Editorial

Diversity in Unity – Horses for Courses

In the 1992 Churchill Memorial lecture in Luxembourg the Lord Chancellor took diversity in unity as his theme, with a *tour d'horizon* of various legal systems in the Member States. His emphasis was on English law, German law and French law, with some reference to what he reminded his audience was described by Lord Maugham as "those interesting relics of barbarianism, tempered by a few importations from Rome, known to the world as Scots law". Dutch lawyers, who are justly proud of the *Nieuw Burgelijk Wetbock* (the new Civil Code), much of which entered into force on 1 January 1992 to much acclaim, might be sad not to have been included in the *tour*. The Lord Chancellor rightly drew attention to elements of cross-fertilisation between the civil and common law systems, both at national level and indeed in the development of various aspects of Community law. One classic example of the latter (which he did not mention) is the equitable nature of the rule of reason developed in relation to the free movement of goods.[1]

Much co-operation on judicial matters has taken place through international agreements or under the aegis of the Council of Europe. Indeed, Community harmonisation measures on mutual recognition of qualifications were to some extent foreshadowed by agreements reached in the Council of Europe framework, whether bilaterally or multilaterally. The Brussels, Lugano, San Sebastian and Rome Conventions are instances of intergovernmental co-operation initially with a Community aspect set out in Article 220 EEC being expanded to embrace non-member States. There are, then various forms of co-operation possible, in addition to harmonisation through a formal Community instrument.

The Lord Chancellor pleaded for close co-operation between the various legal systems within the Community (taking the co-existence of the Scottish and English legal systems within one State as an example), without any requirement of standardisation and without any loss of the essential character of the individual systems. another example of a civil law system co-existing within a broader essentially common law framework is, of course, the situation of Louisiana in the USA. The plea for respect of national identities is perhaps most important in respect of national criminal law, but the Lord Chancellor noted that sensitivites over national criminal and civil procedure have hitherto precluded substantial Community involvement.

The mutual confidence and respect arising from the implementation of the Brussels and related Conventions were rightly praised by the Lord Chancellor, although these are far from being the only examples of judicial co-operation: there are regular meetings of the highest administrative courts in the Community and mutual confidence has developed apace between national judiciaries and the Court of Justice, despite the occasional hiccup. In a Community in which subsidiarity appears to be becoming the keynote[2] respect for national identities is clear, but we must beware lest this become simply an excuse for continuing integration solely along intergovernmental lines. There is more to the Community approach than the caricature of rigidity.

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[1] See Case 8/74, *Procureur du Roi* v *B & G Dassonville* [1974] ECR 837 at p 852; and Gormley, *Prohibiting Restrictions on Trade within the EEC* (Amsterdam, 1985) pp 51-57

[2] *Cf* Treaty on European Union (Maastricht, 7 February, 1992), Title I Common Provisions, Article A (numbering is that of the draft of 18 December 1991, CONF-UP-UEM 2017/91).