rules of procedure require a national court to grant an application for annulment of an arbitration award where such an application is founded on failure to observe national rules of public policy, it must also grant such an application where it is founded on failure to comply with Community rules of this type.¹⁹

Without stating in so many words that Article 6(1), of the Directive, or even the Directive in its entirety, is a rule of public policy, its conclusion is that the Directive requires:

[T]hat a national court seised of an action for annulment of an arbitration award must determine whether the arbitration agreement is void and annul that award where that agreement contains an unfair term, even though the consumer has not pleaded that invalidity in the course of the arbitration proceedings, but only in that of an action for annulment.²⁰

In these judgments the Court examines the aim and the interest of the rule of Community law involved,²¹ as well as whether a rule of Community law may be qualified as a rule of European public policy. In his conclusions in the *Elisa Claro*

Editores SA v. José M. Sánchez Alcón Prades (C-241/98), José Luis Copano Badillo (C-242/98), Mohammed Berroane (C-243/98) & Emilio Viñas Feliú (C-244/98), Joined Cases C-240-44/98, [2000] E.C.R. I-4941.

18. See *Mostaza Claro*, [2006] E.C.R. I-10421.

19. *Id.* ¶ 35.

20. *Id.* ¶ 39.

21. Compare M. Verhoeven, S.E.W. 2007 pp. 121-23, case-note under *Mostaza Claro*, [2006] E.C.R. I-10421.

case, Attorney General Tizzano argued that a rule of European public policy had been violated, namely the right of the defence. As I have already remarked, the Court in that case did not, however, expressly qualify the Directive, nor indeed the principle of Community law cited by the Attorney General, as embodying public policy.

III. *INTERIM CONCLUSIONS BEFORE THE VAN DER WEERD CASE*

Limiting myself to the procedure before an administrative court, in my view, if a rule of Community law which has not been raised by one of the parties may have an influence on the outcome of the dispute, the national court should apply the following "checklist":

- a. When the rule of Community law involved falls within the scope of the dispute: the court should examine whether the factual and/or legal grounds of appeal may be supplemented by it, representing a so-called *ex officio* completion of the legal-grounds of appeal.²²
- b. When the Community law issue has not been mentioned and is located outside the scope of the dispute:

Is the rule involved a rule of Community public policy? As *Eco Swiss* leaves room for doubt on this point, the only case on point is *Manfredi*, but its rather sweeping statement about the public policy character of EC Treaty Articles 81 and 82 is not fully convincing. Note that, according to Dutch legal doctrine, national competition law is not deemed to form a part of the rules of public policy.

If national law obliges the court to raise of its own motion a similar rule of domestic law, then the provision of Community law involved should be applied likewise; the same applies when the court is only empowered to raise of its own motion the similar rule of Community law. In fact, as will come back later on, Dutch administrative courts are only obliged to apply their national law *ex officio* when the competence of the court or of the decision-making body and/or the admissibility of the appellant is concerned. Accordingly, rules of Community law which cover

22. General Administrative Law Act art. 8:69 (1994) (Neth.).

the same subject should be applied *ex officio*, based upon the so-called principle of equivalence.

If the national court is not obliged or empowered to apply a similar rule of national law *ex officio*, would the refusal to apply the rule of Community law involved render virtually impossible or excessively difficult the exercise of rights conferred by Community law, applying the so-called principle of effectiveness?²³

In that event the national court should pay attention to the place of the rule of national procedural law involved, i.e. the one which would prohibit *ex officio* application, in the procedure, its progress and its special features, viewed as a whole before the various national instances. Naturally, the basic principles of the domestic judicial system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of procedure, should be taken into account, applying the so-called procedural rule of reason.²⁴

These are the questions that an administrative court should ask itself. In practice, however, most cases can be solved with the aid of the answer to question (a), provided that the limits of the dispute are interpreted rather broadly.

IV. *THE VAN DER WEERD CASE*²⁵

A. *The Facts of the Case*

In February 2001, an epidemic of foot-and-mouth disease was declared in the Netherlands. At that time, the appellants in the main proceedings ("the appellants") were in charge of cattle-breeding holdings which were situated less than two kilometres from the holding which had been declared to be infected by foot-and-mouth disease by the Director of the Rijksdienst voor de keuring van Vee en Vlees ("RVV") (the national cattle and meat inspection service). The Director's decision was based upon the result of tests carried out by the ID-Lelystad B.V. laboratory. Subsequently, the Director decided to order vaccination followed by the slaughter of all biungulate animals on the holdings of the appellants.

23. See *van Schijndel & van Veen v. Stichting Pensioenfonds voor Fysiotherapeuten*, Joined Cases C-430 & 431/93, [1995] E.C.R. I-4705, ¶ 17.

24. See *id.* ¶ 19.

25. *van der Weerd & Others v. Minister van Landbouw, Natuur en Voedselkwaliteit*, Joined Cases C-222-25/05, [2007] E.C.R. I-4233.

After having lodged objections to the decisions of the Director, who rejected them as unfounded, the appellants brought proceedings before the national court, the College van Beroep voor het bedrijfsleven ("CBB") (Trade and Industry Appeals Tribunal), challenging the decisions taken by the Director. The CBB rejected all pleas which had been submitted. However, it pointed out that in related cases before it²⁶ the validity of similar decisions had been challenged on the basis of different pleas in law which had not been raised by the appellants. Those pleas had claimed that the Director was not entitled to take measures on the basis of the results of the tests carried out by ID-Lelystad B.V., because the laboratory involved is not mentioned in Annex B of Directive 85/511/EEC (11).

The CBB held that those pleas might have an influence on the resolution of *van der Weerd's* appeal, but could not be taken into account as they were not raised before it. In its holding, the CBB made the (usual) distinction between: a) the duty to supplement pleas in law which have been submitted by the appellants and stay within the limits of the dispute, i.e. *ex officio completion of the legal grounds of appeal*;²⁷ as contrasted with b) an analysis which the court is required to make on its own initiative outside the scope of the dispute, i.e. *ex officio* application. According to Dutch administrative law, such an analysis is only required in cases involving the application of rules relating to the powers of administrative bodies and those of the court itself, and provisions as to admissibility. The CBB considered that the European Community ("EC") law issue could not be considered to fall under (a) above, while item (b) only concerned rules of public policy, to which, according to the CBB, the Directive did not belong. The CBB accordingly asked the ECJ whether Community law required that it should examine EC law rules which were outside the terms of the dispute, in particular those derived from Directive 85/511.

B. *The Judgment of the Court of Justice*

The main part of the Court's judgment is constituted by paragraphs 28 to 33 which merit quotation:

26. See *Dokter & W. Boekhout v. Minister van Landbouw, Natuur en Voedselkwaliteit*, Case C-28/05, [2006] E.C.R. I-5431.

27. General Administrative Law Act art. 8:69(2) (1994) (Neth.).

28. It is clear from the case-law that, in the absence of Community rules in the field, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed rules governing actions for safeguarding rights which individuals derive from Community law, provided, first, that such rules are not less favourable than those governing similar domestic actions (principle of equivalence) and, secondly, that they do not render virtually impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness) (Joined Cases C-430/93 and C-431/93 *Van Schijndel and van Veen* 1995 ECR I-4705, paragraph 17, and Case C-129/00 *Commission v Italy* 2003 ECR I-14637, paragraph 25).
29. As regards the principle of equivalence, it is clear from the order for reference that the *College van Beroep voor het bedrijfsleven* is competent to raise of its own motion issues relating to the infringement of rules of public policy, which are construed in Dutch law as meaning issues concerning the powers of administrative bodies and those of the court itself, and provisions as to admissibility. Those rules lie at the very basis of the national procedures, since they define the conditions in which those provisions may be initiated and the authorities which have the power, within their area of responsibility, to determine the extent of the rights and obligations of individuals.
30. The provisions of Directive 85/511 which are at issue do not occupy a similar position within the Community legal order. They govern neither the conditions in which procedures relating to the control of foot-and-mouth disease may be initiated nor the authorities which have the power, within their area of responsibility, to determine the extent of the rights and obligations of individuals.
31. Those provisions cannot therefore be considered as being equivalent to the national rules of public policy referred to above. As a result, the application of the principle of equivalence does not mean, as regards the present cases, that the national court is obliged to conduct of its own motion an examination of the validity of the administrative measures in question by having regard to criteria based on Directive 85/511.

32. Moreover, were those provisions to form part of public health policy, they would have been put forward in the main proceedings essentially in order to take account of the private interests of individuals who had been the object of measures to control foot-and-mouth disease.
33. As regards the principle of effectiveness, it is clear from the Court's case-law that each case which raises the question whether a national procedural provision renders the exercise of rights conferred by the Community legal order on individuals impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its progress and its special features, viewed as a whole, before the various national instances. In that context, it is necessary to take into consideration, where relevant, the principles which lie at the basis of the national legal system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the proceedings (see, to that effect, Case C-312/93 *Peterbroeck* 1995 ECR I-4599, paragraph 14, and *Van Schijndel and van Veen*, paragraph 19).²⁸

As the quoted text shows, the Court started in paragraph 28 with a summary of its earlier case-law regarding the principles of national procedural autonomy, equivalence and effectiveness.²⁹ As far as the principle of equivalence is concerned, the Court held in paragraphs 30-31 that Directive 85/511 does not contain any rules of public policy. Thus, the principle of equivalence does not apply here, because the principle does not go further than the obligation or the power to apply rules of national law *ex officio* when they are based upon public policy.³⁰ The Court's somewhat puzzling paragraph 32 states that:

[W]ere those provisions [of Directive 85/511 which are at issue] to form part of public health policy, they would have been put forward in the main proceedings essentially in order to take account of the private interests of individuals who had been the object of measures to control foot-and-mouth disease.³¹

This paragraph gives some ground to the view that the Direc-

28. *Id.* ¶¶ 28-33.

29. *See id.* ¶ 28 (referring to *van Schijndel*, [1995] E.C.R. I-4705, ¶ 17).

30. *See id.* ¶ 30-31; *see also supra* Part III.

31. *van der Weerd*, [2007] E.C.R. I-4233, ¶ 32.

tive's provisions could sometimes be considered to protect public health and might then reach the level of European public policy.

As regards the principle of effectiveness discussed in paragraph 33, the Court repeated the procedural rule of reason as it has been formulated in the *van Schijndel* case.³² The Court then pointed out that in the *van Schijndel* case it had to deal with a principle of national law which provided that the national court had to stay within the limits of the dispute and had to base its decision on the facts put before it. The Court then deemed that limitation to be justified on account of the protection of the rights of the defence and in the interest of a proper conduct of proceedings.³³

According to the CBB, the procedural circumstances in the present case did not differ from those which were the subject of *van Schijndel*, the only point of difference being that the court in the *van Schijndel* case (the Supreme Court of the Netherlands) is a court of last instance, while the CBB is a court of first and last instance. The Court of Justice did not consider that distinction sufficient to deviate in the present case from the principles which had been reached in *van Schijndel*.³⁴

The Court finally dealt with the question whether other circumstances might lead to a different result. As far as *Peterbroeck* is concerned, the applicant in the main proceedings had been deprived of the opportunity to rely effectively on the incompatibility of a domestic provision with Community law. *Océano*, *Cofidis* and *Elisa Claro* all found their basis in the need for consumer protection, while *Eco Swiss* formed an application of the principle of equivalence (and not of the principle of effectiveness); pleas based on national law and those based on Community law should be treated equally.³⁵

V. QUESTIONS REMAINING AFTER VAN DER WEERD

Some might consider that with *van der Weerd* all issues concerning national court's *ex officio* application of EC rules have

32. See *id.* ¶ 33; see also *van Schijndel*, [1995] E.C.R. I-4705, ¶ 19.

33. See *van der Weerd*, [2007] E.C.R. I-4233, ¶ 35.

34. See *id.* ¶ 38.

35. See *id.* ¶¶ 39-40; see also R. Ortlep & M. Verhoeven, S.E.W. 2007 pp. 516-18, case-note under *van der Weerd*, [2007] E.C.R. I-4233.

been definitively solved. Furthermore I have the impression that the "interim conclusions" which I have presented above still hold. But nonetheless, I would raise the following questions.

About the principle of equivalence: is it possible that the Court of Justice might reach a different result than in *van der Weerd*, based upon its appraisal of the high importance of the rule of Community law involved, although it does not relate to the competence of the administration of the court nor to the admissibility of the claimant, in effect making the Community law rule one of the level of a rule of European public order? The example is *Eco Swiss* where Article 81 was qualified as a rule of such importance that it had to be applied in the same way as a national rule of public order.

A further step would be to consider a rule of Community or Union law as reaching the level of a rule of European public policy which for that reason only has to be applied by a national court of its own motion. In Dutch legal literature a reference has been made to the distinction known in French civil law, between the "*ordre public de direction*" (public policy and the general interest) and the "*ordre public de protection*" (public policy and the private interest). In paragraph 32 of the *van der Weerd* case the Court seems to leave open the possibility that national courts might have to apply the first mentioned rules of their own motion "irrespective of the importance of that provision to the Community legal order."³⁶

As far as the principle of effectiveness is concerned, one might wonder about the compatibility with Community law of a rule in Dutch administrative law stipulating that the court of first and final instance should not take into account rules of Community law which have not been raised by the appellant during the previous administrative stage. According to *van der Weerd* the parties should have had a "genuine opportunity to raise a plea based on Community law before a national court."³⁷

Finally, I would like to draw the attention of the reader to Article 9(1) of the Treaty of Lisbon which reads as follows:

Member States shall provide remedies sufficient to ensure ef-

36. *Id.* ¶ 41.

37. *Id.*

fective legal protection in the fields covered by Union law.³⁸

Although this rule is a codification of existing case-law, it should have a stimulating effect upon the willingness of national courts to apply Community or Union law *ex officio*. As far as the position of administrative jurisdiction itself is concerned, one should not neglect that by the removal of the Third Pillar of the Union and the inclusion of its subject-matter in the first one, the role of administrative courts may increase.

CONCLUSION

My Essay had a threefold objective: to describe the development of relevant case-law; to elucidate the aspects of Dutch administrative law which are relevant for a proper understanding of the *van der Weerd* case; and to answer the question whether with *van der Weerd* the development of the case-law has been finally concluded.

The answer to this question should in my view be in the negative, but I have to admit that future case-law will probably be characterized by fine-tuning. The basic sounds of this piece of music have been very well composed indeed.

38. Treaty of Lisbon (Reform Treaty) art. 9, O.J. C 306/01 (2007), signed on Dec. 13, 2007 (not yet ratified).