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906704184X - Co-actorship in the Development of European Law-making: The Quality of European Legislation and Its Implementation and Application in the National Legal Order

Ernst M. H. Hirsch Ballin and Linda A. J. Senden

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T · M · C · A S S E R P R E S S

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PREFACE

Unity in diversity is a feature of the European Union in which 25 countries, each with its own national legal order, come together in a single European legal order.

The European Union is not an arbitrary forum for cooperation but a legal order that applies to all its actors – EU institutions, Member States and citizens. The European legal order serves the EU's diversity and plurality, and the EU legislature must take this into account.

European legislation is not intended to detract from the diversity of legal traditions, methods and systems in the Member States, but rather to shape their compatibility. European legislation therefore never stands alone but must always be considered and applied in balanced cohesion with the applicable national legislation.

Just as the EU's legislature must serve diversity and plurality, so must national legislatures increasingly be mindful of their roles as part of a single European legislative process. With time, achieving and maintaining the delicate balance between unity and diversity increasingly becomes a shared responsibility of the EU and national legislatures, just as the subsequent uniform application of European law is a shared responsibility of the EU and national courts.

National legislatures and courts are not only *consumers* of European law, and as such subject to its binding force, but are also *co-actors* in the development of the manifold interlaced legal systems of the Member States and the European Union.

It is in this context that the 19th colloquium of the Association of the Councils of State and the Supreme Administrative Jurisdictions of the European Union – whose General Report you have in front of you – should be understood.

The colloquium produced several interesting conclusions which are set out in the report. It also played a role in a process in which the bodies responsible for advising governments on legislation and the Union's administrative courts are developing a greater awareness of their position as co-actors in the formation of European law. In this process, it is important to continue striving to achieve and preserve a balance between unity and diversity. The balance is embodied in the connecting links between Community law and national law. In these connecting links, the co-actors must always play their own roles and counter the many forces that may disturb this delicate balance.

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The colloquium and this report represent only one moment in the process which I very much hope can and will be pursued in the framework of the Association, on the basis of 'the spirit of The Hague'.

I should like to address a word of thanks to the general rapporteur of the colloquium, Professor Ernst Hirsch Ballin of the Dutch Council of State, who presided over the substantive preparations for the colloquium, and to Professor Linda Senden, who wrote the report. I should also like to thank those who assisted them and the staff of the Dutch Council of State.

Finally, thanks are due to the national rapporteurs, since it is their reports that provided the foundations for this colloquium and General Report.

December 2004

Herman Tjeenk Willink
Vice-President of the Dutch Council of State

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LIST OF ABBREVIATIONS

BOE	Boletín Oficial del Estado
BverwG	Bundesverwaltungsgericht
C.E.	Conseil d'Etat
CFI	Court of First Instance
CMLR	Common Market Law Reports
CMLRev.	Common Market Law Review
ConstEur	Treaty Establishing a Constitution for Europe
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECR	European Court Reports
ELRev.	European Law Review
EP	European Parliament
ESF	European Social Fund
EU	European Union
EuLR	European Law Reports
EWHC	England and Wales High Court (Administrative Court)
IGC	Intergovernmental Conference
JRP	Journal für Rechtspolitik
MP	Member of Parliament
MEP	Member of the European Parliament
NGO	Non-governmental Organisation
NVwZ	Neue Zeitschrift für Verwaltungsrecht
OJ	Official Journal
OMC	Open method of coordination
STC	Simon's Tax Cases
TEC	Treaty establishing the European Community
TEU	Treaty on European Union
UKHL	United Kingdom House of Lords
VAT	Value Added Tax