Editorial

Home and dry? . . . or slightly damp?

The judgment of the *Bundesverfassungsgericht* on 12 October 1993 finally cleared the way for the Treaty on European Union to come into force on 1 November 1993. Its terms emphasise the nature of the Community as an association of democratic States, operating by the consent of the national parliaments. In that vision Community policies and development are legitimised by those national parliaments, rather than by the European Parliament. The German judges thus appear to take the view that the increase in legislative powers of the Parliament set out in the Treaty still does not go far enough to bridge the democratic deficit so widely perceived to exist in the Community's structure. In that latter perception they are undoubtedly correct. The emphasis on national parliaments as a source of legitimacy is in perhaps keeping with the tend towards emphasis on subsidiarity and intergovernmental co-operation; it scarcely corresponds to the role which the European Parliament, directly elected since 1979, seeks to promote for itself. The judges' vision of Community legitimacy will scarcely meet with anything like universal approval, even though the result will certainly strengthen pressure from the European Parliament for the next intergovernmental conference, to be convened in 1996, to confer yet more powers on the Parliament at the expense of the Council, in order to deflect the very real criticism of the Community's decision-making procedures.

Perhaps more worrying for lawyers at the moment is the apparent attempt by the *Bundesverfassungsgericht* to resurrect the spectre of the *Solange* judgment from 1974, which most people felt had been laid to rest by the *Solange II* judgment in October 1986. Under cover of an alleged general protection of inalienable constitutional norms it appears that the judges seek to reverse the right to examine whether the Community has acted *ultra vires*. Such an examination has consistently been reserved by the Court of Justice as a matter for it, not a matter for national courts, in order that the consistency and uniform application of Community law throughout be upheld. From the Community viewpoint the judgment of the German judges is simply unsustainable on this point. Equally worrying is the apparent attempt to bind the government's hands in relation to any substantial alterations in the present text of the Treaty (particularly, but not only in relation to the criteria relating to economic and monetary union) which may be agreed in the Council. The idea of German nationals arguing in German courts that devaluation of their savings through the combination of a weakened system of economic and monetary union and high inflation amounts to an attack on their constitutionally guaranteed property rights is reminiscent of the attempts before the Court of Justice to fix the Community with liability for losses suffered by individuals as a result of global policy measures in the agricultural field dictated by economic considerations at Community level. The respect for fundamental rights guaranteed in the Community system is not designed to isolate operators from the economics of market forces. Similarly, Community measures have to have regard to wider interests than those of savers in any one country. Indeed, if the recent runs on the currencies of the United Kingdom and France plead for anything, it is a strong single and centrally managed Community currency. In no country do savers have legal protection against the economic cycle; such protection cannot be afforded by the Community any more than by any of its Member States.

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