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BEYOND THE REASONS STATED IN JUDGMENTS

*Giorgio Gaja**

THE LEGAL REASONING OF THE EUROPEAN COURT OF JUSTICE: TOWARDS A EUROPEAN JURISPRUDENCE. By *Joxerramon Bengoetxea*. Oxford: Clarendon Press. 1993. Pp. xvi, 294. \$49.95.

I

In the context of the abundant literature on European Community (EC) law — which is mainly devoted to describing, often uncritically, the decisions of the European Court of Justice (ECJ) — Joxerramon Bengoetxea's¹ book provides a welcome contribution. It attempts to answer some of the fundamental questions concerning the role that the ECJ plays in the development of EC law.

No doubt the ECJ has added significantly to many areas of EC law. It has also been regarded as authoritative by the other EC institutions and has successfully imposed its views on Member States' courts, which in most cases are entrusted with the application of EC law and the solution of conflicts between EC law and Member States' legislation. Although article 177 of the EC Treaty established the ECJ as the ultimate interpreter of EC law, this Treaty mandate did not necessarily provide a guarantee that the ECJ's rulings would generally be accepted in practice. It seems fair to state that widespread acceptance has in fact occurred, despite the ECJ's strong profederalist line on issues such as (i) the competence of EC institutions over areas — like the protection of the environment — about which the Treaty was originally silent; (ii) the supremacy of EC law over Member States' legislation; and (iii) the ability of private parties to invoke Treaty provisions and acts by EC institutions that apparently require implementing legislation.

How did the ECJ achieve all this? Joseph Weiler provided one ingenious explanation about ten years ago² when he linked the judicial development of EC law with the EC decisional framework: the fact that EC institutions had been unable, for political reasons, to adopt major legislative measures without the consent of the governments of

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1. Associate Professor of Law, University of the Basque Country.

2. See Joseph H.H. Weiler, *The Community System: The Dual Character of Supranationalism*, 1 Y.B. EUR. L. 267 (1981).

all the Member States made it possible for the latter to accept the supremacy of EC law and other innovations that the ECJ masterminded. In other words, had EC legislation progressed by majority decisions as the Treaty provided, the Court's caselaw would have come under political challenge. This explanation would now require some adjustment if one intended to confirm it with regard to the present circumstances, because significant developments have taken place in the normative process, mostly through the Single European Act (SEA) and the Treaty on the European Union — treaties which have come into force after their unanimous acceptance on the part of all the Member States. A series of important decisions have been adopted by the EC Council by majority vote. Nevertheless, while the pace of development of EC law by the judiciary has slowed, the earlier achievements have not been undermined and still remain unchallenged.

Bengoetxea defines his method as follows:

Most of the judgments analysed give a picture of the ECJ as actively engaging in the European Community project and the aim of this book is partly to explain how this is possible and to reconstruct the work of the Court. But the questions framed and addressed are primarily those of a legal philosopher or legal theoretician and not so much those of a political scientist or a legal sociologist. My main interest has been to analyse how the Court has reconstructed EC law and to reconstruct or represent the work of the Court itself. [p. viii]

This approach clearly restricts the author's ability to give an explanation of the Court's role within the EC system. It also limits the scope of his analysis of individual decisions. However, Bengoetxea does not intend to consider only the legal justifications given by the ECJ, which is the main object of Part II of the book; he refers in Part I also to "discovery," which he defines as those

factors that, put together, actually led to the decision as it was reached at a given point in space and time and to the real process whereby the decision was reached. . . . These factors can be of a psychological [nature] (hence the expression "psychological process"), of a sociological nature (factors relevant to the explanation of social action), or they can be idiosyncratic factors: related to the situation and context, or special characteristics of the institution such as resources, time, working conditions etc. [p. 114]

Bengoetxea does not go far in the direction of "discovery." He makes one attempt with regard to the *Polydor*³ case:

Sometimes the Court does not echo those justifying grounds although one could postulate that they figured prominently in its deliberations. For instance, comparative-law arguments or, as in *Polydor*, arguments from economic consequences: the Commission argued that if the Court's interpretation of articles 30 and 36 of the EEC Treaty were extended to the similar provisions (articles 14 and 23) contained in the

3. Case 270/80, *Polydor Ltd. v. Harlequin Record Shops Ltd.*, 1982 E.C.R. 329.

Community's Free Trade Agreement with Portugal, that would lead to a situation where non-Member States might obtain all the rights of Community membership (in the present case, the doctrine of the exhaustion of industrial property rights: no trade restrictions justified on the ground of the protection of industrial and commercial property when the holder of those rights has already consented to their marketing) without having to assume the corresponding obligations. [p. 124; citation omitted]

Bengoetxea further mentions the same judgment when he notes that "at other times the Court does refer in its justification to substantive and consequentialist arguments of the sort which featured prominently but *sotto voce* in *Polydor*" (p. 125).

In *Polydor*, the Court was requested to determine whether some provisions in the Free Trade Agreement between the EC and Portugal⁴ required the same wide meaning as the identically worded articles in the EC Treaty.⁵ Another issue was whether private parties could invoke the provisions in the Agreement in judicial proceedings.⁶ Several Member States, and to some extent the Commission, took a negative attitude on both issues before the Court. The alleged lack of reciprocity on Portugal's part was one of the arguments supporting their stance; Advocate General Rozès stressed it in her opinion.⁷ The ECJ did not rely on the lack-of-reciprocity argument in *Polydor*, however, and even rejected it shortly afterwards in *Kupferberg*,⁸ another case involving the same Free Trade Agreement. Although the Free Trade Agreement was widely regarded as more beneficial to the EC than to Portugal, it may be true that in *Polydor*, as Bengoetxea suggests, and later in *Kupferberg*, the Court took some economic considerations into account when giving a stricter meaning to the provisions in the Agreement than to the corresponding texts in the EC Treaty. However, another reason not mentioned by Bengoetxea may have played a significant role in *Polydor*. Knowing that Portugal would not be bound by the Court's interpretation, the ECJ may have preferred to exercise judicial self-restraint and to leave the settlement of the ques-

4. See Council Regulation 2844/72 Concluding an Agreement Between the European Economic Community and the Portuguese Republic, 1972 O.J. SPEC. ED. (L 301) 166, 167 (reciting the text of the Agreement). The Agreement was signed on July 22, 1972. The ECJ did not find it necessary to address the question of direct effect.

5. 1982 E.C.R. at 333.

6. 1982 E.C.R. at 333.

7. 1982 E.C.R. at 354-55. In her later opinion in *Kupferberg*, Advocate General Rozès said: To recognize a provision of that Agreement as having direct effect without the guarantee that an individual may rely on the provision in Portugal on the same terms and with the same results in relation to legal protection would, by reason of the absence of reciprocity, lead to the Community's being at a disadvantage and that would not correspond to the discernible intention of the Contracting Parties.

Case 104/81, Hauptzollamt Mainz v. C.A. Kupferberg & Cie. KG a.A., 1982 E.C.R. 3641, 3674. See *infra* note 8 and accompanying text.

8. In *Kupferberg*, the ECJ said: "[T]he fact that the courts of one of the parties consider that certain of the stipulations in the agreement are of direct application . . . is not in itself such as to constitute a lack of reciprocity in the implementation of the agreement." 1982 E.C.R. at 3664.

tion concerning the protection of trademarks for imported products to negotiations between the parties to the Agreement in a political forum.

Bengoetxea also makes an attempt at "discovery" in discussing the series of cases concerning the European Parliament's standing to challenge the validity of acts taken by other EC institutions (pp. 105-11, 124-25, 236, 246, 249). The Court first refused the European Parliament standing in *Comitology*⁹ and later reversed itself in *Chernobyl*,¹⁰ though only insofar as Parliament's prerogatives are affected. Bengoetxea approvingly notes Advocate General Van Gerven's opinion in *Chernobyl* to the effect that the earlier decision by the ECJ should be regarded "as a refusal to address Parliament's demand to modify the whole institutional balance created by the Treaties and thus indirectly as a careful decision on the part of the Court to avoid overstepping its role by deciding a politically delicate question in a way which contradicts the SEA."¹¹ Although this view comes from the Court, it appears to overstate somewhat the importance of the standing issue and the weight that political considerations may have played in the Court's first decision. Parliament's powers were unlikely to be affected substantially, whether or not it obtained standing to challenge the validity of acts taken by the Council or the Commission. The ECJ's stance in *Chernobyl*, the more recent decision, does not necessarily imply a reappraisal of Parliament's role. The Court attempted, not to alter Parliament's powers, but rather, as the ECJ noted, to enable Parliament "to maintain the institutional balance" within the context of fulfilling its "task of ensuring that in the interpretation and application of the Treaties the law is observed."¹² The ECJ's role, rather than the European Parliament's role, would have been restricted in practice had the Court denied the Parliament standing. Moreover, the second decision appears to aim at a more satisfactory overall solution, in light of the fact that in *Les Verts*,¹³ the Court had already recognized the right of other institutions to challenge Parliament's binding acts — a right that Parliament strongly contested at first. Article 173 of the EC Treaty as it originally stood provided for neither this right nor Parliament's standing. Through an amendment to article 173 adopted with no apparent difficulty in the Treaty on the European Union, the EC Treaty now incorporates both Parliament's standing and the right of other institutions to challenge Parliament's

9. Case 302/87, *Parliament v. Council (Comitology)*, 1988 E.C.R. 5615. The ECJ said: "[T]he applicable provisions, as they stand at present, do not enable the Court to recognize the capacity of the European Parliament to bring an action for annulment." 1988 E.C.R. at 5644.

10. Case C-70/88, *Parliament v. Council (Chernobyl)*, 1990 E.C.R. I-2041, I-2073.

11. P. 125 (discussing 1990 E.C.R. at I-2056-57); see also p. 110.

12. 1990 E.C.R. at 2073.

13. Case 294/83, *Parti Écologiste 'Les Verts' v. Parliament*, 1986 E.C.R. 1339. The ECJ held that "an action for annulment may lie against measures adopted by the European Parliament intended to have legal effects *vis-à-vis* third parties." 1986 E.C.R. at 1366.

binding acts, to the extent outlined by the ECJ in *Chernobyl* and *Les Verts* respectively.

The absence of individual opinions and the collective drafting of judgments partially explain the fact that "discovery" often yields little with regard to the decisions of the ECJ. While judges publish articles that refer to decisions given by the ECJ, they generally do not critically analyze their own decisions, and on the whole they faithfully comply with their obligation under article 2 of the ECJ statute "to preserve the secrecy of the deliberations of the Court."¹⁴ The Commission and Member States often intervene in proceedings before the Court and may bring economic and social consequences of prospective rulings to the Court's attention. However, the written briefs are not usually available to scholars, who must rely upon the short summaries included in the judges' reports for the hearings, the advocate generals' opinions, and the judgments. Confidential information, moreover, serves only to provide background knowledge for the Court, as it may not be published.

Yet, hard as it is to base "discovery" on significant elements, its importance to a court that often deals with major political issues cannot be exaggerated. A variety of factors that are not stated in the ECJ's decisions often influence the answers to even apparently technical questions. The much-discussed question of the horizontal direct effect of EC directives provides a pertinent example.

Under article 189 of the EC Treaty, 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."¹⁵ This article was originally understood to imply that implementing legislation by Member States was required before a rule stated in a directive could be invoked in courts. However, in a series of decisions in the 1970s, the ECJ held that some provisions included in directives — because they were unconditional, complete, and precise — would have direct effect, that is, they could be invoked in courts against Member State authorities. This part of the ECJ's caselaw caused the most criticism by some of the Member States' higher courts — the French Conseil d'État in *Cohn-Bendit*¹⁶ and the German Bundesfinanzhof in *Re Value Added Tax Directives*¹⁷ — which determined that the ECJ's view was incompatible with the wording of article 189 of the EC Treaty and thus refused to accept the idea that directives could have direct effect. This refusal came at a

14. See COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES, SELECTED INSTRUMENTS RELATING TO THE ORGANIZATION, JURISDICTION AND PROCEDURE OF THE COURT 61 (1993).

15. TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY [EEC TREATY] art. 189.

16. Minister of the Interior v. Cohn-Bendit, 1 C.M.L.R. 543 (1980).

17. 1 C.M.L.R. 527 (1982).

time of vehement media criticism of the ECJ's activism, especially in France.¹⁸

It hardly seems a coincidence that, after such intense criticism, the ECJ limited the direct effect of directives by specifying that directives, unlike provisions in the EC Treaty, could not be invoked by an individual against another individual, or, in other words, could not have horizontal direct effect. The Court first achieved this goal by stating in *Ratti*¹⁹ that the direct effect of a directive was a sanction for Member State noncompliance with their obligations under the directive. This statement appeared to imply that directives could not be invoked against individuals, a point that was made shortly after *Ratti* in an influential article written by Judge Pescatore in a leading French periodical.²⁰ The ECJ emphatically asserted that directives could only have vertical effects in *Marshall*.²¹

While Bengoetxea does not fail to refer to the decisions in *Ratti* and *Marshall* and also to the French Conseil d'État's ruling in *Cohn-Bendit* (pp. 202, 237-38), he does not examine any political factors. He leaves the reader with the observation that the ECJ asserted the existence of direct effect "by saying that it must go beyond the letter of the provision and have regard to the useful effect of EC law," whereas it rejected the idea of a horizontal direct effect "by claiming, in a rhetorical appeal to authority, that it was strictly adhering to the wording of article 189. This contradiction must be criticized from the point of view of rational practical discourse" (p. 238). While Bengoetxea correctly appraises the inconsistency, he fails to elaborate on what clearly appears to be a sign that an explanation should be sought elsewhere.

To reinforce what seems to be the more plausible reconstruction of the ECJ's caselaw on the horizontal direct effect issue, it is also significant to note that, once the resistance of Member States' courts to the direct effect of directives subsided, the ECJ to some extent proceeded toward recognizing their horizontal direct effect. The Court stated in its 1990 decision in *Marleasing*²² that Member States' legislation, even if enacted before a directive, had to be interpreted in cases between individuals "in the light of the wording and the purpose" of the directive even, as was no doubt the case in *Marleasing*, at the cost of dis-

18. See HJALTE RASMUSSEN, ON LAW AND POLICY IN THE EUROPEAN COURT OF JUSTICE 339-57 (1986).

19. Case 148/78, *Pubblico Ministero v. Ratti*, 1979 E.C.R. 1629. The ECJ held that "a Member State which has not adopted the implementing measures required by the directive in the prescribed periods may not rely, as against individuals, on its own failure to perform the obligations which the directive entails." 1979 E.C.R. at 1642.

20. Pierre Pescatore, *L'Effet des Directives Communautaires: Une Tentative de Démythification*, RECUEIL DALLOZ SIREY 171, 176 (1980).

21. Case 152/84, *Marshall v. Southampton and S.-W. Hampshire Area Health Auth.*, 1986 E.C.R. 723, 749.

22. Case C-106/89, *Marleasing SA v. La Comercial Internacional de Alimentación SA*, 1990 E.C.R. I-4135.

torting national legislation.²³ Thus, directives, although they are still denied horizontal direct effect, may impinge in practice on the relations between individuals.

II

The book's strength clearly lies in its examination of the reasons given by the Court in its decisions. Bengoetxea proceeds on the basis of the analytical theory of law. His is a remarkable effort, which certainly contributes to a better understanding of the ECJ's caselaw. Moreover, while some references to legal theorists have little relevance to the object of the study and the author's language appears at times unnecessarily complex, his analysis has the great advantage of lucidity and precision.

In systematizing the ECJ's decisions, Bengoetxea draws a distinction between clear cases and hard cases, the latter category encompassing those cases in which an interpretation in the narrow sense of the word is required. The author rightly notes that the ECJ's practice runs as follows: "Justification in clear cases is rather straightforward and follows roughly a deductive scheme. Justification in hard cases follows deductive schemes only as a general outline: the final decision is presented deductively, but the intermediate, enthymematic steps cannot be deductively justified, although they can be rationally justified in the law" (p. 193).

Both types of cases contain a major premise in a syllogism. In clear cases, the major premise may represent the contents of an earlier ruling by the ECJ on the same or a similar question. Bengoetxea notes: "The main rationale of *acte clair* in this type of ECJ decision is authority" (p. 205). In other instances, clarity of the norm may be "a felicitous, sincere statement" or else "a device to disguise interpretation" (p. 206).

In so-called hard cases — of the type that "usually involves a doubt regarding the formulation of the premisses that will lead to a decision in the law" (p. 221) — justification is seen as an attempt to persuade the legal audience that the adopted interpretation does no violence to the legal order and that its consequences are at least not undesirable. Several arguments (reasons) will be offered by the interpreter in support of the proposed interpretation. These arguments mutually support each other in order to persuade an audience that the proposed interpretation is more coherent and fits better with existing law and leads to better results than other rival interpretations (coherence and consequences are relative). [p. 225]

This passage rightly points to the ECJ's traditional practice of giving more than one argument to justify a certain result. However, it should also be noted that, especially in recent years, the Court states

23. 1990 E.C.R. at I-4158-59.

its reasons very briefly. In many preliminary rulings on the interpretation of EC law, one of the few paragraphs giving the reasons fully corresponds to the operative part of the judgment. While the use of this technique does not imply that there is no justification, it provides an indication of the ECJ's reluctance to develop arguments. Scantly reasoned judgments may have the advantages of offering fewer opportunities for the reader's criticism and of leaving the ECJ freer when making further decisions; however, such judgments hardly persuade. This new way of stating the reasons has yet to affect the overall authoritativeness of the ECJ's decisions. One possible explanation is that, while it is expected that a judicial decision should not read like an oracle, political actors and Member State courts do not consider the reasons for the decision to be that important.

Bengoetxea recalls that the ECJ stated some general guidelines on the interpretation of EC law only in *CILFIT*.²⁴ The first of these guidelines requires an attempt to reconcile the different language versions of Community provisions, although the ECJ often tends to play down the inevitable differences in the meaning of texts written in the ten official languages. The second guideline is more significant: it states that "legal concepts do not necessarily have the same meaning in Community law and in the law of the various Member States."²⁵ The idea that concepts of EC law are autonomous must be read in conjunction with the third and last guideline: "Finally, every provision of Community law must be placed in its context and interpreted in the light of the provisions of Community law as a whole, regard being had to the objectives thereof and to its state of evolution at the date on which the provision in question is to be applied."²⁶

The ECJ's criteria for interpretation in fact go further than those criteria that were outlined in *CILFIT*. Bengoetxea groups them into different categories: "semiotic criteria" (pp. 234-40), "systemic and contextual criteria" (pp. 240-51), and "dynamic criteria" (pp. 251-62). He provides the following summary of the various categories:

Semiotic criteria look at the linguistic features of the language which legal norms use. Contextual criteria lay the emphasis on the static perspective; they place the text under interpretation in a spatial context (*sedes*). Systemic criteria are used with a view to drawing inferences from different norms which are interrelated. They give a static picture of EC law. I have classified under the general term "dynamic criteria" three types of arguments: functional, teleological, and consequentialist arguments. These arguments are related to the dynamic context in which norms operate. Arguments are drawn from the value-laden conception that norms are to be interpreted in such a way that they function

24. Case 283/81, Srl CILFIT and Lanificio di Gavardo SpA v. Ministry of Health, 1982 E.C.R. 3415.

25. 1982 E.C.R. at 3430.

26. 1982 E.C.R. at 3430.

effectively (functional arguments), or from the objectives which some norms of the legal order either formulate explicitly or are seen as pursuing (teleological arguments), and finally from the consequences to which the proposed interpretation for those norms leads (consequentialist arguments). These criteria give something like a moving picture of EC law: each figure in the picture is understood in its relations to the other figures and in its development in the picture through time. [pp. 251-52]

While most of Bengoetxea's examples of the different categories are accurate, there are some exceptions. One of them is the view expressed about the *Defrenne II*²⁷ case, concerning equal pay for men and women:

[T]he Court limited in time the effect of the interpretation given to article 119 in the sense that the judgment could not be invoked in support of claims for periods of retribution prior to the judgment, because otherwise important economic losses could follow to many Member States from actions for recovery. [p. 256]

This view may be true if one looks at the case from the perspective of "discovery,"²⁸ while from the point of view of "justification" — which the author adopts in the relevant part of the book — one would have to come to the opposite conclusion. The ECJ said:

Although the practical consequences of any judicial decision must be carefully taken into account, it would be impossible to go so far as to diminish the objectivity of the law and compromise its future application on the ground of the possible repercussions which might result, as regards the past, from such a judicial decision.²⁹

Bengoetxea notes that

the most interesting substantive reasons are those which originate in principles which did not originally appear in the Treaties, e.g. human rights (in their liberal, social, and cultural versions), the protection of the environment, consumer protection, etc. The acceptability approach is most relevant in such cases; it could be argued that some of these values have made their way into EC law (through judicial decision-making and through legislation) when there has been an "adequate" (rational?) consensus concerning their urgency within the different audiences to which decisions are addressed. [p. 273; footnote omitted]

Bengoetxea gives the ECJ's decision in *Cassis de Dijon*³⁰ as an example of the addition of a "new 'category' of exceptions" — including consumer protection in particular — to those that article 36 of the EC Treaty allows Member States to make to the free import of goods in

27. Case 43/75, *Defrenne v. Société Anonyme Belge de Navigation Aérienne Sabena* (*Defrenne II*), 1976 E.C.R. 455.

28. The president of the ECJ acknowledged the weight of economic considerations in a book that he published shortly after the judgment in *Defrenne II*. See ROBERT LECOURT, *L'EUROPE DES JUGES* 172 (1976).

29. 1976 E.C.R. at 480.

30. Case 120/78, *Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein* (*Cassis de Dijon*), 1979 E.C.R. 649.

intra-Community trade (pp. 273 n.2, pp. 258-59). While this interpretation has indeed been suggested,³¹ the prevailing view is that the ECJ referred in *Cassis de Dijon* to measures that Member States take with regard to both domestic and imported products and that, according to the ECJ, article 30 of the EC Treaty implicitly allows under certain conditions.³² If the latter view is correct, the ECJ's decision in *Cassis de Dijon* introduced no new category of exceptions. On the contrary, the ECJ appears to have restricted the Member States' freedom in regulating marketing in their respective territories. The ECJ required measures that also affect intra-Community trade to pursue genuinely an acceptable goal: a prohibition of marketing fruit liqueurs with a low alcoholic content failed to meet this test, although German authorities contended that it protected consumers.³³

This observation may appear to be a quibble, but it shows how difficult it is to write a general overview of the ECJ's reasoning without a thorough knowledge of the various areas of EC law on which the Court's judgments were rendered. Also, in an analysis of justification it may well be necessary to go beyond an examination of the wording of the judgments in order to identify the proper category in which a case should be included and to explore why certain criteria were not relied upon in a particular judgment. The latter type of analysis, however, is clearly beyond the reach of a general survey, which may still provide — as Bengoetxea's book arguably does — a useful framework for more specific inquiries.

A general study could discuss some questions regarding the use of "dynamic criteria" of interpretation. While Bengoetxea's book does not address these questions, it indirectly helps to put them in focus. I shall frame them as questions, although some replies are implicit. First, it may be useful to recall that in the passage of the decision in *CILFIT* quoted above³⁴ the ECJ mentioned the need to refer to the "state of evolution" of EC law when interpreting a legal rule. The use of dynamic criteria implies that Treaty provisions and, likewise, acts adopted by EC institutions may acquire a meaning other than that originally intended. Is this consistent with the ECJ's idea in *Salumi*³⁵ that the Court's interpretation of a rule of EC law "clarifies and defines where necessary the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its coming into force"?³⁶ Should not the retrospective effect of interpreta-

31. See PETER OLIVER, *FREE MOVEMENT OF GOODS IN THE E.E.C.* 208-13 (2d ed. 1988).

32. See, e.g., ERIC STEIN ET AL., *EUROPEAN COMMUNITY LAW AND INSTITUTIONS IN PERSPECTIVE* 116-17 (Supp. 1985).

33. 1979 E.C.R. at 664.

34. See *supra* text accompanying note 26.

35. Joined Cases 66, 127, and 128/79, *Amministrazione delle Finanze v. S.r.l. Meridionale Industria Salumi*, 1980 E.C.R. 1237.

36. 1980 E.C.R. at 1264 (operative part).

tion be limited when a rule is interpreted on the basis of a dynamic criterion? Moreover, as the use of dynamic criteria implies that a provision may acquire a new meaning in the future, how can one assume, as the Court suggested in *Salumi* and other decisions,³⁷ that, once the ECJ has interpreted a provision of EC law, this provision has become clear? Could not the future use of dynamic criteria induce the ECJ to give a different meaning to the same provision?

37. See in particular the decision in *CILFIT. Case 283/81, Srl CIFIT and Lanificio di Gavardo SpA v. Ministry of Health, 1982 E.C.R. 3415.*