

# THE COMMON MARKET AND THE THREAT TO ENGLISH LAW

If you believe that our Constitution, the English legal system, English law have served us well in the past:  
If you want to preserve them and continue to live under them:

## YOU MUST VOTE "NO" IN THE REFERENDUM

Here are the reasons:

THEN (i.e. the position as it was before we were dragged into Europe)

### (1) Parliament

Parliament at Westminster made the laws. We elected our own Parliament by a democratic process. A later Parliament could repeal any Statute made by a previous Parliament.

### (2) The Judges

In addition to law made by Parliament — the Statutes — there was another body of law called the Common Law which the English Judges developed over the centuries. These rules reflect the Englishman's sense of fair play. If an English Judge disagrees with the other members of the Court he can deliver a dissenting judgement.

### (3) Trading agreements with other countries

We were free to make treaty arrangements with other States. We could buy and sell where we wanted to and arrange the terms of our own contracts. This was part of the rights of the Crown — what lawyers call the Crown's "prerogative".

### (4) Law Reform

We could reform our own laws in our own way if they were not working well. We had set up a body of specialists with a Judge as Chairman ("the Law Commission" — not to be confused with the Common Market Executive in Brussels) which led to a lot of valuable reform measures.

### (5) The right of entry and search

Subject to very limited exceptions (such as the powers conferred on Customs officials) no person could enter an Englishman's home or office without his consent unless authorised to do so by a Search Warrant or Magistrate's Order. Certainly no foreigner could come to this country and insist upon entering and searching your home or office.

NOW (i.e. after the coup d'etat known as the European Communities Act 1972)

### (1) Parliament

Parliament at Westminster has literally surrendered the right to make the law in many vital areas. The power has been transferred to the European authorities—the Council of Ministers and the Commission in Brussels.<sup>1</sup> These authorities are not democratically elected. The English Parliament cannot now make laws which are inconsistent with European law.<sup>2</sup> The European Communities Act 1972 deliberately tied the hands of future Parliaments.<sup>3</sup>

### (2) The Judges

In all matters of European law there is now a superior Court which can over-rule the highest English Court. This is the European Court. Our Judges are bound by its decisions.<sup>4</sup> It is the supreme authority throughout the nine member States as regards the interpretation and application of European Law.<sup>2</sup> In fact it has conceived for itself a dynamic role and has produced many startling (but unchallengeable) decisions. No dissenting judgements are permitted in the European Court.

### (3) Trading agreements with other countries

We have lost the power to negotiate and conclude our own treaties as regards food and tariff and commercial arrangements. A further loss of power takes place whenever the Council of Ministers decides to adopt a new "common policy" on some matter falling under the wide terms of reference of the Treaty of Rome. An example is international road transport.<sup>2(d)</sup> Hence the erosion of the British Crown's prerogative is a steadily continuing process.

### (4) Law Reform<sup>5</sup>

One of the aims of the Treaty of Rome is to bring about the "approximation" of the respective municipal laws of the member States to the extent necessary for the functioning of the Common Market. In practice this will lead to the "harmonisation" of English Law to bring it into line with the foreign civil law systems. A flood of draft proposals to secure this end is coming out of Brussels. Examples relate to such matters as bankruptcy, company law, and claims in respect of defective products. Many of these proposals are not even being passed to the English Law Commission for scrutiny. They are considered by Government Departments in Whitehall.

### (5) The right of entry and search<sup>6</sup>

There is already one example of a Regulation made by the Council of Ministers which authorises officials from the Commission in Brussels to enter and search homes and offices in this country. No search warrant is needed and no order of a magistrate. All that is required is a piece of paper from the Commission stating why the search is being made. This example relates to the field of restrictive trading agreements. But a similar power could at any time be included in any new Council Regulation.

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## SUPPORTING TEXTS

### (1) E.E.C. Treaty (Treaty of Rome) Article 189

In order to carry out their task the Council and the Commission shall, in accordance with the provisions of this Treaty, make regulations, issue directives, take decisions, make recommendations or deliver opinions.

A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A decision shall be binding in its entirety upon those to whom it is addressed.

Recommendations and opinions shall have no binding force.

### (2) Extracts from judgements of the European Court (quotations from the Common Market Law Reports are cited as "C.M.L.R.").

#### (a) Van Gend en Loos case (1963) C.M.L.R. at 129

"We must conclude from this that the Community constitutes a new legal order in international law, for whose benefit the States have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only the member-States but also their nationals. Community law, therefore, apart from legislation by the member-States, not only imposes obligations on individuals but also confers on them legal rights".

#### (b) Costa v. ENEL (1964) C.M.L.R. at 455-6

"In fact, by creating a Community of unlimited duration, having its own institutions, its own personality and its own capacity in law, apart from having international standing and more particularly, real powers resulting from a limitation of competence or a transfer of powers from the States to the Community, the member-States, albeit within limited spheres, have restricted their sovereign rights and created a body of law applicable both to their nationals and to themselves. . . . The transfer, by member-States, from their national order, in favour of the Community order of the rights and obligations arising from the Treaty, carries with it a clear limitation of their sovereign right upon which a subsequent unilateral law, incompatible with the aims of the Community, cannot prevail".

#### (c) The Internationale-Handelsgesellschaft case (1972) C.M.L.R. at 283 (Note: This case decides that European law overrides even fundamental provisions of the Constitution of a member State).

"Therefore the validity of a Community instrument or its effect within a member-State cannot be affected by allegations that it strikes at either the fundamental rights as formulated in that State's constitution or the principles of a national constitutional structure".

#### (d) Re E.R.T.A.: The Commission v. The Council (1971) C.M.L.R. at 356 (Note: In this extraordinary piece of litigation the Commission sued the Council of Ministers in the European Court claiming that the Commission had the right to negotiate international treaties in the field of road transport. The Council of Ministers, i.e. the Governments of the member States, denied the existence of such right and in the alternative claimed that the member States had a concurrent right to conclude such treaties. The Council lost on both points).

"Although it is true that Articles 74 and 75 do not explicitly confer on the Community authority to enter into international agreements, nevertheless the bringing into force, on 25 March 1969, of Council Regulation 543/69 relating to the harmonisation of certain social provisions in the field of road transport had the necessary result of conferring on the Community authority to enter into any agreements with non-member States impinging on the subject-matter of that regulation. . . .

"This Community authority excludes the possibility of a concurrent authority on the part of member-States, since any initiative taken outside the framework of the common institutions would be incompatible with the unity of the Common Market and the uniform application of Community law".

#### (e) Re Export Tax on Art Treasures (No. 2) (1972) C.M.L.R. at 708 (Note: In this case the Italian Government argued that Community Law could not be applied in Italy until a conflicting Italian Statute had been repealed. The European Court rejected this argument out of hand).

"Since we are concerned with a directly applicable Community norm, the argument that its violation could be terminated only by the adoption of measures which are constitutionally proper for repealing the provisions incompatible with that norm would amount to affirming that the efficacy of the Community norm is subject to the law of each member-State and, more precisely, that its application is impossible so long as a national statute is opposed to it. . . .

"The attainment of the aims of the Community requires that the norms of Community law, contained in the Treaty itself and enacted under it, should apply unconditionally, at the same instant and with identical efficacy in the whole territory of the Community without the member-States being able to thwart them in any way. . . .

"The grant to the Community by the member-States of the rights and powers envisaged by the provisions of the Treaty implies in fact a definitive limitation of their sovereign powers, over which no appeal to provisions of internal law of any kind whatever can prevail".

### (3) The European Communities Act 1972

Section 2 (1) "All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties, as in accordance with the Treaties are without further enactment to be given legal effect or used in the United Kingdom shall be recognised and available in law, and be enforced, allowed and followed accordingly. . . ."

Section 2 (4) ". . . any enactment passed or to be passed . . . shall be construed and have effect subject to the foregoing provisions of this section. . . ."

### (4) The European Communities Act 1972

Section 3 (1) For the purposes of all legal proceedings any question as to the meaning or effect of any of the Treaties, or as to the validity, meaning or effect of any Community instrument, shall be treated as a question of law (and, if not referred to the European Court, be for determination as such in accordance with the principles laid down by and any relevant decision of the European Court).

### (5) E.E.C. Treaty (Treaty of Rome) Articles 2, 3, 100 and 101

article 2. The Community shall have as its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it.

Article 3. For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein: . . .

#### (h) the approximation of the laws of Member States to the extent required for the proper functioning of the common market.

Article 100. The Council shall, acting unanimously on a proposal from the Commission, issue directives for the approximation of such provisions laid down by law, regulation or administrative action in Member States as directly affect the establishment or functioning of the common market. . . .

### (6) Regulation 17, Article 14. Investigating powers of the Commission

Para. 1. In carrying out the duties assigned to it by Article 89 and by provisions adopted under Article 87 of the Treaty, the Commission may undertake all necessary investigations into undertakings and associations of undertakings. To this end the officials authorised by the Commission are empowered:

- (a) to examine the books and other business records;
- (b) to take copies of or extracts from the books and business records;
- (c) to ask for aural explanations on the spot;
- (d) to enter any premises, land and means of transport of undertakings.